METAPROGRAM OF RESEARCH IN HUMAN RIGHTS: APPLICATION OF LEGAL HUMANISM IN DISSERTATIONS AND THESES OF THE FACULTY OF LAW, UNIVERSITY OF SÃO PAULO (USP), BRAZIL

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Abstract: a critical analysis of some theses and dissertations on human rights of the Faculty of Law of the University of São Paulo, Brazil, is developed in this article with the objective of constructing a research metaprogram in legal humanism. The material used includes ten academic papers from the period 2012-2017, which were reorganized in the form of "legal research programs" that facilitated the epistemological communication among the selected authors in view of the collective construction of a conciliatory metaprogram of human rights.

Keywords: human rights; academic production; research programs; legal humanism.

INTRODUCTION

The objective of this article is to analyze the way of production of some theses and dissertations on human rights of the Faculty of Law, University of São Paulo
(USP), Brazil, seeking to know specifically the reasoning structure of this academic material and later to construct a conciliatory metaprogram of research in legal humanism. The selection of the academic material of this article was carried out in a random manner comprising the period 2012-2017, involving only the first two pages of the electronic library of USP, referring to the subject “human rights”, which contains exactly 12 works available in full version on the internet, of which we use ten copies.

The epistemological analysis undertaken on this bibliographical material revealed three modes of knowledge production (realistic, idealistic and “criticalist”) that became evident from the reorganization of the ideas of the authors investigated within a standard structure or minimal research program formed by the categories ontology, methodology and theory (Lloyd, 1995).

In the discussion of this article, a comparative analysis was developed between different ontologies applied by the selected authors, finally enabling the construction of the conciliatory metaprogram of research on legal humanism, with contribution of three complementary epistemological categories (axiology, practice and context of ideas).

2 METHODOLOGY

A minimal legal research program generally presents three categories of knowledge: ontology, methodology, and theory (Lloyd, 1995). Complementing this model, Montarroyos (2017) proposed the categories axiology, practice and historical-social context of ideas.

In accordance with Montarroyos (2017; 2016), the ontology of the research
program brings together an essential and dogmatic thesis or proposition that can’t be refuted by the researcher’s epistemological decision. Lakatos (1984), for example, called this part a hard core. But other epistemologists have also termed metaphysics or fundamental norm of inquiry.

The methodology, in turn, specifies the methods and techniques (qualitative and quantitative) that will be used, besides the procedures that seek to bridge the metaphysics of the program (ontology) with the reality of the facts. The analyst Lakatos (1984), for example, called this part of “negative heuristics”, defining the paths that could be traced or not by the researcher.

The axiology of the research program also has a guaranteed presence in human sciences. Values, devalues and ideologies act in the characterization and success of social research.

The theory or a series of them provides a worldview that will explain or interpret the meaning and impact of phenomena observed in scientific knowledge in general. Lakatos (1984), for example, located theories in the “positive heuristic”, which is the flexible part of the scientific research program that dialogues with the content obtained by the research carried out.

The scientific program of this article also presents the praxis category, formalizing a problem and including a corresponding solution attempt. He reminded the epistemologist Laudan (1986) that science is an activity aimed at solving problems that may be empirical, conceptual and theoretical. According to the same author, if research problems are represented by questions, the directed response is usually a theory. In practice, the model established by the researcher makes the simulation of reality, being a kind of laboratory where certain variables will be controlled and finally produced coherent and viable solutions.
Finally, in the structure of the more detailed research program there is also the contextualization of the object of study, including the historical time and the social space where the same object is verifiable.

3 HUMAN RIGHTS AND NATIONAL PLAN DEBATED IN THE MEDIA

The ontology of this research program applied by researcher Miriam Ashkenazi (2013, master’s degree) is realistic. He developed the empiricist method and did not present any means or model of transformation of the facts analyzed in the direction of normativism or legal idealism.

Specifically, this legal research program evaluated that the 3rd National Plan should have been better debated in the media but did not suggest or deepen adequate and concrete means of how it would be possible to do something different.

In fact, the author himself acknowledged the freedom of the press, but did not present any related measure against the “neoliberalism” of the companies he criticized so much throughout the research.

In the methodology was analyzed content of the news, editorials and reports of the newspapers “Folha de São Paulo” and “Estado de São Paulo”, related to the 3rd National Plan of Human Rights; in addition, it sought support in national and international legislation, and in the social and political history of the country related to the progress of the struggles and achievements of human rights.

Building the database, this research program classified the material available in several categories to visualize the controversial attitude of the newspapers in relation to the 3rd National Plan of Human Rights, which at that time had a wide participation of civil society, 2010.
However, according to the author of the research, the National Plan was interpreted negatively by the mass media that strongly disseminated that there was a return of state authoritarianism and censorship on freedom of expression thinking, in view of media control provided for in this National Plan.

The discourse analysis was based on data related with the keywords found in the electronic archive of the selected journals that were combined with the researcher’s reflection. The keywords were: “3rd PNDHs” and “VANNUCHI”, (which was then minister of the Human Rights Secretariat of the federal government Lula).

Subsequently, the critical analysis of physical location (or quadrants) was developed where the thematic materials were published in the newspapers researched. In this way, the application of the semiotic method was justified to visualize hidden meanings and values defined in the pages of the newspapers.

The result showed that between December 21, 2009 and March 21, 2010, the word “3rd PNDHs” in the “Folha de São Paulo” newspaper appeared less often than the word “Vannuchi”, which suggests that the concern of the Media surveyed was more addressed to the person of the Minister, rather than to the Plan itself. Same fact happened in the newspaper “Estado de São Paulo” that brought more frequent quotes of the name “Vannuchi”.

In general, the journalistic material that extolled the 3rd National Human Rights Plan was located on the lower left of the page, while those extolling the name “Vannuchi” were in the upper right corner; this means that the editing technique gained more expression and impact the news that was at the top of the page, focusing on the name of the Minister of State.

In addition, the author of this research considered that the newspapers
researched did not provide an environment of debate and constructive deepening of the ideas brought by the National Plan.

The human rights theory used in this research program described the struggles and resistance against tyranny and state authoritarianism for centuries; from the Greeks, through the Middle Ages, the Eastern and Jewish religions, ancient civilizations, and the natural law of Modernity, highlighting in this process the emergence of various doctrines regarding the supremacy of individual rights.

This same critical theory underscored the role of the 1948 Universal Declaration of Human Rights, which led to a progressive sequence of treaties, conventions, conferences, resolutions and pacts adopted by the Member States of the United Nations.

4 HUMAN RIGHTS, SCHOOL EDUCATION AND NATIONAL PLATFORM

The ontology of this research program is realistic and has investigated the slow consolidation of human rights in the specific field of education. In this sense, the researcher Carla Bianca Bittar (2012, master’s degree) analyzed the effectiveness of human rights in Brazil exclusively developing an empiricist view.

The methodology used government reports, specialized bibliography and relevant standards, in addition to the Brazilian Platform for Economic, Social and Cultural Human Rights (DhESCA) from 2003-2009.

In possession of this material, the author discovered a series of negative factors that impede the advancement of education as a human right in Brazil. According to the survey, the barriers include: lack of funds; irresponsible public
management; social exclusion; violence; mismatch of the curriculum with social reality; market pressures in the search for immediate income, etc.

The basic theory of this research has developed the thesis that education is a human right comprising indivisibility, universality and interdependence with respect to the guarantee of the dignity of the person.

Using this theory, the author criticized the role of the judiciary that does not merit the quality of public education in its generally formal decisions concerned with the number of places in public schools.

5 HUMAN RIGHTS AND DECISIONS OF THE SUPREME FEDERAL COURT

This research program applied by the researcher Juliana Brandão (2015, doctorate) is realistic, describing critically the Federal Supreme Court’s interpretive practice regarding human rights.

The methodology developed a bibliographical and documentary research seeking to know the jurisprudence of the Supreme Court, specifically addressing the theme “human rights”, between 1988 and 2012 (the date of promulgation of the Federal Constitution and the entry of the researcher in the PhD course).

Nancy Fraser’s “integrated theory of justice” was used, which served to problematize the production and institutional design of the Supreme, especially incorporating the speech of different argumentative subjects of the subject “human rights”.

It was highlighted with this theory that there are several interpretations on human rights that vary with the specific demands of each region and reality. The author said that interpretations range from common sense to the extreme of
universalism of human rights.

The basic theory of this research program diagnosed the topics that make up the discourse of human rights and found the existence of a new challenge that is the search for international consensus.

In this case, the concept of “abnormal justice” was introduced in a complementary way in the research, seeking to realize that there is no consensus in the context of globalization, which is also considered by the theory of the integration of justice.

In this study, “abnormal justice” is understood as a new paradigm that highlights individuals and, secondarily, the sovereignty of the State in guaranteeing international human rights, which has always been dominant in normal positivist theory.

The normal term retakes the idea of the epistemologist Thomas Kuhn, that of normal science, in this case, the abnormal legal science would be in opposition to the traditional paradigm.

In the integrated theory of justice it is considered that there is an intense dispute of speeches in the search of the truth, therefore, there is a polyphonic vision of the reality and ideological pluralism that generate contradictions in the discourses, but at the same time the Judiciary has paradoxically increased the injustice, whether due to the institutional slowness or due the ideological bias of the magistrates.

This theory adopts three fundamental principles in the observation: principle of membership; principle of humanism; and principle of all affected. Putting together these three principles it is concluded that all are affected directly or indirectly in a network.

The recommendation of the basic theory of this research program is to reject
positivist tradition and to increase the relativism and pluralism of the interpretations. This same programmatic theoretical framework considered that injustice would be reflection of a bad political representation that affects the recognition of the rights.

The abnormal justice which exists in times of crisis must be “dialogic” joining legality with social legitimacy. The political solution is, therefore, to build new democratic institutions.

That is, there must be permanent dialogue with civil society. This positioning tries to avoid the proposal of a new normal legal science and defends the idea of a permanent and dialectical space of communication and disputes.

The basic theory of this research seeks to know not the “right”, but the “wrong”, that is, the discourse and dialectic of the discourses of injustice in order to know “the moral abominations of injustices”, according to the author’s own textual words of the research.

Two problems appear in this theory: globalization of capitalism and multiculturalism; poverty on the one hand, discrimination, indifference and intolerance on the other.

The two problems of redistribution and recognition must be institutionally corrected, as they hinder good political representation; consequently, the theory of this research program admits that politics can be another source of injustice if it remains in traditional positivist and authoritarian patterns.

The theory of this research program offers three key categories or dimensions: redistribution, recognition, and representation. Therefore, the ideal type of justice in this theory is that all have parity in the power of participation within the Judiciary. Parity means the presence of another individual, thus arising the idea of a collective justice, opposing the idea of an individualistic justice.
Fraser’s theory also claims that there are legal and judicial ways of excluding recognition in the human community through doctrines and jurisprudence of the Courts.

According to the author of this research, there is a mismatch between the consensual defense of human rights and the lack of homogeneity of the concept of these rights. The solution envisaged by this theory consists in proposing means that eliminate barriers to participation, considering the ideal of an increasingly inclusive and participatory democracy of citizens. However, the author of this research did not elaborate on any measures that could lead in this direction.

Empirical research has shown that in 263 Supreme Court rulings, within the limited period, only 186, or 71%, of them spelled out the word “human rights” in the menu. Likewise, the term “human rights” was related to the legislation by about 30% and much of that material does not also refer to doctrines, which also suggests that the theme did not reach its theoretical and practical fullness in the Supreme Court.

6 HUMAN RIGHTS, CAPITALISM AND INTERNATIONAL SOLIDARITY

The ontology of this research program applied by the researcher Pablo Biondi (2015, doctorate) developed a realistic ontology, seeking to know the effectiveness of Human Rights.

Methodologically, this program of research exposed the social reality of the capitalist world, stating with the help of historical and current data which show the damage caused on the ideal of a just and fraternal society.

With this critical procedure based on Marxism, the researcher sought to demystify the imaginary that human rights would be answers to the dilemmas of
ethical conscience, which discovers, perceives, recognizes and acknowledges the delays of Humanity only by the rationalist or idealistic way of the isolated subject thinking.

The methodology also used diverse works by Marx and the orthodox and culturalist Marxists, such as Althusser, who were applied in the sense of criticizing the dynamics of capitalism, its structure and its inhumane mode of production.

The critical theory of this research has plunged into reality through the following procedures.

In the first stage, the researcher emphasized several times that social forms correspond to the capitalist mode of production of society; but it is necessary to recognize and value the class struggle that is shaped by universal or globalized relations of capitalism with its various historical manifestations (imperialist, financial capitalism, etc.).

At that time, the research program emphasized that the state assumes the role of repressive class power through a falsely neutral and impartial image. Basically, then, the premises of Marx’s in “German Ideology” are repeated.

In the second stage of this research, on law and capitalism in international society, authors such as Engels, Kautsky, and Pachukanis were used to draw attention to the fact that law forces people to behave in a certain way, thus subject of law, the Man, protected by the will and the order of the State.

Human rights have become an idea controlled or monopolized by the State in the logic of the bourgeois capitalist system. An example is the legal theory of the contract, which gains weight in this reality, disciplining capitalist relations. It is understood in the contractual theory that the Man is a free subject to negotiate and to sell his work force, and in that juridical space of harmony of the classes, ideally the
contract. By positive law, a selfish culture based on individual property is created. It is a culture of economic rationality.

In the case of international law, the author of this research stated that this legal order serves to regulate the relations between capitalist states, which are free units to obtain advantages through the international contract. In international law, the State is the principal subject of law, not the human person.

The author also said that human rights are fictions, and cited the Guantanamo prison, where the United Nations makes no significant effort to extinguish this traditional site of human rights violations.

In the third stage of this research, on the various dimensions or generations of human rights, the researcher emphasized that the expression “human rights” is an institutionalized bourgeois ideology, and once again values an abstract, free, consumerist, selfish, and rational Man.

In this sense, the author of this research criticized the civil and political rights that were gaining the image and likeness of the bourgeois State, making these rights synonymous with individualism and atomism of opinion through, for example, the universal suffrage of representative democracy.

In short, human rights have been bureaucratized by the sovereignty of the State that has intervened in the economy, either by facilitating the entry of skilled labor into the market, or domesticating the miserable and oppressed classes, which is in reality confused as guarantee and progress of the social rights; which is in fact an ideological denial of the class struggle that takes place in history, practicing an alleged public charity that is nothing more than a political game of capitalist domination on the part of the bourgeois State.
Social rights therefore maintain the bourgeois order. In this context, legal humanism seeks to neutralize class conflicts. The concept of humanity and a supposed universal family of the Universal Declaration of Human Rights conceals the cruel reality of the economic system and leads us to a universalistic abstraction.

The discourse of international documents spreads the responsibility of each one of us, increasing the individualism of the ideology known as “legal humanism”. This paradigm does not consider class antagonism as the starting point for constructing a new world.

In the environmental discourse of the United Nations, for example, it is not Capitalism that destroys the environment, but Man. Humanity is also escalating to repress injustices and reduce environmental pollution, but not Capitalism.

In turn, the right to development is also a way of integrating productive capacity with the ideology of humanism, maliciously imagining that production will be recognized by all as ethical, without, however, ever criticizing the structural income inequalities between capitalists and workers.

In this sense, human rights would be a way of camouflaging reality in capitalism, the exploitation of Man by Man in the direction of the excessive profit, according to the booklet of the dominant system.

In this critical context, the right of peace or fraternity principle, finally, would be another form of “embellishment” of social reality, according to the author’s own expression. For example, the UN Security Council, paradoxically, depends on the vote of the great military powers, historically adept at the practice of war, and these same nations “do not suffer punishment because they are embedded in this body”, said the researcher.
Reinforcing the ideology of legal humanism, analysts on peace and world war began to include multiculturalism as the cause of international disorder rather than the nuclear threat of the Cold War of the past.

Given this context, the author of this research considered that the culture of peace and education in human rights are only illusion, since they do not attack the capitalist mode of production. Consequently, pacifism restricted to an ethical, religious or cultural view hides the economic and political reality.

The author of this research emphasized that pacifism concerns the capitalist system, which is the main source of the wars committed up to the present moment. The war is not due to a conception that man is good or bad, but depends on the capitalist system that is evil, unjust, excluding and inhuman. Therefore, international peace advocacy also serves the interests of capitalism to facilitate market transactions more efficiently.

The conclusion is that the right of peace became more a capitalist ideology that seeks to harmonize relations between capitalist States; and in the same way, the concept of humanity plays the role of ideology in order to harmonize and hide the class struggle.

Consequently, human rights are abstract and shift the responsibility of the world only to the individual and never to capitalist entrepreneurs. It is, therefore, a consolidated ideology after the Second World War, which does not honestly face the exploitation of Man by Man.

The conclusion is that the fate of humanity depends on capitalism. The solution would lie in the development of national and international socialism, overcoming the barriers of bourgeois egoism and opening a new horizon where the dignity of the person would reflect the dignity of a human society practiced differently.
from capitalist society, but the author does not specify how to achieve this stage of civilization supposedly superior.

7 HUMAN RIGHTS, IMMIGRANTS AND DIVERSITY IN FRANCE

The ontology of this research program developed by the researcher Camila Andrade (2014, master's degree) is realistic, investigating the effectiveness of Human Rights.

The methodology of this research combined and analyzed the discourses in action regarding the immigrants, in this case, in France, dealing with the situation of Muslim women with their cultural habits of dress, who started to commit criminal infraction before the new French Law when using burka and niqab, covering the face of women, with the exception of the eyes. Specifically, the impact of the Law on “face dissimulation in public space” among Muslim women in France was analyzed in this research.

The methodology developed an analysis of the contents on various sources and official documents of France, which revealed two discourses in competition: of the guarantee of human rights and the other xenophobic, criticizing and excluding the presence of the immigrants and their descendants.

Realistically, this research made a dense description of the facts, laws, legislative processes and discourses in general, or more precisely, made the empirical diagnosis of the French Law of 2010 with its due social implications.

With this methodology, the empirical observation showed that this French Law did not diminish the traditional use of the veils among the Muslims and only 1 man was condemned by this criminal offense in 2013.
The empirical data also showed, according to Laïcité Observatory, that since this Law was in force, there were no significant cases of violence or social disturbances, however press and non-state organizations revealed that in 2013 there was verbal violence and discrimination of the husbands of the Muslims themselves. This marginalization and violence was registered more frequently in the suburbs of Franc.

The European Court in 2010, however, opposed the Act and recommended to all European States not to prohibit the wearing of full veils and other religious clothing on the pretext of order and public safety; and the maximum social inclusion of Muslim women should be guaranteed, considering that the ideal of a just, fraternal, democratic and pluralistic society is preponderant.

The basic theory of this research interpreted the empirical data noting the presence of the concept of “immaterial public order”. It is an open concept, where even legal proportionality is relativized, that is to say, in the debate of intangible public order, the limits for dealing with the cultural question must vary freely with the conjuncture of each grave moment.

The research also considered together with this concept the “theory of the deterritorialised border”, which defends the thesis that the enemy of order and public safety would not be outside but within France.

This theory defends new symbolic frontiers of demarcation of state power. By extension, as the same theory holds, the legislative response does not seek to restrict the immigration flow of former colonies, nor to increase control of the geographical frontier.

Developing this political theory, the concrete attitude of the French State was to control freedom of expression within the Nation in the name of order and public
Empirically, the analysis showed that the solution adopted by the French State to confront the reality of terrorism applied the concept of “intangible public order”, and the principle of public order in the French case prevails over the principle of cultural pluralism.

In the specific case of this research, it was understood that the Investigated Law simplified the subject of security without considering the complexity or cultural plurality, which resulted in the criminalization of the female Muslim garment. The effect of the Law has produced unfair results against Muslim women and by extension has attacked cultural pluralism which is a prerogative of legal humanism.

By this theoretical bias, this research program discovered the existence of a collision of rights or principles. On the one hand, for individualists, public order should stand above religious and cultural freedom in times of terrorism. On the other hand, for communitarians, the burka and niqab are religious symbols of the Muslim community and therefore could not be marginalized and criminalized by law.

8 HUMAN RIGHTS, LABOR LAW AND LIQUID MODERNITY

This realistic research program applied by the researcher Humberto Bersani (2012, master’s) describes the analysis of the ideal of the social right to work, using the theory of “liquid modernity”, which allows to illuminate the distance between the ideal of norms and social reality. However, no means of reconciling the idealism of norms with the effectiveness of the law has been proposed, pointing out some practical-theoretical measure, restricting research to show only what is wrong in reality in the light of human rights, applying the selected theory.
Methodologically, a script of technical and normative classifications was developed on labor law as a social and human right, highlighting the axiological, philosophical and theoretical foundations, including the author Reale at that moment, with his three-dimensional theory (fact, norm and value), along with the principles that guide the labor rights, such as reasonableness, primacy of reality, social equalization, among other principles.

This research analyzed the theoretical importance of the State in the employee-employer relationship; related social rights in general with labor law; and stressed the hope of guaranteeing a distributive justice within the scope of the Judiciary in favor of the worker.

The critical theory of this research program points out that there is an abyss between advanced norms and social reality; and this diagnosis is based particularly on Bauman’s theory, called “liquid modernity”.

This theory says that the worker himself who currently regulates himself as an efficient productive system that is mobile, volatile, so there is no clarity of the physical limits of the working day and the power of the employer, thus mixing the individual’s private life with labor productivity, especially in services performed outside the physical limits of the company.

With this theory, it is understood that the State has not given minimum guarantees to the quality of life of the worker, and labor law is no longer a public right and is privatized with the minimal and progressive presence of the State within the Judiciary.

In effect, conciliation is a symptom of the minimization of the Judiciary, according to the author, because it surrenders to the parties that dispute resolution
(and most often the parties to the dispute attempt to escape or avoid the inefficient and slow state bureaucracy of the labor process).

9 HUMAN RIGHTS AND ADOLESCENT EDUCATION IN DEPRIVATION OF FREEDOM

The ontology of this research program developed by researcher Renata Antão (2013, master’s degree) brings together the realistic and idealistic approach seeking a political solution as a solution to the problem investigated. This ontology is “criticalist”, moving in the direction of political science of law.

This research reconstructed the legal, institutional and bureaucratic ordering of public policies focused on education in juvenile detention systems, and found a discrepancy between normative idealism and social reality, thus presenting as a political solution adapted to the internment of socio-educational measures; including formal and non-formal education.

In this direction, the experience of the “Casa de São Paulo Foundation” was described as an example to overcome the challenges of education in an environment restricting the freedom of adolescents, under 18 years of age.

The positive experience of the State Government of São Paulo pointed out by the research as a model has the following positive strategies:

a) guarantees the access of the internees to the compulsory and formal education system in the own premises of the Casa Foundation in partnership
with the State Education Department, including the issuance of diplomas due
to the complete implementation of the official curriculum of public schools;

b) guarantees formal education related to public school, developing art, culture,
sport and profession;

c) and develops an educational proposal that takes in account the age and social
heterogeneity of the inmates with their different ways of learning with the
professional help of social workers and psychologists.

The methodology used in this research was interdisciplinary, seeking authors
of Pedagogy, Sociology, Psychology and Law. The dialectical method also served to
understand the movement and interaction of childhood and adolescence in the face
of the modern and globalized world.

This research program further reorganized the legal order on the subject
including resolutions, national and international standards; projects and plans;
treaties of the United Nations and various institutions, using to some extent the
methodology of idealism-normativism to compose this legal reorganization.

The basic theory of this research program was declared constitutionalist, with
emphasis on the right to education. In this sense, education was reaffirmed as a
fundamental human right, public and subjective; a right of all and duty of the State
and of the family, according to the Constitution of Brazil, article 205.

This research shows the distance between the formal and informal education
of public schools and the repression environment adopted by the socio-educational
measures foreseen by the Statute of the Child and Adolescent, particularly in the
homes of children who commit serious crimes.
This research program applied by researcher Emerson Andena (2013, master's degree) accumulated historical and legislative knowledge in dialogue with the critical theory of international human rights, and finally pointed to the possibility of approving a new regulatory framework in progress in the National Congress where the human rights of immigrants can be widely respected.

The methodological procedure sought to synthesize dialectically the realism of Brazilian legislation and the experience of the globalized world with the human rights ideal, presenting as synthesis a practical-transcendental alternative inserted in the disciplinary field of Political Science of Law. The methodological procedures performed the following tasks:

a) conceptualization of what is international immigration, highlighting its social factors and subjects;

b) critical analysis of the past legislation of Brazil, from the Monarchy to the present day, under the light of human rights theory;

c) investigation of the activities of the National Immigration Council in Brazil;

d) criticism of the positive and negative points of the normative texts of the draft laws being drafted in the Brazilian Congress, which aim to establish a new Immigrants Code;
e) as well as criticism of the National Immigration Policy and Protection of Migrant Worker;

f) and finally, arguments about the need to approve a new immigration regulatory framework.

The research defended the maximum freedom of the immigrant in his right to come and go and the necessary reduction of barriers to entry and exit imposed by the national State and condemned by the Universal Declaration of Human Rights.

According to the author’s vision of this research, “the still not guaranteed right to cross a border demands the effective universality of human rights, as well as demands the overcoming of the criterion of nationality as a basis for the protection of individuals, and for the recognition of rights of the citizen” (Andena, 2013, page 135).

The same author believes that the time has come for the constitutional principles and international treaties guaranteeing the dignity of the person as an immigrant to be realized, with legal discretion, cultural discrimination and economic contingencies being overcome in the formulation of new inclusion policies, taking as the center of these new measures always the ideal of human rights.

The immigration theory used in this research stated that “migrating is a human right”, because every person has a natural right to come and go in the world especially in the context of wars, genocides and public calamities that occur in the country of origin and threaten the life of groups and individuals.

Immigration as well as being a social phenomenon is a political act because immigrants are holders of international rights that affect the sovereignty and legal order of the country of destination.
Hera, the theory of immigration has helped to evaluate the history of immigration in Brazil, concluding that it is inhumane and that it continues to be linked to state legislation without preponderance of international human rights.

11 HUMAN RIGHTS, EDUCATION AND CULTURE IN THE INTERNATIONAL ORDER

The ontology of this research program applied by the researcher Felipe Caceres (2013, master’s degree) combines the idealism of human rights with the Brazilian and world social reality through the political proposal of publication of a paradidactic book and an electronic portal in the Internet that would reinforce the guidelines of the 3rd National Plan for Human Rights Education in Brazil.

The methodology carried out bibliographical, documentary, historical and legal investigations to present major themes related to human rights. Subsequently, these themes (genocide, cultural discrimination, violence, slavery, torture, etc.) constituting the contents of this school material.

The theory of this program used several ideological matrices, reflecting the free thought of the author, among them psychologists, philosophers, political scientists, historians, jurists, all done in the attempt to ground critical reflective theory on intolerance and exclusion and finally to argue the importance of the culture of peace and social inclusion of the person.

12 HUMAN RIGHTS, EDUCATION AND THE DESERT WORLD
This research program by the author Lincoln Bruniera (2013, master’s degree) is idealistic and she made reflections on human rights education and public life, rethinking Hannah Arendt’s theory. Critical Theory was based on Hannah Arendt, various works, especially using the concept of “desert world”.

The methodology used the comprehensive method and developed historical retrospective, focusing especially on the experience of the Greek polis.

The basis of this program theory is existentialist and questions capitalist Modernity, Totalitarianism, and administrative and cultural Massification that affect and destroy the person’s freedom, responsibility, and ultimately authentic life. As a result, the author argued that education should serve as a means of resistance to this present “desert world”, in view of a more humane and common world, as did Socrates and other philosophers.

According to this theory, the educator must resist this world of horror of Enlightenment Modernity and Rationality. Thus, it is understood that the theory of education presented by Hannah Arendt values the role of the educator emphasizing that he has authority and responsibility. However, attention was drawn to the need that the act of educating requires love among people towards a more humane world.

The historical reference used in this research was directed to the past of the Greek polis, where the researcher found a model to be thought, in this case, education that has an important role of transforming the world and creates the bases of a new fraternal civilization, socially responsible, free, etc.

In the Greek polis, the public spirit was the fundamental rule for the functioning of assemblies and decisions. The conclusion drawn from the Greek past is that education must be a motivating space to awaken in people sublime human qualities, creativity, ethical values and social responsibility.
Thus, the educator must be a political agent in the classroom, admitting that one can't live in a “desert world”, in a vacuum, and the school should position itself critically in the common world, as a living source of human experience always seeking human happiness. Here is the example of the Greek polis where all “could exercise their power of persuasion without suffering physical violence” (Bruniera, 2013, p. 73).

Therefore, the “desert world” needs to be fought, because it is an impersonal, inhuman, sterile, disposable, consumerist world. In opposition, the human person must reintegrate his humanity with rationality and affectivity. In this picture, the desert metaphor means silence, lack of hope, helplessness, and lack of the right to make choices.

DISCUSSION

Among the ten research programs organized in this study, six research programs are realistic, one is idealist, and three are “criticalists” or synthesizers of these two extreme approaches.

Realistic research programs, according to the jurist Alf Ross (2000), have as a rigid nucleus the effectiveness of law that manifests itself through the action of normative agents, that is, people and institutions.

Ross (2000) also recalled that society is made up of people who have different interests, preferences and ideologies that affect the idealism of norms. In this way, juridical sociology would have better tools of research on the effectiveness of law than Dogmatic science, which focuses the idealism and official validity of norms.
The Hessen (1987) epistemologist reminds otherwise that the basis of realism is experience, in this sense the subject does not determine knowledge, since reality exists objectively.

In this epistemological perspective, the research program on the National Human Rights Plan described the news brought by two electronic newspapers about the 3rd National Human Rights Plan; and thus, produced practical or realistic knowledge about the interpretation that the Media dedicated to the 3rd National Plan of Human Rights.

This research detailed the daily news on the National Plan. In the last few lines, the author briefly suggested that actions be taken in court, criticizing the public concessions of radio and television stations and called on organized civil society to fight the abuses of private communication companies. However, the survey did not identify any illegal behavior of the two newspaper companies criticized at work.

The research program on school education in Brazil analyzed empirical the National Platform for Human Rights. The author concluded that there has been progress in Brazil, with a higher number of public enrollments; with increasing prisoner access to education; with significant investments in many poor localities of Brazil; with the increase in the number of women in high school; with the greater participation of civil society in public debates on education. But despite of all this the reality remains poor with violence rising in and around schools, with frequent cultural conflicts, and the lack of modern equipment in schools, etc. In this sense, the author emphasized that the National Platform for Human Rights is a milestone in the construction of public policies on human rights in Brazil.

The research program on the use of the Muslim veil in France is also realistic and concerned with the effectiveness of cultural pluralism. The conclusion of the
research reaffirmed that the knowledge obtained was through the case study; and thus, an extreme degree of interpretative antagonism between human rights and state sovereignty, between public order and cultural freedom, was diagnosed.

The research program on the various interpretations of the Supreme Court produced practical or realistic knowledge on the content of the selected judgments on human rights. For the author of this research in the Supreme Court there is not a full debate about human rights. The decisions of the Supreme have not overcome the barriers negatively pointed out by Fraser’s “integrated theory of justice”. Most of the cases handled by the Supreme Court were not classified as a human rights issue. In addition, the largest, most frequent applicants are individuals, not groups and associations. Still with respect to individuals the greater accused is the State, violator of rights. Thus, if the State mistreats the rights and at the same time takes care of these human rights, the author of the research automatically agreed with the Portuguese philosopher Boaventura dos Santos who said that in this case “human rights are under suspicion”. The author concluded that the Supreme Court must be multidimensional and take human rights “seriously” in more depth. And the first sign of this change would be to include the theme in the menu of the judgments, “since these are key parts in building precedents”, said the researcher. Finally, the investigation found that the term “human rights” used in the Federal Supreme Court did not directly address the issue of income redistribution, either on the issue of cultural recognition or on the issue of political representation or inclusion, “but they carry potential for that!”, stressed the author of the research. Reinforcing her political concerns, the author highlighted the need to value collective demands in view of the plurality and collectivism of human rights.
The Marxist research program described the effectiveness of human rights in the reality of the capitalist system but did not develop an idealist leap to change the problematic pointed towards socialism, although the author firmly believes that this would be the best political solution for liberate human rights from the ideological manipulation of the bourgeoisie. The knowledge produced was practical or realistic, demystifying the basic principles of human rights (equality, freedom and fraternity) using the experience of History in the light of Marxist theory.

The research program on immigration law in Brazil is realistic, where the author Andena (2013) diagnosed the effectiveness of human rights in the immigration debate. The author of this research, in the last lines of his academic work, believes that the time has come to rethink the warnings of the past and to find ways to make both international commitments and Brazilian constitutional principles effective. However, the author pointed out no solution.

The realistic research program on Human Rights, Labor Law and Modernity diagnosed the distancing and distortion of human rights inside and outside the Judiciary. Within it, there is a growing wave of conciliations that deplete public power as the director of human justice. In this direction, the author thinks that justice should be more humane and fully enter the humanitarian merit of the relations between employer and employee and not just be an instrument of conversation between the parties.

By contrast, idealistic research programs, as their name suggests, idealize norms and normative agents (including people and institutions). In general, the works of legal philosophy and the theory of law fall within this epistemological perspective.

Ferrajoli (2004) explained that normativism is based on the reconstruction of the legal order and draws a pyramid where the upper and lower norms are positioned
and considers that legal norms are ideal types of conduct and are based on the principle of validity or validity of propositions elaborated by the researcher always to improve the existing legal order.

In the idealistic approach, norms are the main actors in the History of Law: they speak, they think, they decide; that is, they have a life of their own, despite being misrepresented and adapted by the people’s experience.

The idealism, as the epistemologist Hessen (1987) recalled, is a form of rationalism, that is, the knowledge of reality in this modality is based on logical propositions, universally valid, where the main working instrument is the consciousness of the thinking subject, the researcher. In this direction, everything that does not fit into the logic of the dominant reasoning is abnormal or empirical anomaly.

The adversary Ross (2000) drew attention to the fact that legal normativism is a kind of idealism, objective, since norms are placed at the disposition of individuals \textit{a priori} as ideal products, and function as a kind of grammar in the construction of legal language everyday life.

In general, it can be said that idealistic research seeks to visualize the pure norm, free from anomalies and social deviations that affect the validity or validity of the Law.

In the academic production selected here, only idealistic work was found. The research program on human rights education and the “desert world” stated that the common world must be preserved and valued. The author of this research understands that education will be a journey towards the common world more dignified, just, fraternal, representative of the person and legitimate. In this sense, the researcher attributed great value to the ideas of Socrates, Plato and Aristotle. In this
idealistic direction, the Greek polis appears as an example of a space for conversation about public life, where everyone could participate by giving opinions and debating the paths of the common good.

A third legal ontology seeks to balance these two approaches, either by creating a middle ground or a synthesis of ideas of a practical-ideal nature. The epistemologist Hessen (1987) confirms in this sense two classic attempts to link idealism with realism.

According to the same author, while *intellectualism* derives its concepts from experience, *apriorism* denies this derivation and emphasizes the rational factor, which acts not effectively in actual experience, but in reason, through which the researcher virtually imagines the experience of facts.

According to the same author (Hessen, 1987), if *Aristotelian intellectualism* and *Kantian apriorism* talk together, *intellectualism* goes a little more towards empiricism and *apriorism* goes a little further of rationalism, but the two approaches are in the intermediate zone of knowledge.

As defined by Montarroyos (2017; 2016), the “criticalist” research program must consider that there is an intermediate region of knowledge, in which idealism and realism are connected or linked through propositions or artificial strategies created or reproduced researcher.

According to the same author, the Dogmatic develops normativist or idealism. Juridical Sociology uses the realism. But in the case of “criticalism”, contributes better Political Science of Law.

The term “criticalist” invented by Montarroyos (2017; 2016) represents a trend already consolidated in the history of legal science. Authors such as Ferrajoli and Ross himself share this epistemological tendency. From these two authors,
Montarroyos (2017) found two types of criticalisms: one based on idealism, the other on a realistic basis (Montarroyos, 2017; 2016).

According to Ferrajoli (2004), for example, who developed idealistic and realistic methods, it is necessary to link or reconcile validity with the effectiveness of law, using the principle of fairness of knowledge that goes in the direction of justice. The bridge of attachment to the same author no longer emphasizes the role of rules and principles, but rather of the criteria, techniques or procedures that must act in the daily life, joining human dignity with the legality and effectiveness of law within state institutions.

Similarly, Ross’s (2000) criticalism considered that realism should be a reference for new utilitarian or pragmatic policies, always aiming to improve people’s lives and legal order (Montarroyos, 2017; 2016).

In this study, the research program on human rights education among adolescents in situations of deprivation of liberty produced a criticalist knowledge, describing the effectiveness of this social right plus the ideality of norms, and in the middle of these two approaches a political model was included. Thus, the schooling carried out by Fundação Casa, of the State Government of São Paulo, attending minors in a deprivation of liberty system is an exemplary initiative in the view of the researcher because it contemplates all their reflections.

The research program on Brazilian immigration law is criticalist. This research evaluated and defended the importance of the bills under discussion in the National Congress, recognizing that in general they promise to bring humanitarian progress.

The research program on human rights, education and culture in the international order proposed a detailed project with the objective of creating a schoolbook and an electronic portal on the internet with relevant themes of history,
thus seeking to increase the legitimacy of human rights among students of education basic. On the one hand, the author of this research observed the idealism of human rights, on the other hand, he described the inhuman reality of social facts, reconciling these two approaches in a practical-transcendental proposal, directed to the publication of critical school book, based on the current educational legislation in the country with the approval of the Ministry of Education.

CONCLUSION

The academic material analyzed in this research varied in three epistemological possibilities: realism, idealism and criticalism; however, a metaprogram of human rights research can offer a consensual or conciliatory epistemological structure in the following terms.

Initially, there would be as a rigid nucleus the existentialist philosophy, concerned with the existence of the human being, with the being-in-the-World of the individual, fighting against totalitarianism, violence, poverty, and cultural, economic and political massification, specifically, inhumanity.

The methodology of this research metaprogram would seek help in diverse hermeneutic techniques, whether legalistic, sociological or teleological. This method is fundamental to include the principles of equality, freedom and others, which are subjective structures of law. Legalistic techniques include exegesis, grammatical analysis, systematic logic, analogical recourse, etc. Sociological techniques relativize the facts from the social, political, and cultural context. In this case, the interpreter plays an active role in understanding the truth of human rights within a dialogical process with society. The teleological technique, finally, follows an introspective trail
regarding the purpose of human rights, which can be Human Justice, Peace, and Dignity, depending on the legal situation. Being more detailed, the methodology of legal humanism would be based on methodological anarchism, where everything is welcome if the ideas come to reinforce the ideal of human dignity or its effectiveness. In this context, the importance of the interdisciplinary method of procedure can't be denied, deepening knowledge about the complexity of human rights.

The axiology of this metaprogram of research around legal humanism would highlight certain facts and norms to the detriment of others less significant in view of human justice, even questioning State sovereignty. The axiology would be basically Enlightenment and would focus on the dignity of the person and human society, betting on education and culture as sources of inclusion of people in Modernity.

The multidimensional theory of this metaprogam would consequently present the following variables: individuals; institutions, facts, norms, values; history and speeches. According to the Universal Declaration, individuals are human beings, endowed with rights and duties, and are embedded in some culture. History implicitly appears in the text of the Universal Declaration presupposing the context marked by barbarism, injustice and symbolic violence. In response, the Universal Declaration proposes a transforming conscience, which seeks humanization and especially the guarantee of the dignity of the person, above any state project. The discourse of the Universal Declaration is humanistic and is based on the humanization of all social activities, even from the act of dying and being born. It is also considered that human rights, besides being global, are progressive and can't be revoked once established in each country. There is no retrogression or elimination of humanist norms that have already been adopted, otherwise it constitutes a break international protocols. In the Universal Declaration, the institutions envisaged must guarantee human rights, their
inviolability, and promote a fraternal, just and democratic social order. These include bodies such as the United Nations, Member States and Non-State Organizations. According to the Universal Declaration of Human Rights institutions need to be democratic because they facilitate the participation and communication of minorities and majorities, promoting enlargement with dignity and respect. From the point of view of social facts, the Universal Declaration also projects the ideal of a pluralistic society. There is in this sense the recognition of a great diversity of ideologies, of religion, of cultures in general, and it is hoped before this picture that the divergences be resolved through a friendly relationship between the involved, starting from the presupposition that all seek a greater good, which is peace and justice in the community itself. The values prescribed by the Universal Declaration originate from the first revolutions that deal with the question of human rights (the so-called bourgeois revolutions). The main values prescribed in this United Nations historical document are: Equality, Freedom and Fraternity. In addition, there are values related to the dignity of the person and universal human justice, which are, in general, the axiological pillars of the Universal Declaration of Human Rights.

The practice of this metaprogram of human rights research would once again emphasize the democratic system. By this means, multivocal spaces and legal instruments of social communication would be created. Several authors in this sense emphasize the importance of democracy as an instrument of conquest and political recognition of cultural and ideological pluralism. In the same category of knowledge, the classic problems of human rights are often gaps, antinomies and injustices or non-observance of international principles. The coherent answers as a way of solving these problems among the researchers would imply constructive interpretations; analogies; neutralization of contradictions; balance of justice, etc.
Finally, the historical-social context of this research metaprogram would recommend that the multilocality and multivocality of social subjects be described from the family, local, regional, national, international level to the universalist level. It is understood at that moment that human rights are instruments of social conversation. At the same time, two historically competitive hermeneutics reappears: Western and Eastern. The first, Western, prioritizes the individualistic interpretation of human rights, with emphasis on the dignity of the person through individual rights; the second interpretation, Eastern, notably Muslim, defends the communitarian conception, emphasizing the dignity of the human society through the social rights. As a solution, subject matter experts have recently sought to find ways of intellectual reconciliation. Contemporary example is the concept of existential damages in the Brazilian Labor Court, where it is considered that the dignity of the worker depends on the living or the life of relationships in his family and social community. Without this guarantee, there is damage in the integral development of the human personality.

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