

Scientific
Journal of
**Applied
Social and
Clinical
Science**

**INTOLERANCE AND
HUMAN RIGHTS:
DISCUSSING
OPPRESSION AND
VULNERABILITY FOR
SYRIAN REFUGEES**

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Summary: This article seeks to identify the concepts of Intolerance and Social Vulnerability considering the works of Gramsci and Raul Zaffaroni, in the understanding of the conforming elements of victimization, through a bibliographic review and data collection. Surveys are carried out on the evolution of cases in Syria from 2011 onwards. The proposed discussion allows the understanding of the role of the autonomy of the human person in the discussion about the ways that amplify the protection of victims in contemporary conflicts.

INTRODUCTION

The discussion about Intolerance is directly related to the perspectives of recognizing the other in authors such as Said, the process of alienation, illusion and allusion in Marx and Gramsci, as well as an intrinsic discussion with Human Rights and Humanitarian Law. Vulnerability, on the other hand, is related to the authors mentioned above, but presents a discussion about the role of Humanitarian Law, having as theoretical basis the thinking of Raul Zaffaroni.

This research seeks to understand the problem of observing the relevance of Intolerance to vulnerability in areas of armed conflict. To this end, it aims to observe some of the main authors who deal with the subject, converging on the understanding of the degree of victimization present in contemporary times.

The research considers as a hypothesis that the intolerance present in the conflict in Syria is directly related to the degree of social vulnerability present. To do so, it chronologically observes the evolution of the main conflicts and the involvement of the civilian population in the conflict.

The theme is justified by the current situation of the dispersion of armed conflicts and its implications for international stability.

Locke is presented as an important milestone in the discussion of dealing with intolerance, when discussing in the work “A letter about Intolerance”¹ tolerance as a political issue that should become a state concern. Locke quotes: “No opinion contrary to human society or to the moral rules which are necessary for the preservation of civil society should be tolerated by the magistrate.”

For Rousseau, misfortune stems from the human will². It was not imposed by the heavens. Society makes man stupid. Rousseau did not intend for man to return to primitive equality, to the state of nature, but he looked for ways to minimize the injustices that result from social inequality.

Marx adds a data that is not in Rousseau, when dealing with the alienation of work. Production, for Marx, would be the result of a usurpation process contained in history. For Marx, the way out would be in the historical process ahead³. For the author, the polarization between social relations and technical progress is based on the private nature of relations, and on the appropriation by the capitalist bourgeoisie, which create these inequalities.

Starting from Marx’s understanding of ideology through the false awareness of the relations of domination between classes. In this sense, ideology is a false and inappropriate perception of a political belief. The other aspect to be considered is that of treating intolerance as the non-recognition of the “other”, by reading Todorov.

A relevant factor for the discussion of the ideological process deals with the role of the State, from Hobbes’ perspective, as

1 LOCKE, John (1689). *A Letter Concerning Toleration*. New Heaven and London, Yale University Press. 2003

2 ROUSSEAU, Jean Jacques. From the Social Contract: Essay on the Origin of Languages: Discourse on the Origin and Foundations of Inequality Among Men/Jean Jacques Rousseau. 5th edition. São Paulo: Nova Cultural. 1991. P. 27

3 MARX, Karl. Economic-Philosophical Manuscripts. Preface Jesus Ranieri. Boitempo Publishing. 2003.p.57

an institution that uses coercion to develop an apparatus to which the human person is subjected⁴.

In addition to the Hobbesian theory, the understanding of Weber's concept of the legitimate monopoly of the use of force and the understanding of its application, referred to in cases such as the Canudos War in 1897⁵. It is the understanding of "Pandora's Box" that unleashes evil forces, inadvertently, in Greek legend, or intentionally, in social praxis. The genocide and forced evacuations that took place in Liberia's armed conflict between 2003 and 2005, for example, are confused with the complete disorganization provided by the relentlessness of government forces.

This first perspective deals with the monopoly of the use of force as a disperser of violence, where social (ethnic) and economic interests (gold, rubber, diamonds), for example, are confused.

Carlos Ginzburg discusses, also in contemporary times, the submission by the State and the dispersion of violence from the State⁶. It is assumed that the State, based on the concept of Leviathan in Hobbes, has the right to impose sanctions on the participants of the social contract, due to the existence of clashes of interests⁷. Sanctions are enforced, for Hobbes. Ginzburg's work deals with the manifestations of this imposition, through fear, which the author discusses using the verb "toawe". Ginzburg shows the culture present in the structure of large states, which use their economic, cultural, technological and military power, in an imposing way,

citing the example of air operations in the Iraq War, in 2003, which were codenamed "ShockandAwe". He discusses the way in which submission through fear was improved in order to immobilize the enemy, during the 20th century and the difficulty of the most powerful world armed force (USA) in dealing with the dispersion of violence.

It is noteworthy that the theoretical discussion has a perspective that values Hobbes' thinking. An example of this approach concerns Hobsbawn's prognosis for the 21st century, when he treats wars as less deadly than the great war confrontations of the 20th century, but with armed violence generating disproportionate, endemic and ubiquitous suffering and losses⁸. For Hobsbawn, the prospect of peace in the 21st century is remote.

According to Van Creveld⁹, Low-intensity conflicts have been recurrent since the end of World War II. The clashes between Hindus and Muslims in the period 1947-1949 killed more than a million people. In the Nigerian Civil War from 1966 to 1969 the number of people killed was three million. During the conflict in Afghanistan in the early 1980s, about one million people died and five million people became refugees. Van Creveld also mentions that close to twenty million people died in different locations such as the Philippines, Tibet, Thailand, Sri Lanka, Sudan, Ethiopia, Uganda and Angola.

The concept of tolerance emerges as a response in the struggle to deny difference. For Echo:

"Educating adults who shoot each other for

4 HOBBS, Thomas. *Leviathan or Matter, Form and Power of an Ecclesiastical and Civil State*. São Paulo: Publisher Martin Claret. 2004.

5 WEBER, Max. *Science and Politics: Two vocations*. Translation by Jean Melville. Publisher Martin Claret. São Paulo. 2005, p. 23

6 WEBER, Max. *Science and Politics: Two vocations*. Translation by Jean Melville. Publisher Martin Claret. São Paulo. 2005, p. 23

7 HOBBS, Thomas. *Leviathan or Matter, Form and Power of an Ecclesiastical and Civil State*. São Paulo: Publisher Martin Claret. 2004

8 HOBBSAWM, Eric. *Globalization, Democracy and Terrorism*. São Paulo: Companhia das Letras. 2007. p.179

9 VAN CREVELD, Martin. *The Transformation of War*. New York. The Free Press. 1991. P. 43

ethnic and religious reasons for tolerance is a waste of time. Too late. Wild intolerance must therefore be tackled at its roots, through constant education that begins in early childhood, before it can be written down in a book, and before it becomes a too thick and tough behavioral shell.¹⁰

Therefore, it is fundamental that when dealing with tolerance, the nature, the causes and the consequences of intolerance should be considered. Understanding this last concept does not mean, however, understanding only doctrinal elements, present in Christian traditionalism for example. For Eco (2001):

“pseudoscientific anti-Semitism emerged in the course of the 19th century and transformed into totalitarian anthropology and the industrial practice of genocide only in our century. However, it could not have been born if there had not been for centuries, from the time of the Church fathers, an anti-Jewish polemic and, among the common people, a practical anti-Semitism that has crossed the centuries wherever there was a ghetto.”¹¹

For that author, still, “... the most dangerous intolerance is exactly that which arises in the absence of any doctrine, triggered by previous impulses¹².

According to Cançado¹³, In order to better understand the emergence of the term vulnerability in the analysis of social inequality, it is valid that we make a historical retrospective of the conditionings of social vulnerability.

Cançado mentions Marx¹⁴:

“Karl Marx warned in *Capital* (1867) of the contradictions inherent in modern capitalist society. These societies would have an antagonistic character because their

production relations would have as their essence the search for profit, which would generate the explosion of labor forces, clearly defining a dominant class and a dominated class. According to Marx, social inequalities would be intrinsic to the capitalist mode of production. Based on historical materialism, the author states that conflict has always been present in social relations and the only way to reverse this situation would be with the abolition of private property.”

For the author, Marx received numerous criticisms, especially with regard to the economic determinism of his theory, however, his contribution to the analysis of social vulnerability. It also emphasizes the contribution of Weber on the subject¹⁵:

“...in Max Weber’s *Essays on Sociology*, the discussion on inequality transcends the approach in the economic sphere, by perceiving a social class according to similar life opportunities, shared by social actors. It related the distribution of hierarchies not only to the appropriation of private property, but also to the prestige and status of a given group.”

In the quotations, the thought of the complexification of vulnerability analysis and its relationships is sought, transcending the economic perspective. Carlo Ginzburg¹⁶ mentions that “Marx demonstrated in his research on the capitalist mode of production how phenomena that appear to the common consciousness as systemic deformations, deviations, abnormalities, contingent degenerations of the normal functioning of society (unemployment, economic crisis, war, genocide, open crime, assumed corruption, etc.) are in some way products or necessary effects of the system itself”.

10 ECO, Umberto. *Five moral writings*. Rio de Janeiro. Record. 2001. p.67

11 Ibid, p. 121

12 Ibid, p.94

13 CANÇADO, Taynara. *Working on the concept of Social Vulnerability. XIX National Meeting of Population Studies*. ABEP.2014

14 Ibid, pág. 6

15 Ibid, pág.6

16 CERQUEIRA FILHO, Gisálio. *Emotion and Politics: Adventure and Sociological Emotion for the 20th Century*. Porto Alegre. SérgioAntonio Fabris. 1977. Pág 17

It is about the understanding of multivariate aspects, including intermediate situations of risks facing the development of labor precariousness, poverty and lack of social protection.

Translated with www.DeepL.com/Translator (free version)¹⁷. Zaffaroni discusses a relevant aspect to be added, which deals with zones of vulnerability¹⁸.

Considering the elements above, it is worth referring to Katzman, who considers social vulnerability as¹⁹:

“the absence on the part of individuals, groups or families of assets capable of facing certain risks, that is, assets that would give them greater control sobre as forces that affect their well-being, that would allow them to take greater advantage of opportunities. These would be physical, human and social assets.”

Katzman discusses the concept of “structure mobility”, through the understanding of the quantitative aspects, and even more of the qualitative aspects of the offer of opportunities, within a historical, dynamic and structural perspective²⁰. That author considers that **physical assets** (access to means of production and property; access to credit), **personal assets** (health, education and professional qualification) and **social assets** should be considered.²¹. Katzman discusses how these factors represent strong aggregators for the exclusion of populations,

presenting the vulnerabilities of life in society²².

Ulrick Becker develops the concept of risks, which would complement the perspective presented by assets. for Beck²³, the social perception of risks transcends the confrontation of conjunctures present in social realities. There would be two types of risks: individual and global. The focus on the contemporary approach to global risks through multidimensionality on social classes and geographic aspects, present in the combinations presented by cybernetics and globalization. to Guivant²⁴, with reflexive modernization, issues of technology development and application are replaced by issues of “political and scientific risk management”.

The author cites new risks of an unpredictable nature such as ecological, chemical, nuclear risks, which are industrially produced, economically outsourced and politically minimized²⁵.

Social invisibility would treat certain groups and individuals as elements without assets to exercise it. It would encompass cultural issues and transcend the theoretical aspects that valued economic, political and territorial elements²⁶.

The inclusion of cultural aspects refers to the understanding of the need to invest in cultural and symbolic capital, cited by Castro²⁷:

17 Ibid, pág.8

18 ZAFFARONI, Eugenio Raúl. In search of lost feathers. 5th edition. Revan. 1991,p.85

19 KATZMAN, R. *Vulnerability, assets and social exclusion in Argentina and Uruguay*. Santiago do Chile. OIT. Ford. 1999, pág 43

20 CANÇADO, Taynara. Working on the concept of Social Vulnerability. XIX National Meeting of Population Studies, pág 8

21 Ibid, pág.8

22 KATZMAN, R. *Seduced and Abandoned: Social Islamization of the Urban Poor*. la magazine CEPAL, 2001 - repositorio.cepal.org, pág 172

23 GUIVANT, J. *Ulrick Beck's theory of risk society: between diagnosis and prophecy*. Magazine Studies Society and Agriculture. No. 16. April 2001. Pág. 95

24 Ibid, pág.103

25 Ibid, pág.103

26 CANÇADO, Taynara. Working on the concept of Social Vulnerability. XIX National Meeting of Population Studies, pág.16.

27 CASTRO, M.; ABRAMOWAY, M. *Youth in Brazil: Negative and positive vulnerabilities*. Paper presented at the 1st Congress of the Latin American Association of Population, A L A P C a x a m b u, September 2004

“...an investment in cultural and symbolic capital, a mechanism to combat vulnerability, increasing the capacity of individuals to respond to different risks... The increase in social capital would generate greater participation of society in the formulation, implementation and evaluation of development strategies.”

DEVELOPMENT

GRAMSCI AND THE DISCUSSION ABOUT CONFORMATIONS IN CULTURE AND SOCIETY

Antônio Gramsci's thought has relevant concepts about cultural hegemony; superstructure and infrastructure; organic intellectuals and historicity. Such approaches allow understanding the behavior of intolerance and vulnerability, variables under discussion, considering the perspectives present in the situation of victims of armed conflicts in the 21st century.

Mézaros analyzes the structures that shape society as a set of historically situated social relations, subject to change, arising from a conscious human definition²⁸. Such an approach refers to the concept of ideology discussed by him, as a form of social consciousness, with characteristics that transcend history, and can only be understood in the reproduction of some predominance of structures. Considering this context, ideology is inseparable from class societies, constituting a “practical conscience”²⁹, through the control of social activity. Pierre Bourdieu discusses the same concept when addressing the presence of the so-called “socialization of drives” present since childhood, where the child admits renunciations and sacrifices in exchange for proof of recognition, consideration or

admiration. A highly charged exchange of affectivity, by mobilizing the individual entirely³⁰.

Cerqueira Filho emphasizes the role of affectivity, citing Althusser's critique of the concept of ideology, transposing the perspective of Karl Marx:

“According to L. Althusser, ideology, in *The German Ideology*, is thought of as a primary construction whose status is very similar to the theoretical status of the dream in authors prior to Freud. For these authors, the dream was a purely imaginary result, that is, a nullity of diurnal residues, presented arbitrarily, occasionally, in disorder. *The German Ideology*, the whole reality of ideology, is practically outside it.

Cerqueira Filho emphasizes the specificity of understanding ideology in terms of social structure and presents an important argument about the role of ideology in a social analysis, discussing Althusser's theses on: the autonomy of the ideological instance; the imaginary relationship with the conditions of reality; the effects of ideas on individuals; the reproduction of production relations; the existence of ideology in the apparatus and in its practices; the discussion on the concept of the ideological apparatus of the State and the relationship between science and ideology³¹.

It should also be noted the connectivity in Mézaros and Bourdieu when the first cites the relevance of ideology and the second describes the relevance of symbolic capital³²:

“Symbolic Capital ensures forms of domination, which involve dependence on those it allows to dominate: in fact, it exists only in and through the esteem of recognition, belief, credit, and the trust of others, managing to perpetuate itself only to the extent in which it manages to obtain the belief in its existence.”

28 SIQUEIRA JR, Adilson. *Ideology, social consciousness and hegemony in Gramsci's work. Emancipation*. Pág. 26

29 Ibid, pág 26

30 BOURDIEU, Pierre. *Pascaline Meditations*. Bertrand Brasil. Rio de Janeiro. 2002. Pág 202

31 CERQUEIRA FILHO, Gisálio. *Social Analysis of Ideology* /Gisálio Cerqueira Filho. São Paulo: EPU, 1988. Pág. 18

32 Ibid, pág. 202

The power of ideology as a “philosophy of praxis”, a term presented by Gramsci, represents for that author a claim from the moment of social hegemony for the conception of State action.

Gramsci overcomes economic determinism in Marx and emphasizes the active relevance of the cultural fact, alongside the so-called economic and political fronts, both for the forms of domination and for the political and organizational intervention of workers’ struggles.³³

Another relevant aspect to be considered deals with the action of the State by force and consensus. For Gramsci, the State has an organic and broader meaning that includes political society and civil society, it comprises, in addition to the “government apparatus”, the private apparatus of hegemony that corresponds to civil society³⁴.

Starting from an approach developed by Lenin on the term “hegemony”, Gramsci expanded the concept and observed how the bourgeoisie operates its predominance and maintains its control, using instruments of social control³⁵. Gramsci argues that the predominance of capitalism is operated through the state apparatus, but reveals the organic aspect present in ideological approaches, transcending violence through political and economic coercion. The discussion about “common sense” is typical of this approach and Gramsci the relationship between power and its maintenance via cultural hegemony.

The concept of the **mantempolitic superstructure** and ideologically the relations

of interest of the economic class, reproducing itself through a nexus of social relations and ideas³⁶. The discussion present in the approach on the role of the Church and the relevance of Catholicism for the understanding of an analysis of cultural hegemony is fundamental for the perception of the behavior of the hegemonic classes and the processes of ideological production and reproduction, as substrates of power structuring.

To Cerqueira Filho³⁷:

“...We must bear in mind that, in Gramsci, the dominant ideology in a society is the ideology of the hegemonic social class, which holds possession of the means of production and political power. The hegemonic social class, controlling the whole of political society (the State) and civil society, combines coercion and consensus to obtain acceptance... therefore, politically organizing society, realizing social unity.”

The infrastructure is discussed in Luitgarde Barros if he connects the relationship with the superstructure through the role of the intellectual. The author mentions that the relationship between structure (from the Marxist perspective of forms of economic production) and superstructure will be established through the analysis of the role of the intellectual, seen as the organic link between the two elements³⁸. Also for the author, the need to study social classes and their relationships, organization and class consciousness, inserted in the sociological tradition of dividing the social structure into infrastructure and superstructure, is discussed. Civil society, identified with sociology, would be constituted in private organizations, in

33 SIQUEIRA JR, Adilson. Ideology, social consciousness and hegemony in Gramsci's work. *Emancipation*. Pág. 28

34 Ibid, pág.33

35 ANDERSON, Perry (November-December 1976). *The Antinomies of Antonio Gramsci* (<http://newleftreview.org/1/100/perry-anderson-the-antinomies-of-antonio-gramsci>). *NewLeft Review*. New LeftReview.I (100):5-78

36 SASSON, Anne Showstack, *Hegemony*. In Bottomore, Tom; Harris, Laurence; Kiernan, V.G. Miliband, Ralph (eds). *The Dictionary of Marxist Thought* (Seconded). Blackwell Publishers. P. 230

37 CERQUEIRA FILHO, Gisálio. *Social Analysis of Ideology* / Gisálio Cerqueira Filho. São Paulo: EPU, 1988. Pág.21

38 BARROS, Luitgarde Oliveira Cavalcanti. *The Land of the Mother of God*. Rio de Janeiro: Francisco Alves. Brasília. INL. 1988. Pág. 27

charge of the intellectual and moral direction of society. "It corresponds to the function of hegemony that the dominant group exercises throughout society."³⁹.

According to Chagas⁴⁰, Marx and Engels demonstrated the (dialectical) relationship between infrastructure, as productive forces, which become civil society, and the superstructure (State), the former founding the latter. Still for Chagas⁴¹, Gramsci considers the role of civil society as a determinant of the structure, even if present between the structure and the superstructure. An axis presented by Bianchi⁴² allowed the visualization of Gramsci's work within a more "comprehensive and integrative" perspective of the economic perspective of the structure in Marx, and beyond a component of the superstructure, discussed by Norberto Bobbio⁴³. Therefore, the role of the diffusion of the dominant ideology should be highlighted. In this perspective, discussing the role of the "organic intellectual" is fundamental for the improvement of an approach where consistent and active elements allow the repeated weaving of an enveloping mesh, which connects coercion with the ideology of

practice. The author also cites the importance of considering civil society: Church, Schools, etc., as amplifiers of this repressive apparatus of the State.

The concept of organic intellectual emphasizes the role of articulating social segments, through language and culture, with the objective of developing alternative values and ideologies, contrasting with the dominant classes⁴⁴.

RAUL ZAFFARONI, HUMANITARIAN LAW, LEGITIMACY IN THE LEGAL SYSTEM FOR VICTIMS

Regarding vulnerability, the discussion present in the theoretical framework of this thesis will be used, which deals with the work developed by Eugênio Zaffaroni⁴⁵. The author discusses the presence of a stigmatizing system⁴⁶, legitimized by an imposing legal framework, in which marginal regions would imply penalties for those excluded from social rights. According to that author, currently, the rationality of the traditional legal-criminal discourse and the consequent legitimacy of the penal system have become "utopian"

39 BARROS, Luitgarde Oliveira Cavalcanti. *The Land of the Mother of God*. Rio de Janeiro: Francisco Alves. Brasília. INL. 1988. Pág. 34

40 CHAGAS, Thiago. Gramscian Concept of Civil Society: Uses and Abuses in Education. Page 4. Withdrawn from <https://www.unicamp.br/cemarx/ANAIS%20IV%20COLOQUIO/paineis/GT5/gt5p6.pdf>. Consultation held on October 12, 2020.

41 CHAGAS, Thiago. *Gramscian Concept of Civil Society: Uses and Abuses in Education*. Page 5. Withdrawn from <https://www.unicamp.br/cemarx/ANAIS%20IV%20COLOQUIO/paineis/GT5/gt5p6.pdf>. Consultation carried out in October 12, 2020.

42 For Bianchi: "...by maintaining – civil society and political society – a relationship of unity – distinction, they configure two superimposed plans that can only be segmented for purely analytical purposes. For this reason, Gramsci emphasized that the "unity" between state and civil society is always "organic..." BIANCHI, Álvaro. *Gramsci's Laboratory: philosophy, history and politics*. Sao Paulo: Alameda. 2008. Pág 184. Read Liguori's work, which infers the fact that while Marx considers civil society (economic base) as the primary factor of social-historical reality, Norberto Bobbio makes a reading of Gramsci's work by shifting the "infrastructure" to the "superstructure", giving it centrality. LIGUORI, Guido. *Itineraries for Gramsci*. Rio de Janeiro: UFRJ Publisher, 2007. Pág. 40.

43 BIANCHI, Álvaro. *Gramsci's Laboratory: philosophy, history and politics*. São Paulo: Alameda. 2008

44 MAYO, Peter. Antonio Gramsci and his Relevance for the Education of Adults. Consultation carried out in https://www.um.edu.mt/library/oar/bitstream/123456789/44580/1/Antonio_and_his_relevance_to_the_education_of_adults.pdf, on the 11th of October 2020. *Educational Philosophy & Theory*. Págs. 418-435

45 ZAFFARONI, Raul. *In search of lost feathers. 5th edition*. Revan. 1991

46 "... selectivity, the reproduction of violence, the creation of conditions for more harmful conduct, institutionalized corruption, the concentration of power, social verticalization and the destruction of horizontal or community relations are not conjunctural, but structural characteristics of the exercise of power by all. the penal systems". Ibid, p.15

and “timeless” and will not be carried out anywhere and at any time⁴⁷.

Para Zaffaroni⁴⁸:

“False legal-criminal discourse is neither a product of bad faith nor of simple convenience..., but it is sustained, in large part by the inability to be replaced by another discourse due to the need to defend the rights of some people”.

The utopian legitimacy of the penal system is understood as the characteristic granted by its alleged rationality. for Zaffaroni⁴⁹, the theoretical or discursive construction that intends to explain this planning would be its legal-criminal discourse⁶⁷. If this legal-criminal discourse were rational and if the penal system acted in accordance with the penal system, it would be legitimate. For the author there is a need to reduce the expression “rationality” by:

- a) internal coherence of the legal-criminal discourse, and
- b) truth value regarding the new social operability.

Also, according to Zaffaroni⁵⁰:

“...In our marginal region, the rationality of the criminal legal discourse is absolutely unsustainable, which, much more evidently than in central countries, does not fulfill any of the requirements of legitimacy”.

Legitimacy could not be supplied by legality. Theories that are exhausted in formal legality remain, however, as if suspended in a void, as they require a legitimizing support point of the normative production process itself, support that has sought, either in the idea of “sovereign”, or in the presupposition and unquestionable legitimacy of the “fundamental norm” or even in the ultimate

rule of recognition⁵¹.

For the author, the partial and incoherent use of legitimacy with the legality of the system is often carried out in our Latin American marginal region, a context in which this kind of discourse is particularly alien (strange to reality).

Still according to that author: “The penal system does not act according to legality – the real operation of the penal system would be “legal” if the bodies that converge to it exercised seu poder de acordo com a programação legislativa tal como expressa o discurso jurídico-penal”⁵².

Renunciation of legality would occur when the law itself renounces legality and that the criminal-legal discourse (penal knowledge) does not seem to perceive this fact. ⁵³:

“...Criminal knowledge only deals with the legality of matters that the legislative body wants to leave within its scope and, finally, with a very small part of the reality that, as it is within this already delimited scope, the executing agencies decide to submit to it. The author cites as excluded from legal matters: the linking of minors (especially the abandoned), the mentally ill, the elderly and even prostitution itself with the legal-criminal discourse, although all these groups are subject to institutionalization, imprisonment and stigmatizing marks authorized or prescribed by the law itself that are, on the whole, similar – and often worse than those covered by criminal legal discourse.”

Zaffaroni considers that this area, in which the law itself renounces the limits of legality, in which any function guaranteeing criminal types disappears and from which the normal intervention of judicial bodies is excluded, is

47 Ibid, pág. 19

48 Ibid, pág. 14

49 Ibid, pág. 32

50 Ibid, pág. 19

51 Ibid, pág.34

52 Ibid, pág. 20

53 Ibid, pág.22

the indispensable basis for the true exercise of power of the penal system, that is, for the configuring power of the organs of the penal system to operate and so that only eventually a greater repression than authorized can be exercised in cases supposedly reserved for the legal-penal discourse⁵⁴.

That author also emphasizes the presence of an “oppressive” system, which connects him with the thought of Foucault⁵⁵. Through this express and legal waiver of criminal law, the organs of the penal system are in charge of a militarized and verticalized social control, of daily use, exercised over the vast majority of the population, which extends beyond the merely repressive scope, as it is substantially configurative. of social life.

This configuring power influences the executing agencies of the penal system that act beyond their functions, and as agencies of execution, recruitment and reinforcement of other configuring agencies or institutional instances, whose power is explained by different discourses, although with resources similar to imprisonment, kidnapping and stigmatization. Thus, penal bodies are concerned with selecting and recruiting or reinforcing and guaranteeing the recruitment of deserters or candidates for institutions such as asylums, asylums, barracks and even hospitals and schools (in other times, convents). This power is also exercised selectively, in the same way that, in general, is exercised by the entire penal system.

The organs of the penal system exercise their militarizing and verticalizing-disciplinary power, that is, their shaping power, over the poorest sectors of the population and over some dissidents (or different) that are more

uncomfortable or significant.

“...the configurative or positive power of the penal system (which fulfills the function of vertical disciplining) is exercised on the fringes of legality, in an arbitrarily selective way, because the law itself plans it and because the legislature leaves very wide scopes outside the legal-criminal discourse. of punitive social control”⁵⁶.

Foucault developed a relevant work in the understanding of a “radial power”, with concepts such as “biopolitics” and “biopower”⁵⁷. In the work “Discipline and Punish”⁷⁵, published in 1975, Foucault focuses on disciplinary processes in prisons, especially in France. He reflects on why torture gave way to incarceration in prisons, claiming that this was the most appropriate form of correction. The philosopher answers this question by reflecting on the power of the (absolute) monarchy, which was replaced by the power of a republican government.

According to Foucault, society makes abusive use of power through institutions, schools and prisons, for example. The modern era is defined through discipline, which is nothing more than a means of domination that aims to domesticate human behavior. As for education, Foucault calls the school one of the “sequestration institutions”. According to him, the school takes students out of their environment to cloister them and, in this cloister, to domesticate them the way society wants. Before, school was a place of punishment. With the modern era, it becomes a place of domestication, a model that is also followed in the prison system.

Zaffaroni makes an approach to the discipline that highlights the oppressive presence of a dysfunctional structure:

54 Ibid, pág. 23

55 FOUCAULT, Michel. *Discipline and Punish. The Birth of the Prison*. Penguin. 1991

56 Ibid, pág. 23

57 History of Madness (1961), his doctoral thesis; Mental Illness and Psychology (1962); The Birth of the Clinic (1963); The Words and the Things (1966); The Archeology of Knowledge (1969), and Discipline and Punish (1975) are some of these relevant works...

“Militarized discipline tends to be the same as in the barracks; the uniformity of the external aspect, the respect for the superior, the feeling that every pleasurable activity is a concession of authority, etc., are evidently part of the exercise of configurative and not merely repressive power. It is also a repressive power because it tends to internalize this discipline (to make it part of the psychological apparatus itself), it acts at a conscious and – perhaps, mainly – unconscious level, eliminates spontaneity and configures a society of subject to a internalized surveillance of authority”⁷⁶.

He still criticizes the naivety of believing that the true power of the penal system is exercised, for example, when its agencies detain, prosecute and convict a homicide. This power, which is exercised very occasionally, in a highly selective manner and surrounded by widespread publicity through the mass media, is negligible when compared to the power of control that the organs of the penal system exercise over any public or private conduct through the internalization of this disciplinary surveillance by a large part of the population.

Foucault’s institutional epistemology is almost indisputable and explains, in large part, both the nature of the responses to delegitimization in our Latin American marginal region, as well as some positive contradictions between a knowledge generated by central agencies and dysfunctional for periferic agencies suggesting the possibility of thinking (rethinking) the “colony” with the paradigm of the “kidnapping institution”⁵⁸. For Zaffaroni, the discussion about the surrounding character of prison assumes a relationship with the institutionalization of criminology: “It goes without saying that, in the criminological context, the relationship between etiological criminology and prison is very clear”⁷⁸.

58 ZAFFARONI, Eugenio Raúl. In search of lost feathers. 5th edition. Revan. 1991. p.63

59 Ibid. p.182

60 Ibid, Pág 225

A very coherent relationship with the proposal of this thesis is chapter 5 of Zaffaroni’s work, where he proposes a constructive model for the non-legitimate legal-criminal discourse, comparing it with Humanitarian Law.

The author cites that industrial society exercises its verticalizing power, rationalizing it through the justifying discourse of criminal law. This legitimation, not through a judicial agency, but through the entire penal system. The legal-criminal discourse has legitimizing and guiding components, intimately linked⁵⁹.

Intervention (in the few cases in which the judicial agency is called upon to decide based on the selection process carried out by non-judicial agencies) is based on abstract categories that prevent contact with the conflicting social reality within which the agency must decide. The author cites the need to build a legal-criminal discourse based on correct data, which removes it from the discretion of the exercise of power by legitimating agencies.

Zaffaroni considers that a rational juridical-penal discourse must be disposed at the service of delegitimization, as the most practical and effective way of acting on men and institutions, modifying norms and inaugurating an ethics focused on life.⁶⁰. To this end, he cites the perspective presented by Humanitarian Law, which presented three alternatives of action: on the instruments of combat, action on man and the orientation towards peace and action, through institutions, in order to create superior instances of control.

When comparing with the penal system, he considers the action on institutions and men relevant, due to compatibility and complementarity. The author considers an interesting historical proposal for the improvement of a perspective that opposes

the present vulnerability of the penal system.

Mentioning the Humanitarian Law legislation allows for an understanding of the complexity of trying to break down and reach an infinity of elements present in war, and with its delegitimization, more modernly in armed conflicts, from 1856 onwards⁶¹:

One has, then, the international scene in 1939 with the war was a custom. And in international relations between the twenties and thirties of the twentieth century, International Law and its criminal branch were at an even more embryonic stage to serve as a brake on the conduct of statesmen.

The Nuremberg Trial served as the basis for the Tokyo Tribunal in 1948 and provided the legal basis for the creation of ad hoc tribunals for the trial of war criminals, such as the former Yugoslavia, and more recently Somalia. There is a new perspective of punishment for violations of the legal norm, instituted from the Customary Law.

In addition to the treaties developed regarding limitations on the use of weapons, new issues present in armed conflicts are also incorporated. Can be cited:

- The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict, 1954;
- The Convention on the Prohibition of the Development, Production and Stockpiling of Bacterial and Toxic Weapons, in 1972;
- The Additional Protocols of 1977 address issues such as neutrality, sanitary transport, limitations on means and methods of warfare, incorporation of new characteristics to those protected by the Combatant's Statute, provisions on the treatment of the civilian population,

61 Declaration of Paris, April 16, 1856, on the right to war at sea. It was the first attempt at conventional hostilities regulation, dealing with the establishment of norms regarding navigation, approach and blockades, followed by the Lieber Code - Instructions for the forces in the field of the American Army, 1863 and the Geneva Convention, of August 22, 1863. 1864, relating to servicemen wounded on the battlefields;

62 MELLO, Celso D. de Albuquerque Mello. *Public international law course. 9th edition. Rio de Janeiro. Publishing company, Renovar. 1992. p.1237*

civilian goods, provisions on Civil Defense and also on non-international conflicts;

- The 1980 United Nations Conventions on Prohibitions on the Use of Conventional Weapons, specifying non-localizable fragments, use of mines, trap weapons and other similar artifacts, as well as prohibitions and limitations on the use of incendiary weapons.
- In 1993, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons was approved;
- In 1995, the Protocol on Blinding Laser Weapons was approved, and
- In 1997, the expansion of the 1980 Convention on Mines and Their Destruction was approved.

The perspective of understanding the evolution of the rule of limitation of war, allows the understanding of the background, represented in customary law and in the issues presented by Henri Dunant and Franz Lieber in the formulation of Humanitarian Law.

In the 16th century, Gentili distinguished between public and private warfare when he wrote "Bellum est armorum publicorum just contentio" (De Jure Belli, 1598). According to Prof Celso Mello⁶², For International Law this distinction is important, because it is only directly interested in public war, while private war (civil war) is only interesting when it threatens international peace, or even from a humanitarian aspect.

Thus, the Jus ad Bellum belonged not only to the State, but also to individuals, in a certain period of history. The Jus ad Bellum in International Law, with the affirmation of State sovereignty.

Jus in Bello is the regulation of war. These

are, for example, the rules that regulate the conduct of belligerents. It is formed by the international norms in force after the beginning of the war. It developed through international custom, finding norms that belong to it since antiquity. Customary norms began to become conventional in the course of the 19th century.

Jus in Bello has sanctions that seek to repress violations. To Celso Mello⁶³, the sanctions of the laws of war are not as effective as reprisals. Reprisals have been condemned because they target people who have nothing to do with violating the laws of war, despite the fact that they are aimed at the offending State.⁶⁴ They only subsist because in the international world there is still no institutionalized society, with an effective power above the States. Protocol I of the Geneva Conventions (1977) prohibits reprisals against: the wounded, sick, sick and shipwrecked, the civilian population, goods essential for the survival of the population, cultural goods, the environment and buildings containing dangerous forces.

Each historical period has its own peculiarity, but common to all, especially in land warfare, are questions about the rights of belligerents, the treatment of prisoners and civilians, the observance of truces and immunities, the acceptability of particular weapons and systems. weapons, the distinction between the treatment of civilized and uncivilized combatants, codes of honor and war crimes in general.

As has already been seen, war is a clearly

de-legitimized fact of power; however, no one doubts the necessity and rationality of the efforts of jurists, dedicated to humanitarian law, and their agencies. While war is delegitimized, Humanitarian Law is legitimized, as it seeks to reduce the level of violence of a fact of power that is out of control, that is, that it cannot, due to its limited power, suppress.

The need to limit and then to eradicate war in central countries generated humanitarian law as a means of putting an end to its violence. However, for Zaffaroni: “the agencies responsible for this legal program do not have the necessary power to carry it out globally, when central and marginal power are contradictory to the objectives of this legal branch”.

For Zaffaroni, the penal system, unlike war, has never been discursively delegitimized by power. of candidates for prison, in addition to the duration, intensity and extent of prisoners⁶⁵. For the author, in the case of the penal system, the solution passes ⁶⁶:“... as it guides the decisions of the judicial agency so that it assumes a role of contradiction within a set of agencies of the penal system”.

The solutions proposed by Zaffaroni allow the visualization of possible paths aimed at mitigating the vulnerability of victims, observing the ideological construction of Humanitarian Law by limiting the means and methods of war. When discussing paths that seek to restrict or delimit actions in the penal system, the perspective of protecting the vulnerable is sought, considering Katzmann's perspective⁶⁷ about the high risk represented

63 MELLO, Celso D. de Albuquerque. *Public international law course. 9th edition. Rio de Janeiro. Publishing company Renovar. 1992. p.1143*

64 Protocol I of the Geneva Conventions prohibits attacks carried out without discrimination and attacks or retaliatory actions against: goods indispensable for the survival of the civilian population, the civilian population and civilians, cultural heritage and places of worship, works and facilities that contain hazardous forces and the natural environment. I Protocol to the Geneva Conventions. Edited by the International Committee of the Red Cross. ICRC. Available in: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470?OpenDocument>. Consultation carried out on December 13, 2007

65 ZAFFARONI, Eugenio Raúl. *In search of lost feathers. 5th edition. Revan. 1991. Pág 234*

66 Ibid, pág 198

67 KAZTMAN, R. *Seducidos y abandonados: she social isolation of the urban poor. la magazine CEPAL, 2001 - repositorio. cepal.org, pág 172*

by subjugation to a system that presents people excluded from social protection.

It is relevant to mention how vulnerability in the prison system has similarities with the issues of treatment of victims in Humanitarian Law. The resistance to the process of delegitimization of the practice of war, by the actors involved, created the possibility of understanding a process in which the law is re-legitimized as a guardian of subjective rights, by delimiting “crimes” and their relationship with “injuries”.⁶⁸.

Until the 20th century, Jus ad Bellum was present as a traditional feature of the State. International law regulated war between states. Currently, with the renunciation of war, the States have theoretically lost the Jus ad Bellum. The use of armed force would theoretically be subject to UN authorization. The employment given by the United Nations does not exactly create a war, because most of the time international political actions take place. The situations provided for in the event of a conflagration allow for military right-to-war actions with the approval of the Security Council⁶⁹:

- Legitimate Defense Individual or collective, and
- Military peacekeeping operations under UN warrant or authorization.

However, it should be remembered that the principle of equality between belligerents has predominated in doctrine and jurisprudence, even when a war is declared illegally.

After presenting the concepts of cultural hegemony, in Gramsci, the delimitation of a legal system for victims with Zafaroni, a provision will be made about the elements to be observed in the conflict in Syria.

DATA ANALYSIS: CONFLICT IN SYRIA

The discussion about the conflict in Syria implies the understanding of the hegemonic elements represented by local and international groups that act in the perpetuation of a power structure with a history of practices of violence and disruption in several against ethnic groups different from those that have been governing the country. .

The theorists discussed in the first part of this article deal with concepts such as cultural hegemony and superstructure that are suited to the development of an oppressive apparatus on the part of President Bashar al-Assad with the support of countries such as Russia, in the midst of the confrontation of different ethnic groups.

The Syrian government has the support of Russia and Iran, which send, in addition to weapons and money, troops. The Free Syrian Army and the Kurdish Army receive US support. In addition, Turkey also funds the Free Syrian Army, but fights the Kurdish army (persecuted in Turkey). Other international forces linked to France, the United Kingdom and Saudi Arabia, Qatar, Kuwait and Jordan are active in the armed conflict.

The theoretical discussion present in the aforementioned work by Raul Zaffaroni allows the understanding of the legal apparatus that was developed by the Syrian government and that reifies the suppression of antagonistic groups, with the commission of atrocities against the civilian population, by the expansion of risks and the lack of a protective structure for victims of more than 50 years of armed conflict in the delimited area.

The civil war in Syria is a conflict that has been going on since 2011 between various armed groups. The Syrian Observatory for Human Rights has already estimated more than 500,000 dead and more than 11.7 million Syrian refugees as a result of the conflict, of

68 ZAFFARONI, Eugenio Raúl. In search of lost feathers. 5th edition. Revan. 1991. p. 223

69 BYERS, Michael. *War Law: Understanding International Law and Armed Conflict*. Grove Press. New York. 2005. p. 156

which 4.9 million have migrated out of the country.⁷⁰

According to the Geneva International Center, after 50 years of the seizure of power by Hafiz al Assad and the passing of the government to his son Bashar al Assad, Syria has become a fratricidal confrontation between ethnic groups, through coups and counter-coups, under long period of authoritarianism⁷¹. The conflict began as a result of the Syrian government's crackdown on Arab Spring protests.

According to the Syrian Center for Policy Research, more than 470,000 people died in the first five years of the conflict, in addition to more than 1.9 million wounded. Still, 70,000 people would have perished for not having access to water, food or medical care, as reported in the report carried out by the English Guardian newspaper.⁷²

War crimes are attributed to all parties to the conflict, such as genocide of civilians, in addition to two chemical weapons attacks. The war resulted in the destruction of much of the country's existing historical collection, mainly by the action of the Islamic State.

The intolerance perpetrated by the Syrian government forces, the result of an intertwined relationship of religious forces between Sunnis and Shiites, unleashed a conflict that took place during the 20th century. It is noteworthy the lack of recognition of human values between the parties and the cultural hegemony present within the segments. The result of the actions of intolerance is presented in a great humanitarian dispersion that affects

more than half of the Syrian population and with a great dispersion of victims, in the lack of physical and social assets.⁷³

The theoretical discussion presented by Martin Van Creveld⁷⁴ on the breaking of the monopoly of the use of force and the dispersion of violence is directly related to the large presence of international forces and the dispersion of armed groups, terrorizing and creating a high degree of social vulnerability.

The main rebel force is the Free Syrian Army, which emerged in July 2011. This group is not subject to any religious order. The opposition has extremist groups with jihadist leanings, such as JabhatFateh al-Sham, formerly known as the Al-Nusra Front. Starting in 2013, the Islamic State, the former Iraqi armed wing of Al Qaeda, took advantage of Syria's instability and joined Sunni jihadist rebel groups. However, as the Islamic State grew rapidly, it proclaimed a Caliphate in territories in Syria and Iraq. The conflict that had started for political reasons took on religious proportions.

Other war fronts emerged with small rebel groups, mainly of fundamentalist tendencies. The Kurds stand out, who mobilized in the conflict from 2014, when the Islamic State began to persecute the Kurdish minority in Syria. Kurdish troops currently maintain control of the northern regions of Syria.

The United States intervened in the conflict after the chemical attack that took place in April 2017 against the city of Khan Sheikhoun. The chemical weapons used resulted in 86 deaths from sarin gas.

70 OCHA. UM Office for the Coordination of Humanitarian Affairs projected 11,7 milhões de pessoas na Síria necessitando de apoio humanitário e assistência em 2019.

71 Geneva International Centre for Justice, 2017. Syrian Civil War: Six Years into the Worst Humanitarian Tragedy Since WWII, Geneva, Switzerland. 2017. Page II. Taken from https://www.gicj.org/images/2016/pdfs/Final-Report-Syria_June-2017.pdf. Consultation carried out on January 21, 2021.

72 REPORT on Syria conflict finds 11,5% of population killed or injured. The Guardian. 2016. Available in: <<https://www.theguardian.com/world/2016/feb/11/report-on-syria-conflict-finds-115-of-population-killed-or-injured>> Acesso em 19 jan 2021

73 KATZMAN, R. *Vulnerability, assets and social exclusion in Argentina and Uruguay*. Santiago do Chile. OIT. Ford. 1999, pág 43

74 VAN CREVELD, Martin. *The Transformation of War*. New York: The Free Press. 1991

Among the atrocities against victims of the armed conflict in Syria, the⁷⁵:

- attacking civilians using civilian targets and using human shields;
- the indiscriminate use of weapons, with the use of chemical weapons;
- arbitrary arrests;
- enforced disappearances;
- torture by hanging victims, electroshock, keeping in a stressful position for days and hours, exposure to heat and cold, verbal threats, use of acid;
- Sexual violence through rape, use of penetrating objects, prolonged nudity and beatings;
- detention of journalists and activists;
- summary executions without the right to trial and confessions obtained through the use of torture;
- attack on medical institutions, sieges and denial of humanitarian access with the death between 2011 and 2016 of about 697 people involved in health teams and 198 attacks on medical facilities;

According to the Geneva International Center of Justice, 13.5 million people are in need of humanitarian assistance, 11 million are in need of health care, 4.5 million are living in conflict areas, 2.4 million are in need of shelter, 2 million children are out of school, 1.5 million are millions of people are disabled.

Among the actions that contribute to the increase in mortality are air attacks, shootings,

According to the international press, in 2019, in northeast Syria, the number of civilians killed by the US-led coalition and its ally, the Syrian Democratic Forces, suggests a degree of destruction in areas held by the Islamic State, characterizing the lack protection for the protection of civilians.

Syria's alliance with Russia carried out several attacks against northeast Syria using

cluster bombs, incendiary weapons against schools, homes, hospitals in 2019 and 2020 with the deaths of more than 1000 civilians and children. In August 2019, the United Nations launched an investigation into attacks on hospitals in Syria. Still, according to the United Nations, around 1.5 million civilians from northeast Syria have been displaced.

According to HumanRightsWatch, HayétTabrir al-Sham and Jaysh al-Izza launched indiscriminate attacks against civilian areas under government control. The report also mentions that the Turkish coalition and the Free Syrian Army have deteriorated security conditions, with the commission of war crimes, civilian targets, hostage taking, use of car bombs, arbitrary arrests, extortion and torture. About 10,000 people have been detained or disappeared since 2011.

The facts presented allow an understanding of the relevance of the two theorists discussed by the disposition of a structured violence that instruments national and international means in the perpetuation of their interests.

More than understanding the risks involved in the vulnerability of the civilian population in Syria, the discussion proposed here finds clear elements that characterize the role of organized violence in the destruction of lives and maximization of victimization. The search for solutions to the Syrian situation implies understanding the demands of the different segments present, their experiences and needs. The construction of a country ravaged by destruction and hopelessness is directly related to the understanding of the social and cultural needs of the Syrian population.

CONCLUSION

This research sought to understand the problem of observing the relevance between intolerance and vulnerability in areas of armed

⁷⁵ Geneva International Centre for Justice, 2017. Syrian Civil War: Six Years into the Worst Humanitarian Tragedy Since WWII, Geneva, Switzerland. 2017. Pág. IV. Taken from https://www.gicj.org/images/2016/pdfs/Final-Report-Syria_June-2017.pdf. Consultation carried out on January 21, 2021.

“The search for wisdom incessantly consolidates the belief in the discovery of truth...”⁷⁶

conflict, in contemporary times. To this end, it aims to observe some of the main authors who deal with the subject, converging on the understanding of the degree of victimization present in contemporary times.

He considered as a hypothesis that the intolerance present in the conflict in Syria is directly related to the degree of social vulnerability present. To do so, it chronologically observes the evolution of the main conflicts and the involvement of the civilian population in the conflict.

The text presented the relationship between intolerance and vulnerability of the Syrian population and discussed concepts present in the thinking of Gramsci and Zaffaroni to understand the conformation of the destructuring and instrumentalization of violence by Syrian hegemonic groups.

The analysis of the data allowed the understanding of the difficulties in maintaining the distinction of means and methods of war, even after 160 years of the implementation of the principles of humanitarianism. The discussion by the international organizations created after World War II, with the convergence of Humanitarian Law and Human Rights, for the universalization of the right to life and the condemnation by the international community of the right to go to war and the development of concepts of crimes against humanity has not been enough to preserve the victims in Syria.

The justification of the work is related to the current situation of the dispersion of armed conflicts and its implications for international stability.

The work allows the understanding that it is necessary to search for solutions that value the autonomy of the populations involved, respecting the human person, considering the good life as a universally protected good.

76 BILLIER, Jean-Cassier e MARYIOLI, Aglaé. *História da Filosofia do Direito*. Barueri: Manole, 2005, cap. 2, p.67

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