

# **“KILLING SOMEONE”: GROUNDS FOR DEFENDING THE INSTITUTE OF THE JURY TRIAL**

## **“MATAR ALGUÉM”: FUNDAMENTOS PARA DEFESA DO INSTITUTO DO TRIBUNAL DO JÚRI**

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### **RESUMO**

O artigo analisa o homicídio como violação profunda da coexistência humana, abordando suas motivações complexas. O Tribunal do Júri é apresentado como espaço que integra direito, moralidade e participação popular, conferindo solenidade ao julgamento de crimes graves. Sua estrutura ritualística equilibra a gravidade do homicídio com a seriedade necessária para enfrentar suas implicações. A crítica ao júri reflete, muitas vezes, resistência à descentralização do Poder Judiciário, mas sua liturgia é fundamental para lidar com a complexidade emocional dos crimes contra a vida. O Tribunal do Júri é pilar da democracia e da justiça, harmonizando razão e emoção em casos de extrema gravidade, e sua preservação é essencial para a confiança no sistema judiciário e na ordem social.

**Palavras-chave:** Homicídio. Tribunal do Júri. Soberania Popular. Rito.

### **ABSTRACT**

The article examines homicide as a profound violation of human coexistence, addressing its complex motivations. The Jury Court is presented as a space that integrates law, morality, and public participation, lending solemnity to the judgment of serious crimes. Its ritualistic structure balances the gravity of homicide with the seriousness required to address its implications. Criticism of the jury often reflects resistance to the decentralization of judicial power, yet its liturgy is essential for dealing with the emotional complexity of crimes against life. The Jury Court is a pillar of democracy and justice, harmonizing reason and emotion in cases of extreme gravity, and its preservation is crucial for maintaining trust in the judiciary system and social order.

**Keywords:** Homicide. Jury Court. Popular Sovereignty. Rite.

## **1 THE ACT OF KILLING SOMEONE: ONTOLOGICAL VIOLATION OF HUMAN COEXISTENCE**

“Crime? Que crime? ...Que eu matei um inseto perverso e nocivo, uma velha penhorista, sem utilidade para ninguém! ...Matá-la era expiação por quarenta pecados”.  
(Fiódor Dostoiévski, Crime e castigo, parte 6, capítulo 7.)

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The premise of Dostoevsky in *Crime and Punishment* (1866) suggests the existence of extraordinary individuals, for whom everything is permitted. In the novel, this philosophy is personified by the Law student Rodion Raskólnikov, who materializes this belief by committing the murder of the old usurer, a figure he considers to be inferior, not only socially, but also morally and intellectually in relation to himself. By taking this premise to its most radical expression, authorization based on the idea of superiority can culminate in various transgressions, including what Shakespeare called “assassination” and which, in the current Brazilian legal system, corresponds to the crime provided for in the article 121 of the Penal Code: “killing someone”.

In essence, the act of killing breaks the primordial bond of human coexistence, denying the other as a subject of rights and experiences, and reducing them to a mere object. This gesture not only violates the physical integrity of the victim, but also calls into question the ethical foundations that sustain social coexistence. Killing someone, therefore, transcends the individual sphere, becoming an ontological shaking that challenges the basic principles that legitimize collective existence. As Sigmund Freud rightly observes in *Totem and Taboo* (1913), parricide - understood as the elimination of the father or an ancestral figure - constitutes the primordial crime that underpins the genesis of human culture. This mythological perspective reveals that the complexity inherent in homicide is the result of a multidimensional construction, whose foundations are built by interconnected elements such as religion, mythology, morality, social organization, history and artistic production.

Murder occupies a central place in literature and in the collective conscience, as well as in [criminal] law. Its singular seriousness and complexity justify its being judged by the Jury Court, a centuries-old institution which, over time, has consolidated itself as the materialization of popular sovereignty in the exercise of criminal jurisdiction, through the trial of intentional crimes against life. The magnitude and impact of these crimes demand that their trial be conducted by a body clothed in rites and liturgies that not only give solemnity to the process, but also enhance the primary function of protecting justice and truth, since it is not just a matter of applying the law mechanically, but also of understanding the psychological, social and cultural nuances that permeate each case.

The Jury Court, therefore, transcends the ordinary legal space (“office”, *data venia*), becoming a solemn stage where law and ethics dialog under the aegis of ritual and tradition.

## **2 CATALOG OF VALUES: THE MOTIVATIONS FOR MURDER**

Still using Raskólnikov, the central character of *Crime and Punishment*, we could assume

three elements that underlie his crime: the pursuit of money; the belief in his superiority [intellectually and morally, over “inferiors”]; and possible mental disorders that led him to justify his act as a kind of transcendent mission. This triad of motivations - passions, money and mental disorders - not only illustrates the psychological complexity of the protagonist, but also reflects the main reasons that, in general, drive intentional crimes against life. These motivations, although often mutually exclusive, offer a comprehensive overview of the forces that can lead an individual to commit the most serious act against human dignity.

Historically, human passions emerge as the inaugural motivation for the phenomenon of homicide. Culturally, the first account of murder, narrated in Genesis, occurs out of anger and envy (“...of *Cain* and his offering [God] was not pleased. *Cain* was very angry and his face was downcast” - Gen. 4:5). Passions, understood as intense and often uncontrollable emotional states, are intrinsic to the human psyche and have the power to override or minimize rationality. Passions include situations such as blatant adultery, jealousy, fights, heated arguments, acts of desperation or emotional lack of control. These extreme emotional contexts often result in criminal acts which, although serious, can receive some form of punitive mitigation. An example of this is the concept of privilege in homicide, provided for in the legal system, which reduces the penalty when the crime is committed under the impact of violent and uncontrollable emotion, provided that this emotion is a response to current and unjust aggression on the part of the victim.

The second motivation, of an economic nature, plays a central role in the contemporary scenario, especially because of the infamous drugs issue. The so-called “drug war”, disputes over sales points, the coercive collection of debts from users, robberies followed by death due to a direct connection between drugs or money for drugs, summary executions and demonstrations of political strength between criminal factions illustrate forcefully how money, directly or indirectly, is at the root of a significant proportion of homicides (of course, other factors make up this motivation, such as extortion, insurance, inheritances, debts, etc.). Money, therefore, not only moves the world, but also feeds a chain of violence that culminates in crimes against life.

The third motivating factor for intentional crimes against life is related to mental disorders. This motivation leads to a complex discussion about criminal imputability, since in many cases the perpetrators of crimes under the influence of mental disorders are considered unimputable or semi-imputable. Although it is not an absolute rule, the unimputability of individuals with mental disorders reveals a tendency on the part of the punitive system to recognize the influence of these conditions on the commission of the crime.

To summarize, we can see that intentional crimes against life are driven by three main motivations: human passions, which override rationality and emerge from extreme emotional

states; money, which directly or indirectly feeds a chain of violence and disputes; and mental disorders, which can compromise the capacity of an individual for discernment and self-control.

There is an extensive debate in legal and criminal doctrine about the nature of hate crimes, questioning whether these acts are the result of mental disorders or whether they can be classified as manifestations of passion. Although crimes of passion and hate crimes have different dynamic characteristics - the former emerging from relationships of identity and identification, based on emotional or affective bonds between perpetrator and victim, and the latter emerging from relationships of difference and “disidentification”, often fueled by prejudices related to race, gender, sexual orientation, religion, among other aspects - they both share a common psychosocial trigger. This trigger is the intense and uncontrolled emotional reaction that arises in response to a perceived threat, affront or loss of something the perpetrator considers fundamental. From this perspective, it is possible to understand such crimes as being motivated by passion, conceived as an irrational force (which overrides reason) and incites violence. In this context, as pointed out by Edward Dunbar, only 20% of individuals who commit hate crimes have a history of psychiatric treatment (DUNBAR, 1999), i.e. contrary to common sense, there is no correlation (or rather, the correlation is minimal) between these behaviors and mental disorders. This finding reinforces the idea that these crimes are more related to social, cultural and emotional factors than to individual pathological conditions.

The multiplicity of motivations that can lead a person to commit homicide - be they passionate, economic or psychiatric - highlights the intrinsic complexity of this crime. Each case reveals a web of psychological, social and cultural factors that interact in a unique way, defying any attempt at simplification.

### **3 RITES: THE SYMBOLIC ORDER IN THE JUDICIAL SYSTEM**

Myths inaugurated the systematization of the Western thought and were clothed in history to explain and even justify human behavior based on a peculiar mechanism of power and domination.

Greek mythology was introduced to historiography and the history of philosophy through literature, with a consensus that the work of Homer (11<sup>th</sup> century BC) was the precursor to the historical-mythological narrative. In the first text - the *Iliad* - the epic Trojan War comes to light, on which occasion the first “jury” written in poetic form appears: the trial of Orestes.

The myth goes that, in order to be victorious in the war, Agamemnon sacrificed his daughter to the gods. Unhappy with the death of her daughter, his wife Clitmnestra, supported by her lover Aegisthus, killed her husband. And in order to avenge his father's death, the couple's

other son, Orestes, killed his mother. The sacredness of this episode would have led to another blood feud against Orestes, but Apollo - god of reason, beauty and rhetoric - interceded for him with Zeus, asking for a trial, which was accepted and carried out.

The jury for the trial of Orestes, made up of twelve Athenian citizens in the Areopagus and presided over by Athena (the Minerva of the Romans), goddess of wisdom and justice, is said to have been the first in mythological history. The three Erinyes were the accusers: Tisiphone (punishment), Megera (resentment) and Alecto (the endless), goddesses in charge of inflicting human punishment. In defense, Apollo.

After the oral debates, the twelve jurors cast their respective votes, but there were six votes in favor of conviction and six in favor of acquittal. Athena (Minerva), president of the jury, cast the tie-breaking vote acquitting the accused.

The Judeo-Christian tradition, supported by the sacred text, makes up a second historical-mythological scenario. When Jesus was presented to the Sanhedrin as “king of the Jews”, under the presidency of Pontius Pilate, the “jury” was made up of Jewish elders and priests. This passage from the Passion of Christ refers to one of the most important trials in the history of the West, and one cannot avoid relating it to the popular trial, the character of his condemnation, because of the preference of the people for Barabbas, who was then freed, over the capital condemnation of Jesus.

What is indisputable is that since ancient times, rites and formalities have been structuring elements of human coexistence, ensuring order and discipline in the most diverse social spheres. The concept of “ritual” (or “rite”) can be understood as a sequence of actions carried out according to a pre-established order, as part of a broader symbolic system, which can encompass religious, philosophical or even legal dimensions.

In modern times, we follow patterns of behavior that often don't even need to be explicit. We sit in the pews of a church at the command of the priest, we respect the queue at the bank without anyone imposing this order, and we conduct ceremonies such as weddings and funerals according to traditions that have been repeated for centuries. The justice system reflects this tendency towards social ritualism, adapting these practices to the field of Justice. From the moment the accused stands up to hear the sentence, to the care taken with robes, titles and treatment formulas, judicial rites not only organize the decision-making space, but also reinforce the authority of the system and the perception of impartiality and respect for norms.

This ritualistic approach goes back to ancient practices, such as those described by Marc Bloch in *The Thaumaturgic Kings* (1924), in which medieval monarchs were seen as sacred figures capable of curing diseases with just the touch of their hands. This symbolic power, based on rituals and collective beliefs, not only legitimized royal authority, but also consolidated the

social order. In the same way, contemporary judicial rites - such as the formality of sessions and respect for procedural traditions - fulfill a similar function: they confer legitimacy and solemnity on the justice system, transforming it into a space where authority is recognized and respected. Thus, both thaumaturgical kings and modern judges share the need to ritualize power, ensuring that it is perceived as fair, legitimate and transcendent.

Rituals play a fundamental role in reducing individual and collective anxieties, especially in contexts of uncertainty or crisis, such as those experienced by individuals, families or communities in times of instability. They function as stabilizing mechanisms, offering predictable and symbolic structure that helps to organize chaos and restore a sense of order. In this sense, the environment of a trial, particularly in homicide cases, is a space marked by high levels of uncertainty and tension, in which rituals play a crucial role. The solemnity of the process, from the formality of the robes to the liturgy of the votes of the jurors, not only organizes the procedure, but also cools the anguish of the parties involved and society as a whole, giving a sense of control and justice in the midst of the emotional whirlwind surrounding these cases. Thus, the rituals within the legal framework of the Jury Court transcend their merely procedural dimension, taking on a psychosocial role by structuring and stabilizing the expectations of individuals in situations of profound vulnerability and conflict, as well as, of course, guaranteeing the credibility and seriousness of the process.

#### **4 RITE: EXPRESSION OF POPULAR SOVEREIGNTY AND DEMOCRATIC RESISTANCE**

Let's repeat: the Jury Court, as a legal institution, transcends its strictly procedural function to take on a symbolic and political role of extreme relevance in the democratic sphere. Its ritualistic structure, far from being a mere archaic formality, reflects the complexity and depth of a system that seeks to balance the application of justice with popular participation. However, this same ritual, which in other spheres of the Judiciary is accepted without question, becomes the target of criticism when applied to the jury. This dissonance perhaps reveals a veiled resistance to the popular sovereignty that the Jury Court embodies, especially in a context in which *decision-making power escapes from the hands of judges and is transferred to ordinary citizens*.

The role of the actors in the Jury Court - prosecutor, lawyer, jurors and presiding judge - is not limited to mere procedural conduct. They are agents of a social response which, although it seeks "justice", will never be able to fully restore the balance broken by the crime. If the accused is innocent, acquittal does not erase the stigma of the accusation, which remains like a perpetual

shadow over their life. If guilty, a conviction, however severe, does not restore the life lost or mitigate the pain of those who suffered the loss. In this sense, “justice” is always incomplete, because the judicial process, although necessary, cannot fully repair the emotional and social wounds caused by the crime. By allowing ordinary citizens to take part in the trial of crimes against life, it democratizes justice and ensures that the voice of the people is heard in the most serious cases. This characteristic, enshrined as a permanent clause in the Constitution, gives the jury a character that is inseparable from the democratic order. Its preservation is essential not only for the protection of individual rights, but also as a *mechanism for controlling state power*, historically fundamental in resisting authoritarian regimes.

The origin of the Jury Court in Brazil, dating back to the Decree of July 18<sup>th</sup>, 1822, is intrinsically linked to a context of political resistance. Initially aimed at judging press crimes, the jury emerged as an instrument of popular expression in the face of centralized power. This function of resistance was perpetuated throughout history, especially during the military regime, when the Constitutional Amendment No. 1 of 1969 reaffirmed its competence to try crimes against life. At a time of such legal vulnerability, this measure represented a crucial step towards preserving democracy. As Paulo Rodrigues (2018) observes, the Constituent Power, driven by an ideology of resistance, elevated the Jury Court to the status of a fundamental right, guaranteeing its sovereignty as a way of counteracting the inertia of the Judicial Branch.

However, the rituals of the Jury Court, which in other instances are accepted as an integral part of the judicial process, are often questioned when applied to the jury. The ringing of the bell before sessions, for example, is seen by some as an obsolete remnant, while in other contexts, such as religious or administrative ceremonies, similar rituals are naturalized. This criticism can be interpreted as an attempt to undermine the legitimacy of the jury, especially in a space where popular sovereignty prevails over the power of judges. In the courts of appeal, the authority of the magistrate is unquestionable, but in the jury, decision-making power is transferred to the citizen-jurors, which can generate discomfort in more conservative sectors of the justice system.

Therefore, resistance to the Jury Court and its rituals can be understood as a reaction to the democratic and popular nature of this institution. In a system where the judiciary is traditionally centralized and hierarchical, the jury represents an exception: a space where the voice of the people prevails over the authority of the judges.

Ultimately, the Jury Court is not only an instrument of justice, but also a symbol of resistance and a pillar of democracy. Its ritual, far from being mere formalism or an archaic remnant, is an indispensable element for maintaining confidence in the judicial system in cases involving crimes against life, in which the tension between legal reason and human emotion

reaches its apex. Thus, the liturgy of the jury, with all its historical and cultural density, not only organizes the process, but also presents itself as the ideal remedy for dealing with a problem whose motivations are so varied and complex. By structuring the trial in solemn and predictable rites, the jury offers a counterpoint to the disorder and unpredictability surrounding the crime of homicide, balancing the seriousness of the act with the seriousness of the procedure. Any attempt to undermine its structure or question its legitimacy should be viewed with caution, as it represents not only an attack on a legal institution, but also a threat to the democratic values it embodies. The preservation of the jury is therefore a defense not only of justice, but also of democracy itself.

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