

# HUMAN RIGHTS IN THE SCHOOL CURRICULUM OF CHILE: PRECARITY AND COMPLEXITY

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*The privileged place that human rights have been taking in the school curriculum in Chile since the 90s is crystallized in the creation of the subject Citizen Education that is to be beginning in 2019. However, in this paper we propose a theoretical analysis of the inclusion of human rights in the school curriculum thus far. In addition, we attempt to analyse the possible effects of Citizen Education on the mandatory curriculum in Chile, with consideration of curriculum as a “complicated conversation” and the notion of “precarity”. We employ three dimensions: first, the notion of person; second, local law versus international law; and third, necessary conditions and latent risks. Considering these dimensions, we acknowledge that the inclusion and visibility of human rights in the curriculum is not a new field. Including new content into the curriculum does not necessarily address the problem of making human rights as a lived experience for students and society. The lack of clarity about what are the real rights of people, the relationship between our national legislation and international law, and the lack of necessary conditions for the promotion of human rights caused concern around the lack of protection and precarity in peoples’ lives. Therefore, the question arises: who exist, who does not exist and which lives matter.*

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## INTRODUCTION

In Chile and in other countries, the implementation of Citizen Education attempts to address two problems: the lack of active citizenship in the population, and the low participation rate in traditional politics. The State attempts to address these problems by implementing policies in a centralized way and in “top down” manner.

In Latin America especially, human rights’ education serves two purposes: to educate the citizenry and to attempt to repair the historical damage done in respect to human rights by dictatorships in the late 20th Century.

This article focuses on a problematizing of the Program on Citizen Education and Human Rights<sup>1</sup>. Our analysis considers the notion of “precarity”<sup>2</sup> and curriculum as “complicated conversation”<sup>3,4</sup>, and is based on three dimensions: the notion of person, the relationship between local law and international law, and necessary conditions and latent risks.

We hope to contribute to the discussion about teaching citizenship and human rights, and its inclusion in the school curriculum, focusing on legal and, in particular educational aspects.

## I. THE STATE OF THE ART

Education for citizenship and human rights has taken a leading role at the global level, and particularly in Latin America and in Chile. It has become evident, however, that such education requires the addressing of the low participation rate of young people in institutional politics, and the low participation rate generally in the electoral system.

The importance of citizen education in schools has increased in recent years in Chile, mainly due to the low political participation of citizens, be it formal and/or informal<sup>5,6</sup>. In this respect, the Chilean educational authorities have made several attempts to give citizenship training a greater presence in

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<sup>1</sup> Ley N° 20911. Diario Oficial de la República de Chile, Santiago, Chile, 02 de abril de 2016.

<sup>2</sup> J. Butler, *Performatividad, precariedad y políticas sexuales*, 4(3) REVISTA DE ANTROPOLOGÍA IBEROAMERICANA AIBR 32—336 (2009), <http://www.aibr.org/antropologia/04v03/criticos/040302.pdf>.

<sup>3</sup> A. PHELAN, *CURRICULUM THEORIZING AND TEACHER EDUCATION: COMPLICATING CONJUNCTIONS* (New York: Routledge 2015).

<sup>4</sup> W. PINAR, *EDUCATIONAL EXPERIENCE AS LIVED: KNOWLEDGE, HISTORY, ALTERITY. THE SELECTED WORKS OF WILLIAM F. PINAR* (New York: Routledge 2015).

<sup>5</sup> M. Garcés & A. Valdés, *Estado del arte de la participación ciudadana en Chile*. Documento preliminar para OXFAM-GB, Santiago, Chile, 0-33 (1999).

<sup>6</sup> MINEDUC, *Informe Comisión Formación ciudadana* (Santiago, Chile: Autor 2004a).

schools, but they have not always had the expected results<sup>7 8</sup>.

Specifically, in the case of human rights, in cases where countries have signed onto the Universal Declaration of Human Rights (UN, 1948) there is an obligation that those countries implement that promote human rights. The founding act itself of the system of protection of human rights, and particularly in adherence to the Universal Declaration of Human Rights, which states that:

... all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction (p. 1).

The Declaration<sup>9</sup>, the Covenant on Economic, Social and Cultural Rights<sup>10</sup>, the Charter of the Organization of American States American Convention on the Child Rights<sup>11</sup>, and the Convention on the Rights of the Child<sup>12</sup>, all establishes that education must “be geared to strengthening respect for human rights and fundamental freedoms”, “to promote understanding, tolerance and friendship among all nations and ethnic or religious groups”, and “to promote the maintenance of peace”, and democracy.

These declarations reinforce the importance of human rights education as an endemic element of the right to an education generally, and as an integral element of quality education.

However, the presence of human rights in the curriculum has been subjected to important criticisms. In particular, the Chile’s Instituto Nacional de Derechos Humanos (National Institute of Human Rights, hereinafter INDH) has stated:

The human rights approached with which the learning objectives are taught, is based on a restrictive perspective, linked almost exclusively to issues of mass and systematic violations (genocide/dictatorship), and lack of awareness of other human rights issues. (...) Thus, there is a concern about the lack of clear references to the development of all economic, social and cultural rights and those related to special protection groups such as children and adolescents,

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<sup>7</sup> *Ibid.*

<sup>8</sup> MINEDUC, *Formación Ciudadana en el Currículo de la Reforma* (Santiago, Chile: Autor 2004b).

<sup>9</sup> UN, *The Universal Declaration of Human Rights*. Art. 26.2 (1948).

<sup>10</sup> UN, *The Covenant on Economic, Social and Cultural Rights*. Art. 13 (1996).

<sup>11</sup> UN, *The Charter of the Organization of American States American Convention on the Child Rights*. Art. 47 (1969).

<sup>12</sup> UN, *The Convention on the Rights of the Child*. Art. 28 (1989).

women, indigenous peoples, migrants and the population with disabilities<sup>13</sup>.

Recently, the Ministry of Education of Chile has proposed the creation of the Citizen Education and Human Rights Plan, through Law 20.911 (2016), which states in particular:

The educational establishments recognized by the State will have to include in the levels of elementary, middle and high school education a Citizen Education Plan, which integrates and complements the national curricular definitions in this matter, which provides students with the necessary preparation to assume a responsible life in a free society oriented to the integral improvement of the human person, as the foundation of the democratic system, social justice and progress<sup>14</sup>.

However, the inclusion of human rights in the school curriculum is not a recent phenomenon. Since the Curricular Reform of the 1990s, the Curricular Adjustments (2009), and the current Curricular Bases (2012, 2013) have been increasing human rights topics in the curriculum. This inclusion has been installed in two ways: as transverse objectives, and specific contents, especially in the subject of History, Geography and Social Sciences.

According to the INDH, “curricular incorporation is inconsistent in its quality, depth and level of integration”<sup>15</sup>. They also denounce an unclear understanding of the differences and scope of human rights education, since the training dimensions of subjects of rights, respectful of their own rights and committed to their protection, are not clear, nor is it understood as an obligation and promotion by the State, being delegated to schools.

On the other hand, how this program appears is not completely clear. While for some scholars it corresponds to the crystallization of a Citizen Education, considering the inclusions in the three last curricular reforms<sup>16</sup>. For others, it responds mainly to an attempt to solve the low rates of citizen participation as a result of disaffection with the political system<sup>17</sup>.

Regardless of this, the Program on Citizen Education and Human Rights considers as one of its fundamental purposes: “to promote students’

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<sup>13</sup> INDH, *Minuta Sobre la Inclusión de la Educación en Derechos Humanos en la Reforma del currículum escolar* 14—15 (2013), <http://bibliotecadigital.indh.cl/handle/123456789/559>.

<sup>14</sup> *Ibid.*

<sup>15</sup> INDH, *Informe Sobre Proyecto de Ley que crea el Plan de Formación Ciudadana para los Establecimientos Educativos Reconocidos por el Estado* (Boletín N°10043-04) p. 2 (2015), <http://bibliotecadigital.indh.cl/bitstream/handle/123456789/855/Informe.pdf?sequence=1>.

<sup>16</sup> C. Cox & J. Castillo, *Aprendizaje de la ciudadanía: Contextos, experiencias y resultados* (Santiago de Chile: Ediciones UC 2015).

<sup>17</sup> H. Gómez, *Formación ciudadana en el currículum escolar: riesgos y posibilidades* (2016), <http://www.eldesconcierto.cl/debates-y-combates/2016/07/21/formacion-ciudadana-en-el-curriculum-escolar-riesgos-y-posibilidades/>.

knowledge, understanding and commitment to human rights as recognized in the Political Constitution of the Republic and in the international agreements signed and ratified by Chile, with special emphasis on the rights of the child”<sup>18</sup>.

Following this purpose, our analytical attention is focused on recognizing that the will to include or make the subject of human rights even more visible does not guarantee, per se, that students, having once completed their education, will be more aware of what the human rights are, what they are their own rights, or how they can be part of a society that promotes a rights approach. That is why we propose a discussion about the risk and opportunity to include human rights in the educational system, considering three dimensions: the notion of person, the complexity of human rights in a complex legal framework, and, the necessary conditions and latent risks.

The discussion of these three dimensions employs two epistemological lenses: The first from viewing curriculum as “complicated conversation”<sup>19</sup>, and second from the notion of “precarity”<sup>21</sup>. In both, purposes and contents, we provide a discussion of the inclusion of human rights in the curriculum thus far, and possible effects of this new program.

We hope to begin a conversation, in order to avoid the current scenario characterized by a maximized human rights’ vulnerability, understood as a suffer exposition of our populations produced by the State, and/or other forms of aggression that do not come from the State, but from which the State is not protecting at all.

## II. EPISTEMOLOGICAL LENSES

### A. *Curriculum, a Complicated Conversation*

According to Ted Aoki (1919-2012)<sup>22</sup>, teachers in their teaching practice are dwelling in a landscape characterized by two horizons: a first horizon of the prescribed or compulsory curriculum (curriculum as plan) and curriculum as a lived experience. To dwell in this space is extremely complex, since teachers, on the one hand, must ‘comply’ with the prescribed

<sup>18</sup> Law 20.911 (2016), p. 1.

<sup>19</sup> A. PHELAN, CURRICULUM THEORIZING AND TEACHER EDUCATION: COMPLICATING CONJUNCTIONS (New York: Routledge 2015).

<sup>20</sup> W. PINAR, EDUCATIONAL EXPERIENCE AS LIVED: KNOWLEDGE, HISTORY, ALTERITY. THE SELECTED WORKS OF WILLIAM F. PINAR (New York: Routledge 2015).

<sup>21</sup> J. Butler, *Vida precaria. El poder del duelo y la violencia* (Buenos Aires: Paidós 2007).

<sup>22</sup> T. Aoki, *Toward Curriculum inquiry in a New Key* (1980), in W. PINAR & R. IRWIN, CURRICULUM IN A NEW KEY: THE COLLECTED WORKS OF TED AOKI (USA and Canada: Routledge 2012).

curriculum designed by the Ministry of Education, and on the other, must respond to the needs of the educational experience in their classrooms, their students, and, of course, their own individuality and life history. The question arises: How is it possible to establish a genuine conversation between these two curricular horizons?

Aoki had already denounced, in 1980, the reduction of human actions (and specifically of teachers) to dehumanized reasons. In this context, he uses the metaphor of “landscape”, consisting of two horizons, a dilemma in which teachers must often dwell in an ongoing tension to address the claims of curriculum as plan and curriculum as lived experience.

The author invites those of us who in the field of curriculum to be sensitive to the challenges teachers face in the context of this metaphorical “landscape”<sup>23</sup>.

Aoki tells us that, in essence, the curriculum should be understood as a conversation. However, a real conversation is “one in which the participants in the conversation engage in a reciprocity of perspectives”. However, a real conversation—for Aoki—needs to have a “legitimate interest” in sharing different points of view, and understandings about curriculum as consequence of living in between of these two horizons.

In recent years, Anne Phelan<sup>24</sup> and William Pinar<sup>25</sup> have continued this idea, adding that it corresponds to a “complicated” conversation, one of its main features being the inability to predict an effect through any curriculum prescription.

According to Pinar<sup>26</sup> the curriculum has been considered in a “simplistic” and “reductive” way. He maintains that, in the United States, and elsewhere, curriculum originally was viewed as the domain of the administrator. This means that the curriculum has been regarded as technical, usually a one-way prescription, centered authority and not on actors based. In short, curriculum was determined as a technical concept, falling under the control of politicians and technocrats to the detriment of a field requiring reflection, dialogue and study.

In response to this situation, Pinar and other theorists have been encouraging those who work curriculum to retake the path initiated by Aoki, including considerations phenomenological and postcritical.

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<sup>23</sup> W. PINAR & R. IRWIN, *CURRICULUM IN A NEW KEY: THE COLLECTED WORKS OF TED AOKI* (USA and Canada: Routledge 2012).

<sup>24</sup> A. PHELAN, *CURRICULUM THEORIZING AND TEACHER EDUCATION: COMPLICATING CONJUNCTIONS* (New York: Routledge 2015).

<sup>25</sup> W. PINAR, *EDUCATIONAL EXPERIENCE AS LIVED: KNOWLEDGE, HISTORY, ALTERITY. THE SELECTED WORKS OF WILLIAM F. PINAR* (New York: Routledge 2015).

<sup>26</sup> W. PINAR, *WHAT IS CURRICULUM THEORY?* (Mahwan, NJ: Lawrence Erlbaum 2004).

First, in the 1970s, Pinar introduced the subject of autobiography as a way of creating spaces of subjective freedom in order to consolidate professional autonomy of teachers, and student teachers, by talking about the lived experiences in relation to curriculum<sup>27</sup>.

Pinar, utilizing the Latin root of curriculum (*currere*), changed the focus of curriculum from something fixed and inert (noun) to something fluid and active (verb). He shifted its emphasis to an understanding of curriculum as being somewhat of a journey and a subjective experience. In this way, Pinar<sup>28</sup> encouraged the first-person narrative construction of compositions written by the actors of the curriculum, giving importance to discourse in and about the classroom, inaugurating what has been called the *Reconceptualist* movement, which considers the curriculum as a complex conversation, structured by ethical commitment to otherness.

Finally, Phelan<sup>29</sup> offers an interesting analysis of curriculum understood as a “complicated conversation”. The author emphasizes that, against a culture based on objectification, with an emphasis on measurement and comparison through standardized tests, there arises a misunderstanding of the importance of subjective experience. Such objectification erodes the teaching profession and makes it necessary and urgent to reconsider curriculum as a subjective experience.

Phelan emphasizes that teacher training is still hijacked by the paradigm of reason, which denies space to complexity and attention to the subjective experience of the teachers themselves and the rest of the subjects. In this way, the author points out: “I imagine myself in a complicated conversation on a matter of mutual concern—the entanglements of the subjectivity of the teacher with historical circumstances, contemporary politics and educational practices—creating public spaces of commitment”<sup>30</sup>. In this way, Phelan opens the space to rethink the curriculum as part of the experience of the actors that participate in it, taking off from a reductionist understanding of the curriculum as a text.

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<sup>27</sup> F. Díaz Barriga, *Comprender la teoría del currículum como una conversación complicada: surgimiento, crisis, reconceptualización e internacionalización*, 21(69) *Revista mexicana de investigación educativa* 641—646 (2016).

[http://www.scielo.org.mx/scielo.php?script=sci\\_arttext&pid=S1405-66662016000200641&lng=es&tlng=es](http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1405-66662016000200641&lng=es&tlng=es).

<sup>28</sup> W. PINAR, W. REYNOLDS, P. SLATTERY & P. TAUBMAN, *UNDERSTANDING CURRICULUM* (New York, NY: Peter Lang 1995).

<sup>29</sup> A. PHELAN, *CURRICULUM THEORIZING AND TEACHER EDUCATION: COMPLICATING CONJUNCTIONS* (New York: Routledge 2015).

<sup>30</sup> A. PHELAN, *CURRICULUM THEORIZING AND TEACHER EDUCATION: COMPLICATING CONJUNCTIONS 5* (New York: Routledge 2015).

*B. From Performativity to Precarity*

The notion of precarity comes from Judith Butler's philosophical reflections. Butler has been working on theories of gender, race, and power. In particular the author has developed the theory of performativity<sup>31</sup> (1990, 1993) that in recent years has advanced towards the notion of precarity (2007) that interests us for the analysis of this article. According to the author, this epistemological transition is explained insofar as "while performativity was, in reality, an explanation of the agency, precarity seems to focus more on those conditions that threaten life and make it escape from our own control"<sup>32</sup>.

For a better understanding of this transit and of the precarity in particular, it is fundamental to start from the gender analysis. For Butler, (1993) gender is conditioned by obligatory norms that make it defined in one sense or another (usually within a binary framework) and therefore its reproduction is always a negotiation of power. In addition, there is no gender without reproduction of norms that put at risk the fulfillment or non-compliance of these norms, which opens the possibility of a re-elaboration of the reality of gender by means of new forms. This last point is key to understand performativity, as well as the linguistic reiteration that creates the effect of what it speaks, as well as the opening—through its own failures—to new possibilities of existence.

Precarity, on the other hand, refers to a certain number of conditions in which human beings are involved. Regarding this, Judith Butler-induced political condition of maximized vulnerability, is an exposure suffered by populations who are arbitrarily subject to state violence, as well as to other forms of aggression not provoked by states, but against which they do not provide adequate protection<sup>33</sup>.

Furthermore, "the idea of precarity determines what politically induces a condition in which certain parts of the population suffer from the lack of social and economic support networks, being marginally exposed to damage, violence and death"<sup>34</sup>. That is why, when we use the term precarity, we are talking about populations that suffer hunger, indigence, poverty, etc., people dedicated to sex work, and those who have to defend themselves from both street violence and police harassment.

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<sup>31</sup> J. BUTLER, *GENDERTROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (New York, NY: Routledge 1990); also J. BUTLER, *BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF "SEX"* (New York, NY: Routledge 1993).

<sup>32</sup> J. Butler, at 322 (2009).

<sup>33</sup> J. Butler, at 323—324 (2009).

<sup>34</sup> J. Butler, at 323 (2009).



The complexity, and at the same time the opportunity of this theoretical notion, is that it offers us a strategic analysis to recognize how a subject requires to comply with certain norms that govern the recognition, those that make a person to be recognizable (or intelligible). This is key, because is questioning the viability of the own life, and the ontological conditions of survival that each one has. On the other hand, the notion of precarity places us in an eminent discussion about the rights that must be guarantee and/or jeopardize such intelligibility, or in the same way the lives that have worth.

### III. ANALYSIS

Our research is focused on an analysis of Law 20.911 which initiated the Program of Citizen Education and Human Rights, on the elements of this law, as well as its possible implications for our students. Our analysis takes into consideration with three dimensions: the notion of person; the relationship between local law and international law; and, necessary conditions and latent risks.

Also, our analysis considers a theoretical positioning of the curriculum as a “complicated conversation”, and along with the notion of precarity. Both theoretical references act here as epistemological lenses of this work.

#### *A. Dimension 1: The Notion of Person*

The Chapter II of the Chilean Constitution establishes four articles concerning constitutional rights and responsibilities. Article 19 contains 26 numerated statement which delineate the guaranteed of citizens. Doing a brief analysis of all of these statements, we can see a clear privilege of individual rights above social rights. One circumstance that is indicative of this is that not all rights are enforceable before a court by means of the remedy of protection. For example, Article 20, establishes the remedy of protection for anyone who is affected by any of their constitutional rights may request measures to re-establish the rule of law and ensure the proper protection of the affected.

However, the cited article points out the rights whose protection protects and are excluded, for example, numbers 8 (live in a pollution-free environment) and 10 (right to education), while it is appropriate in education, but only with respect to freedom of education and in the case of health only in relation to the freedom to choose the system that one wishes to receive, whether in the public or private. The Constitution thus inclines towards individual rights, which are protected through protection: property rights, to freely develop an economic activity, freedom of contract (not the

right to work), equality before the law, honor, privacy, life and integrity, etc.

In its enumerated statements, the Constitution establishes a lower percentage of social rights (health, education, social security, labor) and these in turn are subject to certain limitations. For example, the Constitution guarantees the right to health care that right is limited to access only. In the area of education, the emphasis is on parents' rights to determine the type of schooling their children receive. Consequently, health and education are not the exclusive responsibility of the State<sup>35</sup>. This gives us an unhelpful scenario since it indicates that both health and education are not the exclusive responsibility of the state. Other guarantees, already mentioned, contribute to strengthen certain rights over others, whether political or individual, but fail to cover basic needs such as housing or a minimum salary.

Other factors contributing to the challenges faced by Chilean workers and families: 50% of Chilean workers earn less than \$305,000 (about 470 USD) and that only 15.1% earn more than \$750,000<sup>36</sup>; the low qualification of the workers, labor precariousness and the subcontract of work<sup>37</sup>; a school drop-out rate of almost 9%, i.e. 7% children in Chile are forced to withdraw from primary education, and 11 out of 100 adolescents leave secondary education without graduating in the last year<sup>38</sup>. These factors, among others, demonstrate that, in practice, despite what is declared in Article 19, some citizens enjoy a privileged position with respect to the law, meanwhile social rights must be acquired as property consumption as part of neoliberal system.

So the inequities embedded in the Constitution privileges some rights over others and the socio—economic reality described above create living conditions of thousands of Chileans even more precarious. Educational inequities, specifically lead to a lack of comprehensive awareness and knowledge on the part of Chilean students of what rights and responsibilities the Constitution mandates guarantees. Do citizens know what to do if, in a

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<sup>35</sup> A palpable case is the thousands of protection resources filed against the Isapres (health insurers) in recent years. These remedies do not invoke the right to health (which violates this constitutional right), but invoke their right of ownership over the personal rights that emanate from the contract entered into with Isapre which, by raising the cost of the plan, unilaterally modifies the content of the contract that can only be left without effect by the will of both parties or by legal reasons.

<sup>36</sup> G. Durán & M. Kremerman. *Los verdaderos sueldos en Chile: panorama actual del valor del trabajo usando la Encuesta NESI 2014* (Chile: Fundación Sol 2015).

<sup>37</sup> C. Brega, A. Páez, B. Sáez & G. Durán, *Informe Mensual de Calidad del Empleo (IMCE)* (Chile: Fundación Sol 2016).

<sup>38</sup> A. Sepúlveda, D. Santibáñez, D. Díaz, A. Latorre & F. Valverde, *Infancia cuenta en Chile 2014: Segundo Informe Observatorio Niñez y Adolescencia* (Chile: Observatorio Niñez y Adolescencia 2014).

hypothetical case, the constitutional guarantees are not being respected? It is high probable that large surveys would show that many Chileans are not clear about the human rights provisions of the Constitution. But if we had a good defense to give us the right information some doubts could be cleared. However, there are a large number of people who, because they do not know their own rights and guarantees, have been involved in judicial cases that have ended with pre-trial detention or prison sentences<sup>39</sup>.

It is difficult to determine with certainty the cause the reason why hundreds of people were unjustly detained and, furthermore, they did not receive an adequate repair. But one thing if it is clear, knowledge of our rights and their due protection were in the foreground, the situation would be completely different, because if we have better tools, adequate information and a safe environment, we are likely to be able to defend ourselves against the law. However, lack of opportunities and timely information make a percentage of people more vulnerable to a civil or criminal problem. A recent survey by the Paz Ciudadana Foundation<sup>40</sup> estimated that in our country only 14% of people deprived of liberty have complete school education<sup>41</sup>.

In short, a constitution that enshrines individual rights over social ones, a segregated and unequal context and a widespread misinformation in the most vulnerable sectors of the country, is generating a country with greater fissures and inequalities, where the market is one that is devoted to some over others, because to obtain rights such as health, education, housing must be paid, expect the state to subsidize or commit crimes. All these mean that in practice there are people who have rights and others who do not.

In conclusion, given that access to or satisfaction of social rights depends on the size of each person's pocket, then the result will be that in our country there are, in practice, two types of people: i) Those who have the ability to pay for full access to these social rights; and ii) Those who must conform to the minimum standard financed by the State (called basic solidarity pension, school subsidy, diseases Boom, etc.). In these

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<sup>39</sup> Recently, between January 2014 and August 2015, 4230 people who were innocent and who were subsequently dismissed or acquitted, suffered a custodial deprivation of liberty, that is, house arrest or preventive detention, while the investigation lasted (Proyecto Inocentes, 2015). Inostroza, D. (2015, 19 de octubre). *77 mil imputados en los últimos 20 meses resultaron inocentes. Proyecto inocentes*. [http://www.proyectoinocentes.cl/sala\\_prensa/noticias\\_detalle/127/77-mil-imputados-en-los-ultimos-20-meses-resultaron-inocentes](http://www.proyectoinocentes.cl/sala_prensa/noticias_detalle/127/77-mil-imputados-en-los-ultimos-20-meses-resultaron-inocentes).

<sup>40</sup> Fundación Paz Ciudadana, *Estudio sobre los niveles de exclusión social en personas privadas de libertad* (2016), <http://www.pazciudadana.cl/wp-content/uploads/2016/02/exclusion-social-final-3.pdf>.

<sup>41</sup> In the same study 47% of the criminal population declared that they did not know the procedural situation in which they were and 19% said they explained their situation to them, but did not understand it.

circumstances, it is not strange, but rather inevitable that the country be divided into two worlds, in the worlds of Atria<sup>42</sup> in one of neighbors of health care, schools and private services, and another of under privilege people. So in this context, will it be possible to consider human rights education?

*B. Dimension 2: Local Law versus International Law*

Chile has a constitutional legal framework that regulates the rights of people, including human rights. From the local point of view, it is the courts and public policies that oversee and enforce human rights, which the country has ascribed through the signing of treaties and international agreements. Also, citizens can make sure their rights are guaranteed by referring to an Injustice Protection<sup>43</sup> or Habeas Corpus<sup>44</sup>. In turn, there are autonomous agencies of the State that monitor that our country respects rights and does not violate them, such as the INDH and the Henry Dunant Foundation.

In the international context, there are two mechanisms that ensure that the member states of the United Nations comply with the treaties already ratified: The Universal Periodic Review and the Inter-American Commission of Human Rights (hereinafter the IACHR). Both watch for the fulfillment of fundamental rights, and the court has the possibility to carry out investigations and to dictate recommendations when it estimates that a national state has been ruled against human rights.

These international organizations can inform and recommend, but it is a resolution of the State of Chile if it ratifies the international reports and complies with the new provisions. In particular, Chilean recent history presents citizens who have sued the State, when they have considered that their individual rights, such as equality before the law, non-discrimination among others, have been breached and these international organizations

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<sup>42</sup> F. Atria, *Qué educación es pública?* *Estudios Sociales* N°117 45—67 (2009); F. Atria, *Derechos sociales y educación: un nuevo paradigma de lo público* (Santiago, Chile. Editorial LOM 2015).

<sup>43</sup> It corresponds a constitutional action, proceeding against arbitrary or illegal acts or omissions that affect certain fundamental rights established in the Chilean constitution, especially the property right. In the American law there are actions with similar effects to the Chilean Injustice Protection, known as “injunctions”. *Constitución política de la República de Chile*. Santiago, 2015. Biblioteca del Congreso Nacional de Chile. Disponible en: <https://www.leychile.cl/Navegar?idNorma=242302>.

<sup>44</sup> In Chile, is an action of constitutional rank, applicable when a person has been arrested or detained in violation of constitutional or legal guarantees, so that a higher court of justice adopts the necessary measures to reestablish the law’s empire. The Habeas Corpus (called Recurso de Amparo in Chile) can be claimed by the affected person or by any person, not only for privation of freedom, but also when personal liberty is disturbed or threatened. This action is equivalent to the Habeas Corpus of many other legislations.

have ruled in their favor. The jurisprudence gives us as examples the case of “Atala Riffo and daughters” and the case of “Almonacid Arellano and others”<sup>45</sup>.

The first case arises when Chilean judge Karen Atala decided in 2004 to sue the Chilean State before the IACHR, arguing that she was discriminated against because of her sexual orientation when she was denied custody of her daughters. The international court ruled in her favor and determined that she and her daughters should be financially and morally compensated. The reason: the Chilean court had violated the right to equality and non-discrimination; the right to privacy; and, the right to be heard. On that occasion, the international court argued: while it is true that certain societies may be intolerant of conditions such as race, sex, nationality or sexual orientation of a person, States cannot use this as a justification for perpetuating discriminatory treatment (...). The Constitution cannot control prejudices, but neither can tolerate them. Particular biases may be outside the scope of the law, but the law cannot, directly or indirectly, allow their application<sup>46</sup>.

The case of Almonacid Arellano and others, dates from the military dictatorship. Luis Alfredo Almonacid, was a Chilean primary school teacher and a member of the Communist Party. Days after the coup, he was arrested and shot by police in front of his family. The next day he passed away. This was one of the many cases that were amnestied by Decree Law No. 2,191. Because of this regulation, the case was not properly investigated and the perpetrators of the crime were not punished. With the arrival of democracy, their relatives, finding no justice, appealed to the IACHR, which in 2002 declared: The State failed to comply with its obligations under Articles 1.1 and 2 of the American Convention on Human Rights, and violated the rights enshrined in Articles 8.1 and 25 of such treaty, to the detriment of Mrs. Elvira del Rosario Gómez Olivares and Mr. Alfredo, Alexis and José Luis Almonacid Gómez (wife and children). In order to amnesty those responsible for crimes against humanity, Decree Law No. 2,191 is incompatible with the American Convention and, therefore, lacks legal

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<sup>45</sup> C. Nash, *Derecho Internacional de los Derechos Humanos en Chile. Recepción y aplicación en el ámbito interno*, Centro de Derechos Humanos (Chile: Universidad de Chile 2012); Corte Interamericana de Derechos Humanos, *Almonacid Arellano y otros Vs. Chile*, Corte Interamericana de Derechos Humanos (2014),

[http://www.corteidh.or.cr/cf/jurisprudencia2/ficha\\_tecnica.cfm?lang=es&nId\\_Ficha=335](http://www.corteidh.or.cr/cf/jurisprudencia2/ficha_tecnica.cfm?lang=es&nId_Ficha=335).

<sup>46</sup> I. Toro & M. Octavia, *La bitácora del caso Atala*. La Tercera (2012),

<http://diario.latercera.com/2012/03/24/01/contenido/reportajes/25-104493-9-la-bitacora-del-caso-atala.shtml>.

effects, in light of said treaty<sup>47</sup>.

Lastly, and as mentioned by the IACHR, it was recommended that the State of Chile should ensure that Decree Law No. 2,191 did not continue to be an obstacle to the continuation of investigations into the extrajudicial execution of Luis Alfredo Almonacid Arellano, nor to the identification and punishment of those responsible for their crime. But it also recommended that this decree should not continue to represent an obstacle to the investigation, prosecution and punishment of those responsible for other similar violations. Finally, it recommended that the state should reimburse the costs and expenses to their relatives.

The cases presented show that there has been no concordance between national and international rulings related to human rights. We are talking about Chileans who sought the state to resolve in their favor regarding issues related to discrimination and laws dictated in dictatorship but, however, had to go to international courts. Then we ask ourselves what is happening in our country regarding the protection of fundamental rights? Why an international court rules in an opposite way to the national courts? Is it that the courts have not ruled in favor of human rights?

Considering this lack of correlation between local and international rulings in such emblematic cases, one wonders what happens to the social groups and individuals that receive sentences and that lack the resources that would allow them to have clarity in the judicial processes. We talk about individuals who do not know how the local and international framework protects them, who—if they do not have a good defense, or support of foundations or NGOs—can hardly assert their human rights. We speak of individuals that when being precarized, so are their rights.

Faced with this scenario, we believe that teaching about human rights becomes complex in a country that receives constant recommendations from international organizations since its local courts systematically rules against the provision of human rights.

### C. *Dimension 3: Necessary Conditions and Latent Risks*

Although the task of protecting and promoting human rights belongs to the State and society, for Magendzo<sup>48</sup> it is the teachers and the school who—protagonically—assume the task of educating in citizenship and

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<sup>47</sup> Corte Interamericana de Derechos Humanos, *Almonacid Arellano y otros vs. Chile*. Corte Interamericana de Derechos Humanos (2014), [http://www.corteidh.or.cr/cf/jurisprudencia2/ficha\\_tecnica.cfm?lang=es&nId\\_Ficha=335](http://www.corteidh.or.cr/cf/jurisprudencia2/ficha_tecnica.cfm?lang=es&nId_Ficha=335).

<sup>48</sup> A. Magendzo, *Educación en derechos humanos: Si no los educadores ¿quién? Si no ahora ¿cuándo?*, (12) DOCENCIA 71-81 (2000).

human rights.

In this sense, as Muñoz<sup>49</sup> point out, teacher preparation “entails an even more complex and profound challenge, as it includes not only a transmission of knowledge and procedures, but also processes of reflection on the dispositions with which each person approaches this subject, as well as the duty to construct a professional discourse capable of overcoming common sense, prejudices and unfounded particularisms”<sup>50</sup>.

If we assume that curriculum is a “complicated conversation”, as Pinar<sup>51</sup> points out, a complicated conversation “illustrates a curriculum in which academic knowledge, subjectivity and society are inextricably linked”.

The participation of the teacher in such conversation is, for Pinar<sup>52</sup>, a formative exercise that implies appreciating: “because the curriculum is that complicated conversation between teachers and students over the past and its meaning for the present as well as what both portend for the future, curriculum theory is focused on educational experience”. However, the participation of teachers in this area is almost inexistent.

This is a great challenge because, as the literature points out, teacher training in terms of political science, citizenship, and human rights is almost non-existent<sup>53</sup>, but more importantly, the way curriculum is understood aims to continue perpetuating a curricular conception of it as a *text*, where the teacher is rather an implementer of a curricular plan. That is, “teachers are reduced to technicians”, managing “the productivity of students. The school is no longer a school, but a business”<sup>54</sup>.

In short, future teachers occupy a place of “transmitters” of this type of curricular plans, positioned in an intelligibility that deprives them of an active role in this challenge. Furthermore, the perspective of

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<sup>49</sup> P. Muñoz, C. Silva, A. Ibáñez & C. Millalén, *La Educación en Derechos Humanos y Ciudadanía en la Formación Inicial Docente*, (50) DOCENCIA 84—95 (2013b).

<sup>50</sup> Muñoz, et. al. at 85 (2013).

<sup>51</sup> W. PINAR, WHAT IS CURRICULUM THEORY? 11 (Mahwan, NJ: Lawrence Erlbaum 2004).

<sup>52</sup> W. PINAR, WHAT IS CURRICULUM THEORY? 25 (Mahwan, NJ: Lawrence Erlbaum 2004).

<sup>53</sup> A. Magendzo, *Educación en derechos humanos: Si no los educadores ¿quién? Si no ahora ¿cuándo?*, (12) DOCENCIA 71—81 (2000); M. Curcio & E. Camargo, *Universidad y formación ciudadana*, 14(28) *Reflexión Política* 119—125 (2012); L. Reyes, J. Campos, M. Ossandón & C. Muñoz, *El profesorado y su rol en la formación de los nuevos ciudadanos: Desfases entre las comprensiones, las actuaciones y las expectativas*, XXXIX(1) ESTUDIOS PEDAGÓGICOS 217—237 (2013); P. Muñoz, C. Silva, A. Ibáñez & C. Millalén, *La Educación en Derechos Humanos y Ciudadanía en la Formación Inicial Docente*, 50 DOCENCIA 84—95 (2013b); F. Pizarro, *Representaciones sociales de estudiantes de pedagogía en Historia, Geografía y Ciencias Sociales en torno a la ciudadanía y la formación ciudadana en la región metropolitana. Un estudio de casos*. Tesis de Grado Magister (Santiago, Chile: Universidad Católica Silva Henríquez 2015).

<sup>54</sup> W. PINAR, WHAT IS CURRICULUM THEORY? 27 (Mahwan, NJ: Lawrence Erlbaum 2004).

“accountability” of teachers and their results is reinforced, as Taubman<sup>55</sup> notes. As a result, teachers perform a maximized vulnerability, which puts a gravestone on any attempt to generate a deep discussion about rights and a citizenship education.

This is extremely problematic, since we require teachers that understand the complex relationship that a rights-based approach with their students entails. That is, a human and pedagogical relationship that recognizes the need to rebuild our relationships that have historically been thought in hierarchical and vertical terms. On the other hand, we need to recognize our responsibility as teachers in building, together, a society that values difference and that promotes and protects the rights of all.

In terms of school relationships, it is essential to pay attention to those aspects that potentially increase a maximized vulnerability, such as: The hierarchical and vertical relationships of the actors in the school; the regulations that do not promote a coexistence with a rights approach; and a spatial configuration of the school that does not differ greatly from prison structures<sup>56</sup>.

In short, the fundamental question from this dimension is whether we have the necessary conditions to learn, promote, and protect human rights in the school and its actors that allow us to reduce precariousness in order to promote and manage the rights of children and young people.

As we have discussed above, we do not have the conditions to promote a rights approach in our school system. Firstly, because the actors are not considered, nor been prepared for it. Secondly, educational spaces have been designed in resemblance of a prison model of coexistence, which is perpetuated. And finally, the devices that regulate relations within educational spaces—such as regulations, norms—and even the curriculum are conceived as *texts*, where the subject and her experience have no place. In sum, the notion of precariousness is useful here because it reminds us how the subjects and the mechanisms that regulate them, may be influencing in producing and/or increasing the sensation of vulnerability in educational actors.

## CONCLUSIONS

At the end of this discussion, in the context of curricular design, it is

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<sup>55</sup> P. TAUBMAN, *TEACHING BY NUMBERS: DECONSTRUCTING THE DISCOURSE OF STANDARDS AND ACCOUNTABILITY IN EDUCATION* (New York, NY: Routledge 2009).

<sup>56</sup> M. FOUCAULT, *VIGILAR Y CASTIGAR: NACIMIENTO DE LA PRISIÓN* (1a, ed. Argentina, Buenos Aires: Siglo XXI Editores 2002).



important to mention some risks of this innovation. First, in front of any curricular innovation it is imperative to ask “what” and “who” will carry out this new program. The risk of “what” relates to what other subjects will have to be sacrificed to accommodate this new content. This fear is not unfounded, since Chilean curriculum history provides concrete examples of how certain areas of knowledge have been subsumed in others (geography and civic education), or reduced in their hours (as in the case of music, arts, history and philosophy) to prioritize other (maths and language). This risk also includes aspects of integration, articulation, continuity and progression of knowledge in a curriculum in full implementation.

The question of “who” will certainly not be less important. The struggle for the number of hours allotted to certain contents is not only an issue of curriculum design, but also something that affects the salary of teachers. Additionally, it generates a consecration of fields of knowledge of first, second and third category<sup>57</sup>.

However, the discussion that we have wanted to provide in this space surpasses the curricular notion of it as a text that selects knowledge considered indispensable for the “education” of a subject. On the contrary, we have understood the curriculum, following Aoki<sup>58</sup>, Pinar<sup>59</sup>, and Phelan<sup>60</sup>, as a “complicated conversation”, that is, where academic knowledge, subjectivity and society are inextricably linked. But even more so, curriculum is conceived, following the *Reconceptualist* movement, as the subjective trajectory of the actors along their educational experience.

It is in this context that we wanted to discuss both the complexity and the precariousness that is produced by the eventual inclusion of human rights in the curriculum. First, if we put in the center of the debate the subjective experience over the discussion of the contents that have to be present or absent from the curriculum, then the focus of attention is placed on the lived experience of rights. Such experience is defined by a way of being with oneself and with others, rather than a set of knowledge absorbed through “cognition”.

In this way, we have proposed to discuss this Law and its effects on the

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<sup>57</sup> H. Gómez, *Formación ciudadana en el currículum escolar: riesgos y posibilidades* (2016), <http://www.eldesconcerto.cl/debates-y-combates/2016/07/21/formacion-ciudadana-en-el-curriculum-escolar-riesgos-y-posibilidades/>.

<sup>58</sup> T. Aoki, *Toward Curriculum Inquiry in a New Key* (1980), in W. PINAR & R. IRWIN, *CURRICULUM IN A NEW KEY: THE COLLECTED WORKS OF TED AOKI* (USA and Canada: Routledge 2012).

<sup>59</sup> W. PINAR, *EDUCATIONAL EXPERIENCE AS LIVED: KNOWLEDGE, HISTORY, ALTERITY. THE SELECTED WORKS OF WILLIAM F. PINAR* (New York: Routledge 2015).

<sup>60</sup> A. PHELAN, *CURRICULUM THEORIZING AND TEACHER EDUCATION: COMPLICATING CONJUNCTIONS* (New York: Routledge 2015).

trajectory of the subjects involved in the school, and even beyond. And for that discussion we have found it strategic to include Butler's<sup>61</sup> reflections on precariousness, understood as a maximized vulnerability of the victims whose rights have been denied or limited, either by the State or through forms in which it does not provide protection.

As we stated throughout this article, the theoretical discussion proposed here was based on three dimensions. The first of them is the notion of person. The person has various rights, including political, social, economic and individual rights. However, the Chilean Constitution establishes the rights of individuals over and above the social ones. When it comes to social rights, such as health, education, housing, among others, these are treated as consumer goods.

Along with this, there is a lack of conditions that would allow people to know or have access to what their rights are, and a series of judicial situations that increase the inequality between those who have better cultural capital and those who do not. As a consequence, we are witnessing the existence of two types of people: Those who can pay for their social rights and those who do not. Those who, thanks to their socioeconomic status, are better prepared to deal with complex judicial scenarios, and those that must confront them with their poor preparation and limited resources.

Regarding the second dimension—national versus international law—we showed that although in our country there are various constitutional guarantees and respect for the rule of law, in the last twenty years we have seen cases where some Chilean courts have not ruled in favor of human rights. This has caused some people to have to recourse to international courts with the aim of suing the Chilean state due to their failure to secure their rights. In these cases, the foreign courts ruled in favor of the plaintiffs, demonstrating that our courts have not been able to protect basic rights such as equality before the law, non-discrimination, etc. While these rulings translate into recommendations, they also set a precedent. In this way, we can reveal how there are internal inconsistencies with respect to the full exercise and respect for the fundamental rights of the people, showing that national legislations are simply insufficient to meet the international standards for the protection of human rights.

Finally, and in understanding that these instances have been emblematic, we ask ourselves what will happen to those people who do not have the knowledge and resources to access international courts. What actions could be taken by people such as indigenous people, immigrants,

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<sup>61</sup> J. Butler, *Vida precaria. El poder del duelo y la violencia* (Buenos Aires: Paidós 2007).

persons deprived of their liberty, workers living on minimum wage, young people who have not completed school, students or children who have suffered direct violation of their rights?

In the third dimension, relating to the necessary conditions and latent risks, we talked about the need to rethink the configuration of actors and spaces. The purpose of this is to contribute to avoid the precariousness of the subjects that are now part of the educational system or society as a whole, promoting a rights approach. In this sense, a first step is to review teacher education in terms of the knowledge that future teachers receive, the way in which these knowledges are conceived, and what implies being a teacher in itself.

Faced with this, the construction of more dialogic and democratic relations is a first step, since we cannot imagine the teaching of rights if we impose authoritarian and vertical practices in the relationship with our students. A human relationship based on the effective protection of human rights is a second step, but it requires a commitment from a school that does not forget that the pedagogical relationship is a human one, and the curriculum is not only a text: It is the experience, the trajectory of the subjects comprising their entire life.

We have also pointed out the need to rethink the school as an institution. Nowadays, both the spatial configuration and the devices that make up our schools do not differ much from a prison structure. Most schools are spatially separated from the community, and spaces are characterized more by their restriction based on regulations than by their full habitability. In this scenario it is very difficult to think of promoting rights that contribute to the development of the person in all its integrity, able to respect and promote the rights for himself and others. Therefore, any attempt to include human rights in the school experience is to review beyond “what” and “how”, and to think about the necessary conditions and latent risks of this curricular innovation.

In closing, the inclusion and visibility of human rights in the curriculum is not a new field in the complicated conversation that involves curricular prescription. However, it is not clearly enough to cover the basic needs of our educational system. Both the gap between types of people and basic rights, the relationship between our national legislation and international law, and the lack of necessary conditions for their promotion, lead us to face a sense of lack of protection and precariousness in the subjects telling us who are and who are not, and what lives are really worth protecting.