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**STATE OF EXCEPTION, HUMAN RIGHTS AND THE EXCLUSION  
REQUIRED BY NEOLIBERAL SOCIETIES: HOW ROME STATUTE  
PROTECT VICTIMS OF ECONOMY.****Abstract:**

In his trilogy "Homo Sacer", "State of Exception" and "What remains of Auschwitz", Giorgio Agamben analyzes important aspects of the human condition and the ways in which human rights were perceived over the centuries. Through an internationalist perspective, and based on the concepts brought about by Agamben's Homo Sacer, this study has the aim of argue that the State of Exception is constantly in force and coexist with the universality of human rights - thus the coexistence of the universality of the exception and the universality of human rights is a new reality, not ignoring the debates on universalism versus relativism and the hazard of imposing a 'one-size-fits-all' approach to every situation.

Additionally, taking into consideration the boundaries between the human citizens and the Homo Sacer, this study questions the possibility of an international vindication of human rights and the legitimacy of external interferences in States that are lenient towards violations of human rights. This analysis will be guided by the concept of jus cogens and the role of the International Criminal Court as a mechanism of deterrence of further abuses and of reinforcement of human rights standards. Also, a great part of this concerns, we must admit, is related to the supremacy of economic interests and the neoliberal societies that forget human perspectives when promoting the capitalism in its strict understanding.

Thus, firstly the necessary definition is about the State of Exception and how the neoliberal societies depend on the exclusion of some individuals who are ignored by everyone. Secondly, the intent is to highlight the importance of the recognition of this victims once there is no only one testimony to be given. There is no group of survivors or homogeneity of the victims of the regime, what makes them a human waste and the perpetrators, criminals against humanity. And lastly, it will be important to define what the Homo Sacer is and the idea of the irreducible minimum, which will be important to defend a human rights theory and its importance on the protection of it alongside the rules of capital and the necessities of the capitalist regime.

**Keywords:**

STATE OF EXCEPTION - ECONOMY - NEOLIBERALISM - GLOBALIZATION - HOMO SACER - HUMAN RIGHTS - ROME STATUTE - CRIMES AGAINST HUMANITY.

**JEL Classification:** F60, K33, A14

## INTRODUCTION

Considering the works of the Italian author Giorgio Agamben, it is possible to analyze the scenario in which the capitalist model has foundations and how some citizens live in the edge of dignity and the naked life. Because of this differences between social classes, it is noticeable that some people cannot have the benefits of this regime, they are forgotten by governments and invisible at the eyes of the majority of people. In this situation, in this permanent exception, this exclusion has become a rule; and this rule is a situation that is not inside nor outside the juridical order, it is an indifference zone – difficult to recognize and with an emergency that promote the indistinction between peace and war: a legal form of something that cannot have a legal form<sup>1</sup>.

Regarding this state of exception, Walter Benjamin affirms that we still did not achieve concepts in history that allows to understand this State where the emergency becomes a rule and the exception is no longer transitory. In this same way, Boaventura de Sousa Santos recognizes the difficulty in the perception of this reality while we are still inserted in it; in the Critique of Lazy Reason: Against the Waste of Experience<sup>2</sup>, Santos concludes several times that the multicultural bias in which we are inserted, despite of the willing of totalization, it is impossible to analyze the society with a *post facto* neutrality.

In this regard, each and every day more rights are being offended and its protection is confused with political interests and with intentions to transform these rights in something with material characteristics. The human rights are passing through a reification, are becoming a fetish, as Slavoj Žižek<sup>3</sup> considers it, transforming immaterial elements in some institute that may be negotiated or used to justify western interests over some cultures. Ergo, there is a huge difficulty in defining which people have their human rights neglected and how their human condition is lost. There is a slight boundary that separates the human being and the citizens, the man that is just alive and the one that lives with dignity, and that's why it is important to considerate which means being a man and have something more than the naked living.

We can see it clearly when Agamben says: What has been considered in the concentration camps was the belonging to the human specie, the last connection in an almost biological characteristic. He questions: "which is the last feeling of belonging to the human specie? Is there something that relates to this feeling<sup>4</sup>?"

The people deprived of humanity are spread in societies, mostly forgotten by governments – being, also, sometimes product of it actions. Besides the strong influence of western ideals in the world, these are also the foundations of the capitalist ideology that forget citizens and neglect the effectivity of human rights. The exception, in addition, helps the constitution of an hegemony, once the exclusion is necessary to this neoliberal model that has become a rule. To this analysis, it is necessary to consider Antonio Gramsci works, to whom the supremacy of a group is noticeable in two ways, as domain and as intellectual and moral directions<sup>5</sup>. A social group when exercising its domain, intending to destroy or submit (even with armed force) its

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<sup>1</sup> AGAMBEN. (2004) Estado de Exceção, p. 37.

<sup>2</sup> SANTOS. (2001) Para um novo senso comum: a ciência, o direito e a política na transição paradigmática. Conteúdo: V. 1. A crítica da razão indolente: contra o desperdício da experiência. 8. ed. p. 27.

<sup>3</sup> ŽIZEK. (2005) The Parallax View. Cambridge (MA) / London: The MIT Press.

<sup>4</sup> LEVI. É isto um homem? in AGAMBEN. (2008) O que resta de Auschwitz: o arquivo e a testemunha (homo sacer III).

<sup>5</sup> GRAMSCI. (2002) O Risorgimento: notas sobre a história da Itália. p.62-63.

enemies – considering the notions of friend and enemy of Carl Schmitt, direct the intentions of the other groups and the allies. In this work, these notions of hegemony and domination will be analyzed from the perspective of Ernesto Laclau and Chantal Mouffe, because they have considered the plurality as a precondition of the human existence; well, no hegemonic logic could comprehend the totality<sup>6</sup> of a society and this understanding is important as recognizing oneself in others and recognizing others is the most important thing to value all forms of life and the real effectiveness of human rights.

Thus, taking into consideration plurality and the importance of recognizing every citizen with individualities and particularities, Boaventura de Sousa Santos acknowledges the necessity to reinvent the community relations and to resist the colonialism. With all of the society members building a new place of solidarity, the world will be richer in citizenship, to individuals and to collectivity<sup>7</sup>. And so, the exclusion and de-personalization of some people had been turned into a paradigm, some ways to think had become a rule under the globalization issue and this reasoning and its validity have the characteristic of being western, chauvinist and ethnocentric. As Boaventura says, when these intertextualities become reflexive and conscious that constitutes social relations, they will become local projects of emancipation and of undivided knowledge<sup>8</sup>.

Once the exact sciences and technologies have become a rule and a norm to relations nowadays, it ensures that social relations and inter-personalities have more difficulty to occur and to be true. The world as a globalized one, are also homogeneous and with widely spread wishes and stereotypes; As pleasure and indulgences are premises to each citizen, it is evident that the state of exception of human rights is a result of this politics and of this negligence to social status. Acknowledging this historical moment and these exclusions, we can also recognize that this widespread and systematic practices may be a crime against humanity and a grave offence to people.

## THE STATE OF EXCEPTION

To understand the State of Exception, it is important to start with Michel Foucault's studies, who has been very influential in Agamben's work, mainly with regards to sovereign power and biopolitics. Sovereign power, to this author, is a concept that has changed along the years concerning the control over life and death of the citizens; the power to make or let live, with the transformations of the 19th century it has become the power to make live and let die<sup>9</sup>. The book "In Defense of Society" also contains the understanding that in this century it is a choice of the sovereign who should live and who will be left to death. This question is related to political issues, hence the politics become biopolitics. Dialoguing with Aristoteles, Agamben brings Foucault's definitions about this concept insofar the men are not considered animals anymore, capable of having political existence; politics are now tied to the life in general and to every human being.

Therefore, it is important to highlight the preoccupation that is now mandatory to all heads of States to protect human rights and the citizen's dignity in its

<sup>6</sup> LACLAU; MOUFFE. (2004) Hegemonía y estrategia socialista: Hacia una radicalización de la democracia. p. 186.

<sup>7</sup> SANTOS, op.cit. p. 96.

<sup>8</sup> Idem, p. 94.

<sup>9</sup> 5 FOUCAULT. (2000) Em defesa da sociedade: Curso no Collège de France, p.285.

most deep concept. Some steps have been taken to protect those rights in the last years, such as the adoption of citizen's constitutions and international treaties. With so many offenses to human rights on the last century, it is also possible to refer to the creation of mechanisms to protect the materiality of these rights, as international criminal tribunals and the International Criminal Court. Since the Treaty of Versailles, the aforementioned ways to protect those rights have been adopted to avoid the idea that atrocities against human rights were covered by some sort of immunity<sup>10</sup>. After this treaty, the Nuremberg Tribunal was created to prosecute responsible perpetrators of the Nazi regime, and the creation of the United Nations War Crimes Commission had the aim of supporting the trials with an investigative role<sup>11</sup>. The steps on this protection had continuity in the 1990's with an urge to adequate some procedural issues and the defendant's rights (avoiding the so called victor's justice) there was the creation of the *ad hoc* tribunals for Ruanda and the former Yugoslavia – which were a prelude to the Rome Statute and the International Criminal Court.

However, this preoccupation to protect human rights has taken place just because of extreme violations in almost every society, from what it is very important to consider this necessity of creation of these mechanisms to protect human rights and their effectiveness. Given the limited scope of this article, it will only be considered the formal element of the courts and the international treaties. The political issues and the insufficiency of these norms without real affirmative acts (once only African countries had been taken to charge at the International Criminal Court) could not be properly analyzed within this article. The aforementioned control, exercised by the sovereign, is from where emerges the necessity of the recognition of the biopolitics on the societies.

To Michel Foucault<sup>12</sup>, this concept is different from the power of the sovereigns until the XIX century because then it was related to discipline and now it is related to control (control over citizens' birth, death, reproduction numbers, elderly etc., as well over economical and political situations). The power exercised over the citizens is now exercised over groups of people. These concepts are important for the understanding of the State of Exception because it must be analyzed in connection with the sovereign power and the notion of sovereignty in each State. In this type of State, the legal system is no longer applicable and the people are under the influence of a head of State that leaves them to die. It is also important to highlight that the legal system is still existent in these periods, but with no effectiveness: the legal system exists, but with no law enforcement<sup>13</sup>. In such circumstance, it is perceivable that the decisions must always come from the sovereign, once the legal system has no effectiveness – unrelated with rationality and Law. There is still another perception, that these decisions of letting die are always influenced by political interests and the necessity of maintenance of the capitalist economic model, as previously stated. These political issues, besides the neoliberal character of the sovereigns, sustain this model and, consequently, leave the human rights protection abandoned in the societies.

In this globalization model, the exclusion of some categories of citizens is a logical result, as we can see in Zygmunt Baumann's work – which is called wasted lives, as people are treated like rubbish<sup>14</sup>. This concept refers to the exclusionary

<sup>10</sup> BASSIOUNI. (1997) From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court, p.18.

<sup>11</sup> BASSIOUNI, op. cit., p. 14.

<sup>12</sup> FOUCAULT, op. cit., p.291.

<sup>13</sup> AGAMBEN. (2004) op. cit., p.12.

<sup>14</sup> BAUMANN. (2008) *Vidas Disperdiçadas*, p.96.

character of the globalization, once it is not possible to encompass everybody. The capitalist model, mostly in a neoliberal bias, depends on the hierarchy of social classes and on the exclusion of some people, which has no relation with the changes brought by modernity<sup>15</sup>.

The exclusion of some people can be seen in hunger, in unemployment, which does not allow them to participate in the neoliberal societies, and in some sickness that the State does not bother to heal (all of them examples of social death). However, the exclusion is also present in people who are victimized by grave violations of human rights in countries where their protection is neglected and even the international community is inert. Some of these offensive conducts are defined on the Rome Statute, characterizing crimes against humanity. They are:

any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Murder; Extermination; Enslavement; Deportation or forcible transfer of population (...) Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; Enforced disappearance of persons; The crime of apartheid; Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health<sup>16</sup>.

That being said, all of the conducts listed on the Rome Statute protect people against violations to their dignity. The insertion of such conducts as crimes against humanity, however, has been proved to be not enough. The obligation of protection flourishes when the reality is not shocking anymore and the 'emergency state' or the 'State of exception' becomes a rule<sup>13</sup>. Also, in this space where there is no application of the legal system, it is not a correspondence with a dictatorial reality, but an anomy in which legal determinations are suspended or deactivated. It is still Agamben's understanding that this emergency state that goes beyond the norms is essential to the state of law and its debate, and also very important to politics.

Finally, to conclude this brief analysis of how the State of Exception has been spread on the world in such a way that it can be considered a rule, it is important to highlight that this State has very thin boundaries between Law and politics, being also different from the laws of war (which have a special and transitory characteristic, with a well defined objective). The State of Exception brings a connection between people and Law, once it has a valid legal system, but at the same time abandons this people as these norms are not applicable<sup>17</sup>.

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<sup>15</sup> GODOY. (2010) Estado de Exceção e Refugio Humano: o Campo e as Vidas Desperdiçadas, Fortaleza: Anais do XIX Encontro Nacional do CONPEDI, p.9.

<sup>16</sup> Rome Statute of the International Criminal Court, 1998.

<sup>17</sup> AGAMBEN. (2004), op. cit., p.38.

## HEGEMONY

Going further with the current analysis, it is necessary to understand how the hegemony sustain the capitalist and neoliberal system, and for this, the studies of Antonio Gramsci are essential. To this author, the State is a reunion of practical and theoretical activities in which the dominant class justifies its domain and conquers the agreement of the subordinate classes<sup>18</sup>. It is still possible to consider, to Gramsci, that the supremacy of a class has its validity in the exercised domain and in the moral and intellectual direction. This domination exists with the necessity of absorb other groups of people, with the aim of transforming the 'other' in one of 'us'. Ergo, this intention of homogeneity shows the possibility and necessity of insurgency of the oppressed groups against this.

However, in the present years the State is not only some machine operated by dominant classes to compel the rest of the society; it is a space of hegemony<sup>19</sup>. State acts are not only directed to exterminate citizens, but also neglect the citizens that are not inserted in the homogeneity. And with this ideas, the hegemony is the predominance of some ideas of dominant classes over the otherness in the civil society<sup>20</sup>. Therefore, the hegemony can also be comprehended as something responsible by the exclusion of people that cannot be inserted in the regime, that are not recipient of State's occupation and preoccupation – the human waste. And because of this predominance of some ideologies, as well of the impossibility of homogeneity once humanity is plural (and its desires, feelings, characteristics and necessities), there are always some tensions that emerge to cry the reorganization of the society and the defense of some interests<sup>21</sup>.

The ideologies are also the foundation of hegemony and strongly related to politics. Laclau understands, in this field, that politics exists before the social relations and never will be inexistent; for this same reason, hegemony can never be complete, because they are both important to history and to pass of time. In addition, the impossibility of a total consensus results in the continuity of history, once there will be always irresignation of some – whom will be responsible to change critical moments and paradigms.

Taking back the ideologies, Laclau considers it to be the imposition of facts and beliefs that must be taken as the truth<sup>22</sup>. Stuart Hall defines it as follows:

By ideology I mean the mental frameworks — the languages, the concepts, categories, imagery of thought, and the systems of representation — which different classes and social groups deploy in order to make sense of, figure out and render intelligible the way society works<sup>23</sup>.

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<sup>18</sup> GRAMSCI In.; CARNOY. (1994) Estado e teoria política, p. 90.

<sup>19</sup> Idem, p. 91.

<sup>20</sup> Idem, p. 93.

<sup>21</sup> SCHLESENER. (1992) Hegemonia e cultura: Gramsci, p.27.

<sup>22</sup> LACLAU. (1994) The Impossibility of Society' in Emancipations.

<sup>23</sup> LACLAU. (1997) The death and resurrection of the theory of ideology, p.298.

In this same path, the author points the problems of ideology, as to “give an account, within a materialist theory, of how social ideas arise. We need to understand what their role is in a particular social formation, so as to inform the struggle to change society and open the road towards a socialist transformation of society<sup>24</sup>”.

Hence, irrespective of this difficulty in acknowledge how the ideologies appear, they are essential to the maintenance of the *status quo* and it is equally important to consider the impossibility of totality and homogeneity of a society, so the history will always be able to be reinvented. The crisis that we can see today in capitalism, politics, society and economy, leads us to the necessity of a new perspective of this concepts, as well a new perception of systems that excludes people. There is a pressing need to reorganize hegemony in various forms of revolution<sup>25</sup>. It is completely related to what Zizek understands about this crisis, as we can see:

If our concept of ideology remains the classic one in which the illusion is located in knowledge, then today's society must appear post-ideological: the prevailing ideology is that of cynicism; people no longer believe in ideological truth; they do not take ideological propositions seriously. The fundamental level of ideology, however, is not of an illusion masking the real state of things but that of an (unconscious) fantasy structuring our social reality itself. And at this level, we are of course far from being post-ideological society. Cynical distance is just one way – one of many ways – to blind ourselves to the structuring power of ideological fantasy: even if we do not take things seriously, even if we keep an ironic distance, *we are still doing them*<sup>26</sup>.

In this scenario, the hegemony is sustained by victims that can be ignored and have an extreme difficulty to be recognized. In neoliberal societies, it is perceptible that some individuals are not inserted in the regime and receive nothing but the contempt of the political treatment of the States. They are victims of biopolitics, excluded from the capitalist system; these people are daily violated in their dignity when found in the impossibility to achieve the irreducible minimum of conditions to live. However, this exclusion is somehow different from the one seen with the Nazi Regime, regarding to whom the necessity to testimony their experiences was often what gave strength to the victims to survive. Currently, there are several types and sources of atrocities and exclusions around the world, usually justified by national rules and policies that ultimately alter the perception of those who live under such circumstances, but not with a clear intent of destruction. With this worldly perceived diversity of offences to human rights, it is difficult to obtain a homogeneous testimony from all the victims, or even to recognize them as an homogeneous group. With this lack of identification of the survivors, it becomes much more challenging to have an overall and objective analysis of the violations. Hegemony in ways of think and act, that mostly ignores individuals and make them victims of a normative system, in conclusion, can be the responsible for the denounced crisis. Marx says<sup>27</sup>:

<sup>24</sup> HALL. (2003) *Da diáspora: identidades e mediações culturais*, p.267.

<sup>25</sup> COUTINHO. (1994) *Marxismo e política: a dualidade de poderes e outros ensaios*, p. 116.

<sup>26</sup> ZIZEK. (1989) “How Did Marx Invent the Symptom?” in *The Sublime Object of Ideology*, p. 33.

<sup>27</sup> MARX. (1844) *A Questão Judaica*.

None of the so-called rights of man, therefore, go beyond egoistic man, beyond man as a member of civil society – that is, an individual withdrawn into himself, into the confines of his private interests and private caprice, and separated from the community. In the rights of man, he is far from being conceived as a species-being; on the contrary, species-life itself, society, appears as a framework external to the individuals, as a restriction of their original independence. The sole bond holding them together is natural necessity, need and private interest, the preservation of their property and their egoistic selves.

Therefore, human rights offences are result of human egoism and the difficulty in accepting others (or the otherness), in make effective a society free from prejudice. What we deal nowadays is not with the extreme of biopolitics in which governments premeditate the extermination of some people. The human rubbish and the people in the naked life are products of rejection and negligence.

What is clear from this analysis is that exclusion is a necessary characteristic of capitalism societies and that States, in its egocentrism, ignores the victims of the neoliberal system. Also, there is not only one testimony to be given; there is no group of survivors or an homogeneity of victims that allows an specific survey of what brought them to that situation. It is not the intention of these considerations to disqualify shared experiences or life stories of some situations: the actual aim is to analyze in an objective way how to reckon the exclusion and the absurd that this means in a democratic country.

It is important to consider that the boundaries of countries had become porous, that sovereignty cannot be used to justify some types of behavior. Moreover, with these new characteristic of boundaries, sovereignty is no justification to certain acts; also, globalization makes it even more difficult to identify the effective victims. Unrecognized, it is hard to have their testimony and to have a reunion of identified victims to fight for better conditions. In this situation, there are many people who do not perceive themselves as victims or do not know how they became forgettable for the society.

Furthermore, it is worthy to take into account the discussion of Ernesto Laclau and Chantal Mouffe in which, in *Hegemony and Socialist Strategy*, demonstrated some limits, critics and ambiguities on Gramsci's analysis of hegemony. To these authors, politics and hegemony exist beyond an alliance of classes, but in between the necessity of moral leadership and intellectual commands, also to push away eventual corporativism in social groups<sup>28</sup>. They also consider that the most important factor in the analysis of hegemony is the composition of a plurality of factors, as discourse, articulation, antagonism ...

This conditions that defy the logic of equalization of citizens lead us to strong theories that recognize the unstable character of social relations and differences. It is also important to highlight the issue of the antagonism of identities and discourses, and their incompleteness as well, once they are all responsible for the ephemeral nature of all political discourses<sup>29</sup>. Ergo, there is no space in the world to universalities and eternal dogmas. The authors say:

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<sup>28</sup> LACLAU; MOUFFE. (2004) op.cit., p. 100.

<sup>29</sup> Idem, p.15.



Totality is impossible and, at the same time, is required by the particular: in that sense, it is present in the particular as that which is absent, as a constitutive lack which constantly forces the particular to be more than itself, to assume a universal role which can only be precarious.

Accordingly, the above mentioned theories agree that the hegemony in force usually do not consider some nuances that diversity proportionate in societies. Also, even antagonism can be seen as something helpful to construct societies and, even with some anti-capitalist implementations there would always be different political parties and political activities (important, in this way, the considerations about agonistic pluralism proposed by Chantal Mouffe). Both authors, Laclau and Mouffe, defend that to establish a new hegemony there is a need of attention to the political boundaries – not their exclusion<sup>30</sup>. Politics is closely related to every social relation and, as Gramsci stated, it is also an issue of philosophy. To him, choosing and having an opinion about some world perception are, equally, political facts<sup>31</sup>. The opened and incomplete character of human relations is, therefore, a precondition to each hegemonic practice – what is connected with the impossibility of any totality.

The considerations of this chapter, even if briefly exposed, may help with the analysis of the state of exception denounced by Agamben and the perception that the hegemony in force in the societies is extremely harmful to certain people – mostly, the invisible ones that receive only the neglect of state policies. The lack of insertion in the capitalist regime, as previously stated, can damage human rights in such an heinous way that crimes against humanity may happen. And politics, is a determinant factor to make possible the ideals of citizenship and democracy, to promote equality and popular integration – avoiding invisibilities and vulnerabilities. Again, Laclau states:

‘Politics’ is an ontological category: there is politics because there is a subversion and dislocation of the social. This means that any person is by definition, political. Besides the person, in its radical concept, there is only space to people in the field of objectivity. But the person as we consider in this text, cannot be objective: it will only be constituted in the irregular boundaries of structure. Therefore, exploring the emergency of people in contemporary societies is to examine the damages occurred in the structures of this society<sup>32</sup>.

As a result, politics can be comprehended as closely related to any analysis of the society that we live, mostly when considering the globalization. Hence, the continuity of this work will be to analyze how globalization can contribute to the reality of normativity that avoid or ignores plurality.

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<sup>30</sup> Idem, p.15.

<sup>31</sup> GRAMSCI In.; CARNOY. (1994) op.cit., p. 90.

<sup>32</sup> LACLAU. (1990) Nuevas Reflexiones Sobre la Revolución de Nuestro Tiempo, p.61.

## GLOBALIZATION AND EXCLUSION

Left wing today stands at the crossroads: the 'evident truths' of the past – the classical forms of analysis and political calculation, the nature of the forces in conflict, the very meaning of the left's struggles and objectives – have been seriously challenged by an avalanche of historical mutations which have riven the ground on which those truths were constituted.

The excerpt highlighted above, from Laclau and Mouffe, is provenient from the first lines of their collaborative work *Hegemony and Socialist Strategy* and is a good indicator of the difficulty in analyzing the current global and political scene. Hegemonic thoughts and right-wing extremist ideologies are no longer sustainable and the amazing number of changes in the last century hampers a prediction of the next revolutions and popular applications. Still, there is a certain emptying of the public sphere to the extent that decisions are made mostly in the political realm. Ethnic groups are often obstacles because they have no identification with the state and this is often used as coercion to silence their claims - as we can see in indigenous tribes, maroons etc.

In societies where the goal, even though this is not clear or clearly argued, is an equalization of thoughts, there is a domination and some denial of the 'other's' ideologies, there are often discourses with clearly chauvinistic, sexist and ethnocentric-based intentions. Thus, Boaventura de Souza Santos states that "When these intertextualities become self reflective and aware that constitute social relationships or social processes, they will be able to become emancipator projects and local knowledge, postmodern and undivided"<sup>33</sup>.

In this sense, the proposition of the Portuguese author is to release the citizens from the lazy thoughts that believes in certain results for certain acts, from the 'lazy reason'. Still, the claims of the author have the aim of seeking an insurgency and questions of hegemony - the product of social and legal depoliticization of social conflict and social movements<sup>34</sup>. Emancipation is intended with greater citizen engagement and social participation, here is understood not as "the reunification of man, his reconciliation with his kind nature, but, rather, its division between public man and the private man, the sphere of the state and that of civil society"<sup>35</sup>.

However, it often occurs that citizens found themselves at some stagnant scenario - either by settling in a system that is benevolent to them, either by sense of impossibility / ignorance of his situation excluded. Thus, there is a generalization of the submission of schemes that hinders the revolution, as intended by Boaventura's claims. For this reason, Niklas Luhmann, in turn, points to the fact that both consensus and coercion demonstrate the weakness of a political system. We can still argue:

The effective acceptance of decisions, the presentation of the real reason and the exact associative relationship - or in the case of acceptance of the

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<sup>33</sup> SANTOS. (2011) op.cit., p. 94.

<sup>34</sup> Idem, p. 42.

<sup>35</sup> Idem, p.52.

decision by fear or support - can remain substantially suspended: and sociologically, the problem is exactly this indecision, this generalization of legitimacy causing an almost unmotivated acceptance, as in the case of truths<sup>36</sup>.

Thus, we reiterate the need for political involvement of citizens to confront the hegemony reifying human rights and denials to some individuals. In mass culture, there are no bonds of identity among citizens that, as a rule, are men emptied of culture and with no awareness of the 'other'. And as a result of decades in which abuses were tolerated, there is now a culture of reproduction of violence - whether by action or omission. The non-acceptance or simply forgetfulness of some citizens on the grounds of ethnicity, religion, politics or any other means that he/she does not serve to the capitalist system, transforming the daily and repeated violations of human rights a rule, something really ignored by average citizens. On the other hand, for the victims of these speeches or omissions of state, the feeling of belonging to a place is gradually decreased to the extent that they became an 'enemy' of the dominant classes.

It is important to emphasize in this regard that this consciousness of the other is often present not only in hate speech, but also on the State failure in curbing these speeches. With the rise of the freedom in the last century, primarily in its negative aspect, it is often confused with permissiveness and thus propagating the denial of certain individuals. It is important to note, however, that human dignity is violated not only by an act, as stated – but also if verified inertia in implementing minimum standards for life to exist with a minimum of dignity. These omissions are serious to the extent that ideologies are often used to control and oppress the less privileged people of a society. They are restrained of their individualities and prevented from accessing the most basic rights, which are represented by the idea of 'existential minimum'. Jorge Reis Novais<sup>37</sup> brings understanding of what this minimum is, which is also linked to the concept of human dignity: that something "without which the person forced to live in conditions of extreme poverty, would involuntarily transformed into 'mere object State's acts', and thus with equal violation of the principle (of dignity)".

The political space is no longer something easily defined; the state of exception can be understood as a rule in which became a routine the suppression of rights and, consequently, the natural life stops to always be on the margin of the system; In societies there are people who are not citizens, that have nothing but some natural life, a bare life as mentioned by Agamben. That being so, the fact is that nowadays some lives are not accommodated by the legal frameworks, that are at the mercy of a positively valued citizenship or a dignity expected in treaties and documents of human rights.

Still, according Binding cited by Agamben in *Homo Sacer* book I, the point reached by these beings is the worthless life, unworthy of being lived. Says the author: "There are human lives lost to such an extent of legal assets that its continuity, for both the bearer of life and society, permanently lost all value"<sup>38</sup>. Flavia Piovesan, in

<sup>36</sup> LUHMANN. (1980) *Legitimação pelo Procedimento*, p.30.

<sup>37</sup> *Idem*.

<sup>38</sup> AGAMBEN. (2010) *Homo Sacer, o Poder Soberano e a Vida Nua I*.

turn, meant that the dignity principle was established as a matrix of the Brazilian Constitution and must therefore constrain the interpretation of its rules. On this subject, she says are incorporated into the magna charta "the demands of justice and ethical values, giving axiological support the entire legal system"<sup>39</sup> – and so it should be to every democratic nation.

Therefore, it is crystal clear the understanding that there are very serious practices that deny the different and that these practices are spread around every national system. This need for denial also receives contributions from political speeches and medias that encourages to the equalization of standards and to the aesthetic knowledge or desires that are presented to the public.

Still, the universality can be seen in fast fashion companies, in beauty concepts present in advertising campaigns and in the doctrines of human rights that want an imposition of Western values, among many other examples . Well, about the role of the consumer society in this context, the understanding of Hobsbawm is truly enlightening :

By its very nature , the contemporary consumer society increasingly requires policies to adapt its structures. In fact, the free market theory argues that there is no need of politics, because consumer sovereignty should prevail over all the rest: the market is supposed to ensure maximum choice for consumers, allowing them to meet all their needs and desires through these choices. This way ignores the political process, makes it a side effect, or derivative . This is the reason for the tremendous spread of occupations as public relations and policy advice, and the application of systems such as focus groups , which actually are based on market research policy<sup>40</sup>.

Therefore, it can be seen that the situation of the capitalist model that hinders the power of the sovereign, together with the reduction of state borders, contributes significantly to various parts of the population to be forgotten. Similarly, the context is compounded by globalization and in this situation the role of the legislature and of lawyers becomes increasingly important to allow a change of scenery and to avoid continuity of serious and daily violations to the dignity of citizens. Still, to see themselves as responsible for their society it is necessary to transform social engagement in routine;

The fact is that a world without borders give rise to political apathy and lead to the crisis of the nation state; however, it is not a phenomenon of today. Similar phenomenon can also be analyzed in relation to Hellenistic and Roman civilizations, as did the attorney Abili Lázaro Castro Lima<sup>41</sup>. The porosity of borders brought us to the fact that there is no indisputable territories or homogeneous populations<sup>42</sup>, territorial location is no longer an imperative for social life – where we have to take into account the concepts of universal hospitality in Kant<sup>43</sup> and the weakening of power submissions. On globalization and state sovereignty, it follows that :

<sup>39</sup> PIOVESAN. (2011) Direitos Humanos e o Direito Constitucional dos Direitos Humanos.

<sup>40</sup> HOBBSAWM. (2000) O Novo Século, p. 118-119.

<sup>41</sup> LIMA, Abili. (2006) Cosmopolitismo e Globalização: efeitos na seara político-jurídico contemporânea; Revista Eletrônica do CEJUR, v. 1, n. 1, ago./dez.

<sup>42</sup> MENAUT. (2013) Después de laSoberanía. Internet Access: <http://e-spacio.uned.es:8080/fedora/get/bibliuned:DerechoPolitico-2001-50-13620/PDF>.

<sup>43</sup> KANT. In DERRIDA. (2001) On Cosmopolitaniism and Forgiveness.

The operation of States in an increasingly complex international system limits their autonomy (in certain spheres radically) and gradually neglects its sovereignty. All concepts that interpret sovereignty as a form unlimited and indivisible government - embodied canonically in individual nation-states - result obsolete . Sovereignty has to be conceived today as a college divided among multiple agencies - national, regional and international - and limited by the very nature of this plurality<sup>44</sup>.

The decrease in political action and the sovereign power, linked to the neoliberalism that results in the denial of some, the identification of all citizens as part of a single mass, take the population away from the political action process. The new scientific rationality is also a totalitarian model in that denies diverse forms of knowledge<sup>45</sup>. With the advent of science and technology in the last century just based on this knowledge gained respect - see, for example, the foundations of the theory of Thomas Kuhn.

Contributes to the current crisis, thus, the fact that the social sciences have an objective nature; That "the scientific rigor, because founded on mathematical rigor, is a rigor that quantifies and that by quantifying disqualifies a rigor that by targeting the phenomena, objectifies and degrades it, which, by characterizing the phenomena, makes them caricatures<sup>46</sup>".

Here were punctuated several factors to the current crisis of capitalism regime by excluding nature that repeatedly passes over human rights to achieve their ideals: patterns of hegemonic ideologies of power, depoliticization of citizens and disqualification of the humanities- in general, totalization. As, again , Abili Castro Lima, besides the depoliticization of citizens and their detachment from political power, states also lose autonomy. This is due to numerous guidelines imposed by agencies and transnational corporations - sum of factors that endangers "the future of politics, democracy and solidarity, allowing for social disintegration and fragmentation<sup>47</sup>".

As Giddens<sup>48</sup>, globalization can be understood as the intensification of relations on a global scale; technologies shorten distances, reciprocal social networks gain ratios of regionalities and global economies become interconnected. But despite these findings, one can see a slow walk in the opposite direction. The decrease in the power of decision making and the inability to work show a pattern of a crisis that is flanked by the ease of information transmission and the myriad of possibilities of making a statement or (where available ) critical discourse .

Some of counterculture movements have been gaining ground, such as the valuation and recovery of social and cultural movements; as opposed to fast fashion, fashion and bespoke tailoring to win back fans; both in the popular and academic literature, peripheral authors gain space (outside of Europe - North America shaft). In the same way, gains space the defense of particularism in promoting human rights, questioning the increasingly universalist doctrine that often leaves out important regionalisms to print only a formal sense of equality. And these acts are directed towards strengthening democracy, since this was never the goal of liberalism and

<sup>44</sup> HELD. (1997) La Democracia y el Orden Global: del Estado moderno al gobierno cosmopolita. In LIMA. Op.cit., p.56.

<sup>45</sup> SANTOS. (2011) op.cit., p.61.

<sup>46</sup> Idem, p.73.

<sup>47</sup> LIMA. op.cit., p.58.

<sup>48</sup> GIDDENS. (2008) Sociologia, p.61.

therefore loses its strength every time we are faced with some act of denial of diversity of any citizen.

In the present context, therefore, the power relations in society are dissolved from a complicity established between law, state, science and capitalism. The structure and hierarchy of these relationships is something that will be the starting point for emancipatory acts of citizens - removing some of ostracism once they turn to the concerns of the State acts - and integrating into society those excluded from the capitalist system

## CONCLUSION

Among the myriad of concepts and studies that must be analyzed to reach a reasonable understanding of the current world situation, globalization and human rights, we sought to outline some ideas to facilitate the foundation of opinions on the interpretation of rights, particularism and the need to respect them; a call to watch the necessary international protection of human rights and a rethinking of the current capitalist model in which we operate.

The intention is that the exceptional situations of offense to non-inclusion of rights and citizens again have this character, that the state of emergency no longer rule. As stated, the atrocities of today can not always have a witness or victim identification as in the past; but it is important to every witness be a lesson to us, to take every possible action to protect the humanity of individuals - and the first step for this is to enable, without doubt, the recognition of most citizens possible in their condition as victims and to hear their clamor for a more inclusive society.

Jack Donnelly, on the topic, states:

We cannot passively watch the torture, disappearance, arbitrary arrest and detention, racism, antisemitism, repression of trade unions and churches, poverty, illiteracy and disease in the name of diversity and respect for cultural traditions. None of these practices deserve our respect, even though it is considered a tradition<sup>49</sup>.

And with this perception the performance of all countries together will be necessary for relativizing up issues of sovereignty and interests, and thus acting in cooperation to make worthy the positivized rights (mainly those touching the Conventions and International).

Likewise, it is important to recognize that the existing hegemony in society, and also worldwide, is based on the ideologies of the dominant classes and on the political interests that govern the country and its rulers. Still, the impossibility of a single concept of ideology is as important as the internalization of the human being is dual and there is also an equalization of needs or feelings. Respect for individuals and

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<sup>49</sup> DONNELLY. (2008) Human rights and Human Dignity: an analytic critique of now-western conception of human rights.

plurality result in a lighter course of history and more inclusive / respectful environment.

Irrespective of the political issues surrounding all forms of operation of law, the first step to a perennial social justice is being non resigned with the situations imposed and some express manifestation of citizens' needs so that they can effectively be so named. The work continues therefore to make that real and effective respect for human rights in all countries. International Courts are gaining more credibility and general awareness increasingly adapts to respect the cultures and human beings, so that the message that impunity will not be tolerated is an important achievement of the last century.

About the fact , it is worthy to mention the interview of Danilo Zolo, who states:

How can we be optimistic given the current world situation? But on the other hand, how can we only be pessimistic? The world on which we are is full of paradoxes that can provide us anything but leaving us perplexed. We must free ourselves of anthropological certainties of the past and at the same time seek to build, between many contradictions and ruptures, lines of coherence and continuity.

Hope and despair cannot help but intertwine on our experience. In a period of succession to insurmountable neglects of human rights and citizens, which subvert concepts such as state sovereignty and identifying groups victimized by the exclusion of the capitalist model (a norm in most countries), it is important to recognize the value of human rights as universal to some extent. We need to understand the paradoxes that modernity imposes on us and from them build up a new idea of capitalism and democracy - a rethinking of the current models of exclusion and promote a culture of respect to human rights. Moving away any justification in the sovereignty or rights of cultures and traditions and combining with the legal interpretation of the otherness of humanity recognition in to any living person, it is easier to outline a plural and respectful future around the globe - and this is hope deposited in producing this study.

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