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**BARBARISM AND EXCEPTION: DISCOVERING THE
PARADIGM OF LAW THROUGH THE WITNESS
LITERATURE NOVEL BY PRIMO LEVI**

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ABSTRACT: This article aims at presenting a debate about the paradoxical state of exception, as a meaning structure of governance law, in an approximation between Law and Literature made by deductive method, with the source of theoretical research supported in bibliographic research. To do so, the analysis begins with the testimony of Primo Levi, an Italian literary survivor of Auschwitz, in order to demonstrate to what extent his witness literature novel illustrates the existence and condition of the concentration camp and its dwellers in a normatively paradoxical situation, capable of providing even the complete destruction of human subjectivities. In this perspective, following the reading of Giorgio Agamben, this paper presents a genealogy of the Law supported by the institution of the “gang”, in opposition to the social contract theory, as a theoretical matrix and paradigm of Law. Thus the concentration camp, in the form of an exception, reveals itself in an original structure in which the Law refers to life, and includes it in itself through its own suspension, concluding that the “camp”, in a spectral form, is the result of Law and politics operation via capture device.

KEYWORDS: law; gang; state of exception; concentration camp.

1 INTRODUCTION

The twentieth century historically demonstrated a series of phenomena that raised the necessity, the foundation and the protection of human rights, mainly because of its relation to Politics, in the sense of

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seeking a theorization for the intertwining of all social life dimensions, requiring a genealogical approach regarding the recognition and protection of legal guarantees understood as “essentially human – regardless of the historical period.

In this sense, history reveals that the recognition of rights understood as innate and inalienable of man, whose foundation is based on human nature, are not sufficient for the protection of the human being, inasmuch as, even today, in the twenty-first century, large conglomerates of human beings deprived of such rights are noticeable, as what has been happening to immigrants and refugee camps scattered across the globe.

Thus, a serious debate, not only on the effectiveness of human rights, is necessary, but also on the very person who is a subject of law, involving the discussion about Law and Politics, a debate that is carried out in this article through the deductive method, and with the support of bibliographical research as a source of theoretical investigation. To this end, the present research is supported on witness literature, especially represented by the work of Primo Levi, one of the survivors of the most barbarous concentration camp in the Second World War, namely: Auschwitz, which leads us to question, not only on the perspective of human rights and the subject of law, but also on the role of law in this tragic episode of human history.

Thus, the article begins with the “testimony” of the Italian author during his stay in the extermination camp, revealing even the discredit of the population regarding the practices maintained in such camps.

Firstly, the article presents the relationship between law and literature, and especially witness literature, in order to demonstrate the social analysis of concentration camps and their epistemological consequences with respect to the representation of man and as legal-political categories, as verified in the “testimony” of Primo Levi.

Moving forward in the text, the second section aims at establishing a relation between testimony and memory, in the sense of presenting man to that “animal” capable of promising, in order to make possible the disposition of oneself, and thus to respond for oneself in the future. The

memoir, especially for being related to Auschwitz, in historical, political and legal terms, is similar to the epistemological condition, in terms of legal knowledge about the relation of the categories of humanity, politics and law.

In the third part, given the ISSUES built around the legal and human categories, the article advances in order to seek meaning for the concentration camps as a space of normative exception, identifying the “camp” as an ambiguous area in terms of representation and the existence of human beings who do not have human rights, thus configuring a paradox, also demonstrating the characterization of the extermination camps of the most extreme figure of this paradox, setting it at the same level as a paradigm of legal-political action in contemporary society.

At the end of the article, there is an approach regarding the role of law in the concentration camps in their spectral form of a state of exception, pointing to the law, with the sovereignty paradigm, to what extent the device that operates from the exception in an action of exclusion of the living from the legal circuit and its consequent inclusion in the calculations of power.

Furthermore, it is important to clarify that the purpose of this paper is not to construct a (good or bad) answer to the questions raised in the text, not to exhaust any discussion about the topics involved, but to approach the whole experience lived by the Italian author, expressed in his witness literature, about violence in its broadest conception.

2 THE TESTIMONY: DISBELIEF ON BARBARISM AND THE HORROR OF THE *LAGER*

The use of Primo Levi’s work in the present study as a literary resource aims at demonstrating to what extent literature leads us to question, in poetic terms, that is, of self-reflection, about the legal and political categories that promote the definition of man as a subject of law, in one of the most tragic episodes of human history, namely: the Nazi death camps.

The Law and Literature movement presents interesting contributions and approaches with regard to discourses and, in particular, to normative discourse, in the sense of seeking an approach of the law

through literature, in order to reach the understanding of the legal system and its language (Ramiro, 2012, p. 297).

Thus, according to Professor Roberto Bueno (2011, p. 10):

Literature is a promising instrument, probably more so than philosophy, when we have in perspective a process of self-referencing. This self-referencing derives from the process of reconstructing ourselves from our occupation in reconstructing our lexicons, something that is repeatedly necessary because we live in a situation of contingency, that is, transience or historicity.

It is in this sense that literature, and its approximation with law, presents itself, according to the lessons of Pietroforte (2002, p. 32), as well as poetic discourse that operates from forms of language capable of revealing the complexity that exists between those who make the law and those who suffer it, bringing up all the problems regarding the subject of law experienced and “testified” by Primo Levi.

The debate about the subject of law finds echoes in literature, in a self-reflection, in order to demonstrate, from the work of Primo Levi, that the holder of human rights does not figure in the mere condition of being human, but in an eminently political circumstance, in the sense that the protection of the respective rights requires the condition of a political subject, that is, of citizen, thus pointing to the “camp” as the borderline, and therefore a paradigmatic situation that defines the ownership of human fundamental rights, removing any idea that nature, essentiality, from a temporal space perspective, is capable of establishing the ownership of rights.

Thus Primo Levi’s “testimony” is fundamental in the search for the identification of the “subject of law” in an exceptional condition, where the legal system, although in force, is suspended, given the impossibility of fixation, *a priori*, of its legal status.

From a theoretical point of view, there is a consensus that the witness literature used in this research is directly associated with the reflection on social exclusion, which is why critical discourses that establish rigid separations between literature and history may be re-analyzed, because of the necessary integration that the testimony, as an

object of inquiry, demands between the fields of the two disciplines (Ginzburg, 2008).

Witness literature has its origin in the legal phenomenon, since it refers etymologically to the voice that takes part of a trial, in a situation of impasse, and that can contribute to undo a doubt (Ginzburg, 2008). In addition, the term testimony, according to Seligmann's (2003, 378) lessons, is associated to the tradition of the figure of the martyr, the survivor of an ordeal, which in both cases points to a tense speech with a conflictive reality .

It is in this sense that the work of Primo Levi presents a hard and shocking account, not of survival, but of the whole experience lived in the most barbarous of the concentration camps of the Second World War, namely, Auschwitz. The testimony, that is, the *supertite*², from the first classifications of prisoners by the Nazi state, of their subjugation to travel, of their "existence" in the *Lager* (concentration camp), of the process of destruction of life, which demonstrates the whole issue involving the relation between man and the law as instrument of management for social life, from an eminently paradoxical situation, namely: the camp³, which in the present research is approached by the extermination camps characterized in a space of normative exception, from the approximation between Law and Literature.

The proposed theme leads us to question human nature, not only in a conceptual extent, but especially in an ontological dimension, and it is here that the thought of Professor Oswaldo Giacoia Júnior fits in, with regard to human nature, that is, no object corresponds to a generic subject, whose ontological dispositions would become effective in time and history along a virtually infinite progressive trajectory, especially in the age of the planetary domination of techno-science, in which molecular

² The term means, as clarified by Giorgio Agamben (2008, p.27), etymologically, the one who lived something, went through to the end of an event and can therefore bear testimony of it.

³ According to Giorgio Agamben, the *camp* presents itself as a legal form of what cannot have a legal form, that is, a space of normative-legal exception, where it presents itself as the original device to which the law refers to life and includes life in itself by means of its own suspension, revealing a relation that binds and, at the same time, leaves the living to the law, what is, therefore, a paradox (Agamben, 2004, p. 12).

biology and genetic engineering become paradigms of rationality, objectifying the somatic basis of the human personality (Giacoa Jr., 2013, p. 21).

Concerning barbarism in concentration camps together with deliberate ignorance and even disbelief about them, Levi describes that the news about the Nazi camps was vague, and outlined a massacre of such vast proportions, of such extreme cruelty, of such intricate motivations that the audience tended to reject their existence because of their own absurdity (Levi, 2004, p.9).

The denial of the horror of the camps was warned, cynically, by the SS soldiers themselves to the prisoners, according to the account of Simon Wisenthal:

“whatever the end of this war, the war against you we have already won; No one will remain to bear witness, but even if someone escapes, the world will not give you credit. There may be suspicions, arguments, investigations of historians, but there will be no certainties, because we will destroy the evidence with you. And even if there is some evidence and someone survives, people will say that the facts told are so monstrous that they do not deserve trust: they will say that they are exaggerations of the Allied propaganda and they believed in us, and we will deny everything, and they will not believe in you. We will dictate the history of the *Lager* - concentration camps (Levi, 2004, p.9).

Hannah Arendt, describing the Eichmann trial in Jerusalem, wrote about one of the witnesses to the trial who reported that the people volunteered for the deportation of Theresienstadt to Auschwitz and denounced as “insane” those who tried to tell them the truth about the horror that occurred there (Arendt, 1999, p.135).

Salmen Lewental (*apud* Agamben, 2008, p.20), a member of the *Sonderkommando*, entrusted his testimony in very few lines, that “no human being can imagine how events occurred precisely, and indeed it is unimaginable one can describe exactly how our experiences happened”.

The extent of violence and the horror perpetrated in the *Lager*, known only in the testimony, and even frequently denied to this day, goes beyond the limits of the prisoner’s physical and psychological extension, since at the end of the “process” the consequence is expropriation of the life of the being, of one’s soul, that is, the destruction of man.

In fact, according to Professor Roberto Bueno's description, violence transforms, marks, and deep violence, it ruses, hinders, undoes and paralyzes, while organized violence disrupts and disfigures human subjectivities, and withdraws their own souls in life, tends to make them *nothing* (Bueno, 2012, pp. 471-498). And, similarly, as expressed by the voice borrowed from the testimony, "it cost you, it took time, but you Germans did it" (Levi, 1988). Such destruction has to do with the denial of man before himself and the others. Physical destruction, that is, that of the body, is a mere consequence of the whole process.

3 *IS THIS A MAN?*

In reporting his experience in the concentration camp - *Lager*, Primo Levi, in order to satisfy a personal and declared need for interior liberation from all the trauma he had experienced, he begins the work *If this is a man* with a dark and at least disturbing poem in order to prepare the reader for an infinitely less but also traumatic experience of an account not only of Auschwitz but above all of man himself:

Is this a man?
You who live safe
In your warm houses;
You who find on returning in the evening
Hot food and friendly faces,
consider if this is a man
Who works in the mud
Who knows no peace
Who fights for a bit of bread
Who dies because of a yes and because of a no. Consider
if this is a woman,
Without hair and without name
Without enough strength to remember
Vacant eyes and cold womb
Like a frog in the winter.
Reflect on the fact that this happened.
These words I commend to you.
Inscribe them on your heart
When staying at home and going out,
Going to bed and rising up;
Repeat them to your children:
Or may your house fall down,
Illness bar your way,
Your beloved children turn away from you (Levi, 1988, p. 9-10).

The seditious questioning, almost, if not a curse, is the portrait of the encounter of the author with the man thrown aside from all the exception,

of the subject devoid not only of the goods that attribute personality and dignity to him, but also of the last a thread capable of leading him to a minimally moral, subjective consciousness that individualizes and distinguishes him as a living *being* resulting from a phenomenal process, causing the conscious loss of the encounter of the *being* as an individual with himself and which generates a trauma, and a negation as to the identification of the *self* in the *being*, a mirror that reveals all its constitution, which is more intimate and individual, the cause of its greater shame, the nakedness of all life.

“Is this a man? [...] Reflect on the fact that this happened [...] Inscribe them in your hearts” – There is no denying Levi’s proposal for the memory of barbarism; of the traumatic and irremediable memory that afflicts his soul even after liberation, and which is the cause of his greater guilt, that of surviving, of having known the deepest part of man’s dimensions, on the threshold between man and mere life, of the nudity caused by the greatest possible violence, the expropriation of the soul, and which causes memory.

The encounter with the horror witnessed by Levi causes the trauma that generates the memory necessary for us to remember what man is, and what he can become, therefore, “you who live safe”, you who have not experienced the horror barbarism is able to cause, what barbarism can transform, what violence can disrupt, “reflect on the fact that this happened, inscribe them in your hearts”.

Nietzsche, in *On the genealogy of morality*, formulates his heuristic fictions on the prehistory of hominization by linking memory and oblivion with determining faculties of the human being. According to the philosopher, the hominid becomes human by creation and a memory of the will, measuring the dimensions of the past, present and future, and making possible both prediction and recollection. The invention of memory provides the conditions for the possibility of a faculty of symbolization, which draws from the animal man his animal condition, linked to the current (present) effects of sensible perception. The human is the only animal capable of promising, a faculty that presupposes a memory of the will, and this, in turn, makes it possible to dispose of oneself, to respond for oneself in the future (*apud*, Giacoia Jr., 2013, p.28).

“Is this a man? [...] Reflect on the fact that this happened [...] Inscribe them in your hearts” – We must bring up here the question posed by Oswaldo Giacoia Júnior (2013, p.28) in *Nietzsche: the human as memory and as a promise*, on the creation of this faculty from the instrumentalisation of the violence employed against the man by himself, associated to the representation of value, “how to imprint something on this understanding of the moment, an understanding that is partly obtuse, partly stunned, in this living capacity of forgetfulness, in such a way that it remains present?” That is, how to build a future memory, an understanding of value, before the capacity for forgetfulness? Using the lessons of Nietzsche, the Brazilian philosopher concludes that in order for something to remain in memory, it is imprinted by fire; only when what does not cease to cause pain does it remain in the memory (Giacoia Jr., 2013, pp. 28-29).

Still according to Professor Giacoia (2013, p. 29-30):

The technology needed to implant the memory of will itself consists in the instrumentalisation of pain – it is not merely a matter of arranging for some precepts to remain in the memory previously recorded, if only in potential. Rather, the very record of memory comes to be, and this becoming has physiological psychological bases. It was burned in the man’s sensorium. Only through a pain that does not cease does the memory remain, and thus it becomes possible for something to be inscribed as a precept in that calcined tissue of human memory. [...] Such anthropological constant conditions make the *humanitas* of the human *homo*: a memory of the will forged against the current of the powerful animal force of forgetfulness; and an ability to promise, to make oneself responsible.

It is in the face of this capacity for forgetfulness that the Italian writer clarifies that the memories of the witnessed experience are not written in stone; not only do they tend to disappear with the years, but often change or even increase, thus revealing an unreliability of memories. This little reliability will only be applied satisfactorily when we know in which language, in what alphabet they will be written, on what material, with which instrument (Levi, 2004, p.19).

Therefore, Levi’s initial “outburst”, in questioning whether this is a man, proposes a promise; “See what we are, see what we can do; carry it in our memory, or lose our own soul still alive”.

4 THE AMBIGUITY OF VIOLENCE: THE GRAY ZONE

The gray color indicated by Levi is a representation of life in the *Lager*, whose life became gray in the years lived in the camp. Symbolically, the gray color also played its part, after all, it approached the same one that darkly emerged from the chimneys of the crematorium ovens in the Nazi concentration camps. In a sinister act subsequent to horror, the chimneys would cover up the concentration camps and throw over the surviving relatives and friends the remains of the violently slaughtered people (Bueno, 2012, pp. 471-498).

It is in front of this gray zone that Levi describes that human relations within the *Lager* were not simple, but an incomprehensible, gray nebulosity, not being able to reduce them to two blocks, those of the victims and the oppressors. According to the writer, in which Lager's story reads (or writes) today, the tendency, or rather, the need to divide good and evil, to take one side, to repeat the gesture of Christ in the Universal Judgment is evident: here the righteous, there the sinful (Levi, 2004, p.32).

Giorgio Agamben, in his work *What remains of Auschwitz*, in analysis of the “gray zone”, classifies it as

a place from which comes the long chain of conjunctions between victims and executioners, in which the oppressed becomes oppressor and the executioner, in turn, appears as a victim. It is a gray, incessant alchemy, in which good and evil, and like them, all the metals of traditional ethics have reached their melting point. It is, therefore, a zone of irresponsibility and of *impotente judicandi*, which is not *beyond* good and evil, but which is, as it were, *below* them. [...] This infamous zone of irresponsibility is our first circle from which no confession will be able to tear us apart, and in which minute after minute the lesson of the fearful banality of evil is deflated, which defies words and thoughts (2008, p. 30-31).

This violence, represented not only by the gray color but, above all, by the bodies and souls massacred by the life in the camp, represents, at the same time, the unspeakable *banality of evil*, in the manner presented by Hannah Arendt in the Eichmann case, which, in the *Lager*, is visible from the simplest relations, based on the expectation of caring for their equal in the condition of oppressed, to the most complex relations, reflected in the search for survival, and, as a hiatus, the suffering of the deepest violence represented by the aggression from their equals.

The arrival in the *Lager* is marked by the absence of ambiguity between the prisoners and the imprisoners, between the victim and the oppressor, who, despite the terrible experience of the camp, would have a small comfort to find the one who was in the same condition as a prisoner, such comfort brought by the reading of the relations, by the possibility of finding a terrible, but decipherable world (Levi, 2004, 32).

On entering the *Lager*, Primo Levi (2004, pp. 32-33) reports that:

[...] it was a shock because of the surprise it implied. The world in which it precipitated was certainly terrible, but also indecipherable: it was not according to any model, the enemy was around, but also inside, the “us” lost its limits, the contenders were not two, there was no distinction between a frontier, but many, often confusing, perhaps innumerable, separating each one from the other. People entered, waiting for at least the solidarity of their companions of misfortune, but the expected allies, except for special cases, did not exist; there existed a thousand impermeable simple life forms, and among them a desperate struggle, hidden and continuous. This abrupt revelation, which manifested itself from the first hours of captivity, often in the immediate form of a concentric aggression on the part of those expected to find future allies, was so hard that it soon overturned the ability to resist. For many it was lethal, indirectly or directly: it is difficult to defend oneself against a coup for which one is not prepared, that is, of the violence of the equals in captivity.

It is observed, therefore, that the whole system of the *Lager* is organized in the sense of putting an end to any possibility of resistance of its “dwellers”, insofar as they are faced with an indecipherable “universe”; visible to the eyes, but devoid of any sense; making it impossible for the continuity of life beyond the orders of the SS, and for any sketch of resistance, given to the violence perpetrated by the prisoners themselves, the *Sonderkommandos* (special units composed by the “collaborating” prisoners themselves), not only in the material scope, , at their orders, but above all in the moral perspective, in view of the inability to resist the desire to be in a privileged condition, that is, as an aggressor, where pain, hunger and thirst are, so to speak , softened, becoming, in this way, a system short of good and evil, a nebulous, opaque, gray world.

The normal destiny of a prisoner was only one: death. In a macabre way, it was written on the entrance portal of Auschwitz, *Arbeit macht frei* (work will set you free). In fact, even if fatigue, blows, cold, illnesses are not taken into account, it must be remembered that food was clearly insufficient. The physiological reserves of the organism were spent in two or three months, and death by starvation, or illnesses caused by hunger were a certain destination for the prisoners, which could only be avoided with a food supplement, that is, with an extra portion of food ration, and in order to obtain it, a great or small privilege was needed, in other words, an astute or violent way, licit or unlawful to be above the standard of the camp (Levi, 2004, 35).

Yes, violence came from those who held the status of a prisoner-employees, those who were at the same time a victims of the Nazi system and servants of the same, it came from of the ones who showed themselves equal as a prisoners, victims, violence came from the ones who

instead of taking the novice's hand, to reassure him, teach him the way, throw themselves on the *Zugang* (novice), shouting orders in an unknown tongue and strike his face. The veteran prisoner who wants to tame the novice, he wants to erase the spark of dignity that perhaps the "newbie" still retains, and that he has lost. Privilege, by definition, defends and protects privilege itself, so that any sign of reaction can lead to death, since the answer in the same coin is an intolerable transgression, and which can only occur to a "novice" (Levi 2004, p. 35).

It should be noted that the privileged prisoner status eventually attracted, almost necessarily, those prisoners who somehow presented some favorable characteristics to the system, a potentiality of collaborator in favor of a survival possibility (survival – life beyond the norm of the field). Many sought this power spontaneously, these were the sadists, feared in the field, since for them the position of privilege coincided with the possibility of inflicting upon the subordinates suffering and humiliation.

The *Sonderkommandos*, in the words of Agamben, represents the *extreme figure of the gray zone*, which is the concentration camp, to the extent that, according to Primo Levi's testimony (2004, p. 43), these were attributed with the function of managing the gas chambers and crematorium ovens. All the preparation, even the execution of the deaths

was attributions of the *Sonderkommandos*. “They were to take the naked prisoners to death in the gas chambers and maintain order among them” (Levi, 2004, p. 43); “After dragging out the corpses, stained with rose and green, by the hydrogen cyanide, washing them with jets of water; to verify that in the holes of the bodies were not hidden precious objects” (Agamben, 2008, 34); “Pluck the golden teeth out of the jaws; cut the hair of women” (Levi, 2004, p.43) “and wash them with ammonium chloride; then transport the corpses to the crematorium ovens; and finally remove residual ash from furnaces” (Agamben, 2008, p.34).

Levi reports:

On these Squadrons, vague and truncated rumors circulated among us during the confinement and were later confirmed [...], but the intrinsic horror of this human condition imposed on all testimonies a kind of modesty; so it is still difficult today to construct an image of what “meant” to be forced to exercise that office for months. [...]. One of them stated, “By doing this work, you whether go mad the first day, or else you get used to it”. But another said, “Surely you could have killed me or let me kill you; but I wanted to survive, to avenge myself and to bear witness. You must not believe that we are monsters: we are like you, but much more unhappy”. [...] Having conceived and organized the Squads was the most demonic offense of National Socialism (2004, p. 45).

This organized violence, systematized, was so dark that it reached not only the physical dimensions of the body, but also the psychological aspects of the members of the camp, given the moral collapse experienced, thus subtracting all human subjectivity, the expropriation of one’s own soul, still in life, for “the Jews ought to furnish the Jews, it must be shown that the Jews, sub-race, sub-men, bow to any humiliation, including self-destruction” (Levi, 2004, p. 44).

According to Levi’s revelations, in both cases, those who occupy the status of privileged to escape the “final solution”, or to satisfy sadism, power is given generously to those who are willing to revere the Hierarchical authority, thus achieving a social promotion otherwise unrealized (Levi, 2004, p. 35).

It should be noted that the search for privilege did not occur only within the *Lager*, since the search for salvation of the “final solution” also occurred outside the concentration camps, also in the figure of the *Sonderkommandos*, composed of “Jewish collaborators” of the Nazi regime, in order to save themselves from immediate death, and the Jewish Elders’ Councils, which in a sense acted to “avoid” more ‘serious’ consequences than those which occurred (Arendt, 1999, p. 106-107).

In describing Eichmann’s trial in Jerusalem, one of the Nazi state officials, in regard to the Jews’ own collaboration in the “final solution”, Hannah Arendt (1999, p. 133) reports that:

Eichmann said that the most powerful factor to calm his own conscience was the simple fact of seeing no one, absolutely nobody, effectively contrary to the Final Solution. He found an exception [...]. It was in Hungary, he was negotiating with dr. Kastner Himmler’s offer to free one million Jews in exchange for 10,000 trucks. Kastner, apparently strengthened by the new course of things, asked Eichmann to stop “the death mills of Auschwitz”, and Eichmann replied that he would do it “with the greatest pleasure”, but that unfortunately it was out of his control and out of the loop of his superiors as it really was. Of course he did not expect the Jews to share the general enthusiasm for his destruction, but he expected a little more complacency. He hoped – and received, to a truly extraordinary point – their cooperation. This was “evidently the cornerstone” of everything that was done [...]. Were it not for Jewish aid in administrative and police work – the Berlin grouping was [...] made entirely by the Jewish police – there would have been either absolute chaos or an extremely significant drain on German human potential. (“There is no doubt that, without the cooperation of the victims, it would scarcely have been possible for a few thousand people [...] all along the road to their deaths, the Polish Jews saw only a handful of Germans” [...]).

The “extraordinary” and deadly administrative and police system of the Nazi state created a complete inability to resist not only to the “attacks” of the SS, but above all the inability to resist the very system of functioning of the Nazi state machinery, inasmuch as the cooperation of the victims was demanded by the need to save themselves from death, on the grounds of mitigating the atrocities that “could” be committed. That is, the maintenance and continuity of the “death mill” of the Nazi state was

the constant privileges granted to those who would contribute to the system as an exception, thus justifying the whole rule involving the settlement of the “inferior race”.

As for the Central Jewish Council, an organ of collaboration with the Nazi State, Hannah Arendt describes that Jewish officials, when transformed into instruments of murder, felt like rescuers who “with a hundred victims saved a thousand people, with a thousand saved 10 thousand” (Arendt, 1999, 135), in order to convince themselves of their need not to leave selection to the “blind destiny”, since they used sacred principles as a guiding force for the weak human hand that registers in the paper the name of an unknown person and with that decides about life or death (Arendt, 1999, 135).

Concerning the collaboration of the Jews in the extermination of their own people, Hannah Arendt (1999, p. 139), referring to the witnesses heard at Eichmann’s trial, reports that:

The well-known fact that the direct work of the extermination centers was usually in the hands of the Jewish commanders was fairly and fully clarified by the prosecution witnesses – how they worked in the gas chambers and in the crematoriums, how they plucked the golden teeth and cut the hair of the dead, how they dug the graves and dug them up again to eliminate the traces of mass murder; how Jewish technicians built the gas chambers in Theresienstadt, where the autonomy of the Jews had been carried so far that even the executioner was Jewish.

Whatever the circumstance of the privilege, the violence caused by the absence of sense in relations, resulting from the inability to analyze the references to the symbolic field or from the field of signifying structures, leads us to analyze in terms of genealogy of relations of force, thus implying strategic development, that is, of survival, or of the satisfaction of certain *desires*.

In Foucault’s analyses, relations in the *Lager* are relations of power, not of a relation of meaning (Foucault, 2015, p.41), which implies, with regard to the violence of relations between ordinary prisoners, the privileged prisoners, and the SS soldiers, in a senseless violence to the one who suffers it, whose only meaning, unrelated to the cognitive condition of the prisoner, or of the one who suffers violence, in face of his inability

to attribute meaning, is precisely to destroy any and all capacity for reaction and struggle to power relations.

As for the relations of power, Foucault describes that its meaning is indefinitely the same, that of domination, where one observes the dominators and the dominated ones. Men dominate one another, and so the difference of values is born; classes dominate classes, and thus the idea of freedom is born; men take hold of things that they need to live, it imposes duration on them that they do not have, or they assimilate it by force, and thus logic arises (Foucault, 2015, p.68).

The necessity of seizing a portion of power over the other bodies of the *Lager*, within a domain relationship, is established by the necessity of survival, from the granting of extra ration of food, necessary for the minimum or longer maintenance, of the existence of the body itself.

The French author goes on:

Neither is the relation of domination a relation anymore, nor the place where it is exercised is a place. And that is precisely why at every moment of history domination is fixed in a ritual; it imposes obligations and rights; it constitutes careful procedures. It establishes marks, engraves memories in things and bodies; it becomes liable for the debts. A universe of rules that is not meant to sweeten, but rather to satisfy violence. It would be a mistake to believe, according to a traditional scheme, that the general war would be exhausted in its own contradictions, that it would renounce violence and accept its own suppression in the laws of civil peace. The rule is the calculated pleasure of obstinacy, it is the promised blood. It allows us to unceasingly reactivate the game of domination; it puts on the scene a meticulously repeated violence. The desire for peace, the sweetness of compromise, the tacit acceptance of the law, far from being the great moral conversion or calculated usefulness which gave birth to the rule, are only its result and properly its perversion: “Lack, conscience, duty has its emergence in the right of obligation; and in its beginning, like all that is great upon the earth, was bathed in blood”. Humanity does not progress slowly, from combat to combat, to a universal reciprocity, in which rules have forever replaced war; it installs each of its violence strategies into a system of rules and thus proceeds from domination to domination (Foucault, 2015, p. 68-69).

Foucault’s analysis is fundamental to an understanding of the purpose of the whole normative system of the *Lager*, especially the ritual of receiving the “novices”, that is, of the violence on the arrival of the

prisoners in the camp, institutionalized in the norms of the camp, whose purpose is expropriating any and all capacity for resistance to domination, and thus, at the end of the whole process, that is, of the ritual, the prisoner, be it common or privileged, is completely tamed.

Still, Foucault's criticism of the contractual form of the law, which has already been criticized at the outset of the present paper, is emphatic about the empty contractual form, devoid of an essential substance. It is precisely rules that allow violence to be made as violence and domination can undo those who dominate it. In themselves, the rules are empty, violent, not finalized; they are made to serve this or that; they can be mocked to the taste of one or the other. The great game in history will be whoever takes over the rules (Foucault, 2015, p.69).

Thus, the "gray" of living in the concentration camp, an infernal environment whose system strenuously conditions the behaviors, since in a few weeks or months, the privations to which they were subjected led them to the condition of pure survival, of daily struggle against the hunger, the cold, the fatigue, the beating, and the space for choices (especially for the moral choices) was reduced to nothingness. That is to say, barbarism and horror in their widest dimension, have consolidated the substance of the *Lager's* norms, thus destroying any capacity for reaction not only to physical violence but to the prisoner's own soul.

All the systematics of the camp, that is, its (ab)normal structure, *exceptio*, exceptional, implies the disappearance of discomfort, of the malaise of submission to the conditions of the *Lager*, thus remaining the "custom", which, according to Levi (2004, p. 97), "is a charitable way of saying that the transformation of human beings into animals was already in the middle of the road", this transformation being consolidated in the figure of the *Muslim*, another extreme representation of the camp.

*Witnessing about Muslims*⁴, Levi (1988, p. 132) describes that they are

⁴ Designation made by veterans of the camp, about the weak, the inept, those destined for selection (Levi, 1988: 129). These are those who, because of physical and mental exhaustion, given the very small food rations, excessive work and disease, *wan, low-browed, with curved shoulders, whose face, in whose gaze, one cannot read the slightest thought* (Levi, 1988, p. 132).

submerged, they are the force of the field: the anonymous crowd, continually renewed and always the same; the divine spark has already been extinguished in them, they are already so empty that they cannot even really suffer. One can hesitate in saying they are alive; one hesitates to call “death” their death, which they no longer fear, because they are too exhausted to be able to understand it.

Muslims represent the aforementioned consolidated transfiguration of human beings into animals, resulting from the whole normative system of the *Lager*, which in turn is caused by the useless cruelty of the violated modesty that conditioned life in the camp.

According to Levi, this dark, perverse and horrendous consequence would not have been explicitly projected, at any level of Nazi hierarchy, in any document or “labor meeting, but a logical consequence of the system of an inhuman regime which diffuses and extends its inhumanity in all directions” (2004, p. 97), a banal, bureaucratic evil “which has no depth but which can destroy the world due to people’s inability to think, capable of spreading over the surface of the earth as a fungus”(Lafer, 2006, 26).

5 THE CAMP AS A NORMATIVE PARADOX

In view of the whole panorama hitherto established, in particular, of the existence of a systematic structure that has provided the barbarity denounced, capable of causing the death of the soul before the suffering of the body, we must question, because of the object of investigation of the present research, what role did Law, as instrument of tutelage and guarantees, play in this tragic episode in the history of humanity? Now, to what extent is it possible to think of the existence of the *Lagers*, that is, of the extermination camps, at the same time as the existence of the Law, in particular, of Human Rights?

In order to clarify the issue presented, it should be noted that the Nazi state was consolidated in a State of Law, since, at the time of the rise of Nazism, and also of the concentration camps, the Constitution of Weimar had already been imposed on Germany by the Allies themselves at the end of the First World War.

Thus, as soon as power was “delivered” to the Nazi party, Hitler enacted the Decree for the Protection of the People and the State, which suspended the articles of the Weimar Constitution relating to individual freedoms, based on the constitution itself, on a legal basis Article 48⁵, which provided for the possibility of suspending fundamental rights in cases where security and public order were threatened.

In this sense, the twelve years in which the Nazi state was at the head of power, as a totalitarian regime, established by the state of exception, implies the paradoxical conclusion of a legal civil war, “where there is the permission of physical elimination not only of political opponents, but also of entire categories of citizens who, for whatever reason, appear to be not integrated into the political system” (Agamben, 2004, p.13).

Thus, in order to bring some sense to the previously presented questions, it is necessary to emphasize what significance the camp has in the discussion about the relation between the legal and the political social aspects.

In this respect, the *camp* is primarily identified as a legal form of what cannot have a legal form, that is, as an area of normative-legal exception, an original device to which the law refers to life and includes it in itself by means of its own suspension, revealing a relation that binds and, at the same time, abandons the living to the law (Agamben, 2004, p.12).

Giorgio Agamben proposes, with the aforementioned definition, that the extermination camp presents itself as an ambiguous, and therefore

⁵ Artikel 48. Wenn ein Land die ihm nach der Reichsverfassung oder den Reichsgesetzen obliegenden Pflichten nicht erfüllt, kann der Reichspräsident es dazu mit Hilfe der bewaffneten Macht anhalten.

Der Reichspräsident kann wenn im Deutschen Reiche die öffentliche Sicherheit und Ordnung erheblich gestört oder gefährdet wird, die zur Wiederherstellung der öffentlichen Sicherheit und Ordnung nötigen Maßnahmen treffen, erforderlichenfalls mit Hilfe der bewaffneten Macht einschreiten. Zu diesem Zwecke darf er vorübergehend die in den Artikeln 114, 115, 117, 118, 123, 124 und 153 festgesetzten Grundrechte ganz oder zum Teil außer Kraft setzen

Von allen gemäß Abs. 1 oder Abs. dieses Artikels getroffenen Maßnahmen hat der Reichspräsident unverzüglich dem Reichstag Kenntnis zu geben. Die Maßnahmen sind auf Verlangen des Reichstags außer Kraft zu setzen.

Bei Gefahr im Verzuge kann die Landesregierung für ihr Gebiet einstweilige Maßnahmen der in Abs.2 bezeichneten Art treffen. Die Maßnahmen sind auf Verlangen des Reichspräsidenten oder des Reichstags außer Kraft zu setzen.

Das Nähere bestimmt ein Reichsgesetz.

paradoxical, circumstance, in which the validity and suspension are observed, concomitant with the legal norm, which if it is revealed by the application, by its disappearance, and, consequently, by an inclusive exclusion of the living.

In order to exemplify, Agamben clarifies that:

The immediately bio-political meaning of the state of exception as the original structure in which the law includes the living in itself through its own suspension appears clearly in the “military order”, promulgated by the President of the United States on November 13, 2001, which authorizes the “indefinite detention” and the trial before the “military commissions” of non-citizens suspected of involvement in terrorist activities (not to be confused with the military tribunals provided by the law of war) (Agamben, 2004, p. 14).

It is clear, in the example above, that the political order of the Head of State (Sovereign), ends up radically annihilating the whole legal status of the individual, placing it at the mercy of the State, insofar as the latter, at the same time that it annuls the former’s political rights, thus putting it outside the legal circuit, captures it outside the respective circuit, producing, in this way, a legally nameless and unclassifiable figure, since the individual has no longer a legal status as a person or subject of law.

From this idea, the problematic of the juridical depersonalization of the Jews, that in its majority composed the extermination camps, is opened. In 1935, two measures were announced by the Nazi state in Nuremberg, becoming known as the Nuremberg Laws. The second of these measures, the “Citizenship Act of the Reich”, declared that those who did not belong to the “Aryan race” were not citizens for state affairs, that is, they were not citizens of the Reich. It should be noted that the respective legal-political measure ends, as a consequence, by removing from the Jews the status of citizens, which is why no apparatus of legal guarantees of the Reich would apply to them.

The legal-political measure mentioned above reveals that the Nazi state places those who are not considered citizens of the Reich, in an indecipherable zone (space) from the legal point of view, since, not being citizens, that is, not being included in a relation subject-nation-state,

there is no consequent possibility of qualification and legal protection of their lives, as there is no longer legal personality.

In view of the presented scenario, a questioning is necessary to the understanding of the Nazi state as a Rule of Law, and also, as the extermination camps existed concomitantly with law, namely: what is the legal legitimacy of the chief executive in to edit the measures which have removed from the Jews their status as a citizen, and consequently their legal personality, that is, what is the basis of political authority?

It is observed that the questioning pointed out an issue about the right to govern, and, due to the theoretical references that guide the present work, it is necessary to revisit one of the founding narratives of modernity: the social contract theory.

As is well known, this theoretical matrix provides a great intelligibility of modern politics, providing the foundation and legitimation for the relations of dominion, the differences between command and obedience, which are the basis of sovereignty, law and state. The mythologema of the contract, used by Giorgio Agamben, indicates the linkage of the fundamental categories of political thought to the figure of the State, understood as juridical organization of the *civitas*, as a pact of union and submission (Giacoa Jr., 2014, p. 50).

It is at this point that Giorgio Agamben attacks the myth of the social pact as the foundation of the right of governance, and consequently of political authority. In this sense, the relationship between the legal and the political aspects does not find its basis in the proposal of consent, that is, the contract, and, rather the opposite, the matrix figure of the legal-political relationship is the *gang*⁶.

Agamben states that it is only possible to think of the institute of punishment, and consequently of the juridical organization of society (*civitas*), from the paradox of exception as structure and truth of the norm,

⁶ According to the lessons of Professor Oswaldo Giacoia Júnior (2008), “Bando” (i.e. “gang”) is the Portuguese translation of the German term *Bann*, which means the power of government, sovereignty, the right to establish commands and prohibitions, to impose and execute penalties; also the right to ban. As a concept, it maintains an intimate relationship with the *Friedlosigkeit* institute of old Germanic law and the corresponding *Friedlos* figure, which designates the condition of the one who, banished and outlawed, is excluded from the sphere of protection of the legal system of the community of origin, and therefore, is unable to enjoy the privilege of peace guaranteed by that order. In this sense, *Friedlos* is the one without peace, the one exposed to the forces of nature and the arbitrary violence of whoever.

given the necessary relation between law, force and power, by the bias of sovereignty, which disables the prevailing interpretation of sociability, through the admission of violence as a primordial juridical fact, by revealing the original structure in which the law refers to life and includes it in itself through its own suspension (Agamben, 2002, p.35).

According to Agamben (2002, p. 116), the one who was placed in the *Gang* is then consigned to his own separation and, at the same time, at the mercy of the one who abandoned him, being at the same time excluded and included, dispensed and simultaneously, captured by the juridical-political paradigm, by the possibility of expropriation of the categories and attributes of qualifying the individual as a man and a citizen, by means of a sovereign decision, revealing the figure of *Homo Sacer*, the condemned person whose death is neither a sacrifice nor a murder, with the one excluded both from the sphere of divine right and human right. In this sense, *gang* and *exceptio* exhibit a structural analogy, for the exception means the capture of the one who was put out of the right circuit near the ban.

The relation of abandonment is, in fact, so ambiguous, that nothing is more difficult than to disconnect from it. The *gang* is essentially the power to remit something to oneself, that is, the power to stay in relation with an assumed unrelated. The one that was put into a gang is delivered to the separation itself and, together, delivered to the mercy of those who abandon it, at the same time excluded and even, dispensed and simultaneously captured (Agamben, 2002, p. 116).

Thus, the ban would be a disentanglement, subsequent to the noncompliance with the *obligatio*, which binds the members of the community to its customs, and carries with it the sense that expulsion from the sphere of customs, where order and peace reign. The gang corresponds to the condition of the “peaceless”, to that whom is placed outside the law, a condition that places the offender in the exposition of violence and at the will of natural and human forces (Nietzsche, 2009, pp. 78-79).

What is put in question, based on the structural relation between gang and exception (*exceptio, ex capere*, ‘capture outside’), is the whole proposal for the foundation of the law, in the Modern State, founded on the pact of submission, because in a deeper hermeneutic exercise, in order to give an

account of the problems raised in the present debate, we have to stop considering the declarations of fundamental rights as a proclamation of eternal and meta-juridical values, in order to account for their real historical function, as a means of insertion of the field of incidence of the sovereign decision. It includes the dogma of the sacredness of life which, in the form of the declarations of the rights of man and of the citizen, which inspires the republican constitutions (Giacóia Jr., 2014, 51).

If, in fact, what defines sovereignty is the (normative) prerogative of deciding on the suspension of the legal-state order, then the sovereign is, at a first moment of analysis, the one to whom the law applies by suspending its application; sovereign is the one who, by virtue of a constitutional prerogative, may order the total or partial suspension of the constitution of the rights and guarantees therein bound. It is therefore a matter of suspending the legal order by means of a political decision (Giacóia Jr., 2014, p. 51), thus making it possible to suspend the guarantee of the rights of man and of the citizen, in accordance with the propositions of Carl Schmitt on sovereignty, hence inserting the individual, who was a subject of law, in bare life, that is, life disqualified, as was the case with prisoners in concentration camps.

This discussion becomes so serious and even more emergent as the rights of man and the citizen are understood in the perspective of inalienable, imprescriptible rights, since they are grounded within the very conception of man and in the conception of national sovereignty, of the idea of emancipation of a people in the sense of assigning to it the questions of government.

This “front line” in the assessment and evaluation of the concentration camps – in the past and the present – points to the need to verify the mechanisms that allow the existence of spaces that lack normative regulation, that is, spaces of exception, that end up providing figures such as the *Muslim*, *Homo Sacer*⁸, the killable life.

⁷ As for the concept of sovereignty in Carl Schmitt, we suggest reading the text *Political Theology*, because, although the problem of sovereignty has a direct relation with the present discussion, it is not the object of specific analysis of this research.

⁸ It is the figure of the Sacred Man, therefore, that which the people judged for a crime; and it is not lawful to sacrifice him, but who kills him shall not be condemned for murder; indeed, in the first law of the courts it is warned that ‘if a man slayeth him who by

Hannah Arendt reveals in a specific manner that the problem of the state of exception is directly related to the loss of a space of belonging, so that the “calamity of those who do not have rights does not derive from the fact that they were private of life, of freedom, or of the search for happiness, nor of equality before the law or of freedom of opinion, but of the fact that they do not belong to any community” (Arendt, 2012, p. 402).

In close reading, Professor Ricardo Fonseca identifies Agamben’s steps from the project of Hannah Arendt regarding the need, in terms of legal protection, of belonging to a political community, that is, in the existence of the State as guarantor and “public force”, as long as rights are to be measured, in an individual-nation-state relationship, without intermediaries:

That is: the subject has rights while belonging to a particular Nation-State, which protects them with the guarantees and rights established in its legal documents (derived from its sovereignty). This leads inevitably to the question of how the rights of those (who become ever more numerous throughout the twentieth century), who are not under the protection of any nation-state, remain unaffected (Fonseca, 2011, p. 286).

In this sense, the concentration camp is the result of the confiscation of citizenship and nationality, transforming the life of their inmates into disqualified life, “bare life”, since no legal protection is possible, resulting only in an object of power, of the result of bio-politics, of the political structure of government (Fonseca, 2011, 286).

In view of the fact that the primary structure of the modern state requires membership in a certain political community, thus qualifying the living in person, and thus is the holder of rights recognized by the legal order, which is not recognized as such, and which was excluded from the political community, is included in a zone (space) of abnormality, thus revealing the action of inclusive exclusion, that is, the state of exception that appears in concentration camps.

plebiscite is holy, he shall not be considered a murderer.’ From this it follows that an evil or impure man is usually called *sacrum* (AGAMBEN, 2002, p. 196).

The barbarism experienced in World War II, with the concentration camps, is the most extreme figure of the state of exception, and is the result of the assumption of power in the function of managing life via legal devices, especially the law as a guarantor and public force of the tutelage of collective life, which reveals the paradox of legislation as an instrument of management and organization of social life, since the “rule” exists because of its exceptions.

6 CONCLUSIONS

The Second World War presents itself as a paradigmatic event in the history of humanity, especially as regards the discussion on Man, Law and Politics, especially when analyzing the concentration camps.

To a great extent, this research demonstrates the impossibility of separating the law from politics, so that the concentration camp (space of exception) is the result of this borderline, this zone of undecidability between law and politics, eliminating, from this form, any and all attempt to explain the human phenomena from sectarian arguments that necessarily end up neglecting the integral context of history.

Thus, the existence of Auschwitz as a historical phenomenon reveals the fragility of the debate about contemporary legal and political action, as regards the foundation of law and politics for the dignity of the human person, since there is an intimate and necessary relationship between the definition (political decision) of what law is, the application of the law, and also the suspension of the law itself, evidencing the impossibility of recognizing a substantive legal content by itself, based on the idea of essence or human nature, confirming the understanding already announced by Hannah Arendt on the objective of human rights.

Considering the necessity of belonging to the political community (State) so that one can be submitted to a juridical order, and thus acquire juridical personality, the law as guarantor of the conditions understood as “necessary for a dignified life”, finds an essentially political element, namely: citizenship, putting in check the proposal of human rights as innate and inalienable rights, as it becomes possible the existence of

human beings who do not belong to any political community, which is evidenced in the figure of refugees and stateless persons, these conditions resemble those of concentration camp prisoners. One observes, therefore, a Human Being who does not have human rights, because they are not submitted to any nation-state, and thus are inserted within a state of exception.

The re-signification of the foundation of political authority which structures modern states from the institute of the *gang*, as opposed to the contract myth, in a radical inversion of the legal-philosophical tradition, allows the paradoxical identification of the *exception* to be the structure and truth of the *norm*, a necessary interchange between law, force and power by the bias of sovereignty; which disables the prevalent and recurrent interpretation of the existence of a normative substance, based on human nature, legitimate and applicable in itself.

In the light of this relation, the concentration camp, in the form of exception, is defined from an “original structure in which the law refers to life, and includes it in itself through its own suspension” (Agamben, 2002, p.35), concluding that the camp, in a spectral way, is the result of the operation of law and politics via legal devices.

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