

## O desamparo dos idosos em situação de rua: estado exceção diante das violações dos direitos da personalidade e inefetividade das políticas públicas de promoção humana\*

*The helplessness of the elderly on the street: an exceptional state in the face of violations of personality rights and the ineffectiveness of public policies for human promotion*

*El desamparo de los ancianos en situación de calle: estado excepción ante las violaciones de los derechos de la personalidad e inefectividad de las políticas de promoción humana*

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### Resumo

A população em situação de rua é caracterizada por uma realidade complexa e diversificada, abrangendo diferentes grupos que vivem em condições extremamente precárias. Ao mesmo tempo em que ocorre o envelhecimento da população, as condições de vulnerabilidade desse grupo associado ao empobrecimento podem levar ao aumento do número de idosos em situação de rua. O idoso que experimenta a dura realidade das ruas personifica a essência do desamparo, enfrentando carências físicas, econômicas e psicológicas, e “expondo ao ar livre” aquilo que é negado por grande parte da sociedade. A análise desse estudo será a partir da exploração da temática das desigualdades sociais e da verificação da situação de vulnerabilidade dessa parcela da população, bem como se revelará a importância da efetividade de políticas públicas de promoção humana para a garantia de direitos individuais e sociais essenciais. O objetivo do estudo se configura em demonstrar a existência (ou não) da estrutura antinômica do estado de exceção em meio à democracia Brasileira e suas possíveis consequências. Para tanto, se vale do método hipotético-dedutivo, por meio de pesquisa documental, descritiva e exploratória para a reflexão sobre o aumento expressivo da população em situação de rua, especificamente os idosos que vivem essa

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realidade vulnerável e de exclusão.

**Palavras-chave:** direitos da personalidade; estado de exceção; idoso em situação de rua; população em situação de rua; vulnerabilidade social.

### **Abstract**

*The homeless population is characterized by a complex and diverse reality, encompassing different groups that live in extremely precarious conditions. At the same time that the population is aging, the conditions of vulnerability of this group associated with impoverishment can lead to an increase in the number of elderly people living on the streets. The elderly who experience the harsh reality of the streets embody the essence of helplessness, facing physical, economic and psychological needs, and exposing to the open air what is denied by a large part of society. The analysis will be based on exploring the theme of social inequalities and verifying the situation of vulnerability of this part of the population, as well as revealing the importance of the effectiveness of public policies for human promotion to guarantee essential individual and social rights. The objective of the study is to demonstrate the existence (or not) of the antinomic structure of the state of exception in the midst of Brazilian democracy and its possible consequences. To do so, it uses the hypothetical-deductive method, through documentary, descriptive and exploratory research to reflect on the significant increase in the homeless population, specifically the elderly who live in this vulnerable and exclusionary reality.*

**Keywords:** rights of the personality; state of exception; street elderly; homeless population; social vulnerability.

### **Resumen**

*La población en situación de calle es caracterizada por una realidad compleja y diversificada, incluyendo distintos grupos que viven en condiciones extremadamente precarias. A la vez que ocurre el envejecimiento de la población, las condiciones de vulnerabilidad de este grupo asociado al empobrecimiento pueden llevar al incremento del número de ancianos en situación de calle. El anciano que experimenta la dura realidad de las calles personifica la esencia del desamparo, enfrentando carencias físicas, económicas y psicológicas, y exponiendo al aire libre lo que es negado por gran parte de la sociedad. El análisis será a partir de la exploración de la temática de las desigualdades y de la verificación de la situación de vulnerabilidad de esta parte de la población, como también se revelará la importancia de la efectividad de políticas públicas de promoción humana la garantía de derechos individuales y sociales esenciales. El objetivo del estudio se configura en demostrar la existencia (o no) de la estructura antinómica del estado de excepción en medio a la democracia brasileña y sus posibles consecuencias. Para tanto, se vale del método hipotético-deductivo, por medio de investigación documental, descriptiva y exploratoria para la reflexión sobre el aumento expresivo de la población en situación de calle, específicamente los ancianos que viven esta realidad vulnerable y de exclusión.*

**Palabras clave:** Derechos de la personalidad; Estado de excepción; Anciano en situación de calle; Población en situación de calle; Vulnerabilidad social.

## **1 Introduction**

The elderly who live on the streets personify in an extreme way the seriousness of this reality of abandonment, clearly revealing what is invisible and widely denied by a large part of society. It is in the context of violations that the vital importance of studies related to the situation of hypervulnerability of this group becomes evident. In this cold reality, watered by the abandonment of both the State and civil society, a social problem emerges that affects not only the lives of those who are homeless, but also those who surround them daily. Thus, this study seeks to give voice to this invisible universe.

The central problem of this research finds evidence in the extreme vulnerability of aging on the streets, the invisibility and social exclusion of the homeless population. And, in view of this reality, the question arises: is it possible to verify the existence of a regime of a

state of exception in relation to the most recent Western democracies, especially Brazil? Does the radicality of the social helplessness of this population that survives, deprived of very personal rights for a dignified life and without effective public policies for human promotion, exemplify situations that give rise to the configuration of a true state of exception in Brazil?

From the analysis of the current diagnosis of major violations of personality rights of the homeless population, especially the elderly who experience the reality of the streets, and the ineffectiveness of public policies of human promotion aimed at this public, the objective of this research will be to demonstrate the existence (or not) of the antinomic structure of the state of exception in the midst of Brazilian democracy and its possible consequences. The hypothetical-deductive scientific method, proposed by Karl Popper, is similar to the rational procedure that moves from the general to the particular of the deductive method, and the experimental procedure as its founding condition of the inductive method. In short, this method considers scientific knowledge to be a process of controlled speculation. To this end, conditions and hypotheses are established to be ratified or refuted. The first hypothesis established is that contemporary Western democracies, such as Brazil, they are coordinated by the logic of exception, where the bare lives contained therein are not inserted in a system of normativity to which they can rationally understand and adjust. The second hypothesis defined is that there is a lack of a normative system protecting the dignity of homeless people and public policies for human promotion, especially the elderly who live in this condition. And the third stipulated hypothesis states that there is no lack of a normative system protecting dignity and public policies, what is verified is a failure to observe the concreteness of the rights abstractly safeguarded, either due to the State's negligence, or because of the structure of exception itself.

As a research technique, a bibliographic and documentary, descriptive and exploratory review will be used from theoretical references, literature review of works, journal articles and official electronic documents. This analysis will be made in three distinct parts: at first, it will seek to draw an overview of inequality and vulnerability regarding the homeless population, especially the elderly. The purpose is to give visibility to the elderly who experience the reality of the streets, identify which rights are violated and the possible circumstances that lead to the homeless situation and that justify the need for differentiated attention or action for the protection of personality rights for a dignified life.

In a second moment, the importance of public policies for human promotion aimed at the elderly homeless population and the challenges of implementing transformative policies that are clear and efficiently direct the care actions of the care teams will be examined. And, in a third moment, the configuration and forms of action of the state of exception of contemporaneity will be investigated, for this the figure of the *homo sacer* denounced by Giorgio Agamben will be used as a reference, evidencing *bare life* as a condition of total helplessness of those who are cornered in a vague

condition, deprived of their rights and their citizenship, being compelled to live in a state of exception.

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## **2 Overview of inequality and vulnerability regarding the elderly homeless population**

Aging with dignity is a goal. According to Crelier (2021), Brazilians have lived longer, a fact that represents a surprising advance, as can be seen from reading the report of the aforementioned body<sup>1</sup>. The advance of population aging is becoming evident both in Brazil and in other countries around the world. This phenomenon is a result of decreasing birth and death rates, along with increasing life expectancy.

In addition to the finding that the Brazilian population is aging and living longer, these data highlight the importance of implementing effective measures to ensure the protection of the rights of the elderly. As the population ages, conditions of vulnerability arise for this group, which, combined with increased poverty, can lead to an increase in the number of elderly people living on the streets. It is common for cases of abandonment and violence against this vulnerable portion of society to occur. It is necessary to identify the circumstances that place them in this condition and justify the need for special attention or protection to ensure the protection of their fundamental rights and personality (Oliveira; Fermentão, 2022, p. 21).

It is essential to overcome the simplistic approach to the aging process and consider it comprehensively, taking into account its multiple dimensions. To examine only the biophysiological perspective is to ignore the environmental, social, cultural and economic problems mentioned, which certainly play a role in the aging process, to a greater or lesser degree (Pinto Neto, 2007, p. 143).

The theme under analysis in this study is of paramount importance for life in society, since the number of homeless people has constantly increased, evidencing the lack of protection by the State and the disrespect for personality rights. At the beginning of the covid-19 pandemic, in 2020, the IPEA (Institute of Applied Economic Research) published a technical note exposing the survey that about 221 thousand people lived on the streets in the national territory, with a concentration in metropolises and large municipalities, especially in the Northeast and Southeast, a population that grew 140% between 2012 and 2020 (Brazil, 2020).

The covid-19 pandemic has revealed a significant additional challenge for public

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<sup>1</sup> A person born in Brazil in 2019 was expected to live, on average, until 76.6 years old. Since 1940, life expectancy has increased by 31.1 years. And female longevity is, on average, seven years higher than that of men (CRELIER, 2021).

policies aimed at the homeless population. In fact, homeless people face significant difficulties in complying with the restriction measures recommended by the World Health Organization (WHO), such as staying at home. In addition, they face challenges in obtaining masks and 70% hand sanitizer for the necessary prophylaxis during the pandemic. According to IPEA, the economic crisis resulting from the pandemic led to an unemployment rate of 13.3% (IPEA, 2020). Unemployment and underemployment were determining factors for the situation of extreme vulnerability, leading people to irregular occupations and to live on the streets.

A point of fundamental importance found in this research is that there is a lack of effective data on the number of homeless people in Brazil. The National Policy for the Homeless Population (PNPR)<sup>2</sup> provides for the establishment of an official count of individuals living on the streets. Despite this, both the 2010 and 2022 Population Census (Brazilian Institute of Geography and Statistics [IBGE]) continued to use the traditional counting method, which covers only the domiciled population. This situation has negative consequences in the accurate assessment of the demand for public policies by this very vulnerable group, as evidenced by the difficulty faced by the Ministry of Health in allocating an adequate number of vaccines against covid-19 to the homeless population in times of pandemic.

IPEA, in a new technical note published in February 2023 on the estimate of the homeless population in Brazil (2012-2022), informs that the main source of official information on the subject is collected by the Ministry of Citizenship, through electronic questioning known as the SUAS Census, since 2013, it is mandatory that all municipal social assistance secretariats inform if they have any survey or survey that indicates the number of homeless people in their municipalities. In addition, they must provide information on how many people are in this condition (Natalino, 2023). Based on these sources, which are often precarious, IPEA estimated that in 2022 there were 281,472 homeless people in Brazil, this number is 38% higher than the estimated value in 2019, and 211% higher than that estimated a decade ago, in 2012 (Natalino, 2023).

As for the elderly<sup>3</sup> living on the streets, the estimated data are generally prior to the covid-19 pandemic. The analysis of these data reveals a quantitative panorama that needs to be deepened and updated. According to the latest census survey report in São Paulo, 12% of homeless people are elderly (SMADS, 2021, p. 22), while in Rio de Janeiro this number is 9.1% (Prefeitura da Cidade do Rio de Janeiro, 2020). The Southeast Region of Brazil has the highest concentration of homeless individuals registered in the CadÚnico (Single Registry for Social Programs of the Federal Government) database, totaling 62.62%. Of these people,

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<sup>2</sup> The National Policy for the Homeless Population and its intersectoral follow-up and monitoring committee were established by Decree No. 7,053, of December 23, 2009.

<sup>3</sup> The elderly person portrayed in this study refers to a person aged 60 (sixty) years or older, according to article 1 of the Statute of the Elderly, Law No. 10,741, of 2003.

91.15% are in a situation of extreme poverty, and 11.25% are elderly (Dias, 2021, p. 38). In the state of Paraná, the most recent survey of the homeless population, carried out in 2021, revealed a significant increase in elderly people living on the streets, as well as an increase in the number of families in this situation. Data from CadÚnico between April and July 2022 point to a 24% increase in the number of homeless people. According to the most recent data from CadÚnico, Curitiba is the capital of the Southern Region of the country with the highest number of vulnerable people living on the streets (Public Defender's Office of the State of Paraná [DPE-PR], 2022). In the South Region of Brazil, 14.30% of homeless people are registered in the Unified Registry.

Among them, 71.56% have updated registrations. Almost all (98.12%) of the homeless people in this region belong to the age groups eligible for vaccination, with 8.31% being elderly. In addition, 88.22% are in extreme poverty. The state of Paraná is home to the highest absolute number of homeless people in the South Region, with 9,550 individuals, which corresponds to 41.73% of the homeless population in the region. Of these people, 8.64% are over 60 years old, 98.82% are within the group eligible for vaccination and 73.6% have their records updated (Dias, 2021, p. 43-44).

The lives of these people living on the streets are characterized by extreme vulnerability and complexity, since it encompasses several groups in precarious conditions. Among them are individuals who have left the penal system, those with mental disorders, immigrants, people addicted to drugs, lonely individuals, families in extreme poverty and those who have been evicted from their homes, among other circumstances that lead people to face the harsh reality of living on the streets. Faced with this reality of rights violations, the National Human Rights Council (CNDH) issued Resolution No. 40 in October of 2020, establishing an important milestone for the rights of homeless people. This resolution seeks to establish the guidelines to promote, protect and defend the human rights of homeless people, in accordance with the National Policy for the Homeless Population (Brasil, 2020).

Brazil, after the promulgation of the 1988 Constitution, ratified important international treaties aimed at the protection and promotion of human rights. These treaties come from organizations such as the UN (United Nations) and the OAS (Organization of American States). Among them, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the American Convention on Human Rights stand out. From that moment on, Brazil began to be subject to monitoring in relation to compliance with these treaties. Resolution No. 40 is the result of this process and represents a historical-legal milestone in the affirmation of the principle of the dignity of the human person, which permeates all activities of the State.

Inequality is the origin of social vulnerability, being the negative result of the connection between the availability of material or symbolic resources of individuals or groups,

and access to the structure of socioeconomic and cultural opportunities that come from society, the State and the market (Abramovay *et al.*, 2002, p. 29). It is important to emphasize that, on the subject of income inequality in Brazil, there are several analyses and that their results vary depending on the methods adopted in the study, the data source used and the indices chosen by the scholar. The results even vary according to what is considered income. From this perspective, a person's disposable income can be affected by several indirect factors, an example of easy visualization is access to public policies, where the State offers essential services, such as health and education, which, otherwise, would need to be paid for by the individual (Arretche, 2015).

Be that as it may, research that aims to analyze the trajectory of income inequality in Brazil (Arretche, 2015; Souza, 2016) describe that, in general, it is high and has few significant variations throughout history. Inequality with a strong inertial character is the result of structural and institutional factors that connect Brazilian political decisions to the interests of large economic elites. And, even in periods when variations occur, they produce much greater impacts on the middle and lower income classes, not significantly threatening the income of the richest 10% of the country (Souza, 2018).

In the words of Souza (2018, p.328):

The first signs of a slowdown in the decline in inequality appeared in the PNADs in the early 2010s, and, more recently, the serious political and economic crises of 2014–2016 were responsible for undermining optimism once and for all. Moreover, recent evidence based on the IRPF declarations went against the sample surveys, indicating that the concentration of income at the top and, perhaps, the Gini coefficient would not have undergone significant changes in recent years. The moment, therefore, makes it opportune not only to revisit the recent history of Brazilian inequality, but also to better understand its long-term trajectory, with an emphasis on the role of the rich. [...] **The study of the history of inequality can hardly be separated from the study of discourses on inequality. The theories and hypotheses used to explain the world shape our own view of this world, leading our attention more easily to certain objects and cutouts of reality.** As a result, certain themes and approaches can flourish, decay and later reappear, as the intellectual climate and socioeconomic context transform (Souza, 2018, p. 328, *emphasis added*).

Inequality also varies according to several other conditions, such as the international economy, programs to increase the minimum wage and monetary transfer, as well as tax policies and the transmission of wealth. In the national territory, the redemocratization and the promulgation of the Federal Constitution of 1988 were elements that contributed to a reduction in inequality that was more accentuated in the following decade, especially as a result of the inclusion of *outsiders* in the public agenda, that is, those people who were until then socially excluded in terms of basic rights, such as retirement, the social rights to health and education (Arretche, 2018, p. 17-19).

According to a study by the Institute of Applied Economic Research (IPEA, 2012),

from the 2000s onwards there was a sharp drop in Brazilian income inequality, precisely as a result of national income transfer programs, combined with a favorable international economic dynamic that positively impacted the country's economic growth, the fall in interest rates and the expansion of opportunities in the work. Thus, there was an increase in the income of the poorest, which grew 550% faster than the income of the richest, contributing to the fall in inequality in the country in the period (IPEA, 2012). This movement was discontinued in the following decade, where Brazilian inequality grew again with the retraction of the labor market and the reduction of the earnings of the poorest. This inequality remained stable from then on (IBGE, 2019, 2020a), rising drastically with the arrival of the covid-19 pandemic. It is noted that variation (increase or decrease in inequality) depends on political and macroeconomic factors, but also on public policies committed to this purpose.

Given the conception that social inequality is closely related to the situation of vulnerability, this vulnerability should be understood as a multidimensional process that flows into the probability or risks of the person being affected by external situations in several ways:

The social vulnerability of subjects and collectives of population is expressed in various ways, as it is fragile and defensive against changes originating in the environment, as institutional helplessness from the State that does not contribute to strengthening or systematically takes care of its citizens; as internal weakness to concretely confront the necessary changes of the individual or hogar to take advantage of the set of opportunities that are presented; as a permanent insecurity<sup>6</sup> that paralyzes, disables and demotivates the possibility of thinking strategies and acting in the future to achieve better levels of well-being (Busso, 2001, p. 8).

Social vulnerability is closely related to the insecurity and helplessness that people, families and groups experience in their living conditions as a result of the impact caused by some type of traumatic social and/or economic event (Pizarro, 2001, p. 11). The state of vulnerability of homeless people leads to a borderline condition in terms of the possibilities of satisfying basic subsistence needs.

It is essential to ensure that human development policies and strategies are directed towards reducing vulnerability based on strengthening individual capacities. States and institutions must work together for human empowerment, and in-depth studies that provide useful subsidies for policy implementation are of great importance. On the subject, the 2014 Human Development Report, published by the United Nations Development Program (UNDP), relates poverty and social exclusion to the issue of aging:

Poverty and social exclusion are intrinsic problems of ageing, especially as around 80 per cent of the world's elderly population does not benefit from a pension and depends on work and family for income. As people age, they generally become more vulnerable physically, mentally and economically. Poverty in old age is more often chronic, as a lack of economic opportunities and security in the early stages of life turns into vulnerability in old age. The disadvantages accumulated during youth also imply the transfer of poverty from

one generation to another (UNDP, 2014, 70-71).

In this sense, a group or individual is vulnerable who, for different reasons, is unable to access resources, skills, and rights inherent to a given social group. From this perspective, the social vulnerability approach is an essential tool to understand the situation of at-risk elderly people living on the streets, a hostile environment, harmful to health and of great violence. Thus, vulnerability is characterized by being a situation in which the set of resources, characteristics and skills concerning a given social group are insufficient to face the reality of opportunities offered by society, in order to rise to higher levels of well-being or reduce the possibilities of deterioration of the living conditions of certain social actors (Abramovay *et al.*, 2002, p. 30).

According to Broide (2021a), the various groups that experience the reality of the streets have something in common, the deep rupture of the fundamental ties of their lives, both intimate and close ties and those with which the subject articulates in the world in a more comprehensive way, that is, in relation to the other (family, territory, institutions, etc.). The situations in which these ties are broken are diverse, including: families affected by economic misery in its various psychosocial impacts, the breaking of cultural ties experienced by immigrants and migrants, the group of socially stigmatized ex-prisoners who leave prison without social economic monitoring and professional training (Broide, 2021b, p. 36).

In the context of invisibility that people in street situations find themselves in, it is observed that many age in this situation, and do not have their personality rights guaranteed, thus experiencing a double vulnerability: the physical and psychic fragility of the senescence process and life on the streets of exclusion and helplessness. The vulnerability of this group of individuals reflects the existing inequality, which should be treated with due importance.

In the face of a context of exclusion that homeless people find themselves in, the need for a reflection that interrogates the relationship between *bare life* and politics in post-modernity is evidenced so that we can understand the problems of today. Thus, *bare life* must be understood as biological life that exists at the mercy of constant standardization by the Sovereign, that is, the life of *homo sacer*. Qualified life, on the other hand, is the one that determines the *modus vivendi* exercised before the State, which also regulates it in the name of preserving the former (Agamben, 2002). This time, *bare life* refers to the condition of total helplessness of those who are cornered in a vague condition, deprived of their rights and citizenship, being compelled to live in a state of exception. This work will develop later, these categories will be explored, in order to insert them in the contemporary context in relation to the theme discussed.

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### **3 The importance of public policies for human promotion aimed at homeless individuals from the perspective of personality rights**

The Federal Constitution of 1988, with regard to the protection of minorities and vulnerable groups, article 3 establishes the fundamental objectives of the Federative Republic and highlights the eradication of social inequalities as the basis of the democratic rule of law. This implies recognizing respect and equal treatment for all people with regard to their dignity, thus respecting the characteristics of minorities (Brasil, 1988). This recognition is promoted through the development of tolerance and solidarity.

It is essential, therefore, that the State assumes the responsibility of effectively protecting minorities and vulnerable groups, taking into account their particular characteristics and recognizing their specific vulnerabilities, in order to guarantee them the right to a dignified life (Siqueira; Andreoli, 2019b, p. 67). It is noteworthy that the elderly living on the streets fit into the concept of vulnerable group, and their individual rights must be respected, as they are fundamental and related to their dignity and personality.

Decree No. 7,053 of 2009 instituted the National Policy for the Homeless Population (PNPSR), the guiding objective is to ensure broad, simplified and safe access to the services and programs of the various public policies developed by the Federal Government. The basic principles of this policy are based on equality, equity, dignity of the human person, the right to family and community life, the appreciation of life and citizenship, humanized and universal care, and respect for different social conditions and different characteristics, such as origin, race, age, nationality, gender, sexual and religious orientation, with special attention to people with disabilities (Brasil, 2009).

Another document of fundamental importance is Resolution No. 40 of the National Council of Human Rights (CNDH), which was established as a response to the need to ensure the protection and defense of the human rights of people living on the streets in Brazil. This resolution represents a historical-legal milestone in the affirmation of the principle of the dignity of the human person, which is an essential value in the Brazilian legal system. The creation of this measure reflects the recognition of the importance of combating the violation of human rights and the exclusion faced by these vulnerable people. Its objective is to establish a legal framework that guides and supports the implementation of public policies and initiatives aimed at this group, seeking to ensure the full exercise of their fundamental rights and promote their inclusion in society (Brasil, 2020)

It is also significant to reflect on the obligation of the State, according to the Statute of the Elderly (Law No. 10,741, of 2003), to guarantee the protection of the life and health of the elderly, through the implementation of public policies for human promotion that ensure dignified aging. However, it is common to come across elderly people in extreme poverty,

deprived of this protection that should guarantee their basic needs. This shows the lack of preparation of both the Government and society to comply with the legal precepts. In addition, it is important to recognize that initiatives that aim only to meet the physiological needs of homeless people end up contributing to them remaining in this environment and settling into the precarious situation in which they find themselves. It is necessary to go beyond basic needs and adopt more comprehensive approaches, which consider the living conditions, integrity and dignity of these individuals (Ghirardi *et al.*, 2005).

Although the Brazilian Constitution and the National Policy for the Homeless Population ensure the dignity of the human person as a legal ideal, the social reality reveals a picture opposite to that expected when analyzing the growth of the homeless population. This disparity between the will expressed in the law and the existing reality is the result of the lack of political will on the part of the State to protect an unpopular minority. The dignity of the human person occupies a central place in the Brazilian legal order, and the valorization of the human person is the fundamental reason for the organizational structure of the State. Human dignity is the fundamental element of the fundamental rights enshrined in the Constitution, recognizing that each individual is equal and has the right to develop physically and psychologically, with respect for life and liberty (Fermentão, 2016, p. 892).

According to Bonavides (2001), the normative force of the dignity of the human person and its legal density should be maximum, as this principle encompasses all ethical aspects of personality. Personality rights are based on the dignity of the human person itself, and it is essential to recognize dignity in order to understand all aspects of personality. When it comes to the importance of protecting personality rights, the need to be guided by constitutional principles that prioritize human dignity and the free development of personality is highlighted (Cantali, 2009, p. 53).

Personality rights are minimum rights that aim to ensure and safeguard the dignity of the human person and as such must be provided for and sanctioned by the legal system (Freitas; Motta, 2015). Therefore, a general right of personality is recognized, considering that they are rights belonging to the protection of the human person, which are essential in view of the necessary protection of the dignity of the human person and his psychophysical integrity (Cantali, 2009, p. 28). Thus, it will only be possible to perceive all aspects of personality if there is effectively recognition of dignity.

The new reality of the post-modern world highlights the obligation to rethink, update and expand the rights of the citizen corresponding to the new times. The right to the city, for example, is configured as a legitimate set of formal and material rights that make up citizenship itself. In this way, the right to the city is an essential right that affects the dignity and personality of individuals, taking its complexity and assuming the task of thinking critically about the use of common space in contemporary societies, being inextricably linked to the right to housing

(Bittar, 2011, p. 266).

The current patterns of urbanization, however, accentuate social differences and exclusions, according to Borja (2013). This time, urban areas express, in their visible reality, the inequality and exclusion of the less affluent population strata, that is, the city that historically was an integrating element now tends to exclusion. The social function of the city can redirect resources and wealth in a fairer way, combating situations of economic and social inequality experienced in large urban centers, mainly, ensuring sustainable urban development, in which the protection of human rights is the focus, avoiding the segregation of needy communities. The practice of citizenship thus consists of incorporating sectors of society into the basic mechanisms of housing rights (Farias; Rosenvald, 2006, p. 214).

The right to the city is conditioned by the physical and political forms that urban development assumes. There are many current challenges, such as precariousness regarding employment and the naturalization of the speculative economy; the scarcity of affordable housing integrated into the urban fabric and evictions or unaffordable debts; the privatization of public spaces; the waste of basic resources generated by current forms of urbanization and consumption; denying or weakening the memory of popular claims and urban conquests and inequality of access to information and communication (Borja, 2013, p. 113). Thus, the right to the city is today the integrating concept of the citizen's rights and the basis for the claim of these rights in a democratic framework. Institutions will only receive the respect they are due in democracy if they act through policies that develop and enable the rights of citizens.

In view of the relationship between personality rights and the general clause for the protection of the dignity of the human person, it can be observed that, especially from the constitutionalization of civil law, it is possible to classify the social right to the city as a right of personality, and, consequently, deserving the same protection as other personality rights. The right to housing is a social right that is umbilically related to the right to the city, as seen above, with the place of residence being an autonomous legal good, even if its function is the protection of privacy, intimacy or personal identity. Thus, there is no doubt that the dwelling space is essential to the development of the personality (Milagres, 2011, p. 132-133).

In addition to the various manifestations of the right to the city, in the case of physical, psychic or moral integrity, it is one of the personality rights closely linked to personal integrity, so that every person has the right to have his physical, psychic and moral integrity respected for the exercise of citizens related to the right to the city. It is important to emphasize that adherence to a theoretical model for the protection of social rights (as in the Brazilian case) is not always accompanied by a real effort to effectively implement these rights. Thus, the importance of the existence of an international judicial protection that effectively protects social rights is revealed, so that the same commitment can really be verified in domestic jurisdictions. And that there is still a long way to go to be able to make social rights effective

(Botelho, 2017).

The vulnerability of the homeless population is the result of a disaggregation of protections aimed at work. Thus, it shines on the disaffiliation of society, weakening the structures of sociability among citizens. In view of this, Valêncio *et al.* (2008, p. 573) considers that "[...] Homeless people are like strangers who do not participate in the social spectacle. These play the role of the 'non-person', which implies a relationship of disrespect and discrepancy in relation to the acting individuals".

The identity of the elderly person is composed of the sum of all their experience in a given socio-historical context. In this way, the elderly are the way they are because they have incorporated the objectified identification into their social relations, as well as adopted the position of roles and social expectations about who they are and how they should act (Mattos, 2005, p. 24). The construction of identity, with reference to the doctrine of Honneth (2003), is based on an intersubjectivity based on reciprocal recognition, that is, on the experiences of human beings in the processes of formation of their identities. According to Honneth (2003), individuals are inserted in today's society through three forms of identity recognition, namely, through love, law or solidarity. Thus, it is observed that the human being has his individuality, but his identity is related to the coexistence with other individuals. For this, there must be a connection and sharing of daily life in the social environment so that there is recognition as a human.

With age, the human body goes through an aging process that makes it more fragile and dependent on the care of other people. In this context, it is crucial to emphasize the need to protect the elderly who are homeless, since they face physical difficulties and are exposed to a hostile environment that further aggravates their health condition. These people live in totally precarious conditions, devoid of the minimum necessary for survival, dignity and any other right that should be guaranteed to them (Oliveira; Fermentão, 2022, p. 24-25).

The elderly homeless population is an extremely vulnerable part of society, which has been affected by cycles of discrimination, exclusion and violence. This population urgently needs truly effective and transformative emergency public policies that guarantee their full exercise of citizenship. It is important to emphasize that public policies can be understood as state actions aimed at public welfare. These are actions carried out with public resources, in which both the objectives and the governmental mechanisms or procedures must aim to achieve the greatest possible well-being in an efficient manner (Vázquez; Delaplace, 2011, p. 89). Maria Paula Dallari Bucci offers the following definition of public policies:

Public policy is the program of government action that results from a process or set of legally regulated processes – electoral process, planning process, government process, budget process, legislative process, administrative process, judicial process – aiming to coordinate the means available to the State and private activities, for the achievement of socially relevant and

politically determined objectives. As an ideal type, public policy should aim at the achievement of defined objectives, expressing the selection of priorities, the reserve of means necessary for their achievement and the time interval in which the results are expected to be achieved (Bucci, 2006, p. 39).

Public policies operate at different levels, due to the diversity of entities that make up the State and the variable political issues. Frequently, different perspectives in relation to problems and solutions are present in the formulation of public policies. There are distinct institutional configurations, with different actors and interests involved (Giulliani, 2005). According to Secchi (2017, p. 43-48), the process of elaborating public policies follows a scheme of visualization and interpretation called the public policy cycle. However, in practice, this cycle is rarely followed in a linear and sequential manner, despite being conceptually possible. Often, solutions are proposed even before the problems are fully identified.

There is no fixed point of beginning or ending a public policy, making the process uncertain and its phases, as mentioned, they are not clearly delineated.

In the context of the contemporary constitutional state, public policies are seen as indispensable elements for the realization of fundamental and very personal rights. Through these policies, the State has the responsibility to ensure the effectiveness and fulfillment of the rights established in the legislation, in a systematic and comprehensive manner, based on a hierarchy of needs. Therefore, in order to break with the patterns of discrimination and inequality that relegate homeless people to social exclusion, it is essential to build cross-cutting public policies that are designed and implemented from an appropriate framework.

With regard to public policies aimed at homeless people, it is essential to overcome this hygienist approach and adopt a more comprehensive perspective, which recognizes the complexity of the situations experienced by homeless individuals. The social programs developed in this context reflect an ideological vision of social discarding, in which a certain population is treated as surplus. These programs are characterized by the institutionalization of practices that aim to remove these people from the streets, but offer few opportunities for them to rebuild their lives (Varanda; Adorno, 2004).

The State has difficulty in implementing truly transformative public policies, in view of the difficulty of dialogue between different public sectors. The social assistance provided by state agencies is limited and difficult to implement, the social assistance provided by the Unified Social Assistance System (SUAS) and the Unified Health System (SUS) faces significant challenges in serving the homeless population. SUAS faces financial, management and human resources limitations, with reduced teams and under intense pressure, both from managers and users who cannot get adequate care, in addition to the demands of the general population. Although there are vacancies in shelters, in many cases, the quality of these services is often low, which leads many individuals to choose to remain on the streets instead of using the equipment provided by

the assistance. The SUS also faces significant pressures in general, aggravated by the covid-19 pandemic, and services aimed at serving the homeless population are in precarious conditions (Broide, 2021b, p. 37).

The elderly living on the streets face a reality marked by loneliness and helplessness, and can even lead to an undignified death. The question then arises: is it possible to achieve effective social justice for this portion of society made up of elderly people living on the streets? These individuals are denied access to various fundamental rights and personality rights, as a result of an unequal distribution of the precariousness of life. It is essential to recognize and respect diversity as a way to guarantee the dignity of the human person. There is an urgent need to institute institutional work to support and assist the elderly living on the streets, as well as to implement public actions aimed at protecting the human dignity of these elderly people, especially those who live on the streets.

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#### **4 The contemporary state of exception: the loss of the meaning of life**

The violation of the fundamental rights and personality of those subjected to homelessness is evidenced as a result of the operation of the *exception*. The human being in contemporary times is fragmented. The world is divided into ill-adjusted fragments and individual existences follow the same parameter, they are sliced into a succession of weakly connected episodes. The human being and the mechanisms of power in post-modernity must be analyzed through different perspectives, from a socio-historical perspective to those of mechanisms of control and maintenance of power.

In the words of Matos (2016, p. 59-61), the state of exception would be established:

[...] in the face of abnormal, serious and unpredictable circumstances – natural catastrophes, violent civil conflicts, acts of terrorism, wars, etc. – capable of threatening the structure of the rule of law, thus determining the concentration of powers, almost always in the hands of the Executive, with the aim of normalizing the crisis situation.

The state of exception, therefore, has been used as a synonym for the temporary suspension of the constitutional order in the face of abnormal circumstances, which would represent an imminent offense to integrity

of the State. From this perspective, the state of exception is characterized as a stage of indeterminacy between democracy and absolutism, through which a situation is generated and ensured in which the law needs for its own validity (Wermuth; Finco; Martini, 2023, p.8). Starting from the biopolitical analysis of the main aspects of Western states, such as the Nazi-fascist experiences, it is possible to admit the existence of dictatorial democracies in a teratological way, considering that the exception and democracy would no longer be

considered paradoxical, but would share the same reality (Marra; Fachin; Zenni, 2022, p. 323).

The state of exception, therefore, is not configured only as the complete absence of the legal order. In spite of the classic concept of the term, in the contemporary edition, this figure would assume its costumes through a zone of exclusion from the efficacy of legal norms. It is possible to affirm that even democratic states have fields and spaces of exception addressed to specific people or groups, according to Agamben (2002). Thus, the exception assumes a permanent character, becoming the rule (Villarroel; Rock; Silva; 2023). A strong example of a current space of exception is the context of invisibility of people living on the streets. The extreme vulnerability of aging on the streets, the invisibility and social exclusion of the homeless population exposes the radicality of the social helplessness of this portion of society that survives deprived of personalistic rights for a dignified life.

In view of the above, it is based on the premise that the central objective of sovereignty is the generalized instrumentalization of human existence and the material destruction of human bodies and populations. Foucault (2020), for example, teaches that the colonial period was the first biopolitical experiment of modernity. The author Agamben (2002) dialogues with Foucault with regard to the state of exception to explain the repressive forms developed by Western politics.

On the issue of the panorama of the human being in contemporary times, it is essential to highlight the historical relationship between sovereign power and *bare life* and how this is reflected today. *Bare life*, unlike wild life, through the state of exception, is excluded and captured by the legal system, this relationship of "exclusion-inclusive" would be the hidden foundation on which the entire political system rests (Agamben, 2002). Thus, *bare life* must be understood as biological life that exists at the mercy of constant standardization by the Sovereign, that is, the life of *homo sacer*. Qualified life, on the other hand, is the one that determines the *modus vivendi* exercised before the State, which also regulates it in the name of preserving the former (Agamben, 2002).

In this sense, *bare life is a consequence of the sovereign power that strips human beings of their political life and transforms them into an excluded and invisible being. It is a condition of total helplessness of those who are cornered in a vague condition, deprived of their rights and citizenship, being compelled to live in a state of exception. According to Agamben (2002, p. 66):*

The task that our time proposes to thought cannot consist simply in the recognition of the extreme and insuperable form of the law as a meaningless validity. Any thought that limits itself to this does nothing more than repeat the ontological structure that we define as the paradox of sovereignty (or sovereign band). Sovereignty is, in fact, precisely this "law beyond the law to which we are abandoned," that is, the self-presupposing power of the *nómos*, and only if we can think of the being of abandonment beyond any idea of law, can it be said that we have moved from the paradox of sovereignty to a politics free of all kinds.

Only a reflection that interrogates the relationship between *bare life* and politics in postmodernity can be able to understand the problems of today. The peak of Nazism in World War II is a great example that sovereign power enters *bare life* through biopolitics, that is, through a sovereign power capable of creating exceptions in exclusion that millions of Jews were transformed into *homo sacer*, and could be killed without being considered homicide (Agamben, 2002). The *homo sacer*, then, would be the one who, having committed a crime, could not be sacrificed according to the rites of punishment and, in the event of being killed, his executor would not be punished (Agamben, 2002, p. 91-93). This time, the *homo sacer* represents the fragility of human life abandoned by law and, at the same time, reveals the existence of a sovereign will capable of suspending order and law.

In this sense, *bare life* is no longer confined to a particular place or in a defined category, but inhabits the biological body of each living being. The intrinsic violence of the law is what legitimizes injustices and sometimes becomes visible in episodes such as those of Auschwitz, the growth of misery and slums in which life is exposed to death, states that reject the arrival of refugees, mass incarceration in inhumane conditions, an increase in the homeless population, and so many other suspensions of legality that mark the path of humanity. It is in these common situations in postmodern society that life is *naked*, totally exposed and submissive to a power that can freely discard it (Pinto Neto, 2010, p. 143). Biopower in postmodernity reduces human life to survival, while the perspective of emancipation points in essence to a transgression. Agamben (2002, p. 62) points out that in certain circumstances, such as those portrayed above, it is a human being who has lost his human characteristics, who emerges when the human has already immersed himself, in the limit between life and death. In the meantime, new figures of people "deprived" of their rights that resemble *homo sacer* emerge in postmodernity. In the state of exception, it becomes increasingly possible for physical and symbolic violence to occur, which, in turn, is anomic, since they materialize from the suppression of rights. (Ramos, 2003, p. 2). Thus, the state of exception is the rule on which the rule of law stands as a kind of myth that conceals the real power relations that exist, for the theorist Benjamin (2011), the state of exception has appeared as the "rule" within the contemporary social body, while the ethics of life has been confused with law, who seeks more and more to freeze it in normative terms due to the immense profusion of legislation, which serve a power with an unknown end.

In order to increasingly regulate human life, the law has taken over all its spaces, reducing the environment of conviviality and allowing the State to introduce itself into the lives of citizens, in a silent but inevitable way, determining how, when and why they should act. Thus, the rule of law and its social contract, that is, the Constitution, are clearly shown as a *myth* that conceals the true power relations that are at stake (Flickinger, 2003. p. 149). In this

vein, Pinto Neto (2010, p. 141) states:

The law will never explain why there is a hyper-guarantee in criminal cases of famous bankers at the same time that individuals are murdered by the police in Complexo do Alemão without even generating a criminal process. This myth is a *hallucination* that projects the supposed contract onto reality and keeps creating aporias to solve its problems: for example, that where there is no law – in a prison, on a hill in Rio de Janeiro, in a courtroom, in the rural countryside, etc. – there is simply a *lack of law*, that is, there is a "non-being" (that is, as if it simply did not really exist or was of little importance).

In this way, it can be understood that the coexistence of tacit violence inherent to the law confers authority and sustainability on it, just as the use of violence can serve to maintain the right or even to create a new law and, thus, continue the regulation of social relations in their various structures (Marra; Fachin; Zenni, 2022, p. 329). If human actions are limited and controlled, consequently, their sphere of freedom in the State is also emptied of meaning, to such an extent that the identity of the subject is transformed. Regarding the identity of the subject, Agamben (2002) teaches that it is the most adaptable and moldable characteristic of the human being, a product of the combination of historical values of a society. Therefore, if the individual lives in the society of post-modernity, tainted by exception, constant surveillance and domination, he believes that his identity will only be developed to the extent that he manages to obtain a mark that defines him well, and, at that time, his emancipation will be. Consequently, this subject begins to internalize the need for limitless efficiency, self-centeredness, exacerbated consumerism of goods and products in which appearance and merchandise have become overvalued, objectifying and artificializing experiences, which are no longer lived in their essence (Debord, 1997).

It is interesting to note that there is a certain convergence in the thought of Giorgio Agamben and Hannah Arendt in *The Human Condition* (2010, p. 333-338). The philosopher points out the progressive importance that the *animal laborans* assumes in society, so that *bare life* comes to occupy the core of power relations. The Modern Era is seen by Arendt, at the end of *The Human Condition*, as the moment of the victory of *the animal laborans* over the *homo faber*, since the activity of manufacturing is swallowed up by the rhythm of the machines in the production and assembly lines and assimilated to the activity of work. In the meantime, new figures of people "deprived" of their rights that resemble *homo sacer* emerge in postmodernity. Agamben exemplifies this reality through the situations experienced by refugees, human guinea pigs used in scientific experiments, prisoners sentenced to inhuman punishment, among others (Agamben, 2002).

Foucault (2015) develops the reasoning from the perspective that power is something that circulates, that works in a network, and that each one of us is the holder of a certain power, and, due to this, also conveys power. Thus, powers are exercised at various levels and at different points in the social network, and in this complex micropowers exist in an

integrated way or not with the State. Power, therefore, begins to conceive two meanings, one positive and a negative. The denial is related to the State as a repressive apparatus that punishes in order to dominate. And the positive one, directs the will to the satisfaction of desires and pleasures. In this sense, access to micropowers in the social sphere provides the individual with the deceptive feeling of self-sovereignty, while the struggle for emancipation increasingly inserts him or her into the system of exploitation of the state of exception, whose malaise can be identified, especially, as the product of a rational process of state oppression, typical of the Western democratic regimes of post-modernity (Marra; Fachin; Zenni, 2022).

Necropolitics carried out by the State can be defined as the power and ability to dictate who can live and who must die. Violence is closely related to the very structure that organizes social relations, reproducing itself in the daily lives of various groups (Mbembe, 2020). For Achille Mbembe (2020), the collateral effects of colonialism and slavery are still felt today, with racism being an element of control and domination in power relations.

It is worth emphasizing, even if briefly, about the fact that the concept of biopower or biopolitics (developed by Michel Foucault) should be expanded in contemporary times. Currently, it is important to portray the magnitude and influences brought by the psychotechnologies of psychopower, as developed by Han (2020). As pointed out by Wermuth, Finco, Martini (2023, p. 13):

[...] In relation to the digital world: thus, a "digital biopolitics" today would accompany the "digital psychopolitics that actively controls people", that is, a politics that is internalized by individuals, who, succubi of neoliberal commandments, construct themselves as subjects of provision. Psychopolitics is digital in the sense that with Big Data and smartphones, the person himself becomes positivized, becoming a pile of quantifiable data dependent on the same smartphones, a "devotional object."

From this perspective, neoliberalism would no longer have the corporeal, the biological and the somatic as its primary concern. There is a discovery of the psyche as a productive form by neoliberalism, current capitalism would be dominated by immaterial and incorporeal modes and powers, bodily discipline thus gives way to mental optimization. Thus, the promise is of personal optimization through the search for limitless efficiency. In other words, the idea is to exploit people completely. We are experiencing the *era of exhaustion*, resulting in a society of fatigue and the development of mental illnesses (Han, 2020).

Han (2020) elucidates that permanent personal optimization, which coincides in its entirety with system optimization, is destructive, leads to a mental collapse, and is configured as a total self-exploration. In contrast to this, the author states that negativity itself is what keeps life alive. Pain is constitutive to experience. It is precisely to negativity that the human spirit owes its deep tension. In this way, the imperative of limitless optimization would exploit even pain, the subject in this world perishes with the imperative of optimizing oneself and dies of the

obligation to produce more and more performance.

Control mechanisms are present in digital technologies and their effects on the subjectivity of users. Today there are several power techniques active in our time, which are directed at the mind and emotions, using psychotechnologies with a focus on increasing efficiency and performance (HAN, 2020). The combination of the state of exception and the misuse of technologies can cause significant damage to personality rights, and there must be recognition that these rights need protection not only in the face of tyrannical power camouflaged as liberal-democratic, but also against violations that can be developed by the use of advanced technologies.

Considering the situation of vulnerability and marginalization of homeless people, especially in *the age of the information society*, it is essential that specific public policies be developed and implemented for this group, taking into account their particular needs. These policies should aim to guarantee access to essential rights, such as health, housing, food, physical and psychological integrity, privacy, among others. It is necessary to offer minimum conditions for these people to be able to exercise their fundamental and personality rights, thus ensuring the realization of the dignity of the human person. However, despite the existence of initiatives and programs that contribute to these people having minimum access to basic rights, the functioning of the care network is still fragile, as well as the intersectoriality between policies and the weak integration between the city's services, which made it impossible to provide satisfactory care and the realization of social rights (Hino; Saints; Rosa, 2018). The deficiency of structuring public policies for human promotion and the non-observance of the concreteness of rights are abstractly safeguarded, either due to the negligence of the state, or because of the structure of exception itself. The violation of the personality rights of the homeless people is a reflection of the functioning of the state of exception in contemporary democracies, including the Brazilian reality. This results in the social exclusion of these individuals, depriving them of essential rights for a dignified life. This deprivation of basic rights compromises their human existence, leading them to an undignified survival that, in many cases, culminates in tragic consequences, such as death.

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## 5 Conclusion

In the present study, it was found that there are several groups that live on the streets, but they all share one aspect in common: the deep rupture of the fundamental ties that sustain their lives. This includes both the closest personal ties and the broader connections to family, territory, and institutions. These ruptures are comprehensive and complex, being the result of different circumstances. In this context of invisibility that people find themselves in street situations, it is observed that many age in this situation, configuring

a double vulnerability: the physical and psychic fragility of the senescence process and life on the streets of exclusion and helplessness. The vulnerability faced by this group of individuals is therefore a reflection of existing inequality.

The post-modern world emphasizes the obligation to rethink, update and expand the rights of the citizen corresponding to the new times. The right to the city and its correlated rights configures as a legitimate, a set of formal and material rights that make up citizenship itself. Thus, in view of the relationship between personality rights and the general clause for the protection of the dignity of the human person, it can be observed that it is possible to classify the social right to the city as a right of personality, and, consequently, deserving the same protection as other personality rights.

It was found that, despite the existence of initiatives for a normative system that protects the dignity of homeless people, of programs that contribute to these people having minimum access to basic rights, the functioning of the care network is still very fragile and not very transformative. The violation of the personality rights of homeless people is a reflection of the functioning of the state of exception in contemporary democracies, including the Brazilian one.

The State and institutions must work together for human empowerment, and in-depth studies that provide useful subsidies for the implementation of public policy for human promotion are of great importance. The importance of articulation with the third sector, such as associations, universities and specialized technical teams, joining creative forces with specific equipment and techniques is remarkable. Therefore, it is concluded that the social abandonment of the elderly homeless population and the ineffectiveness of public policies for human promotion are examples of situations that give rise to the configuration of a state of exception in the Brazilian State.

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