

NATURALIZATION OF INEQUALITY IN BRAZIL: A DIALOGUE WITH CARL SCHMITT, WALTER BENJAMIN AND GIORGIO AGAMBEN |*NATURALIZACIÓN DE LA DESIGUALDAD EN BRASIL: UN DIÁLOGO CON CARL SCHMITT, WALTER BENJAMIN Y GIORGIO AGAMBEN |**NATURALIZAÇÃO DA DESIGUALDADE NO BRASIL: UM DIÁLOGO COM CARL SCHMITT, WALTER BENJAMIN E GIORGIO AGAMBEN*BRUNA DA PENHA DE MENDONÇA COELHO
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ABSTRACT | The article establishes a dialogue between Carl Schmitt, Walter Benjamin and Giorgio Agamben's theories, transposing them to the Brazilian social reality. The naturalization of inequality is a cruel mark of our society, and the philosophy of law contributes to a juridical approach that takes into account the social disparities. First, the state of exception will be analyzed in the light of Benjamin and Agamben's works. Later, with Schmitt, the issue of exception will be analyzed together with the political decision, demonstrating the intrinsic connection between law and politics and the reflection of this in the worsening of social inequalities. It will be established the difference between the Schmitt's concept of "Enemy" and the Agamben's concept of *homo sacer* in the establishment of the state of exception and how the concept of "enemy" was distorted with the construction of Enemy Criminal Law's Theory.

KEYWORDS | Inequality. Brazil. Schmitt. Benjamin. Agamben.

RESUMEN | *El artículo establece un diálogo entre las teorías de Carl Schmitt, Walter Benjamin y Giorgio Agamben, transponiéndolas a la realidad social brasileña. La naturalización de la desigualdad constituye una marca cruel de nuestra sociedad, y la filosofía del derecho contribuye a un enfoque jurídico que tiene en cuenta las disparidades sociales. Se hará, primeramente, un análisis del estado de excepción a la luz de las obras de Benjamin y Agamben. Posteriormente, con Schmitt, la cuestión de la excepción será analizada en conjunto con la decisión política, demostrando el vínculo intrínseco entre derecho y política y el reflejo de esto en el agravamiento de las desigualdades sociales. Se establecerá la diferencia entre los conceptos de "enemigo", de Schmitt, y homo Sacer, de Agamben, en la instauración del estado de*

excepción y cómo el concepto de "enemigo" fue desvirtuado con la construcción de la Teoría del Derecho Penal del Enemigo.

PALABRAS CLAVE | *Desigualdad. Brasil. Schmitt. Benjamin. Agamben.*

RESUMO | *O artigo estabelece um diálogo entre as teorias de Carl Schmitt, Walter Benjamin e Giorgio Agamben, transpondo-as para a realidade social brasileira. A naturalização da desigualdade constitui marca cruel de nossa sociedade, e a filosofia do direito contribui para uma abordagem jurídica que leva em conta as disparidades sociais. Far-se-á, primeiramente, uma análise do estado de exceção à luz das obras de Benjamin e Agamben. Posteriormente, com Schmitt, a questão da exceção será analisada em conjunto com a decisão política, demonstrando a ligação intrínseca entre direito e política e o reflexo disto no agravamento das desigualdades sociais. Será estabelecida a diferença entre os conceitos de "inimigo", de Schmitt, e homo sacer, de Agamben, na instauração do estado de exceção e como o conceito de "inimigo" foi desvirtuado com a construção da Teoria do Direito Penal do Inimigo.*

PALAVRAS-CHAVE | *Desigualdade. Brasil. Schmitt. Benjamin. Agamben.*

1. INTRODUCTION

In the study of law, it is common to take as a starting point the positive norm, and draw from it the theoretical networks that will permeate the legal approaches that we propose to do. We often forget that, as a phenomenon not only normative, but also social and cultural, the right requires of its operators the ability to look at reality and verify the asymmetries and webs of power that develop in it.

It is on this track that the philosophy of law shows itself, more than ever, of great value, since it reconnects law with the problem of justice, from which it should never have been dissociated. The abstraction of the norm, within a perspective that takes legal knowledge by merely formal structure, is too dangerous, because it leads to the concealment of the concrete subject of injustice. In fact, the philosophy of law exercises a grounding function, as well as critical and evaluative, to the extent that it provides the fundamental metascientific knowledge for the correct understanding of legal reality and is able to appreciate a certain legal order "according to the most fundamental requirements of the human person's being and social life"¹.

One of the cruelest marks of Brazilian society, the nefarious heritage of colonial times (times that often do not seem to have ended), is the naturalization of inequality. The trivialization of social disparities, the relativization of life, the assumption that the rights housed in the constitutional charter are just a sheet of paper disconnected from social reality for a large part of the population, are very noticeable wounds that dark speeches try to hide from time to time.

The purpose of this article is to establish a dialogue between three authors of extreme relevance to the philosophy of law (Carl Schmitt, Walter Benjamin and Giorgio Agamben) and make use of their theoretical contributions to draw a critical analysis of this still quite open wound that is the inequality in our country, as well as the mechanisms that provide the naturalization of so serious social illness.

1 HERVADA, Javier. *Lições propedêuticas de filosofia do direito*. Translation by Maria Gasparotto. Technical review by Gilberto Callado de Oliveira. São Paulo: Martins Fontes, 2008, p. 36.

Schmitt's contribution includes, above all, an incisive critique of positivism and the recognition that there is a very specific relationship between norm and decision-making. The exception is rethought, the link between law and politics is rethought. The moment when non-compliance with the norm occurs cannot be ignored by law, because it is precisely there that power relations are unveiled. It should also be noted that, regarding the Schmittian division of the politician in the friend-enemy binomial, certain later authors tried to embody these categories, giving rise, in a way, to a distortion of the original theory, which will be addressed in more detail ahead.

Benjamin, in turn, is essential in any study that intends to problematize and question the production of a concept of history that hides the tradition of the oppressed. Moreover, the understanding that the invisibilized by history is renewed in the present, that the ideology of progress not only does not stop barbarism, but provides it daily, opens our eyes to the sense that law, to a large extent, produces violence. The perception that, for the oppressed, the state of exception is the rule, leads the author to project what would be, in his conception, a true state of exception.

Finally, the theory of the contemporary Italian philosopher Giorgio Agamben is of remarkable relevance with regard, in particular, to the study of the state of exception (whose counterpoint with the Benjaminian state of exception will be traced later). Moreover, the rescue of the *homo Sacer* figure of Roman law can help us to understand how, in our social reality, the cruel process of relativization of the life of a certain portion of the population.

In fact, these are very valuable contributions, the study of which is - more than desirable - necessary.

2. LAW AND PRODUCTION OF VIOLENCE. AN ANALYSIS OF THE STATE OF EXCEPTION IN THE LIGHT OF THE THEORIES OF WALTER BENJAMIN AND GIORGIO AGAMBEN

Walter Benjamin² is concerned with analyzing how the civilizing project has a direct relationship with the production of oppression and violence, which falls daily on the invisibilized by history. The loser of history lives on, updates himself in the present. For the oppressed, the state of exception consists of a permanent exclusion; it is not exceptional or sporadic (hence the idea of state of exception as a rule). The systematic production of barbarism that is updated in time is very palpable in our social reality and can be exemplified by the figure of the resistance records, which represent a true remnant of the military regime (also studied in the light of Agamben's theory)³.

It is customary to propagate the idea that where there is right, the relations of violence end. Nevertheless, it is necessary to recognize that law and its normativity can themselves be propitiators of violence. It is in this context that the author proceeds to a critical analysis both of theories that assume the production of violence as a legitimate mechanism to achieve just ends, as those that conceive of power-violence as something generated and legitimized throughout history. "It is, then, about thinking critically the Law making the criticism of the means: power and violence"⁴.

Thus, understanding the claws of social exclusion, the systematic violence practiced in the Brazilian favelas, the assumption that certain lives have no value to society, all this requires a study of national history, especially the history of slavery. And the most important thing is to realize that it is not a finished story, that exists somewhere in the past; it is oppression that is perpetuated daily. With the outbreak of the First World War, the perception that the State massively produces violence became evident, shaking the belief held

2 LÖWY, Michel. *Walter Benjamin: aviso de incêndio - Uma leitura das teses "Sobre o conceito de história"*. São Paulo: Boitempo, 2005, p. 70-95.

3 FERREIRA, Natália Damazio Pinto. *Testemunhas do esquecimento: uma análise do auto de resistência a partir do estado de exceção e da vida nua*. Dissertation (Master). Universidade do Estado do Rio de Janeiro, Faculdade de Direito, 2013. Advisor: Profa. Dra. Bethânia de Albuquerque Assy.

4 RODRIGUES, Ivoneide Fernandes. *Violência, mito e destino: para uma crítica do Direito com base em Walter Benjamin*. Dissertation (Master). Centro de Humanidades da Universidade Estadual do Ceará, 2010, p. 37. Advisor: Prof. Dr. João Emiliano Fortaleza de Aquino. Available at: http://www.uece.br/cmef/dmdocuments/dissertacoes2010_violencia_mito_destino_critica_direito_benjamin.pdf. Accessed on: June 6th, 2016.

until then that the State was the best-finished entity through which human beings could create social life and achieve progress.

Another mark of the ideology of progress (which tends to be established at the expense of social barbarism and the worsening of inequalities) is the precariousness of labor relations based on the discourse of modernization of the productive process. The deregulation of labor relations, which increasingly finds abundant ground in the productive model currently in force in the capitalist system, leads progressively to the increasingly intense restriction of labor rights and the worsening of working conditions. It also leads to the expansion of the use of institutes that, once distorted in Brazilian practice, tend to be used in order to reduce costs (due to the depreciation of the wage standard) and the exemption of responsibilities, such as outsourcing.

In fact, in the midst of what was conventionally called the Third Industrial Revolution, data from the International Labor Organization indicate that Benjamin's warning was accurate. Work has not ceased to have centrality in contemporary capitalism; what is observed is precariousness and a consequent increase in exploitation⁵. And, given the scenario of political instability that the country is currently experiencing, special caution must be taken to avoid setbacks.

"It is necessary, therefore, at least to have the perception that the labor issue, once again, is the central point of socio-economic tensions, but the way the political crisis has been made explicit, from a dispute on the plane of appearances, let go of the deep causes of the labour-capital relationship, it may be that labour rights constitute the currency of exchange to achieve political stability, without there being the forces to oppose it, because most of the people who have positioned themselves in the debates will not suffer the direct consequences of this dismantling of rights, which can therefore come with or without impeachment"⁶. (Translated).

5 PRIEB, Sérgio. *A classe trabalhadora diante da Terceira Revolução Industrial*. Available at: http://www.unicamp.br/cemarx/anais_v_coloquio_arquivos/arquivos/comunicacoes/gt4/sessao1/Sergio_Prieb.pdf. Accessed on: March 20th, 2016, p. 5.

6 SOUTO MAIOR, Jorge Luiz. *Os direitos trabalhistas sob o fogo cruzado da crise política*. Published on March 27, 2016. Available at: <https://blogdaboitempo.com.br/2016/03/27/os-direitos-trabalhistas-sob-o-fogo-cruzado-da-crise-politica/>. Accessed on: June 6th, 2016.

Back to Benjamin, it is noticed that the philosopher noted, quite correctly, that the ideology of the civilization march ignored that scientific progress does not lead to a natural elimination of political and social barbarism (just analyze the fascist experiences of the twentieth century)⁷. In Brecht's words, "Benjamin stands up against the idea of history as a continuous process, of progress as a powerful company of a few rested heads [...]"⁸. (translated).

The author proposes, then, the establishment of a "real state of exception". There is no incitement here to an authoritarian policy, because what he wants is the *real exception*, the end of authoritarian powers (although some glimpse an excess of utopia). To produce the true state of exception means to abolish domination and classes, to build a society in which there are no "superior" and "inferior", "masters" and "slaves". To do so, he intends to use a concept of history that gives account of the tradition of the oppressed, being necessary to "rub history against the grain". Moreover, action is needed (hence some revolutionary pessimism). In the words of Benjamin, in his Thesis VIII, "the tradition of the oppressed teaches us that the 'state of exception' in which we live is the rule. [...] Then our task will arise, that of establishing the real state of exception [...]"⁹. (translated).

Agamben¹⁰, commenting on the two conceptions of the state of exception of the Benjaminian theory, points out that the former can be associated with that Schmittian as a *fictio iuris* intended to make the state power use of the very suspension of the right, the anomie. The second, the real, concerns civil war, revolutionary action, which does not intend to have any link with law¹¹.

The Italian philosopher notes that the "voluntary creation of a permanent state of emergency" has made the state of exception the prevailing

7 LÖWY, Michel. *Op. Cit.* P. 83-86.

8 BRECHT, Bertolt. *Arbeitsjournal*. 1º vol.: 1938-1942. Ed. Werner Hecht, Frankfurt, 1973, p. 294 *APUD O anjo da história / Walter Benjamin*; organization and translation of João Barrento. Belo Horizonte: Autêntica Editora, 2012, p. 174.

9 LÖWY, Michel. *Op. Cit.* P. 83.

10 AGAMBEN, Giorgio. *Estado de exceção*. Tradução de Iraci D. Poletti. São Paulo: Boitempo, 2004, p. 9-49.

11 Idem, 92.

government paradigm in contemporary politics¹². The author mentions the expansion of the Executive in the proposition of "decrees with force-of-law", pointing out that the First World War would have played an important role in the propagation of governmental measures of exception. And today, no longer an exceptional providence, it has become a technique of government, and even a constitutive paradigm of the legal order itself¹³. The author maintains that the state of exception would not be internal or external to the planning, because the norm is not abolished by its suspension, and the zone of anomia that is established is not devoid of connection with the legal order¹⁴. Thus, it maintains that the state of exception is an "anemic space where what is at stake is a lawless force [...]"¹⁵. (translated).

Márcio Seligmann-Silva¹⁶ notes that Agamben would have considered Schmitt's response to Benjamin's pure Gewalt theory "precise" at this point, since pure violence outside the law would not be possible. For the Italian philosopher, it is not as if the exception is characterized by an exclusion without any relation to the norm; instead, the norm maintains a link with the exception precisely by its suspension.

Moreover, with regard to the sovereign, there is a different approach in the theories of the two authors: Benjamin even mentioned the inability of decision on the part of this (for him, in the state of exception what prevails is the catastrophe, not the sovereign, in view of the radicality of this exceptional situation)¹⁷ while Agamben conceives that there would be a gang relationship in the exceptional relationship between sovereign and subjects, in the sense that these would be exposed to the agency of that (hence the concepts of *homo Sacer* and naked life, as well as the idea of attributing different values to people's lives).

12 Idem, p. 13.

13 Idem, p. 18-19.

14 Idem, p. 39.

15 Idem, p. 61.

16 SELIGMANN-SILVA, Márcio. *Walter Benjamin: o estado de exceção - Entre o político e o estético*. Instituto de Estudos da Linguagem - UNICAMP. Available at: <<https://periodicos.ufsc.br/index.php/Outra/article/download/12579/11746>>. Accessed on: January 6th, 2016, p. 33, 34.

17 Idem, p. 34.

It can thus be said that the political history of the West is guided by the constant abandonment of naked life by the sovereign. The interests that the permanent state of exception coordinates guide the living or letting die of this biological life, control the body and mind, characterizing the biopower. A clear example of this biopower can be found in the unconstitutional state of affairs that prevails in the national prison system, in view of the systemic violation of fundamental rights.

It is in this line that the Italian rescues the figure of the *homo Sacer* of Roman law, which will be treated more closely in the next item, such as "the paradigmatic model of production and justification of naked life in the context of the legal and political structure of the West, marked by sovereign power and the state of exception"¹⁸. (translated).

Despite the different perspectives on the theory of the state of exception in the works of Benjamin and Agamben, both allow focus to be given to these situations of violation that exist within the state and are often carried out by their own agents. The fact is that the oppressed experience a permanent state of exception, this state has become a paradigm of government. Patent and constant violations of rights, as well as failure by the State to comply with the most basic duties, show that building a theory of the right conscious of its social role must necessarily go through an approach that takes into account the power relations that permeate reality.

3. THE CONCEPT OF "HOMO SACER" IN THE THEORY OF GIORGIO AGAMBEN AND THE SUBSTANCIALIZATION OF THE OPPOSITION SCHMITTIANA FRIEND-ENEMY IN BRAZILIAN REALITY

18 BAZZANELLA, Sandro Luiz. *A centralidade da vida em Nietzsche e Agamben frente à metafísica ocidental e a biopolítica contemporânea*. Thesis (Doctorate). Centro de Filosofia e Ciências Humanas da Universidade Federal de Santa Catarina, 2010, p. 244, 257. Advisor: Prof. Dr. Selvino José Assmann. Co-Advisor: Prof.^a. Dr.^a. Sandra Caponi. Available at: <https://repositorio.ufsc.br/bitstream/handle/123456789/94701/287230.pdf?sequence=1>. Accessed on: June 6th, 2016.

Carl Schmitt¹⁹ analyses together the question of the state of exception and the political decision as a way of apprehending the legal phenomenon in its entirety, so that one can concretely identify the political disputes at stake. To this end, it seeks to conceptualize the political from the identification of own categories, specifically political²⁰, in order to differentiate it from other domains (moral, economic, cultural, etc.), characterizing it from two groups whose existences are opposed: friend *versus* enemy.

For the author, the politician is realized through the antagonism of the relationship between a group that constitutes itself as identity, the friend, and the other, the enemy, a group that threatens its existence and opposes everything that the grouping of friends is, which is why it needs to be fought and destroyed. This real possibility of confrontation, of physical death of the other²¹, is what constitutes the political, so that it is not possible to think it abstractly and constitute a prior norm in order to resolve the dispute, since only the subjects involved, in the face of a factual circumstance of conflict, are able to define "what is central in the existence of the group and what the other seems to deny"²² (translated); only political groupings can establish what threatens their life forms and thus reach the extreme case of conflict, which is the outbreak of war.

It should be noted that Schmitt refers to the public²³ enemy and that, therefore, it is he who decides whether to threaten the existence of the state. This perception is essential for the study of law, because for the author, the moment of exception is the moment that reveals who has power within the law, which shows that there are no neutral legal norms, quite the contrary, are

19 SCHMITT, Carl. *O conceito do político*. Tradução de Alvaro L.M. Valls Petrópolis: Vozes, 1992, p. 43-53; 67-70.

20 Idem, p. 51.

21 CAIXETA, Renato Reis. *O Conceito do Político em Carl Schmitt: a distinção entre amigo-inimigo como a relação política genuína*. Brasília, 2012. Available at: http://bdm.unb.br/bitstream/10483/4093/1/2012_RenatoReisCaixeta.pdf p. 6. Accessed on: January 6th, 2016.

22 FERREIRA, Bernardo. *O risco do político: crítica ao liberalismo e teoria política no pensamento de Carl Schmitt*. Belo Horizonte: Ed. UFMG; Rio de Janeiro: Luperj, 2004, p. 43.

23 SILVA, Washington Luiz. *Carl Schmitt e o conceito limite do político*. Available at: http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0100-512X2008000200010. Accessed on: January 7th, 2016.

loaded with political-ideological content, usually benefiting the groups that hold the command over the normative production.

The concepts of *enemy* and *homo Sacer* revolve around the establishment of a state of exception, anomie situations, in which the right is excepted. The distinction between both is in the fact that, for Schmitt, however threatening and undesirable the enemy is and needs to be fought²⁴, he exists and is within the state, therefore, is a citizen who has political rights and lives up to "the rituals of "sacrifice" in short, is not in the condition of "insacrificable"²⁵.

Unlike the *homo Sacer* of Giorgio Agamben, a figure drawn from Roman law, who "represented a man tried by the people for a crime, but who, although it is not lawful to sacrifice him, whoever killed him would never be convicted of murder"²⁶ (translated) because the *homo Sacer* lost the status of citizen and consequently became stripped of any protection in the face of the state and political qualification. *Homo Sacer* has a naked life, devalued, reduced to mere biological existence²⁷ and is thus in the condition of "insacrificable", in the sense that no rite of legal sanction²⁸ is applicable to him. The right exists, however, is suspended; it is not applied in its favor.

Transposing into the reality of the Brazilian favelas, *homo Sacer* can be equated with drug traffickers who, in a circumstance of war on drugs, are being killed by state agents²⁹, without any chance of defense, the Constitution of the Federative Republic of Brazil of 1988 and several international agreements

24 SCHMITT, Carl. *Op. Cit.* P. 52

25 SOUZA, Angelita Matos. *Estado de Exceção*. Revista Espaço Acadêmico - N° 112- September 2010. Available at: <http://www.periodicos.uem.br/ojs/index.php/EspacoAcademico/article/viewFile/10790/5963>. Accessed on: January 7th, 2016, p. 17.

26 MELCHIOR, Antonio Pedro. *Direito Penal Do Inimigo no Rio de Janeiro. Do confronto ao tráfico de drogas ao discurso da pacificação*. Available at: <http://www.carvalhoadv.com/user-files/publications/DIREITO%20PENAL%20DO%20INIMIGO%20NO%20RIO%20DE%20JANEIRO%20-%20Do%20confronto%20ao%20tr%C3%A1fico%20de%20drogas%20ao%20discurso%20da%20pacifica%C3%A7%C3%A3o...pdf>. Accessed on: January 8th, 2016, p.11.

27 SOUZA, Angelita Matos. *Op. Cit.* P.16.

28 MARTINS, João Victor Nascimento. Políticas públicas de guerra às drogas: o estado de exceção e a transição do inimigo schmittiano ao homo sacer de Agamben. *Revista Brasileira de Políticas Públicas*, Brasília, v. 10, n. 1, 2013. Available at: http://www.publicacoesacademicas.uniceub.br/index.php/RBPP/article/view/2360/pdf_1. Accessed on: January 8th, 2016, p. 278.

29 *Idem*, p. 277.

saying the opposite. On many occasions, the "auto de resistência" is used as a justification for the disposability of the trafficker's life³⁰.

Going further, favela residents themselves, without any involvement with trafficking or other illicit activity, are relegated to subhuman conditions. There is no social commotion when police massacres occur in these places, because the:

"condition of those who live there is killing, they are outside the state being inside - formally, the law, the rule of law, is for everyone. And when political identity is denied to an individual/group, its existence is reduced to biological life, it is 'outside', in a situation of 'killing', ceasing to be considered an 'equal' by others"³¹. (Translated).

In this way, Being and Duty-Being are detached within the Brazilian reality. In Duty-Being, there is a Constitution called citizen to encompass all individuals to the extent of their needs, which guarantees everyone, indistinctly, the right to life and has as a fundamental principle the Dignity of the Human Person (art.1, III, CRFB/88). In Being, there are disposable people, stripped of any realization of rights.

There are several situations that make this clear, such as the fact that, although the inviolability of the house is a fundamental right positive in article 5, XI of the Greater Law, which says that "the house is an inviolable asylum of the individual, no one can enter it without the consent of the resident, except in the event of a flagrant crime or disaster, or to provide relief, or, during the day, by judicial order" (translated), which usually happens, is the entry of the military police into the homes of residents, without consent, without flagrante crime, without a court order, often putting the door down, in search of drugs or traffickers who are hiding. In reality, this portion of the population, as a rule, only knows the legal system in its exception "version", since it lives in a state of permanent exception.

30 MELCHIOR, Antonio Pedro. *Op. Cit.* P. 11.

31 SOUZA, Angelita Matos. *Estado de Exceção*. Revista Espaço Acadêmico – N° 112- setembro de 2010. Available at: <http://www.periodicos.uem.br/ojs/index.php/EspacoAcademico/article/viewFile/10790/5963>. Accessed on: January 7th, 2016, p. 278.

Resuming the analysis of the enemy *versus* friend, it is necessary to speak of Günther Jakobs, who, based on the nomenclature of Carl Schmitt, coined an approach about the "Criminal Law of the Enemy" which accords differentiated legal treatment to criminals in accordance with their customary conduct in the commission of offences:

"The criminal Law of the citizen is also law with regard to the criminal. He remains a person. But the criminal Law of the enemy is Law in another sense. Certainly, the State has the right to seek security against individuals who persistently recur in the commission of crimes. After all, security custody is a legal institution. What is more, citizens have the right to demand that the state take appropriate measures, that is, they have a right to security"³². (Translated).

Thus, on the one hand, those who do not commit crimes with habituality, receive milder treatment through the Criminal Law of the Citizen; on the other, those who challenge the system and make crime a lifestyle, reason why they become enemies of the State and receive a stricter treatment of the Enemy's Criminal Law, characterized by exceptional measures, but within the Democratic State of Law, such as reducing the guarantees of the contradictory and broad defense and criminalization of conduct unrelated to any logic of harm.

However, this ideological construction of Günther Jakobs represents the inappropriate use of Schmitt's theory, since the "Criminal Law of the Enemy" substantiates the enemy, when in reality there is no intrinsic characteristic to the political enemy, it does not need to be morally reprehensible or aesthetically ugly³³.

The identity that unites a group of friends in the face of the enemy may even be given, initially, by economic, cultural, religious relations, among others, however, from the moment that he is oriented to the conflict, these relations become secondary, because what is being targeted is political existence and not identity. "Thus, any social relationship can become a political greatness

32 JAKOBS, Gunther; MELIÁ, Manuel Cancio. *Direito Penal do Inimigo, Noções e Críticas*. – 3 ed. Porto Alegre: Livraria do Advogado, 2008, p. 29

33 SCHMITT, Carl. *Op. Cit.* P. 52.

when it reaches the 'turning point' (entscheidendenPunkt), characterized by the intensity of the specifically political opposition, because what matters is the case of conflict"³⁴. (translated).

Likewise, it is not possible to define *homo Sacer* as an identity group, because any individual, potentially, can have his life decreed worthless by sovereign power. It is a question that goes beyond identity. It is enough that the sovereign so decides, so that anyone is excluded from the gang, abandoned and transformed into a killable individual, such as the black, the favela dweller, the trafficker, the immigrant and the stateless.

Thus, it is possible to observe that Agamben and Schmitt, each with its own peculiarities, approach figures who are in the situation of social vulnerability by decisions made by the sovereign state; these decisions are legitimate, within the context of democratic rule of law, often as a public security policy.

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34 LIMA, Deyvison Rodrigues. *O conceito do político em Carl Schmitt*. Argumentos, v. 3, n. 5, p. 166, 2011.

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