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## THE SOCIAL REPRESENTATION OF THE DEVIL AND THE ENEMY IN CRIMINAL LAW: THE DUALITY BETWEEN LIGHT AND DARKNESS IN THE LEGAL ENVIRONMENT

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**Abstract:** Far from being just an element used in literature and art, the figure of the Devil is full of meanings, myths, peculiarities, information and symbolic values, with specific and own meanings in social, political and legal dynamics. In the theological discourses that inspired the Western imagination, the Devil appears as a central figure in Christian traditions. In the Criminal Law of the Enemy, a movement that has grown a lot in Brazil in recent years, the Enemy is elected, based on values, fears and suspicions, so that it is fought and won by good society, in a true crusade against diabolical evil. This version of the communication initially made at the International Congress of the Society of Theology and Religious Sciences intends to identify and analyze the outlines and possible consequences of Manichaeism, which propagates religious dualism, between good and evil, in the application of Criminal Law, as well as in the construction of the figure of the enemy of society. Such an analysis, based on bibliographical research, will take place through the comparison of legal provisions and books and articles written by specialists in the areas of Religious Sciences, Theology, Sociology, Criminology, Law and Psychology. As a general result, there are interweavings and complementarities between Criminal Law and religious traditions with regard to the social representation of the Devil and his identification in the image of the subject who violates the legal order.

**Keywords:** Criminal Law. Devil. Enemy of society. Religion.

## INTRODUCTION

Personified in the figure of the Devil, the representation of evil exerted and continues to exert enormous influence on the most diverse cultures, in several societies, going beyond the religious universe and, sometimes, also reaching the legal world.

Intimately linked to the negative, malefic, harmful and execrable meaning, the Devil, in this perspective, gained strength and became remarkable in art and literature over the years. The paintings portrayed him with the brutish appearance of a winged goat, surrounded by huge horns, with a dragon's tail and eyes on the wings, belly and rump.

In books, religions and popular conversations, he gained numerous names, such as Asmodeu, Beelzebub, Azazel, Belial, Iblis, Ahrimã, Demo, Satan, Satan, Mangy, Beicudo, Father of lies, Rabudo, Cão, among others so many. With his meanings, values and myths, he became one of the most intriguing figures to populate the human imagination.

Nowadays, although it is no longer decorated and made up as it used to be, it continues to be present. Several Hollywood films portray him, such as: "The exorcist" (1973); "Satanic Heart" (1987); "The Devil's Advocate" (1997); "End of Days" (1999); "Little Nicky: A Different Devil" (2000); "Constantine" (2005); "Tenacious D: A duo from hell" (2006); The ritual (2010).

The Catholic Church continues to authorize priests to become exorcists. In all nations, Satan never stops provoking debates and, mainly, facilitating the manipulations of the political game – demonizing the opponent ends up being a powerful weapon in any dispute. (MORAIS, 2016).

In Criminal Law, from the 1980s onwards, with Jakobs, a theory called Enemy Criminal Law emerged which, among other characteristics, considers the individual who violates the legal order as the enemy of society, in a true process of demonization of those who do not comply. social, political and legal interests. All in order to justify the punishability of preparatory acts - punishment before the conduct -, the excessively high penalties and the mitigation and/or suppression of constitutional guarantees.

Elected as an enemy of society, the individual is no longer viewed as a good citizen - who contemplates the good, compassion, solidarity and who deserves to have their rights respected - and is now treated as the entity that concentrates evil in himself absolute – thus not having its guarantees and fundamental rights preserved. Such Manichaeism, in addition to feeding the fetish of the hero who can do anything, creates a strong stereotype of the enemy, a diabolical being that needs to be fought and won in the legal battle.

Thus, it becomes important to analyze the contours and possible consequences of Manichean thought, which propagates religious dualism, between good and evil, in the application of Criminal Law, as well as in the construction of the figure of the enemy of Society

## **DEVELOPMENT**

Günther Jakobs, creator of the thesis that Criminal Law has the essential function of protecting the norm (and would only indirectly safeguard the most important values of society), in his best-known work “Enemy’s Criminal Law: notions and criticism”, clearly abandoned its descriptive position of the so-called Criminal Law of the Enemy (this position first disclosed in 1985), starting to defend, from 2003, the affirmative, legitimizing and justifying position of this line of reasoning. In the mentioned work of the German philosopher, the structural foundations of what comes to be the Criminal Law of the Enemy, its concept, its consequences and forms of application are planted.

For Jakobs (2020), terrorists, delinquent members of criminal organizations, perpetrators of sexual offenses and other dangerous criminal offenses are considered enemies, that is, those who permanently and lastingly depart from the Law and do not offer

secure guarantees that they will be faithful to the norm.

The aforementioned author points out that the individual who is not allowed to enter the state of citizenship must not benefit from the concept of person and, consequently, cannot be considered a procedural subject, holder of fundamental rights and guarantees. Against him, the adoption of a war procedure will be justified, surpassing the guaranteeing procedural procedure that grants the full right of defense, adversarial proceedings and due process of law.

Furthermore, according to the German writer, the following are characteristics of the Enemy’s Criminal Law: (a) the enemy cannot be punished with a penalty, but with a security measure; (b) the enemy must not be punished according to his guilt, but according to his dangerousness; (c) measures against the enemy do not look primarily at the past (what he did), but at the future (what he represents in terms of future danger); (d) it is not a retrospective Criminal Law, but a prospective one; (e) the enemy is not a subject of law, but an object of coercion; (f) the citizen, even after committing a crime, continues with the status of a person; the enemy loses this status (only his dangerousness is important); (g) the citizen’s Criminal Law maintains the validity of the norm; the Criminal Law of the Enemy mainly combats dangers; (h) the Criminal Law of the Enemy must advance the scope of protection of the norm (anticipation of the penal guardianship), to reach the preparatory acts; (i) even if the penalty is intense (and disproportionate), anticipation of criminal protection is still justified; (j) as for the citizen (perpetrator of an occasional homicide), he is expected to externalize a fact so that the reaction takes place (which confirms the validity of the norm); in relation to the enemy (terrorist, for example), it must be intercepted promptly, in the previous stage, due to its

dangerousness.

What is perceived from the analysis of such a line of thought is a Manichean vision that separates God from the Devil, heaven from hell, good from evil, affirming the existence of a conflict between the realm of light (Good) and that of shadows (Evil), as if such a separation were possible in the midst of so much complexity that involves human beings, their conduct, their psychological state, their existential identifications, their dramas, their beliefs and truths.

Incidentally, as Drummond taught well, in the poetry "The truth" (1987), the truth is not unique, there are many, it has its halves and it is up to each one within his uniqueness to choose his half, according to his illusion, his whim and myopia.

This way of separating facts and people, on the one hand, the good (us), and, on the other, the bad (them), represents an undesirable reductionism, leading to "a way of thinking that, based on any suspicion, already jumps to conclusion, the absence of self-criticism, the lack of empathy and the need for enemies." (SALTON, 2015, p. 81). Such a reduction of thought is the simplism of worldly existence itself and provokes the denial of the fundamental principle of the Democratic State of Law, which is the Dignity of the Human Person, giving way to authoritarianism, insofar as the existence of the hero, of the God is accepted, to be constituted of all perfection and purity, able to fight against the enemy, the "Demo", a being that needs to be annihilated, at any cost, even if illegality is invoked for that.

Within this same perspective, Salo de Carvalho states that:

By defining a group with criminal potential, reinstating dimensions of dangerousness in criminal law, typical of etiological-positivist criminology, and by removing its components from the status of a person, the very notion of the Democratic State of Law is abdicated. Only in totalitarian

political projects (States of exception) does the absolutized idea of public security supersede the dignity of the human person. (CARVALHO, 2010, p. 77).

The choice of enemy in Criminal Law and the way to combat it are similar to the representation of the Devil created in the Middle Ages, which, in a propaganda fiction, aimed to justify the dark or frankly despicable designs of princes. Let's see:

The royal power then needed the Devil to terrify his enemies and justify his demands, and the Pope then offered him his bulls to satisfy him. At the high level where decisions are made, the Devil is a propaganda fiction that only serves to justify the dark or frankly despicable designs of the princes. If ever kings or popes had truly believed in the Devil, he would have been frightened by his own infamy to begin with. The Devil was a scarecrow for the use of the plebs and, bitter paradox, the fiction of this Prince of the World served, in effect, to conquer the world. As in Mesopotamia and Iran, religion was an instrument of political power. The Papacy, it must be remembered, was then also a temporal power. Now, this power is exercised all the more easily when the people are kept in a state of ignorance, hence of superstition and irrationality. (MESSADIÉ, 2001, p. 351).

In this context, the existence of Satan continues to be interesting, in the same way that the belief in the enemy of society also ends up being very useful for maintaining the *status quo*, like a true scarecrow of the Middle Ages, suitable only for the plebs and very far from palaces and kingdoms.

## CONCLUSION

The authoritarian discourse packed by the theory of the Criminal Law of the Enemy can be engaging and seductive, as if it were effective for the establishment of order, since people feel helpless and unprotected in the face of the evil and demonic image of those

who commit crimes and who, apparently, remain without the proper state response. If there is the Devil, personified in the figure of the enemy of society, everything becomes possible and allowed, even going over the Federal Constitution, because against the “Demo” anything goes!

This way, the suppression of fundamental rights and guarantees seems to be acceptable in exchange for security and social well-being, not least because the aforementioned suppression will reach a dangerous entity, Tinroso, who is no longer seen as a person, but rather as a great threat, carrying evil and causing fears and nightmares.

However, at this point, the narrow Manichean vision serves only to reduce the human being to a mere object of coercion, disregarding the complexity of the human soul and of existence itself, abandoning all the conquests (guarantees) that were acquired, with great difficulty, by throughout History,

especially the Dignity of the Human Person. The Manichean dualism removes the condition of each one as a human being when it places him between good and evil, since, in the finitude of life and in the complexity of existence, every individual carries with him and, at the same time, multiple characteristics and diverse profiles, based on good, bad, harmful and beneficial influences and experiences.

Furthermore, as the definition of enemy will be made by the forces that dominate society, the choice may be unlimited and subjective, behold, it will always be considered an enemy who represents a barrier to the interests of those who hold power or who want to assume it, with the marginalization and oppression of others by including them in a process of demonization, which will produce an Arbitrary State, or worse, a Police and Fascist State.

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