

INTEGRAL PROTECTION AND THE COUNSELING OF VULNERABILITIES OF CHILDREN AND ADOLESCENTS | LA PROTECCIÓN INTEGRAL Y EL ENFRENTAMIENTO DE VULNERABILIDADES INFANTILES | A PROTEÇÃO INTEGRAL E O ENFRENTAMENTO DE VULNERABILIDADES INFANTOADOLESCENTES

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ABSTRACT | Integral protection is consolidated as a Brazilian legal doctrine aimed at children and adolescents. It is configured in the elements: shared responsibility, recognition of the condition of subject, principle of absolute priority, fundamental rights, prevention of violence and peculiar condition of developing person. Although welcomed in 1988-1990, the reality of Brazilian children and adolescents still demands care. Violence against this population persists and is recognized in the country. The many forms of violence in the child and adolescent are related to the scourges of humanistic promises in general. From the tools of the critical theory of human rights it is possible to dialogue with comprehensive protection in a broader and deeper way, towards the achievement of concrete and emancipatory dignity, through consideration of vulnerabilities, both intrinsic and in others that commonly accumulate in the context of countries like Brazil (here taken as peripheral), as is the case of socioeconomic vulnerability.

KEYWORDS | Child and adolescent. Integral protection. Human Rights. Vulnerabilities.

RESUMEN | *La protección integral se consolida como doctrina jurídica brasileña dirigida a niños y adolescentes. Se configura en los elementos: responsabilidad compartida, reconocimiento de la condición de sujeto, principio de prioridad absoluta, derechos fundamentales, prevención de violencias y condición peculiar de persona en desarrollo. Aunque acogida en 1988-1990, la realidad de niños y adolescentes brasileños aún exige cuidados. Las violencias contra esa población persisten y son reconocidas en el país. Las múltiples formas de violencia en el ámbito de la infancia y la adolescencia están*

relacionadas con las carencias de las promesas humanistas en general. A partir de herramientas de la teoría crítica de los derechos humanos es posible dialogar con la protección integral de forma más amplia y profunda, en el sentido de la consecución de dignidad concreta y emancipadora, por medio de la consideración de las vulnerabilidades, tanto intrínsecas, como en otras que comúnmente se acumulan en el contexto de países como Brasil (aquí tomados como periféricos), como es el caso de la vulnerabilidad socioeconómica.

PALABRAS CLAVE | Niño y adolescente. Protección integral. Derechos Humanos. Vulnerabilidades.

RESUMO | *A proteção integral é consolidada como doutrina jurídica brasileira voltada para crianças e adolescentes. Configura-se nos elementos: responsabilidade compartilhada, reconhecimento da condição de sujeito, princípio da prioridade absoluta, direitos fundamentais, prevenção de violências e condição peculiar de pessoa em desenvolvimento. Embora acolhida em 1988-1990, a realidade de crianças e adolescentes brasileiros ainda exige cuidados. As violências contra essa população persistem e são reconhecidas no país. As muitas forma de violência na seara infantoadolescente se relacionam com as mazelas das promessas humanistas em geral. A partir de ferramentas da teoria crítica dos direitos humanos é possível dialogar com a proteção integral de forma mais abrangente e mais profunda, no sentido da consecução de dignidade concreta e emancipadora, por via da consideração das vulnerabilidades, tanto intrínsecas, quanto em outras que comumente se acumulam no contexto de países como o Brasil (aqui tomados como periféricos), como é o caso da vulnerabilidade socioeconômica.*

PALAVRAS-CHAVE | Criança e adolescente. Proteção integral. Direitos Humanos. Vulnerabilidades.

1. INTRODUÇION

The legal-political option made in the Constitution of the Federative Republic of Brazil of 1988 (CRFB/1988), with regard to children and adolescents, was the recognition of the condition of subjects of rights, of the principle of absolute priority and of the importance of the dignity of the person also, and especially, for these subjects (Art. 1, III and Art. 227, CRFB/1988). In a special law - Federal Law No. 8,069 of July 13, 1990 (Statute/1990) - by irradiation of the CRFB/1988, it is all based on the conception of full protection. This denomination was given in the following terms: "Art. 1º This Law provides for the full protection of children and adolescents." (Translated).

Children and adolescents targeted by full protection are, unfortunately, subjects subjected to vulnerabilities typical of peripheral or non-central countries. It follows from this that: on the one hand, they are subjects in a peculiar condition of a person in development (intrinsic vulnerability); and on the other hand, they exist in a type of society that lives with structural poverty and inequality (social and economic vulnerability).

The rights recognized for these subjects, in turn, in the line of concrete and emancipatory dignity, are goods of life that involve freedoms and social rights. In other words: from the fact of affirming fundamental rights of children and adolescents, there are both abstentional obligations - or not to do - and service obligations - to do. Sometimes these obligations must be attributed to people in general, sometimes they refer to the Public Administration, via public services. All of them, however, bind the State by its three functions: executive, legislative and judicial.

For the purpose of elucidation: peripheral or non-central, it is the countries, for example, Brazil, Argentina, in Latin America, that under the global prism, are historically and generally submitted to external interests in the economic field, having for this reason, their political autonomy mitigated. Moreover, they are still subordinated to the central economies, internationally considered, via internal system of domination or consolidated relations of force

that have developed dependence rather than political autonomy¹. Regarding the condition of the society of these countries, combined with the perspective - expected - of a mature relationship with democracy and freedom permeated by concrete equality, we gather:

The great aspiration of these peoples in contemporary times gravitates around the realization of the fundamental rights of the four dimensions or generations already known and consecrated - namely: individual rights, social rights, rights of peoples, universal rights. They compose the creed of freedom and the commandment of conscience that run through the field of politics and constitutionalism in Latin America². (Translated).

It happens that the conditions of access to concrete citizenship of children and adolescents in Brazil, although presenting comparatively encouraging statistics at the turn of the twentieth century to the twenty-first century, still leaves something to be desired in terms of access to rights as material and immaterial life goods available. Violations of the integrity of this population are recurrent and not sporadic. The period that is focused on in this article coincides with the entry into force of full protection - 1988-1990 - until the first two decades of the twenty-first century.

In this line, this study intends to answer the following question: under what conditions is integral protection a skillful tool to face intrinsic and socioeconomic vulnerabilities of children and adolescents in Brazil?

Other vulnerabilities coexist with the two separated here for study. The barriers of color, of gender, for example, tend to coexist with the others and have important peculiarities, as well as serious implications. However, they will not be deepened, given the limits of this article.

To answer this problem-question, the method of inductive approach and bibliographic research technique will be used. The inductive option is linked to the fact that the object of study - is a very circumscribed cut to the Brazilian reality and is taken from the beginning of the work, from what is studied and

1 GROSFOGUEL, Ramon. **Developmentalism, Modernity and Dependency Theory in Latin America**. In: Neplanta: views from South, vol. 1, Ed. 2, Editora Universidade Duke (EUA), 2000, p. 364.

2 BONAVIDES, Paulo. **Curso de direito constitucional**. 27. ed.. São Paulo: Malheiros, 2012, p. 608.

plausible generalizations are attempted, within the limits of the research. The bibliographic technique is based on the fact that the scientific production in the areas reached is extensive, current.

Explaining the theoretical framework: the bibliographic production related to integral protection and its application is the result of the activities of the Center for Legal and Social Studies of Children and Adolescents of the Federal University of Santa Catarina (translated) (Núcleo de Estudos Jurídicos e Sociais da Criança e do Adolescente da Universidade Federal de Santa Catarina NEJUSCA/UFSC), mainly by Josiane Rose Petry Veronese, André Viana Custódio and Fernanda Silva de Lima.

Dialoguing with specific production, tools from the critical-humanist theory of Herrera Flores and the critical theory of social welfare policies of Elaine Rosseti Behring will be used. With regard to categories of sociological basis linked to the field of investigation, banks of scientific articles will be used, especially the one that refers to the vulnerability category.

The article is divided as follows: this introduction justifies and presents the problem-question and elucidates the research parameters; Next, a section is developed on integral protection, its doctrinal configuration and its legal-critical potentiality in general; in the second section, vulnerabilities are studied in two distinct aspects, but often coexisting in peripheral countries - the intrinsic vulnerability to the child/adolescent subject; and socioeconomic vulnerability. Then, within the established limits, a conclusion is articulated. In the end, the list of references of the sources consulted.

2. INTEGRAL PROTECTION AS HUMANIST THEORY

Full protection was the term adopted by the Brazilian legislator when creating law 8,069 of 13 July 1990, Statute of the Child and Adolescent (Statute): "This law provides about the integral protection of children and adolescents.". (translated) Through an interpretation literal, but nothing contested, the same full protection was already inscribed in the Constitution of

the Federative Republic of Brazil of 1988 (Constituição da República Federativa do Brasil de 1988 - CRFB/1988) through its Art. 227:

Art. 227. It is the duty of the family, of society and of the State to ensure the right to life, health, food, education, leisure, professionalism, culture and dignity for children, adolescents and young people³, respect, freedom and family and community coexistence, and place them safe from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression. (Translated).

More broadly, the full protection of children and adolescents is inscribed in other constitutional provisions, such as the first articles, referring to humanist principles (Articles 1, II and III; and 3, I, III and IV, CRFB/1988): citizenship; dignity of the human person; building a free, just and solidary society; eradication of poverty, marginalisation and regional inequalities; and non-discrimination in general.

Another provision of the CRFB/1988 that also conditions the Integral Protection, without prejudice to others, because it is aimed at the recognition of fundamental rights of a concrete nature: "Art. 6 - Social rights are education, health, food, work, housing, leisure, security, social security, protection of maternity and childhood, assistance to the destitute, in the form of this Constitution." (Translated).

What draws attention, however, is that Integral Protection, by its very way of being configured in the Brazilian legal system (guarantor, centered on the dynamics of rights and guarantees) and by its rootedness in the idea of the dignity of the human person, has given signs of theoretical-critical potentiality.

In terms of the right of the child and adolescent, full protection is named by the first Article of the federal law (Statute) more special - in terms of the child/adolescent subject - and broader - in the sense of covering aspects of the subject's integral life (Article 3 of the Statute/1990 is illustrative of the levels of

3 The derivative constituent included the youth in the full protection of the constitutional text, via Constitutional Amendment No. 65 of 13 July 2010. For the purpose of Child and Adolescent Law, there are no changes. The National Congress, in face of the inclusion of the Youth in Art. 227 of the RFB/1988, created the Youth Statute, Law n° 12.852, of August 5, 2013. (Translated).

this integrality)⁴. It is understandable and expected the recognition of its doctrinal condition in a traditional environment such as Law, as an area of human knowledge. But more than that, really, it is important to establish the milestones of understanding of the 1990 Statute in relation to what was in force previously and more, in relation to what was anticipated in the face of the 'new' law that came into force.

It was understood - and still is understood - more recurrently, that full protection would call a new 'legal doctrine' to mark strong opposition to the previous doctrine, contained in Federal Law No. 6,697 of October 10, 1979, the last of the two Brazilian Juvenile Codes. The Code of Minors of 1979, based on the 'doctrine of irregular situation', receives harsh criticism for containing anti-humanist characteristics, which undermine the dignity of people aged between zero and eighteen years, called 'minors'. It was in force until 1990, with the promulgation of the Child and Adolescent Statute.

It should be noted that there was another Code of Minors, that of Mello Matos, dated 1927 (Decree No. 17,943-A of October 12, 1927), constituted, in short, of positive social actions in relation to children and adolescents. However, it cannot be said that this consolidated a legal doctrine, only a special legislation, in turn, overridden by the discriminatory character of the historical and cultural context. The claim to universality of these legal initiatives of a social nature - the right to education, for example, for all so-called "minors" - was obscured by the conception that it was in the interest of the State and society to intervene only in relation to situations in which minors generate "social disorder"⁵.

4 "Art. 3 The child and the adolescent enjoy all the fundamental rights inherent to the human person, without prejudice to the full protection that this Law deals with, ensuring them, by law or other means, all opportunities and facilities, in order to provide them with physical, mental, moral, spiritual and social development in conditions of freedom and dignity.

Single paragraph. The rights set forth in this Law shall apply to all children and adolescents, without discrimination of birth, family status, age, sex, race, ethnicity or color, religion or belief, disability, personal condition of development and learning, economic condition, social environment, region and place of residence or other condition that differentiates people, families or the community in which they live." (Translated).

5 ESPEZIM dos SANTOS, Danielle M.. **Sistema de garantias de direitos fundamentais sociais de crianças e adolescentes**. Dissertação apresentada ao Programa de Pós Graduação da Universidade Federal de Santa Catarina (PPGD/UFSC), 2007. [...] p. 15.

In addition, the Code of Minors of 1927 has been linked to the doctrine of the criminal law of the minor, much more consolidated and with effective weight. In fact, what prevailed, at the time, was the criminal legislation of the first republican period (Penal Code of 1890) and a special, interesting and even innovative law⁶, but incipient with regard to a consistent dogmatics aimed at all people aged between zero and eighteen years.

The perspective adopted by the Code of Minors of 1979, to which full protection and the Statute/1990 would be more directly opposed, was based on the assumption of partiality; in terms of state attention, the target would be people aged between zero and eighteen years who have certain characteristics provided for in the Code, according to Article 2:

[...] I. deprived of conditions essential to their subsistence, health and compulsory education, even if possible, due to: a) lack or omission of parents or guardian; b) manifests the inability of the parents or guardian to provide for them. III. victim of further immoderate treatment or punishment imposed by parents or guardians; III. in moral danger, due to: to find oneself, in a habitual way, in an environment contrary to good morals; b) exploitation in an activity contrary to good customs; IV deprived of representation or legal assistance, due to the possible absence of parents or guardians; V With misconduct, due to serious family or community maladaptation; VI. author of a criminal offense. (Translated).

It is understood that the hallmark of the state action resulting from this Law was segregation, since it was based on the assumption of the failure of families to 'assist, protect and supervise minors' (Minor Code, Art. 1). In other words, although the objective of 'socio-family integration' was mentioned (Art. 13) and the existence of other less violent measures, such as warning and delivery to parents or guardians (Art. 14). However, it is important to refer to the dynamics of the law - fruit of the violent culture reigning, under the aegis of the National Security Law (Lei de Segurança Nacional), in the country commanded by a military dictatorial regime - tended to institutionalization. Veronese dismisses the point:

6 VERONESE, Josiane R. Petry. **Direito Penal Juvenil e Responsabilização Estatutária**: elementos aproximativos e/ou distanciadores? O que diz a Lei do SINASE - a inimputabilidade penal. Rio de Janeiro: Lumen Juris, 2015, p. 23.

The Code of Minors of 1979, by targeting a certain category of children and adolescents, those who were in an irregular situation, was justified as a tutelary legislation. However, this tutelage emphasized a discriminating understanding, ratified a supposed 'inferiorizing culture, because it implies the protection of the superiority of some, or even of groups, over others, as history has recorded to have occurred, and yet, occur with women, blacks, Indians, homosexuals and others.⁷ (Translated).

In any case, the criticisms of the configuration of the 1979 Code of Minors and its interpretation and application were in the sense of confronting the tutelary nature and its implications, pointed out by Veronese⁸: inquisitive dynamics when prosecuting 'criminal offenses', alleged deviations of the 'minors' and/or their parents or guardians; denial of the condition of subject of rights for the so-called 'minors in an irregular situation'; provision for precautionary detention; Excess of powers to the so-called 'juvenile judge'. As Custódio⁹ explains:

There was control by an omnipotent Judiciary and advised by the most violent police practices, in which institutionalization was the rule for boy or girl, simply because they were poor and deprived of the basic conditions to exercise their political powers and have a dignified life, as should be the right of every child. (Translated).

The doctrine of irregular situation, therefore, consists of a phenomenon prior to and antithetical to Full Protection which, in this reasoning, is an innovative legal doctrine capable of breaking with the previous pattern of functioning of the positive law in question.

For the purpose of demarcation between one doctrinal moment and another, in Brazilian law, it is necessary to link the terminology 'minor' and 'minorism' to the validity, interpretation and application of rules relating to the Codes of Minors, both of 1927 and 1979, as well as to those situations or conclusions referring to the pre-statutory period in general.

7 VERONESE, Josiane R. Petry. **O Estatuto da Criança e do Adolescente: um novo paradigma.** In: VERONESE, Josiane R. Petry; ROSSATO, Luciano Alves; LÉPORE, Paulo Eduardo. (Org.). **Estatuto da Criança e do Adolescente: 25 anos de desafios e conquistas.** São Paulo: Saraiva, 2015, p. 32.

8 VERONESE, Josiane R. Petry. **Os direitos da criança e do adolescente.** São Paulo: LTr, 1999, p. 37.

9 CUSTÓDIO, André Viana. **Direito da criança e do adolescente.** Criciúma, (SC): UNESC, 2009, p. 22.

The basic features - principles, meanings and concepts - of the doctrine of integral protection are made explicit in the first six articles of the Statute that, when intersected with the *caput* of Article 227 of the CRFB/1988, are able to inform and permeate any and all interpretative activities related to children and adolescents that are intended to be protective.

From the systematic interpretation between the constitutional text and general provisions of the more special law arise the following elements that are taken as doctrinal: shared responsibility between family, society and State before the child/adolescent subject (Art. 227, *caput*, CRFB/1988 c/c Art. 4, *caput*, Statute/1990); the recognition of the condition of subject (Art. 227, *caput*, CRFB/1988 c/c Art. 3, Statute/1990); the principle of absolute priority (Art. 227, *caput*, CRFB/1988 c/c Art. 4, paragraph and *subparagraphs*, Statute/1990); fundamental rights (Art. 227, *caput*, CRFB/1988 c/c Art. 4, *caput*, Statute/1990); the prevention of violence (Art. 227, *caput*, CRFB/1988 c/c Art. 3, Statute/1990) and the peculiar condition of a person in development (Art. 227, *caput*, CRFB/1988 c/c Art. 6, Statute/1990)¹⁰.

The doctrinal perspective that was assumed in Brazil in the period that followed the entry into force of the Statute, with the denomination of Integral Protection, is an important engine in the search for the dignity of children and adolescents in Brazil. However, reality shows that the humanist promises, so umbilically linked to the theme, are either open or denied to a large extent. If it is not possible to assert that nothing has been made in terms of protecting the child and adolescent population, it is also possible to say that it is still a long way from being carried out in the slightest.

The turn of the twentieth century to the twenty-first has its specificities and maintains a pattern marked by the denial of the condition of subject for

10 These configuring elements of the doctrine of full protection are more fully explained and discussed in the doctoral thesis presented by one of the authors to the Programa de Pós Graduação em Direito da Universidade Federal de Santa Catarina (PPGD/UFSC), em 12 de junho de 2017, intitulada **Proteção Integral e Proteção Social de crianças e adolescentes: Brasil, políticas públicas e as cortes superiores**. Available at <https://repositorio.ufsc.br/xmlui/bitstream/handle/123456789/183414/350032.pdf?sequence=1&isAllowed=y>.

children and adolescents (objectification): the exploitation of early consumerism entailing "[...] childhood obesity, early eroticization, stress and family conflicts, trivialization of aggression and violence, among other risks."¹¹ (translated); color barriers in the school environment, where relations are unequal to the detriment of blacks compared to whites¹². Also, figures relating to the exploitation of domestic child labour¹³; the street situation and the family coexistence of children and adolescents in Brazil¹⁴ are not negligible in Brazil after the Statute and its Integral Protection. It is perceived that the intricacies of the pattern of functioning of Brazilian society require strategic sophistication in the interpretation and application of the norms linked to the doctrine in question.

There is also a more delicate and subliminal aspect: invisibility. Invisibility, although more difficult to define, given the configuration of the phenomenon, goes hand in hand with the previous aspect (objectification), both reducing the degree of effective recognition of the condition of subject of children and adolescents. It is reflected in those who do not appear in statistics, who do not break into the news with media appeal, in those who suffer violations in the private space preconceived as safe. The fact is that violations such as these have a high degree of probability of occurring in greater numbers than can be measured exactly, also in more economically affluent classes, who practice the habit of silence and concealment of multiple violence to their children and adolescents. It's the hidden ciphers.

It is possible to deduce something about this invisibility by an inverse reasoning. The example of the perception found in a certain group of

11 LIMA, Fernanda da Silva; VERONESE, Josiane Rose Petry. **Publicidade e consumismo precoce: é possível garantir proteção à criança e ao adolescente pela via da autorregulamentação publicitária no Brasil?** In: VERONESE, Josiane R. Petry; ROSSATO, Luciano Alves; LÉPORE, Paulo Eduardo. (Org.). **Estatuto da Criança e do Adolescente: 25 anos de desafios e conquistas**. São Paulo: Saraiva, 2015, p. 232.

12 LIMA, Fernanda da Silva; MATTEI, Larissa de Faveri. **A escola e as barreiras da cor: entre as tensões raciais e a garantia de direitos da crianças e adolescentes negros no ambiente escolar**. VERONESE, Josiane R. Petry; ROSSATO, Luciano Alves; LÉPORE, Paulo Eduardo. (Org.). **Estatuto da Criança e do Adolescente: 25 anos de desafios e conquistas**. São Paulo: Saraiva, 2015, p. 318.

13 CUSTÓDIO, André; VERONESE, Josiane Rose Petry. **Crianças esquecidas: o trabalho infantil doméstico no Brasil**. Curitiba: Multideia, 2009, p. 173.

14 RÉ, Aluísio lunes Monti Ruggeri. **A situação de rua e a convivência familiar: as crianças e os adolescentes nas sarjetas e nos sinais**. In: VERONESE, Josiane R. Petry; ROSSATO, Luciano Alves; LÉPORE, Paulo Eduardo. (Org.). **Estatuto da Criança e do Adolescente: 25 anos de desafios e conquistas**. São Paulo: Saraiva, 2015, p. 443-444.

guardianship counselors about families usually attended by them: "For the guardianship counselors, the presence of the father and mother is of vital importance for the formation of the children. When this does not occur, as in the case of 'unstructured' and 'community' families, the future of the family and, consequently, of the children is threatened."¹⁵ (translated). In the same step, linked to the perception of family 'breakdown' of residents 'of communities', poverty is perceived by these same tutelary counselors as a factor of "[...] evaluative degeneration of this social group [...]"¹⁶ (translated).

Now, if the conclusion of the counselors interviewed was deterministic and negative in relation to this class of people and families, then could the same determinism be intuited, only in a positive way, in relation to more traditional families and, then, 'structured' and 'values'? It is acceptable that it does. As indicated in the study analyzed here, the families assisted are, for the most part, "[...] of favelas, also called 'communities.'"¹⁷ (translated) And the interference of these counselors in the family life of children and adolescents from other social and economic strata (less subordinate) is not perceived, nor can they be expected to have proactivity in the protection of subjects in these conditions, since - *a contrario sensu* - the families of these strata do not correspond to the violating imaginary detected.

More broadly, visibility is what should be pursued through full protection. Both in the broad perspective that is proposed by giving up the selection of certain 'types' of people with young age - common in the previous

15 BARBOSA, Carlos Henrique Macena. **Entre a cidadania e a estigmatização**: representações sociais da família dos conselheiros tutelares do município de Niterói - Rio de Janeiro. In: SANTOS, Benedito Rodrigues dos; SOUZA FILHO, Rodrigo de; DURIGUETTO, Maria Lúcia. (Org.). **Conselhos Tutelares: desafios teóricos e práticos da garantia de direitos da criança e do adolescente**. Juiz de Fora: Ed. UFJF, 2011, p. 227.

16 BARBOSA, Carlos Henrique Macena. **Entre a cidadania e a estigmatização**: representações sociais da família dos conselheiros tutelares do município de Niterói - Rio de Janeiro. In: SANTOS, Benedito Rodrigues dos; SOUZA FILHO, Rodrigo de; DURIGUETTO, Maria Lúcia. (Org.). **Conselhos Tutelares: desafios teóricos e práticos da garantia de direitos da criança e do adolescente**. Juiz de Fora: Ed. UFJF, 2011, p. 229.

17 BARBOSA, Carlos Henrique Macena. **Entre a cidadania e a estigmatização**: representações sociais da família dos conselheiros tutelares do município de Niterói - Rio de Janeiro. In: SANTOS, Benedito Rodrigues dos; SOUZA FILHO, Rodrigo de; DURIGUETTO, Maria Lúcia. (Org.). **Conselhos Tutelares: desafios teóricos e práticos da garantia de direitos da criança e do adolescente**. Juiz de Fora: Ed. UFJF, 2011, p. 231.

controlling/tutelary doctrine - and in the recognition that protecting needs to be linked with the totality of people aged between zero and eighteen years.

Humanist promises, in general, also contained in full protection remain partially promises. And along these lines, the presence of dignity as a central phenomenon in the definition of integral protection and humanism draws attention. And if it marks the statutory doctrine greatly, it seems to be its great Gordian knot. It is perceived that there are considerable limits in the struggle for integral protection, in case of assuming dignity as postulated in a concrete dimension.

It can be said that there is a heavy wall between juridical dogmatics - and its doctrines - and the dynamics of concrete life. At the heart of this separation lies a debt owed to the Right itself, as an area of technical, dogmatic knowledge, linked to the constitutional demand of struggle for rights, its liberating interpretation and application. This debt becomes clearer when one reflects on systems of guarantees of rights, typical norms of the post-1988 period in Brazil. The CRFB/1988 ended up configuring - itself - a system of guarantees of rights of maximum amplitude - given the position of a constitution in a juridical-political community or Nation-State -, as Cademartori¹⁸ acknowledges: "[...] it is intended to highlight the normative dimension of the Brazilian constitutional discourse." (translated) What is perceived is a considerable normative density, in general, with regard to the rights and guarantees of the subjects, but still the problem of the tendency to low applicability on the part of the institutions.

It is not a question, in this line of survey of the system of guarantees and the legal dogmatics related to it, of analyzing social effectiveness - in spite of the affinity of the world of facts with a research that one wants to criticize - but of analyzing its legal effectiveness. In other words, it is a matter of analyzing or attesting to the applicability of fundamental rights, in view of the form and content they assume in a given legal system¹⁹.

18 CADEMARTORI, Sérgio. **Estado de Direito e legitimidade**: uma abordagem garantista. 2. ed. atualiz. ampl.. Campinas, São Paulo: Millennium, 2007, p. 226.

19 SARLET, Ingo Wolfgang. **A eficácia dos direitos fundamentais**. 10 ed. rev., atualiz. e ampl. Porto alegre: Livraria do Advogado, 2009, p. 254.

It happens that contemporary States have incorporated into their constitutions, ethical-political principles and an extensive list of fundamental rights and guarantees, evidencing the problem of divergence between normative models - tendentially guarantor - and institutional practices - tendentially anti-guarantor, as anticipated by Ferrajoli²⁰. And the case of the statutory guarantee system is no different, in the wake of what has been evidenced so far.

A resumption of the dominant or traditional pattern of legal dogmatics and its consequent doctrinal production tends to unveil a little more the limits with which one is dealing when seeking answers to the problems exposed above and that move between integral protection, legal doctrine, legal dogmatics and dignity.

The link between legal doctrine and legal dogmatics is umbilical and therefore of a shared standard. The modern matrix, with contemporary scope, of dogmatics is the one guided by the liberal model of Law, both as an area of knowledge and in its conformation of apparatus of state manifestation of power. It is elucidated:

[...] modern liberal-individualist law is based on an abstraction that conceals concrete social conditions. It claims to be 'an equal right, supposing the equality of men without taking into account the concrete social constraints, producing an abstract, general and impersonal law'.²¹ (Translated).

The very codification of general, abstract and impersonal norms is characteristic of liberal and modern law: "[...] norms dictated by the legislative State that will come to identify - as in the positivism of the nineteenth century - the Law with the Law, emptying the Law of the whole idea of justice;"²² (translated). The technical-formal structure of Law as it is proclaimed today is

20 FERRAJOLI, Luigi. *Derecho y Razón: una teoría do garantismo penal*. 4. ed.. Madri: Trotta, 2000, p. 852.

21 WOLKMER, Antonio Carlos. *História do Direito no Brasil*. 7. ed. São Paulo: Forense, 2013. [ebook], s/p.[...].

22 WOLKMER, Antonio Carlos. *História do Direito no Brasil*. 7. ed. São Paulo: Forense, 2013. [ebook], s/p.[...].

constituted of norms of general, abstract, coercible and impersonal²³ content embryonically detached from ideas of integrality (of the juridical phenomenon itself) and of organic link with the society to which it should serve more concretely.

The most striking and structural characteristics of liberal law - private property, contract and subject of individual law²⁴ are relevant to think about the traditional formatting of the legal doctrines arising from it and conditioned in it. In addition, the 'principles-ends' of Modern Law - legal certainty and certainty - involve the guarantee of alteration of their patrimonial situation and fundamental rights of the first dimension (in short, the freedoms of those who have patrimony) through procedures previously provided for and validly by state norms²⁵.

These guarantees and 'principles-ends' are quite distant and even opposed to the struggles and movements that underpinned the paradigmatic rupture intended with the recognition of children and adolescents as subjects of rights considered in their integrality and peculiar condition of person in development, but of historical intervention in Brazilian society, marked by violence and invisibility.

In the step of rescuing the characteristics of a traditional legal doctrine linked to the liberal standard of law, it is important to situate the Brazilian legal culture of colonial hue:

[...] on the one hand, the stable and efficient historical production of legality in institutional spaces favored by a pattern of independent economic development and by the diffusion of the political doctrine of liberalism, as is the case of the European colonizing metropolises; on the other, the consolidation of an imposed legality, without its own autonomy, inherent in the historicity of the colonized periphery, oriented to the economic production of dependence, coexisting with the territoriality of political

23 WOLKMER, Antonio Carlos. **História do Direito no Brasil**. 7. ed. São Paulo: Forense, 2013. [ebook], s/p.[...].

24 WOLKMER, Antonio Carlos. **História do Direito no Brasil**. 7. ed. São Paulo: Forense, 2013. [ebook], s/p.[...].

25 WOLKMER, Antonio Carlos. **História do Direito no Brasil**. 7. ed. São Paulo: Forense, 2013. [ebook], s/p.[...].

absolutism and molding itself to the singularity of bureaucratic-patrimonialist institutional practices.²⁶ (Translated).

To explain further: in addition to constantly needing a critical look that reveals the incongruities, in terms of the doctrine of integral protection, of the legal-liberal roots in the interpretation and application of norms related to the concrete life of children and adolescents, one should also keep in mind the distance from what is placed in the legislation and the Brazilian reality in which the Right of the Child and Adolescent is situated and applied.

It illustrates this issue, of the mismatch between what is promised in the laws and in the Law and what is fulfilled or can be fulfilled, the fact that while working for the application, evaluation and improvement of the Socio-Educational Care System (Sistema de Atendimento Socioeducativo - SINASE) in the country as a humanistic and strategic alternative to the bankrupt penal system of incarceration for adolescents prosecuted for the practice of infractional acts - from the entry into force of the Statute in 1990 until the enactment of Law 12,594 of 2012 - the National Congress, in 2015, approved in a reduced debate and with regimental deviations²⁷, in the first round in the Chamber of Deputies²⁸, the reduction of the age of criminal imputability from eighteen to sixteen years and the Federal Senate approved an increase in the limit of the hospitalization time of adolescents prosecuted for the practice of an infractional act from three to eight years in the event of acts equivalent to Heinous Crimes²⁹. This situation of normative alteration - either of the Federal Constitution of 1988 - or, in the second hypothesis, alteration of the Statute of the Child and Adolescent, had not been until now and, fortunately, carried to completion. However, it is revealing that our legislators have not assimilated the maximum meaning of Integral Protection as a political-normative option of the Brazilian State.

26 WOLKMER, Antonio Carlos. **História do Direito no Brasil**. 7. ed. São Paulo: Forense, 2013. [e-book], [...], s/p.

27 NOTÍCIAS CÂMARA. **Novo texto para redução da maioridade penal deve ir a voto hoje: PT, PCdoB e PSOL protestam**. 1º de julho de 2015, [...], s/p.

28 BRASIL. Câmara dos Deputados. **Proposta de Emenda Constitucional nº. 171, de 1993**. [...], s/p.

29 BRASIL. Senado Federal. **Projeto de Lei do Senado nº 333, de 2015**, [...], s/p.

The construction of integral protection is not limited only to the empire of dogmatics and its juridical-doctrinal construction, although this field, in this case and not in all cases, has been and continues to be an important milestone. Nor does it seem to be limited to a classical dogmatic construction, such as the one taken up above. That is why its critical-humanist potential is evaluated.

To evaluate the critical-humanist potential is to aim at the degree of irradiation and transformative forcefulness of integral protection. In the Brazilian legal and political context, this potentiality goes through the (re)positioning of dignity in the scope of integral protection and the application of this central value to the concrete field of rights as goods of life in constant struggle for effectiveness. More specifically, it involves the recognition that the dignity present in the statutory text and harmonized with the legal-political system as a principle, as mentioned above, is the corollary of a culture of human rights.

The culture of human rights was the generator of the contemporary conception of dignity and serves the update, and critical potentiality, of the protective doctrine. The sense of the value dignity passes through the process of international declarations of rights that occurred from the middle of the twentieth century and passes, in the case of countries such as Brazil, admittedly peripheral in the Western world, by the so-called critical theory of human rights.

It is conceded to linking human rights to fundamental rights and to the perspective - broad, it is true - of humanist conceptions. For the purposes of the present analysis, it starts from the classical distinction between human rights or human rights (the latter, here it is discarded) and fundamental, well translated by Comparato³⁰ and of Germanic origin, as being human rights, those goods or interests inherent to the condition of being human and the fundamental, human rights clothed with obligation in the positive sense, formally recognized via legal systems or international declarations.

In any case, to think of dignity conceived as a corollary of the struggle for human rights, their recognition and application, is to think of the content or meaning of rights, whether they are positive or not.

30 COMPARATO, Fábio Konder. **A afirmação histórica dos direitos humanos**. 7 ed. rev. atualiz. São Paulo: Saraiva, 2010, p. 71.

The recognition that human rights are goods or interests attributed to people in general, in view of their innate condition, and that they are inalienable and imprescriptible by definition is an achievement, initially, of modernity and of an embryonically bourgeois matrix.

The values and rights recognized internationally and agreed in the UDHR - Universal Declaration of Human Rights - in 1948 are representative of a historical-political process that has its own address and protagonists: it is the mark of the French Revolution that comes to directly influence the text of the twentieth century. The option for a declaration with pretense of universality has direct influences: the Jewish holocaust by the German legal Nazism and the atomic bombs dropped on Hiroshima and Nagasaki by the United States of America in World War II³¹, generated great humanitarian discomfort. The UDHR has its birth from this critical situation:

The Universal Declaration of Human Rights, as can be seen from the reading of its preamble, was drafted under the impact of the atrocities committed during the 2nd World War, and the revelation of which only began to be made - and in a very partial way, that is, with the omission of everything that referred to the Soviet Union and various abuses committed by the Western powers - after the cessation of hostilities.³² (Translated).

The linking of the text of the UDHR to the motto of the French Revolution - Liberty, Equality and Fraternity - ended up being conceived as the mark of a humanist conception - which is now called 'traditional'. As Comparato³³ summarizes: it would be in charge of humanistic education policy - "[...] human rights education [...]"(translated) - of global scope, the realization of these ideals at the national and international levels, in the future.

However, even for those who assume the traditional liberal conception of human rights - linked to the notion of individual autonomy in the face of state power - the debt of humanist promises persists:

31 COMPARATO, Fábio Konder. **A afirmação histórica dos direitos humanos**. 7 ed. rev. atualiz. São Paulo: Saraiva, 2010, pp. 225-226.

32 COMPARATO, Fábio Konder. **A afirmação histórica dos direitos humanos**. 7 ed. rev. atualiz. São Paulo: Saraiva, 2010, p. 238.

33 COMPARATO, Fábio Konder. **A afirmação histórica dos direitos humanos**. 7 ed. rev. atualiz. São Paulo: Saraiva, 2010, p. 238.

It is important that the various advances of emancipation, retrospectively, also allow us to recognize the ideological function that, each time, human rights have *hitherto* fulfilled. It is that each time the egalitarian claim for validity and universal inclusion has also served to **conceal the de facto inequality of those who have been kept silently excluded**. (Translated)³⁴ [no italics in original].

The agreement that human rights have a claim to universality, with all the negative and positive that can come from this claim in terms of domination of one culture by another, in turn, can be recognized as a production later in the contemporaneity, specifically from the turn of the twentieth century to the twenty-first century. In this period it has already been concluded that Western society, so strongly permeated by humanist discourse and promises of freedom and equality, had been able to produce in addition to the 'Jewish Holocaust', other forms of violence of genocidal proportions, such as the 'prisons of misery' in Latin America³⁵ or the more violent deprivations with which countless human³⁶ beings live. It is illustrated:

What happens to social, economic and cultural rights? What about the collective rights of indigenous peoples? **What to do with so many announcements of formal equality**, when reality shows, for example, women still in a lower social position than men in the work environment and in access to institutional decisions? How to face from the point of view of human rights (traditionally understood as part of a human essence that flaunts them by the mere fact of existing) the terrible realities of hunger, misery, exploitation, marginalization in which more than 80% of humanity lives?³⁷ (Translated). [no italics in original].

Regarding the prisons of misery, in a critical sociological research, Wacquant³⁸ warns that in Latin America there are specificities in the process of penal treatment of poverty: 1) the social and economic disparities in Brazil, in a context of international subordination and accelerated enrichment in the period

34 HABERMAS, Jürgen. **Sobre a legitimação pelos direitos humanos**. In: MERLE, Jean-Christophe; MOREIRA, Luiz. (Org.). **Direito e Legitimidade**: escritos em homenagem ao Prof. Dr. Joaquim Salgado [...]. São Paulo: Landy, 2003, p. 73

35 WACQUANT, Loïc. **As Prisões da Miséria**. Trad. André Telles. Rio de Janeiro: Jorge Zahar, 2001, p. 10.

36 HERRERA FLORES, Joaquin. **A (re)invenção dos direitos humanos**. Trad. Carlos Roberto Diogo Garcia et al. Florianópolis: Fundação Boiteux, 2009, p. 21.

37 HERRERA FLORES, Joaquin. **A (re)invenção dos direitos humanos**. Trad. Carlos Roberto Diogo Garcia et al. Florianópolis: Fundação Boiteux, 2009, p. 21..

38 WACQUANT, Loïc. **As Prisões da Miséria**. Trad. André Telles. Rio de Janeiro: Jorge Zahar, 2001, 8- 9.

of industrialization - links to inequalities a certain street violence linked to international drug trafficking and very close to the police, in addition to the continued increase in the use of weapons; 2) The use of legitimized police violence, strengthened by the period of the military dictatorship and by a conception of struggle between the "doctors" and the "beasts", "savages" and "cults", where the "maintenance of class order and the maintenance of public order are confused"; 3) discrimination based on color, present in police and judicial action.

In such conditions, developing the Penal State to respond to the disorders caused by the deregulation of the economy, the desocialization of wage labor and the relative and absolute pauperization of large contingents of the urban proletariat, increasing the means, breadth and intensity of the intervention of the police and judicial apparatus, is equivalent to (r)establishing a true dictatorship over the poor³⁹. To meet this, the configuration of the Brazilian penitentiary system marches, with all the rules of minimum maintenance of human dignity solemn and regularly broken, providing a *plus* in relation to other places in the world regarding the selective effect of the penal system⁴⁰.

The insufficiency of the traditional humanist conception surfaces at this point. Its matrix based on international declarations of Human Rights is pointed out by Herrera Flores as tending to induce the reductionism of rights to norms. This reduction implies two fundamental assumptions: "[...] firstly, a false conception of the nature of the juridical and, secondly, a logical tautology of grave social, economic, cultural and political consequences".⁴¹ (translated)

On the false conception of the nature of the juridical, it should be noted that the abstraction of the humanist discourse has precisely this idea as a backdrop: the conviction that the positivization of a right implies its concreteness, as if the means of juridical-positive recognition were confused with the end itself, the dignity of persons.

39 *idem*, p. 10.

40 WACQUANT, Loïc. **As Prisões da Miséria**. Trad. André Telles. Rio de Janeiro: Jorge Zahar, 2001, p. 10.

41 HERRERA FLORES, Joaquin. **A (re)invenção dos direitos humanos**. Trad. Carlos Roberto Diogo Garcia et al. Florianópolis: Fundação Boiteux, 2009, p. 17.

On logical tautology: human rights being defined and understood as rights inherent to people because they are human rights. And as human rights because they are inherent rights of people. Here, the emptying of the struggle for recognition and concretization, of the concreteness permeated by social, economic and cultural elements of the life of real subjects, whether individual or collective.

As a functional referral of these ills, a critical-theoretical review of human rights is proposed as the greatest challenge of the twenty-first century: human rights taken as procedural phenomena, of an institutional and social nature with the potential of "[...] opening and consolidating spaces of struggle for human dignity.⁴²" (translated). And in conclusion:

From this perspective, the foundations are laid for a **new culture of human rights, capable of understanding them in their dynamics**, in their complexity, in their hybrid and impure nature, through a realistic and critical theory. In this vision it is important to recognize and respect plurality and diversity, within the framework of a **material and concrete conception of dignity**.⁴³ (Translated). [no italics in original].

It presupposes, in a critical theory of human rights, the recognition that the law is not a sufficient and self-sufficient neutral technique in the face of "dominant value systems and the processes of division of human doing (which place individuals and groups in situations of inequality in relation to such accesses) impose 'conditions' on legal norms, sacralizing or delegitimizing the positions that one and the other occupy in social systems."⁴⁴ (translated). In this line, the probabilities of approaching the juridical norms and the law in general to the glaring reality that opposes the humanist discourse and seeking its reversal in the sense of concrete dignity, depends directly on assuming "[...]

42 PIOVESAN, Flávia. **Prefácio**. In: HERRERA FLORES, Joaquín. **A (re)invenção dos direitos humanos**. Trad. Carlos Roberto Diogo Garcia et al. Florianópolis: Fundação Boiteux, 2009, p. 13.

43 PIOVESAN, Flávia. **Prefácio**. In: HERRERA FLORES, Joaquín. **A (re)invenção dos direitos humanos**. Trad. Carlos Roberto Diogo Garcia et al. Florianópolis: Fundação Boiteux, 2009, p. 13..

44 HERRERA FLORES, Joaquín. **A (re)invenção dos direitos humanos**. Trad. Carlos Roberto Diogo Garcia et al. Florianópolis: Fundação Boiteux, 2009, p. 18.

from the beginning a contextual and critical perspective, that is, emancipating."⁴⁵ (Translated).

The dignity here elevated and considered able to advance in the consolidation of the integral protection of children and adolescents whose address is Brazilian and whose reality is not yet (re)produced in a humanist way, is the dignity that is pursued in the context of the reinvention of human rights.

A possible and plausible theoretical-critical solution is perceived. It is possible why the legal phenomenon - here taken as an object - has an asset in the humanist culture, because if it is true that the discourse of human rights has been abstract and - sometimes - ideological, it is also true that there has not been found yet another way to seek, within the Law as an institutional coercive phenomenon, the inclusion of subjects historically left aside or instrumentalized. And these conditions - the invisibility and denial of the condition of subject - are humanistic ills, just as they are ills of the reality of Brazilian children and adolescents.

It is a plausible theoretical-critical solution because Western experience shows that the path of legal recognition of people's rights, although contradictory in terms of application, has led to some changes. This is how it is perceived in relation to a vastness of subjects, it is also perceived in relation to children and adolescents when the legal-political practice after the entry into force of the Statute led to changes, such as the need to substantiate judicial decisions, for example. In addition, although there is still a perceived stigmatization of certain groups of children and adolescents, the public system is still under the 'sword' of full protection and the mandate of absolute priority in what it says with the service in terms of education, health and safety in an egalitarian way.

In the same line as the possibilities of the struggle for concrete dignity through integral protection inserted in a general critical theory of human rights, there is the existence of a system of guarantees at the prescriptive level. It is

45 HERRERA FLORES, Joaquin. **A (re)invenção dos direitos humanos**. Trad. Carlos Roberto Diogo Garcia et al. Florianópolis: Fundação Boiteux, 2009, p. 18.

true that the recognized trend of applicability at high levels, but with an anti-guarantor tendency at low levels, remains a wake-up call, because there is in the system of guarantees of children's and adolescents' rights, a mechanism that can justly - and contradictorily - provide a more oxygenated dynamic in terms of interpretation and application of statutory norms and the like. This recognition of the anti-guarantor tendency at the base of the system (its inferior norms and institutional practices) made by Ferrajoli at the end of the twentieth century⁴⁶ meets Herrera Flores' warning about guaranteeism sometimes inducing a serious problem for human rights and dignity: the deadly issue would be, more precisely, to confuse the system of guarantees, in itself, with what is intended or with what must be guaranteed, concrete dignity. This would tend to lead, in one way or another, to a general perspective – here, both external and internal to the nation-state – of increasingly systematic and increasingly abstracted logical-formal analyses⁴⁷.

Aware of the danger of the abstraction of the guarantor perspective, the law and its more traditional institutions are called to the perception that the system of rights and guarantees of children and adolescents has a concrete potential that will only take place, effectively, within the proximity between the interpreter/applicator and the real subjects: vulnerable children and adolescents living on the periphery of the contemporary world.

Adjusting a semantic agreement on the term 'dignity' is fundamental for the legal field and its dogmatics to be permeated by the critical theory of human rights. Bear in mind the contrary tendency - abstract and exclusively liberal - of traditional dogmatics and doctrine, as identified earlier. One also has in mind the previous critical-humanist warning that the law is not accepted as a sufficient and self-sufficient neutral technique.

It is noted that dignity, as a constitutional legal principle of general breadth in Brazilian law, has been well reflected. That is, the location in the first

46 FERRAJOLI, Luigi. *Derecho y Razón*: una teoría del garantismo penal. 4. ed.. Madri: Trotta, 2000, p. 852.

47 HERRERA FLORES, Joaquin. *A (re)invenção dos direitos humanos*. Trad. Carlos Roberto Diogo Garcia et al. Florianópolis: Fundação Boiteux, 2009, p. 19.

Article of the CRFB/1988 did not go unnoticed by the interpreters of the constitutional norm.

According to Sarlet⁴⁸, there are those who deny the possibility of recognizing the juridicity of dignity, in view of the undeniable range of meanings that can be attributed to it. Mainly, because it refers to the human condition itself, its unpredictability and the endless number of manifestations to which it is linked and to which it can be linked.

Moreover, it makes a lot of sense that Law bows to the process of investigation of Philosophy in relation to the meanings and dimensions that have been historically attributed to the human 'being', because it is the one, and not this, who says the final word - in each case - about "[...] what dignity will be the object of the protection of the State and, moreover, what protection it can ensure to it".⁴⁹

Undoubtedly, the above assuring perspective overrides the state guarantor function, in addition to aiming at overcoming the exclusive valuation of autonomy and freedom as guarantors of effective dignity. Sarlet's own perception of a 'cultural-historical dimension' of dignity or 'dignity as construction' demonstrates the possible link between a legal theory linked to fundamental principles and rights and a critical theory of human rights. In this line, as an axiological and open category, even if ontological and relational-communicative dimensions of dignity are not discarded, it goes further:

[...] it cannot be conceptualized in a fixed way, especially when it is verified that a definition of this nature does not harmonize with the pluralism and diversity of values that are manifested in contemporary democratic societies, which is why it is correct to say that (also here) - as Cármen Lúcia Antunes Rocha well recalls, we are faced with a concept in a permanent process of construction and development. [...] demands a constant implementation and delimitation by constitutional *praxis*, a task committed to all state organs."⁵⁰ (Translated).

48 SARLET, Ingo Wolfgang. **Dimensões da dignidade**: ensaios de filosofia do direito e direito constitucional. 2 ed. rev., atualiz. ampl. Porto alegre: Livraria do Advogado, 2009, pp. 15-16.

49 SARLET, Ingo Wolfgang. **Dimensões da dignidade**: ensaios de filosofia do direito e direito constitucional. 2 ed. rev., atualiz. ampl. Porto alegre: Livraria do Advogado, 2009, p. 16.

50 SARLET, Ingo Wolfgang. **Dimensões da dignidade**: ensaios de filosofia do direito e direito constitucional. 2 ed. rev., atualiz. ampl. Porto alegre: Livraria do Advogado, 2009, p. 27.

In other words, it is acceptable to recognize the dignity of its axiological content - inherent to birth as human - and also to admit a connection to the process of recognition by the other - communicative/relational dimension⁵¹, however, the open concretion and delimitation always and constantly taken as tasks of the state organs is what will give the term the dynamics and concrete realization.

Here is a warning: one cannot, in the context of critical theory, restrict the protagonism to state organs, only reposition them as guarantor institutions always, however, linked to the dignity of real people, with real contexts, sometimes quite distant from the condition of state agents and, so to speak, of the interpreters and enforcers of norms, even if related to human/fundamental rights.

Still on dignity and its implications in the legal sphere, the openness to complexity stands out in what it says with its negative and rendering dimensions, or even dignity as a limit and as a task, either for the state power or for the community in general. It is elucidated:

As a limit, dignity implies not only that the person cannot be reduced to a mere object of one's own and others' action [autonomy of the will and Kantian rationality], but also the fact that dignity generates fundamental (negative) rights against acts that violate it or expose it to serious threats. As a task, from the constitutional provision (explicit or implicit) of the dignity of the human person, derive from it concrete duties of protection on the part of the State organs, in the sense of protecting the dignity of all, also assuring it through positive measures (benefits) the due respect and promotion."⁵² (Translated).

Thus, a more promising filling of dignity is visualized, which tends to overcome the abstraction of the very notion of human rights. From this resignification of dignity, it is the traditional humanist conception itself that reinvents itself by renouncing the divorce between discourse and practices. Thus, an emancipatory dignity can be targeted, always keeping in mind the

51 SARLET, Ingo Wolfgang. **Dimensões da dignidade**: ensaios de filosofia do direito e direito constitucional. 2 ed. rev., atualiz. ampl. Porto alegre: Livraria do Advogado, 2009, p. 25.

52 SARLET, Ingo Wolfgang. **Dimensões da dignidade**: ensaios de filosofia do direito e direito constitucional. 2 ed. rev., atualiz. ampl. Porto alegre: Livraria do Advogado, 2009, p. 32.

danger of abstraction, the trap of subsuming the right of real subjects to their legal recognition.

In this step, the following definition of dignity is adopted:

Thus, the dignity of the human person is the intrinsic and distinctive quality recognized in every human being that makes him deserving of the same respect and consideration by the State and the community, implying, in this sense, a complex of fundamental rights and duties that ensure the person both against any and all acts of a degrading and inhuman nature, as they may guarantee the minimum existential conditions for a healthy life [criteria of the World Health Organization - WHO], in addition to propitiating and promoting their active and co-responsible participation in the destinies of their own existence and of life in communion with other human beings.⁵³ (Translated).

The consideration of Integral Protection as a construction with critical-humanist potentiality goes through the revision of its exclusively doctrinal scope, at least in the sense here taken of legal doctrine linked to liberal dogmatics exclusively linked to the freedoms of abstract individual subjects. As Custódio⁵⁴ warns: "It is common among researchers in the area to confront a certain type of academic production that constructs logical explanations, articulating (a)historical and unrelated concepts and theories [...]" (translated) without realizing that incompatible legal systems are being placed in the same line: on the one hand, the doctrine of irregular situation, of anti-humanist bias linked to the tutelary ideology of national security⁵⁵ and on the other hand, the Doctrine of Integral Protection, completely distinct for being humanistic, guarantor and broad, in view of the opening of the recognition of the child/adolescent subject to all people aged between zero and eighteen incomplete years.

Exemplifying and consolidating the alert:

53 SARLET, Ingo Wolfgang. **Dimensões da dignidade**: ensaios de filosofia do direito e direito constitucional. 2 ed. rev., atualiz. ampl. Porto alegre: Livraria do Advogado, 2009, p. 37.

54 CUSTÓDIO, André Viana. **Direito da criança e do adolescente**. Criciúma, (SC): UNESC, 2009, p. 28.

55 VERONESE, Josiane Rose Petry. **Interesses difusos e Direitos da criança e do adolescente**. Belo Horizonte: Del Rey, 1997, p. 91; VERONESE, Josiane R. Petry. **Os direitos da criança e do adolescente**. São Paulo: LTr, 1999, p. 33.

In this aspect, it is revealing the statement, frequent in many academic texts, which declares not to find greater distinction between the terms *minor x child and adolescent*, when, in reality, the distinction between such basic elements reveals the incomprehension of the distinctive complexity between radically diverse perceptions, that is, it disregards the essential, the recognition of the paradigmatic transition from the Right of the Minor to the Right of the Child and of the Adolescent.⁵⁶ (Translated). [emphasis in original].

In the effort to revise dogmatism, it is necessary to advocate for the dialectical insertion of Law - as a science, even if peculiar because it is a normative science - in the social context in which it is inserted, in view of the historical reality: "[...] that is, the right that lends itself to man/woman/adult/elderly/young/child in a historical, real and changeable".⁵⁷ (Translated).

It is perceived that in addition to a doctrinal production turned abstractly into the system of guarantees and legal knowledge, there are ways of oxygenating knowledge about this system. This openness demands a critical-humanist orientation through the constant resumption of dignity as a concrete and emancipatory value, always putting in check the interpretations of the statutory norm. Considering, therefore, the concreteness of the real world and not the theoretical-abstract conclusions that are sufficient to themselves.

3. CHILDREN AND ADOLESCENTS, VULNERABILITIES AND INTEGRAL PROTECTION

Aiming to test integral protection as a skillful theoretical-critical tool to confront the vulnerabilities of children and adolescents in Brazil from the period beginning in the late twentieth century to the beginning of the twenty-first century, it is essential to delimit what is understood by vulnerability.

56 CUSTÓDIO, André Viana. **Direito da criança e do adolescente**. Criciúma, (SC): UNESC, 2009, p. 28.

57 VERONESE, Josiane R. Petry. **A academia e a fraternidade: um novo paradigma na formação dos operadores do Direito**. In: VERONESE, Josiane R. Petry e OLIVEIRA, Olga M. B. Aguiar de. **Direitos na pós-modernidade: a fraternidade em questão**. Florianópolis: Editora da UFSC: Fundação José Boiteux, 2011, p. 117- 118.

According to Mirandola and Hogan⁵⁸, the shift from the end of the twentieth century to the twenty-first - markedly from the 1980s - brings problems and changes in the Latin American social fabric and specifically in Brazil, translated into constant insecurity and risk. This picture is the result of a number of social and economic factors. On the one hand, loss of rights and social guarantees in the post-Cold War period and on the other, what they call, in the line of several researchers of this period, as:

[...] an acute crisis of confidence, involving from the rupture of traditional values (implicated in the growing family breakdown and the questioning of the role of religion), of political, economic, legal and social systems, to the crack in the edifice of Reason and Science, which also come to be exposed to uncertainty and doubt regarding their ability to respond to the demands of society.⁵⁹ (Translated).

In this type of social and economic conformation, it is not trivial that social research in Brazil and Latin America has started to work with the vulnerability category. Social reality has changed and vulnerability "[...] appears as a promising concept to operationalize the understanding of this situation experienced everywhere [...]"⁶⁰. This does not mean that we work with the same kind of social response in all classes, in the face of constant risk and uncertainty.

Once these general parameters are outlined, vulnerability in terms of human rights for children and adolescents can be linked to populations that suffer limitations in access to social and economic rights - goods of life, material and immaterial, such as health, education, protected work, family and community coexistence and social assistance - as well as to all children and adolescents, even if they do not reside in territories known to be deprived of access to the specified goods/benefit rights. These two vulnerabilities are here referred to as intrinsic (relative to every person aged between 0 and 18 years)

58 MIRANDOLA JUNIOR, Eduardo; HOGAN, Daniel Joseph. **As dimensões da Vulnerabilidade**. São Paulo em Perspectiva [revista on-line]. V. 20, n. 1, jan/mar, 2006, [...], p. 34.

59 MIRANDOLA JUNIOR, Eduardo; HOGAN, Daniel Joseph. **As dimensões da Vulnerabilidade**. São Paulo em Perspectiva [revista on-line]. V. 20, n. 1, jan/mar, 2006, [...], p. 34.

60 MIRANDOLA JUNIOR, Eduardo; HOGAN, Daniel Joseph. **As dimensões da Vulnerabilidade**. São Paulo em Perspectiva [revista on-line]. V. 20, n. 1, jan/mar, 2006, [...], p. 34.

and socioeconomic (relative to the extremely unequal economic position and low condition of appropriation of means of existence).

Intrinsic vulnerability was recognized in the Child and Adolescent Statute of 1990, in the wake of the peculiar developmental condition of the child/adolescent subject and derives from the anti-minorism social struggles in Brazil in the 1980s. Precisely the denial of the condition of subject of rights, autonomy and visibility, consecrated by previous institutional practices, gave rise to the recognition of intrinsic vulnerability, that is, every person aged between 0 and 18 years requires special attention - integral protection - of society, the family and the State (Art. 227, CRFB/1988; Articles 1 to 6 of the Statute/1990).

It stems from the legal-political recognition of the intrinsic vulnerability, among other consequences, the requirement to create Guardianship Councils (Conselhos Tutelares - TC's) in each municipality of Brazil and the progressive standardization of its composition, its attributions and the responsibilities of public managers for its maintenance. This body must act to protect all children and adolescents who may - due to their intrinsic vulnerability, their historical invisibility, their denial as a subject - suffer violence of multiple kinds: intrafamily, institutional, urban, labor, etc.

Intrinsic vulnerability is the substrate of integral protection and lies in the reasons for the struggles that fostered the protective choice of the last decade of the twentieth century in Brazil. The pursuit of concrete and emancipatory dignity, the potential of integral protection as a critical humanist theory, unveiling concrete life and its nuances, goes through the attention to this vulnerability that in Brazil has led, and continues to lead, children and adolescents to be constant victims of violence of all kinds, often within the family, although not exclusively. Sometimes reaching extremes, as was the case of the boy Bernardo Boldrini, killed allegedly by family members⁶¹, who did not live with difficulties of a socioeconomic nature, but suffered moral harassment, according to a

61 VERONESE, Josiane R. Petry. **Lei 'Menino Bernardo'**: por que o educar precisa do emprego da dor? In: VERONESE, Josiane R. Petry; ROSSATO, Luciano Alves; LÉPORE, Paulo Eduardo. (Org.). **Estatuto da Criança e do Adolescente: 25 anos de desafios e conquistas**. São Paulo: Saraiva, 2015c, p. 599.

subsequent investigation⁶². Certainly, it is not possible to aim only at the TC in the integral protection that reveals the dignity denied in the concrete life of every child and adolescent, but also to all public institutions.

Regarding socioeconomic vulnerability, frailty and intrinsic peculiarity are added to another type of risk and uncertainty. It is illustrated:

The definition of vulnerability refers to the idea of fragility and dependence, which is connected to the situation of children and adolescents, especially those of lower socioeconomic status. Due to the fragility and dependence of the elderly, this public becomes very submissive to the physical and social environment in which it finds itself.⁶³ (Translated).

For children and adolescents who live with lack of access or difficult access to goods of life linked to social and economic rights, the fragility occurs through other paths. And full protection should also adjust to the variation: "The lack of provision of quality education, low wages and unemployment also affect the life trajectory of these Brazilians, forcing them to enter the labor market and/or drug trafficking early"⁶⁴. (Translated).

Socioeconomic vulnerability reveals the non-fulfillment of humanist promises and, in this line, makes clearer the crossroads of integral protection, as a legal doctrine or as a critical-humanist theory. It is explained: social rights in Brazil are covered by fundamentality. In this line, they must have immediate application (Article 5, §1, CRFB/1988), even though their effectiveness is peculiar⁶⁵ in the reason of the type of structure that this right presents: they are

62 SENGIK, Kenza Borges. **O assédio moral na família e a Lei Bernardo**: uma análise da proteção à integridade psíquica da criança e do adolescente e da importância do elemento afeto no âmbito familiar. ARAÚJO, Ludmila Albuquerque Douettes; TOLEDO, Iara Rodrigues de; ESCANE, Fernanda Garcia. (Coord.). In: **Direito de Família II** [recurso eletrônico on line]. João Pessoa: CONPEDI/UFPB, 2014, [...], pp. 152.

63 FONSECA, Franciele Fagundes; SENA, Ramony Kris; SANTOS, Rocky Lane A. dos; DIAS, Orlene Veloso; COSTA, Simone de Melo. **As vulnerabilidades na infância e adolescência e as políticas públicas brasileiras de intervenção**. Revista Paulista de Pediatria [on line]. V. 31(2), 2013. [...], p. 259.

64 FONSECA, Franciele Fagundes; SENA, Ramony Kris; SANTOS, Rocky Lane A. dos; DIAS, Orlene Veloso; COSTA, Simone de Melo. **As vulnerabilidades na infância e adolescência e as políticas públicas brasileiras de intervenção**. Revista Paulista de Pediatria [on line]. V. 31(2), 2013. [...], p. 260.

65 SARLET, Ingo Wolfgang; FIGUEIREDO, Mariana Filchtner. **Reserva do possível, mínimo existencial e direito à saúde**: algumas aproximações. In: Sarlet, Ingo Wolfgang; Timm, Lucino Benetti. (Org.) **Direitos fundamentais: orçamento e reserva do possível**. 2 ed.. Porto Alegre: Livraria do Advogado, 2013, p. 19.

goods of life to require the provision of others, as a rule of the state, such as the public service of health, education, social assistance, protection of work and protection of the integral and healthy family coexistence (Articles 7, 53 and 19, Statute/1999).

To recognize the applicability or legal effectiveness is to attribute to these rights political and judicial enforceability to the same extent that one demands politically and judicially the right to come and go and the right to private property, for example. On the other hand, to technically and legally manage the judicial enforceability, for example, to guarantee a concrete and emancipating dignified life for peripheral children and adolescents (intrinsically and socioeconomically vulnerable) is to open the judicial process to the dialectic between subjects of rights and their representatives in the dispute (family members, public defenders, prosecutors) and obliged by the fulfillment of social rights (public managers or employers). This openness involves conducting the process within the elements of integral protection, willingness to unveil the community and institutional reality and designation of competent expertise both in the social and budgetary aspects. The result of a process in which greater social protection is aimed at in an area in which children and adolescents are socioeconomically vulnerable, may be the creation of a program in which the obligated party (s) commit to the execution of policies in time, conditions and results previously agreed in judgment, under penalty of fine-day in case of default (Art. 11 of Law 7.347/1985 - Law of Public Civil Action). In other situations will be more objective sentences and immediate result, such as the insertion in school vacancy or the effectiveness of a surgery, for example.

How it ends:

We live in a period of rupture, in which the "end of certainties" is announced, coming from the crisis of reason and scientific knowledge [...]. The search to assess and manage risk, knowing the dynamics that produce danger and the elements that promote vulnerability, is an effort to try to tame the indomitable, to know the intangible and to ensure the uncertain. **However, this recognition does not justify a paralysis in the face of danger; rather, it reinforces the need to deepen knowledge both of the mechanisms of the generation of dangers and of the possibilities of society, in general, and of people, in particular, to react and protect themselves.** Recognizing

this *gap* helps to put knowledge about vulnerability in its proper place: an approach that has limitations due to the nature of scientific knowledge, the dynamism of space-time and the uncertainty inherent in the phenomena studied [...].⁶⁶ (Translated). [no italics in original].

Recognizing that the subject targeted for integral protection has his own age, color, address, gender and community means not remaining inert. It means (re)signifying the traditional juridical/judicial operationality, abandoning juridical-doctrinal logics of times in which the same scientific assumptions were not assumed and the same social fabric was not coexisted.

Given the recognition that vulnerabilities are skillful theoretical constructs and before the elements of full protection, potentially producing effective dignity child-adolescent, it is essential to always define the type of vulnerability, the characteristics of the good(s) of life and the individual and community context involved, in order to elaborate answers quality, effective legal (and political) policies.

4. CONCLUSION

The question proposed for this study was to analyze under what conditions integral protection is a skillful tool to face intrinsic and socioeconomic vulnerabilities of children and adolescents in Brazil.

It was possible to delimit the full protection, composed of elements extracted from the conjunction between constitutional and statutory text (Statute of the Child and Adolescent) and that configure it as a legal doctrine consolidated academically. However, the numerous difficulties in terms of applying protection to children and adolescents - Brazilians - are directly related to the open humanist promises.

Thus, the humanistic theoretical tools of critical bias, here subsumed in the consideration of concrete dignity, under construction and always centered

66 MIRANDOLA JUNIOR, Eduardo; HOGAN, Daniel Joseph. **As dimensões da Vulnerabilidade**. São Paulo em Perspectiva [revista on-line]. V. 20, n. 1, jan/mar, 2006, [...], p. 38.

on the child/adolescent subject with its individual and community contexts provide support for integral protection as a broader and more interventional conception. Having as object, the vulnerabilities of children and adolescents of two types - intrinsic and socioeconomic - articulated with the Brazilian reality.

It was found that the critical-humanistic potential of integral protection can be developed and applied in situations such as generalized and effective institutional action in all children and adolescents aged between 0 and 18 years, without excluding, *a priori*, those not subjected to socioeconomic barriers (intrinsic vulnerability), removing them from invisibility. At this point, the illustration was given with the Guardianship Councils and domestic or intrafamily violence.

With regard to socioeconomic vulnerability, the accumulated condition was evidenced in terms of risks and uncertainties when adding to the intrinsic vulnerability, socioeconomic barriers, such as the lack or precariousness of access to material/immaterial goods, health, education, social assistance, protection at work and family and community coexistence. This condition of accumulated fragility, typical of peripheral countries, such as Brazil, requires, as has been demonstrated, a revision in traditional dogmatism and its tools, including in judicial processes that will contain and mediate the positions and reasons of the obliged and the subjects of rights, by their representatives, in order to concretize rights in a more adequate way. Sometimes with more objective decisions and immediate applicability, sometimes with flexible decisions, dilated in time, but never without associated technique and criticism.

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