

# **THE HUNTING OF THE BUS 174: THE GENERALIZATION OF THE ENEMY'S CRIMINAL LAW THROUGH THE TRAJECTORY OF SANDRO BARBOSA DO NASCIMENTO**

---

*Bárbara dos Santos Delatorre*

Graduate of the Law Course of the Centro  
Universitário São Camilo-ES

*Eduarda Castilho Rodrigues*

Graduate of the Law Course of the Centro  
Universitário São Camilo-ES

*Tatiana Mareto Silva*

PhD in Fundamental Rights and Guarantees  
from the Faculty of Law of Vitória (FDV),  
Master in Public Policy and Process from the  
Faculty of Law of Campos (FDC/UNIFLU),  
postgraduate in Procedural Law from the  
Faculty of Law of Vitória (FDV), Professor  
of the Law Course at the institution Centro  
Universitário São Camilo - ES

All content in this magazine is  
licensed under a Creative Com-  
mons Attribution License. Attri-  
bution-Non-Commercial-Non-  
Derivatives 4.0 International (CC  
BY-NC-ND 4.0).



**Abstract:** We present the story of Sandro Barbosa do Nascimento, which was marked by the absence of state support, culminating in a hijacking of bus 174 in Rio de Janeiro, in an attempt by the agent to be heard by the authorities. The study was divided into three stages. In the first, the criminal episode involving public transport is narrated. Then, the story of Sandro is exposed from his childhood, when he witnessed the death of his mother to stab wounds until shortly before the fateful event that led to his death at the hands of the police, in order to highlight the influence of the negligence of the State in his formation. Finally, an analysis is made of the tragic events caused by the non-enforcement of norms that concern the right to life and public safety, as well as the basic requirements of fundamental guarantees, including health, food and education, with the descriptive thesis of Günther Jakobs on the Criminal Law of the Enemy, which establishes the marginalization and anticipated punishment of individuals who insist on violating criminal types, disconnecting from being a citizen and regressing to the so-called Natural State. It is concluded that, although Brazil, as a Democratic State of Law, is not compatible with such a study due to the principle of equality and human dignity enshrined in the Federal Constitution of 1988, it practices it in a subjective way, that is, not recognizably explicit. Therefore, the country, by not socially assuming that it marginalizes low-income communities, ends up colluding with the circumstances that aim to eliminate the miserable population.

**Keywords:** Sandro, State, Enemy, Jacobs, Negligence

## INTRODUCTION

Even though Brazil has been a Democratic State of Law for 33 years, it still finds it difficult to understand the consequences of omission

in the face of cases of criminalization of a part of society, which, consequently, becomes a victim due to the lethality of the police forces. To arrive at the current five thousand eight hundred and four deaths by the military police in 2019, it was not only necessary a state denialism, but also the collaboration of the population, which remained, in general, inert even in the face of situations such as ‘candelária’ event, since there were no significant movements that caused minimal changes.

Sandro Barbosa do Nascimento starred in one of the biggest kidnappings ever reported by the media, however, after his death on the same day, he left as a gap the circumstances that led him to that moment: a boy resident of the Rato Molhado community who, when he was very young, witnessed the death of his mother and, therefore, he left the house where he lived and began to live on the streets, a place where, once again, he witnessed several violations of human principles. In this sense, it can be seen that his trajectory can be analyzed in a parallel way with the definitions of Günther Jakobs, a German philosopher who describes the relationship between State and society in order to differentiate individuals between subjects endowed with rights that maintain a link with the definition of being, that requires certain skills and the ‘enemy’ who, by fulfilling requirements such as frequent misrepresentation of norms and even their life context, is distanced from the ‘citizen’ category.

For these reasons, it is possible to question the subjective way in which Brazil exercises the so-called Criminal Law of the Enemy, using as an example the story of Sandro as a generalization of low-income communities that, in a way, are made invisible by society and government given the insufficiency of public policies and non-effectiveness of fundamental guarantees, encouraging

marginalization and an 'antagonistic' view of them.

## METHODOLOGY

The work carried out adopted the following methodology: research with a qualitative and quantitative approach, with bibliographic and documentary sources and explanatory objectives, discussing and explaining the history of Sandro Barbosa do Nascimento and the failure on the part of the State with regard to helping the needy and miserable. In parallel, a doctrine of Criminal Law was used as the main source.

In 1985, Günther Jakobs, a German professor and philosopher, addresses the Enemy's Criminal Law Theory for the first time, in a lecture. Later, in 2009, his first work on the subject was released: "Criminal Law of the Enemy: Notions and Critics". In this, debate about the division of human beings between 'citizens' and 'enemies' from the socio-economic reference and/or insistence on criminal practice. In the last classification, the individual is isolated from society in such a way as to lose his status as a subject of law, and may (and must) even be eliminated by the force of the State.

In addition, a documentary by director and screenwriter José Padilha called "Ônibus 174" was used, which reports the criminal event on June 12, 2000 and the agent's story based on testimonies from family members (consanguineous or not) and acquaintances, that describe how Sandro did not have a violent personality and about the dangers they faced while living on the streets.

This way, it has a qualitative approach, as it aims to evaluate and explain the similar aspects between current subjective social phenomena and Jakobs' thesis, in addition to analyzing the interactions of the State through the institution of security with society from news recently broadcast by the media. on

police operations and their consequences: massacres.

## THE BUS KIDNAPPING 174

At approximately 2:30 pm on June 12, 2000, the event that marked the history of Rio de Janeiro and Brazil began. A tall, black, tattooed man boarded the number 174 *cávea* bus and, as he jumped the turnstile, showed the 38-caliber gun that was on his waist. One of the passengers, upon becoming aware of the imminent danger, managed to escape and report the situation to the security authorities. Shortly after the police approach, the driver got out of the vehicle through the window. The criminal, upon realizing that the robbery had been frustrated, began to use the victims as a way to protect himself from possible attacks by representatives of the state agency.

The event called "hijacking of bus 174" lasted for 4 (four) hours. In the first moments, there was no siege that kept civilians away from the crime scene, contributing to the gathering of reporters. Realizing that he had become the focus of the cameras, the man whose name no one yet knew began to intensify the threats against the hostages in an increasingly impetuous way. The first victim to be used as a "shield" was Luciana Carvalho, who was forced to sit on her lap. Then the kidnapper shot through the window of the vehicle towards those present. BOPE began negotiations and then Captain André Luiz de Souza Batista tried to establish communication with the agent, naming him "Sérgio", since he was still hidden and difficult to recognize because he was covered in a towel, glasses and cap. The only information they had about Sérgio were confusing phrases said by him that were not proven during the episode, such as the claim that he was one of the survivors of the Candelária massacre in 1993, an event in which he lost "his little brothers" (Ônibus 174, 2002).

After a few hours, Sérgio released his first hostage: Willians Moura, leaving under his control women and a 64-year-old man. The second victim to be targeted by the kidnapper was Janaina Neves, 23 years old at the time and also a student, whom he forced to write in lipstick several threatening phrases such as “He will kill a general at 6 o’clock” and “He has a pact with the devil” followed by “He’s crazy”. When contact is established between the security entity and the kidnapper, the kidnapper orders Model 45 firearms, M-19 type grenades and money while holding a hostage as a target for possible shooting. For hours, Janaina continued to be pressured by the revolver and Sérgio was volatile, sometimes changing the order, sometimes stating that he would kill everyone (ibid.).

As the threats intensified, Damiana Nascimento Souza, 39, began to feel sick and begged to be released; she explains her situation, she tells that she is also a slum dweller and has a brother in prison, thus trying to create a bond with the robber, since she knew he had already been arrested. Geisa Gonçalves tries to impersonate her daughter, also wanting to be allowed to get off the bus, however, she was not granted such a benefit. Damiana begins to show signs of a heart attack and then the second victim, at 5:15 pm, is finally released. During this process, Janaina was still under the kidnapper’s control. As 6 pm approached, she was covered with a towel and, in a confused way, skipping some numbers, Sérgio counts to one hundred, stating that in the end he will kill the student. He then lays her down and shoots her, causing all the hostages to run towards the windows and start screaming (ibid.).

After the gunshots, the pressure on the police increased, however, they were prevented from shooting by orders of Governor Anthony Garotinho, who did not want the thousands of spectators who followed the kidnapping to see

a murder on national television, even if it was an “enemy” who put the lives of nine people at risk. After the shooting, “Sérgio” used another hostage: Geisa Firmo Gonçalves, just 20 years old and pregnant with her first child; she was a teacher and resident of Rocinha. The threats intensified to the point of putting the gun in the hostage’s mouth and saying that “one has already died and the other will die” (Ibid.). The kidnapper moves the hostages to the last seats of the vehicle and threatens to kill another of them, Luanna Guimarães Belmont, who was 19 years old at the time and was studying Communication at PUC-RJ. Later, he uses the fire extinguisher to blur the police officers’ vision of what was happening inside the bus, causing the police operation to retreat. In parallel, Geisa is in a state of panic and is comforted by the other women. One of them, the eldest, Antônia Cardoso da Costa, offers money and intercedes so she won’t be murdered. The tension is clear, while BOPE professionals advise Luanna to try to create bonds of friendship with “Sérgio”, in the hope that that impasse would have a less tragic end than expected by society and professionals who dealt with the situation (Ibidem).

Following the guidelines, Luanna tries to talk to “Sérgio”

Luanna talks to Sérgio. She asks about her sister. She insists on talking.

“Do you know what day it is?”

“Yeah, today is Valentine’s Day, so I’m going to kill a girlfriend”, says Sérgio.

“Oh, so you’re not going to kill me, because I don’t have a boyfriend,” concludes the hostage.

Luanna tries to show that she cares for him (CALDEIRA, 2003).

At that moment, another hostage, a 72-year-old woman, Maria Elvira Ribeiro, who was praying during the kidnapping, asks to approach “Sérgio” and put a necklace with

a religious pendant around his neck. Then, Lourival Sebastião Nascimento, 64, is released and the criminal again takes the hostage Geisa Gonçalves and says that they would “take a walk outside” (Ibidem). Luanna later stated that Geisa was very nervous and very scared.

The protagonist of the crime apparently had the intention of surrendering himself when getting off the bus with Geisa, however, when Sérgio moves a few meters away from the vehicle, with the hostage placed in front of him as a “shield”, one of the officers of the Tactical Intervention tries to shoot the bandit, however, ends up hitting the hostage and alerting the kidnapper who, as he already has the gun cocked, also shoots the victim with two more shots as he falls to the ground (ibid.).

From the beginning to the end of the kidnapping, which was widely covered by the media, it is estimated that 54 million Brazilians became spectators of the events that afternoon, the feeling generated by the images was of anguish while it was impossible to predict the outcome of the “kidnapping”. In parallel, there was not only monitoring by the news vehicles, many people surrounded the crime scene as a kind of audience in a spectacle. At the end of the “show”, the crowd advances on the criminal agent in order to promote a kind of revenge from the lynching. Even the companion of the shot hostage tried to kick him.

Despite all the disorder, “Sérgio” walks, pushed, to the police car, where he was suffocated to death by the military of the operation. Meanwhile, the remaining hostages walked out of the vehicle, including Janaína Neves, who everyone thought was dead from the shots, however, she only remained lying during the course of the kidnapping, making it clear that the agent’s intention was not to leave victims, but draw the attention of the state security institution.

The next day, the question that hovered over her was “who is Sérgio?”. The doubt about the identity of the kidnapper lasted for another 27 days after his death, being identified as Sandro do Nascimento based on the fingerprint records of the IFP (Instituto Félix Pacheco). According to the agency, Sandro already had two charges of robbery and armed robbery. Only one woman who claimed to be the young man’s mother claimed the right to bury him; Elza da Silva, 45 years old, presented herself at the IML stating that the kidnapper’s name was Alessandro da Silva and he was her son, which after DNA tests discovered to be a mistake. As a result, at the end of the thirty-second day the young man is finally buried, but, due to doubts about his identity, his death certificate is issued as a pauper and he is buried in a shallow grave. The only “family member” to attend his funeral was Dona Elza.

## THE KIDNAPPER

Sandro Barbosa do Nascimento was born in 1978 to Clarice and an unknown father. Together with his family, he lived in the Rato Molhado community, in São Gonçalo-RJ, until he was 6 years old, where his mother owned a bar that was a source of family income and, later, became the root of her traumas. In this, Clarice was stabbed and died in the presence of her son. Clarice’s sister, Julieta, narrated for the documentary by screenwriter José Padilha the traumatic scenario she encountered when she arrived at the place and saw her nephew.

I close my eyes and see what it was like when Sandro saw those three people attacking his mother, stabbing his mother, and I have the impression that he was left with his mother in pain, with the knife in her back, you know? He saw the knife in my sister’s back, I’m sure he did (Nascimento, Julieta. Bus 174, 2002).

After the tragedy, Sandro went to live with his aunt, however, due to the proximity to the

region where his mother was killed, the boy chose to live on the streets, being a form of escape from the events witnessed. Close to the Candelária Church, he met his “new family” and found a sense of belonging; he received help from the plastic artist and actress Yvonne Bezerra de Mello. According to her, Sandro “was quiet, quiet, he was a boy who always lived at home with his mother, he had never gotten into any complications, a normal child whose life was cut short by a violent act” (G1-RJ, 2015).

The danger was constant for street youths, especially at night, when they had to sleep in more hidden and remote places, as there were cases in which individuals who passed by the avenue picked up cobblestones on the floor to throw on the heads of those who were resting without knowing that they were not would wake up more (Bus 174, 2002). In addition, with the constant presence of hunger, Sandro was still very young when he started to use narcotics, a form widely used to alleviate the lack of food (Ibidem). As there were still no public policies aimed at the well-being of children and adolescents, in the understanding of lawyer Maria Helena Bragaglia apud PINHO<sup>1</sup>, street youths were seen only as objects of State intervention and not subjects of rights. This way, the state movement in relation to these boys was force to the Police, so they collected and placed them in shelters. Since many carried out thefts or other crimes of lesser potential to obtain food or to maintain their addictions, some encounters with security agents turned into conflict.

According to Psychology, adolescence is a period of search for identity, the individual being prone to external influences that intervene in social and cognitive formation, that is, in the way they relate and express their feelings (ANDREATTA; OLIVEIRA, 2005, p. 129-130 apud OLIVEIRA; TURECK,

2019 p. 4). Regarding Sandro’s story, street children, instead of being supported by the state, ended up being excluded by society in their adolescence and exposed to the world of crime, something that, from the psychic reference point, will contribute to the formation of identity. of these subjects. That said, the popular thought is formed that boys like the ones in Candelária are the cause of social problems, after all, their development is surrounded by more negative interventions than positive ones. In the words of PREUSSLER and CORDAZZO, 2018:

[...] in recent modernity, delinquents voluntarily choose criminality, without any influence of social circumstances, that is, they are seen as the cause of all society’s problems, when in fact their problems are caused by society itself, which forsakes, criminalizes and stigmatizes vulnerable groups (PREUSSLER; CORDAZZO, 2018).

At the age of 16, Sandro completed his fourth socio-educational measure at the Padre Severino Institute, a place recognized for several cases of violence, escapes, homicides, among other notable forms of negligence, as in the episode in 1997, in which one of the escapes had the resulting in the death of six people due to the fire. In addition, in 1999, the then administrative director of the institute was arrested for sexually abusing young people who were in state custody and, in 2008, the Public Ministry charged several agents of the reformatory with the intentional murder of a teenager.

While Sandro was in charge of the Institute, his aunt Julieta made some visits, to which she reports in José Padilha’s documentary:

I was so devastated. When I got there, I was crying and people were still laughing in my face. I cried because I wasn’t even worried about the other children who were there because they passed and beat the children’s hands with their clubs. Then I used to say, “Guys, these children, when they get out of there, they’re going to get worse, because

they don't have support, they don't have affection. I think violence, right? the world is already violent, you go and put the child in an institution there and mistreat them and they will get worse (interview with Tia Julieta for the documentary bus 174. 2002. 00:44:43)

When he was of age, Sandro continued to be chemically dependent, following the routine in the practices of theft to maintain his addictions, provoking two indictments: one for qualified theft and another for attempted robbery. The execution of the sentence was delimited to the Twenty-sixth Police Station, popularly called "the safe" by the detainees because there was no possibility of sunbathing. In the documentary bus 174, one of the jailers who met Sandro reports that in the cells where the limit was ten inmates, the average reached 25 people, making it even more unbearable due to the heat and poor air circulation in the place. In 1999, Sandro, along with other detainees, managed to escape from the institution, a fact reported by jailer Mendonça:

Sandro came on the wave, as there were bums there on the wave, because they understood that the jail was open, he happened to be in a jail like that, took advantage of the wave and left. Because the only opportunity he had to get away. So even when he passed me, he was like, you know, like: "Gee, I have to go, this is the opportunity and he left" (Mendonça for the documentary bus 174, 2002, 01:01:00).

After the escape, Sandro starts living in the Nova Holanda neighborhood, where he meets Dona Elza, who had a son named Alex, with whom he lost contact when he was 4 years old. The last information he got was that the boy was "on the streets". Due to the similarity between the life story and the fictitious names Alex and Alessandro that Sandro used, a mother and son relationship is established between them. She reports that Sandro wanted to start studying and working, that he wanted

to find "Aunt Yvonne" so that she could help him. In her testimony, Dona Elza carries a maternal tone when exposing that the young man really wanted to change his life.

## **JAKOBS' DESCRIPTIVE THEORY AND BRAZILIAN SOCIETY**

In 1985, Gunther Jakobs, a German jurist, outlined the theory of the Criminal Law of the Enemy which, although still discussed by scholars regarding its approach, stated that it was "a suitable instrument to describe a certain scope, of great relevance, of the current development of criminal legal systems" (JAKOBS, 2012, p. 52), a definition that will be used for the following discussion, that is, its descriptive aspect. The German scholar intended to distinguish the figure of the author in two poles, in which the first would represent the criminal law of the citizen, punished only when the criminal conduct is externalized, still having his private sphere separated from the criminal law and, in the other vertex, would be the criminal offense of the enemy, in which the individual would be criminalized previously, that is, without, in fact, having occurred damage to the legal interest (GRECO, 2005), since he would be classified as someone of extreme danger due to his habituality in criminal conducts and, this way, it would be acting according to its "Natural State" (Ibid.).

For Jakobs, there are people who, because of their insistence on delinquency, return to their natural state before the rule of law. Thus, according to him, an individual who does not admit to being obliged to enter a state of citizenship cannot participate in the benefits of the concept of person. And is that the state of nature is a state of absence of norm, that is, excessive freedom as well as excessive struggle. Whoever wins the war determines what is the norm, and whoever loses must submit to that determination (Ibid.).

For Gunther Jakobs (1985 apud Mendes, 2011), the agent classified as an enemy would lose the attribute of 'person' because this is a social concept. In this sense, the human being comprises a natural process in which all are encompassed, that is, the citizen, as a person, carries with him rights and duties and, thus, performs a social function; the enemy, on the other hand, would be displaced from the role it must fulfill, along with the normative expectations that surround them, thus representing a return to the Natural State, characterized by the absence of norms, which demonstrates the influence of Thomas Hobbes<sup>1</sup> in Jakobs' theory. In view of this, the offender must be prevented for, in addition to putting at risk an asset protected by criminal law, also offending the legal system as a whole.

From this perspective, it is possible to draw a parallel between Sandro's trajectory so far and an adaptation of the theory addressed by Gunther Jakobs on state treatment of these marginalized individuals: the so-called Criminal Law of the Enemy. In harmony with the philosopher and professor, both society and the State itself tend to see such people as enemies due to their socio-economic condition and influences, that is, when considering the protagonist of this study, it is noted that, from the moment in which he inserts himself into marginality and persists in the violation of criminal types, he ceases to be a citizen and becomes something that must be eliminated, as exemplified by GRECO (2005) when citing Jakobs, establishing that the opponent of the State must not be treated as subject of rights since he is no longer in a situation of civility, that is, they are not considered as people, but as something that poses danger to social organization, and thus must be neutralized (JAKOBS, 1985 apud GRECO, 2005). p. 218).

           If we add invisibility, the natural drama

1. (1588-1679). English political theorist and philosopher, author of "Leviathan", a work in which he exposes his view of society always being threatened by civil war, so the population lives in a situation of constant conflict: "a war of one against all and of all each other" (FRAZÃO, 2021).

of adolescence, we will understand how difficult this transit is, this trajectory of this boy, of any Sandro in life in the city. This invisible being. Our society defines these human beings, not as human beings, but as society's garbage. Then they are thrown into pigsties and we completely disclaim responsibility for them (Sociologist for the documentary bus 174, 2002, 00:40:15).

The vision of Sandro Barbosa do Nascimento as an antagonist, along with the other street children, becomes explicit on July 23, 1993, in a police operation that provoked the so-called Chacina da Candelária. In this episode, the authorities who were supposed to protect the population carried out a series of firearm shots against the young people with the aim of eliminating the miserable minors and, in parallel, taking revenge for an event in the previous days in which a teenager broke the glass of the patrol car of the 5th Military Police Battalion when throwing a stone. Added to this, the belief that, since such a battalion was known as a "death squad" involved in drug trafficking, they intended to "settle accounts" with the boys who were also in this criminal sphere (SOUSA, 2019).

After losing members of the family to which he belonged in the Chacina da Candelária, Sandro began to move constantly, no longer staying in one place, like other survivors. Before the massacre, there were around 70 children, however, activist Yvonne Bezerra, in later interviews, said she believed that the majority who witnessed the 1993 bombing are dead.

Most are dead. I have the same phone number and my last contact with them was 4 years ago. One died of a stray bullet in Maré and a girl died of illness, she already had problems. The others, maybe one is alive, Sérgio, who was a witness. The others, if they were alive, would contact me (Yvonne for Agência Brasil, 2018).



Faced with these cases of abuse of police power, Brazilian citizens still face difficulties in understanding the rule of law that must be guaranteed. The best symbology of the thought that inflames the mind of society would be the words of Patrícia, sister of one of the victims of the candelaria, who later became an activist: “The population asks for slaughter, especially when they are not with their children. If he’s dying at the hands of the police, it’s because he was doing something wrong. Until you find out that it’s not that” (G1, 2015).

In this sense, when talking about marginalization, it is said that such a street community, sociologically, is despised by the social body for being considered “inferior” or, shaping the definitions elaborated by Jakobs, “non-person”, that is, they end up being penalized “for not conforming to the social standard contained in the norm” (DA SILVA; TEMELJKOVITCH, 2018). This way, it is understood that punishment is applied to the individual, but not for his conduct, but for what he is and represents, even if he has not yet committed the crime, only for the presumption of criminal action according to external influences. received by the subject (Ibid.).

Jakobs’ assertion that it is still not possible to do with the enemy what one wants, because he would be endowed with a “potential personality”, so that it would not be allowed to go beyond what is necessary, is not a solution, but precisely the problem. After all, whoever is treated only according to considerations of utility and necessity is not a person, but a thing. Here it will be as impossible to speak of absolute moral limits as it is in dealing with any objects of the law of things, between which the author has clearly been thrown. (GRECO, 2005)

In fact, the documentary “Ônibus 174” by José Padilha exposes, based on an analysis by the sociologist Luis Eduardo, the vision of

the bandit as a kind of social cancer that was fought in the terminal phase instead of at the origin, as in the support/ assistance to needy populations and implementation of public security agencies that constituted the failures that shaped Sandro’s trajectory.

When I was fifteen, my mother’s head was ripped off, you know? I turned 26, I have nothing to lose.

I’m going to make this situation very complicated.

(...) Oh, this is not an action movie, huh! Here the matter is serious, my friend. (...) You destroyed many things there in the Vigário, didn’t you? You killed my dear friends from Candelária and I was there, I saw it. If you weren’t there, then get out!

Brazil, as a Democratic State of Law, in the light of the principle of human dignity would be totally incompatible with the admission of the criminal law of the enemy of Günther Jakobs, however, as already exposed, the German scholar conceptualizes his work as descriptive due to the fact that society, subjectively, already apply such thesis. With the growth of movements that seek punitivism, such as ‘Law and Order’, for the philosopher, it would be dangerous not to delimit who would actually be at the mercy of suffering the consequences of the enemy’s right, since for the author, not every the delinquent is an opponent of the legal system (JAKOBS, 2012, p. 28). Therefore, when the antagonist is delimited, in compliance with the precepts of the democratic state of law, it would be the best way to contain punitive advances (Ibidem, p. 32).

Brazilian scholar Rogério Greco, by emphatically criticizing Jakobs’ position, exposes the controversies of the theory that, in his conception, defending the application of the German theory would be a way of getting rid of the democratic social advances established so far, because assuming the

possibility of an enemy of the state legitimizes characteristics of authoritarian systems, since it breaks with the limit of state power to punish.

We can not dismiss all our achievements that have been given to us in homeopathic doses over the years, under the false argument of citizen versus enemy, because, since it is not possible to know tomorrow, who knows, maybe some crazy person will come to power and say that enemy is also the one who does not accept the theory of Criminal Law of the Enemy, and there I will be arrested, without any right or guarantee, in exchange for an empty and inhuman argument (GRECO, 2012).

If analyzed the criminal law of the enemy as a descriptive concept, it is clear that there is its application when in the omission of the Brazilian state, since certain groups are criminalized to the point of being denied their status as a person in such a way that they can be eliminated, just the futile justification that they resisted the arrest warrant, that the military agents confuse him with bandits in pursuit or even when the confusion falls on objects such as umbrellas and tools. This way, the result of 5804 deaths by police officers in 2019 is obtained (G1, 2020). The 'color' factor must also be taken into account in the debate, because 78% of those killed by the police are black (G1, 2021).

The Brazilian government has not always behaved as omissive, also showing itself as a legitimizing agent, as in the political management of certain personalities, such as General Nilton Cerqueira, who assumed the position of secretary of public security in Rio de Janeiro (1995) and, based on positivist ideals, created a pecuniary compensation for police officers for an act of bravery. This is how the research of the Violence Analysis Laboratory coordinated by researcher Ignacio Canon (2003) and evidenced by the article by Robson Rodrigues is exposed:

To the perception that criminality was proliferating through the leniency of left-wing politicians, in this case former governor Leonel Brizola, Cerqueira responded by creating a monetary award for "acts of bravery" by police officers who took risks in the fight against crime, soon dubbed "Western gratification" for actually encouraging the death of the enemy (Cano 2003). The result was one of the harshest and bloodiest repressions that the state has experienced, with the consequent increase in homicide rates and in controversial acts of resistance [...]

In 1995 there was a peak of 61.8 homicides per group of 100,000 inhabitants. in the state and, in 1997, it was the capital's turn to reach the peak of 53.7 homicides per 100,000 inhabitants (RODRIGUES, 2014).

Such a position, immersed in punitive ideology, has become a "Trademark" of those who have occupied the presidential chair in recent decades, such as the pronouncement of former president Luiz Inácio Lula da Silva in 2007 in relation to drug trafficking in Brazil. Rio Janeiro which, according to the authors Alexandre da Cruz and Ilka Ferrari, says: "This barbarity that happened in Rio de Janeiro cannot be treated as a common crime. This is terrorism and it has to be fought with the strong policy and strong hand of the Brazilian State". The current president, Jair Messias Bolsonaro, also externalized speeches of the same nature on his social networks, in which he congratulated one of the biggest episodes of police executions in the State of Rio de Janeiro: "By treating drug traffickers who steal, kill and destroy families as victims, the media and the left equate them with the common, honest, law-abiding and fellow citizen". It is noted, therefore, that such declarations diverge from the position occupied, since the Motherland Constitution prohibits the death penalty (with the exception of the declared state of war). In harmony with the arguments of the Minister of the STF (Federal Court of Justice), Edson

Fachin, another emblematic figure who stands out for his arbitrariness in the fight against trafficking without respecting any form of “minimum standards of reasonableness and proportionality, such as those established by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials” (Conjur, 2019) are the representatives of the public security agency.

Furthermore, it is necessary to take into account that extrajudicial executions [in Brazil] are widespread. Almost no measures were taken to resolve the serious problem of clashes in the exercise of police activity, or to reduce the high number of so-called resistance actions. A good part of the homicides is still never investigated in a significant way (Ibid.).

In this logic, Sandro Barbosa do Nascimento, when he was taken to the police car after the hijacking of the public vehicle, was killed by asphyxiation by police officers of the operation who justified themselves with the argument that it was a ‘self-asphyxiating’ and, in the trial for homicide, were acquitted in a people’s court. That said, it can be said that Brazil, as well as being silent on several issues, is also silent when the institutions that constitute it are arbitrary as to the use of their power and/or influence. This is how Luiz Eduardo De Vasconcellos Figueira explains the thinking of Paulo Rangel in his doctoral thesis: “In the jury, equals do not judge equals, it is enough to verify the formation of the Sentencing Council: as a rule, civil servants and professionals. And the defendants? poor. Usually drug dealers and, exceptionally, one of us” (RANGEL, 2003, p. 477).

According to Aristotle apud Michael J. Sandel, what differentiates human beings from animals is not only the ability to reason, but also the ability to express feelings, language, as it records and expresses “what is just or unjust, distinguishes the right from wrong” (SANDEL, 2020). This way, the social Sandros,

knowing that they are psychologically shaped by outside influences during adolescence, after so many events they have experienced and the ineffectiveness of state aid, end up seeing no other way of expressing themselves than through violence, since they have grown up and were formed from it.

If moral virtue is something we learn by doing, we must somehow develop right habits first. For Aristotle, this is the overriding principle of the law - to cultivate habits that make us individuals of good character. “Legislators make citizens good by instilling in them good habits, and this is what every legislator wants; those who don’t, don’t achieve their goal, and that’s where a good constitution differs from a bad one.” Moral education is less concerned with enacting laws than with forming habits and building character. “It makes little difference... whether we cultivate habits of one kind or another from a very young age; makes a lot of difference, or rather, makes all the difference.” (Sandel, 2020 apud Aristotle, 1925).

Therefore, they cannot be characterized as “non-persons”, since, in addition to having a human personality, they were shaped by society itself and, if they wanted an individual of moral virtue, they must develop good habits and cultivate them, as well as legislators. and, by extension, public departments.

## FINAL CONSIDERATIONS

Given the facts presented, it is concluded that Sandro Barbosa do Nascimento, after a tragedy, suffered several ills from the lack of public policies and was made invisible by the social body, so that the first state intervention that touched him was the collective vision that he was source of problem for the security of the community, that is, without first facing the causes that corroborated for events such as the Candelaria, society was confronted by individuals who were transformed into enemies by itself. This way, if the unbridled

violence by the State that, between the lines, revokes the status of "person" of a portion of the population due to stigmas of color or socioeconomic condition, is the only way to guarantee a pseudo defense, then we will be facing the popularly called the "medicine that kills the patient".

It is incompatible, therefore, to say that the State is arbitrary because this is the set of public institutions, however, it is represented by people, and these are arbitrary and, as demonstrated, in a situation of power, they end up using it in a way that propagate their own ideals, hindering moral justice and misrepresenting procedural justice that encompasses all individuals in an egalitarian context. Therefore, the proposal is that there is greater contact with the social group in order to analyze their needs, in addition to investing in technological equipment that avoids violent confrontation by providing a tactical action, such as the use of cameras in drones for greater mapping and preventing episodes of confusion of household items with weapons. Another factor for defense operations would be community policing, which is based on the interaction between the community and the police, being a way of recovering the relationship between the state's armed force with a portion of the population that was greatly abused by the pseudo peace interventions. In this option, the citizen-policeman would act in the prevention of crime directly in his community and, at the same time, the police would make constant rounds, visiting public places such as churches, schools, shops, among others, thus forming a bond of trust with the population.

In this logic, it would be simplistic to say that it is necessary to implement norms or encourage public policies aimed at helping the aforementioned communities, as this will not happen as long as the population cultivates the same thinking, that is, change

must not occur purely and merely on the part of the State, but by the notion that, when belonging to a Democratic State of Law, the guarantees of others are their own guarantees if they were in the same situation, that is, the change must come from society.

## REFERENCES

- CALDEIRA, Cesar. **Mancha na cidade do Rio de Janeiro: a trajetória de um** DA SILVA, Camila R. et al. Estados não sabem raça de mais de 1/3 dos mortos pela **delinquente notável**. Brasília a. 40 n. 159. 23 fls. jul./set. 2003.
- CRUZ, Alexandre ; FERRARI, Ilka. **O Inimigo nosso de cada dia: uma interlocução entre psicanálise e direito**. Revista Ágora - Estudos em Teoria Psicanalítica. Rio de Janeiro. v XXI. n. 2. pags. 169/180. Agosto de 2018. Disponível em: <<https://www.scielo.br/j/agora/a/NDJZ44XB4qnhPgpR9GFXmcz/?format=pdf&lang=pt>>. Acesso em: 30 mai. 2021
- DA SILVA, Leonardo V.; TEMELJKOVITCH, Kime. **Direito Penal do Inimigo**. Publicação independente, ISBN: 9781718174580. 2018.
- Especial sobre ônibus 174 lembra erro de PM e narra a vida de Sandro**. G1. Rio de Janeiro, 2015. Disponível em: <<http://g1.globo.com/rio-de-janeiro/noticia/2015/06/especial-sobre-onibus-174-lembra-erro-de-pm-e-narra-vida-de-sandro.html>>. Acesso em: 27 mai. 2021
- ÔNIBUS 174. Direção: José Padilha. 133 min. Rio de Janeiro: Riofilme, 2002.
- FIGUEIRA . Luiz Eduardo de Vasconcellos. **O ritual judiciário do tribunal do Júri**. Tese. Universidade Federal Fluminense Programa de Pós-graduação em Antropologia. Niterói. pag. 125, 2007. Disponível em: <<http://ppg antropologia.sites.uff.br/wp-content/uploads/sites/16/2016/07/LUIZ-EDUARDO-DE-VASCONCELLOS-FIGUEIRA.pdf>>. Acesso em: 30 mai. 2021.
- FRAZÃO, Dilva. **Thomas Hobbes: filósofo e teórico político inglês**. Ebiografia, 2021. Disponível em: <[https://www.ebiografia.com/thomas\\_hobbes/](https://www.ebiografia.com/thomas_hobbes/)>. Acesso em: 30 mai. 2021.
- GRECO, Luis. **Sobre o chamado direito penal do inimigo**. Revista da Faculdade de Direito de Campos, Ano VI, Nº 7 - 2005. Disponível em: <<http://fdc.br/Arquivos/Mestrado/Revistas/Revista07/Docente/07.pdf>>. Acesso em: 30 mai. 2021.
- GRECO, Rogério. **Direito Penal do Inimigo**. JusBrasil, 2012. Disponível em: <<https://rogeriogreco.jusbrasil.com.br/artigos/121819866/direito-penal-do-inimigo>>. Acesso em: 27 mai. 2021.
- Homem é morto pela polícia após resistir à prisão em Faro, no PA**. Diário de Manauara, 2021. Disponível em: <<https://diariomanauara.com.br/policia/homem-e-morto-pela-policia-apos-resistir-a-prisao-em-faro-no-pa/>>. Acesso em: 30 mai. 2021.
- JAKOBS, Günther; MELIÁ, Manuel C. **Direito Penal do Inimigo: Noções e Críticas**. 6ª ed. Porto Alegre: Livraria do Advogado Editora, 2012.
- MOURA, Carolina. **PM confunde guarda-chuva com fuzil e mata garçom no Rio, afirmam testemunhas**. EL PAÍS, 2018. Disponível em: <[https://brasil.elpais.com/brasil/2018/09/19/politica/1537367458\\_048104.html](https://brasil.elpais.com/brasil/2018/09/19/politica/1537367458_048104.html)>. Acesso em: 30 mai. 2021.
- NITAHARA, Akemi. **Maioria de sobreviventes morreu, diz ativista, 25 anos após chacina**. Agência Brasil. Rio de Janeiro, 2018. Disponível em: <<https://agenciabrasil.ebc.com.br/direitos-humanos/noticia/2018-07/nao-consegui-salvar-aquelas-criancas-diz-ativista-25-apos-chacina>>. Acesso em: 27 mai. 2021
- OLIVEIRA, Renata H. D.; TURECK, Lucia T. Z. A invisibilidade social e a prática do ato infracional na adolescência: possíveis correlações. **Revista Educação e Cultura Contemporânea**. PPGE/UNESA. Rio de Janeiro, v. 16, n. 45, 2019.
- PAULUZE, Thaiza; NOGUEIRA, Italo. **Exército dispara 80 tiros em carro de família no Rio e mata músico**. Folha de S. Paulo, 2019. Disponível em: <<https://www1.folha.uol.com.br/cotidiano/2019/04/militares-do-exercito-matam-musico-em-abordagem-na-zona-oeste-do-rio.shtml>>. Acesso em: 30 mai. 2021.
- PINHO, Débora. **A tragédia que expôs o drama do menor abandonado**. Consultor Jurídico, 2009. Disponível em: <<https://www.conjur.com.br/2009-jul-23/imagens-historia-tragedia-expos-drama-menor-abandonado>>. Acesso em: 27 mai. 2021.
- PERIAGO, Francisco R. **A análise discursiva no documentário Ônibus 174**. 2016. 232fl. Tese (Doutorado em Letras) – Universidade Presbiteriana Mackenzie – São Paulo, 2016.
- Policial confunde ferramenta com arma e mata dois mototaxistas no RJ**. G1, 2015. Disponível em: <<http://g1.globo.com/bom-dia-brasil/noticia/2015/10/policial-confunde-ferramenta-com-arma-e-mata-dois-mototaxistas-no-rj.html>>. Acesso em: 30 mai. 2021.

PREUSSLER, Gustavo S.; CORDAZZO, Karine. **A sociedade excludente: exclusão social, criminalidade e diferença na modernidade recente**. Direito & Práxis. Rio de Janeiro: Revan, 2002, 314p.

RODRIGUES, Robson. **Os dilemas da pacificação: Notícias de Guerra e Paz em uma “Cidade Maravilhosa”**. Instituto Igarapé. Rio de Janeiro. vol 7. pags 69/88. Agosto de 2014. Disponível em: <<https://igarape.org.br/wp-content/uploads/2014/07/artigo-8-p5.pdf>>. Acesso em: 30 de maio. 2021

SANDEL, Michael J. **Justiça: o que é fazer a coisa certa**. 31ª ed. Rio de Janeiro: Civilização brasileira, 2020.

SILVEIRA, Daniel; BOECKEL, Cristina. **Chacina da Candelária: sobrevivente ainda tem pesadelos, diz irmã**. G1. Rio de Janeiro, 2015. Disponível em: <<http://g1.globo.com/rio-de-janeiro/noticia/2015/07/chacina-da-candelaria-sobrevivente-ainda-tem-pesadelos-diz-irma.html>>. Acesso em: 27 mai. 2021.

SILVA, GRANDIN, CAESAR, REIS polícia em 2020; dados disponíveis mostram que 78% das vítimas são negras. G1, 2021. Disponível em: <<https://g1.globo.com/monitor-da-violencia/noticia/2021/04/22/estados-nao-sabem-raca-de-mais-de-13-dos-mortos-pela-policia-em-2020-dados-disponiveis-mostram-que-78percent-das-vitimas-sao-negras.ghtml>>. Acesso em: 30 mai. 2021

SOUSA, Alana. **Chacina da Candelária: uma noite de brutalidade no Rio de Janeiro**. Aventuras na História, 2019. Disponível em: <<https://aventurasnahistoria.uol.com.br/noticias/reportagem/historia-chacina-da-candelaria-uma-noite-de-brutalidade-no-rio-de-janeiro.phtml>>. Acesso em: 27 mai. 2021.