



## THE LEGAL TREATMENT OF "PIXAÇÃO": between the defilement of the capitalist urbanization and a marginal form of reappropriation of the city

*O TRATAMENTO JURÍDICO DA "PIXAÇÃO": entre a conspurcação da urbs capitalista e uma forma marginal de reapropriação da cidade*

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## ABSTRACT

This study aims to investigate the relationship between the right to the city and “pixação” (deliberately spelled with “x” here) – tag or Graffiti Signature – and the form that state actions regarding this practice are based on the production mode and the occupation of contemporary capitalist cities. The analysis was conducted by the deductive-interpretative method and the main procedures used were bibliographic and documentary research. Among the documents gathered are national laws, local laws and jurisprudential decisions - restricting the collection of these last two sources to the host municipalities of the first Brazilian metropolitan regions. In addition to this criterion, the jurisprudential analysis considered two others: decisions that contained the address of the properties; decisions issued as of October 5th, 1998, which the entire content was available on the websites of the respective Courts of Justice. The results obtained allow us to recognize that: the legislative treatment, at a national level, is guided by the criminalization of “pixação” and, locally, by the application of administrative sanctions devoid of reasonability; while police and jurisdictional treatments reflect and, at the same time, contribute to maintain the socio-spatial segregation. Thus, the research provided evidence for future studies on the topic – which consider, for example, other spatial scales - and, also, allowed to identify the “pixação” as a marginal form of reappropriation of the city.

**KEYWORDS:** “pixação”; right to the city; urban space commodification; socio-spatial segregation.

## RESUMO

Este artigo objetiva investigar a relação entre o direito à cidade e a “pixação” (propositadamente grafada com “x”) e a forma como as ações estatais em torno desta prática se pautam no modo de produção e ocupação das cidades capitalistas contemporâneas. A análise se orientou pelo método dedutivo-interpretativo e os principais procedimentos empregados foram a pesquisa bibliográfica e documental. Entre os documentos levantados estão leis nacionais, leis locais e decisões jurisprudenciais – restringindo-se a coleta destas duas últimas fontes aos Municípios-sede das primeiras regiões metropolitanas brasileiras. Além deste critério, a análise jurisprudencial considerou outros dois: decisões que contivessem o endereço dos imóveis; decisões prolatadas a partir de 05 de outubro de 1998, cujo inteiro teor estivesse disponível nos *sítes* dos respectivos Tribunais de Justiça. Os resultados obtidos permitem reconhecer que: o tratamento legislativo, em âmbito nacional, pauta-



se pela criminalização da “pixação” e, localmente, pela aplicação das sanções administrativas desprovidas de razoabilidade; enquanto os tratamentos policial e jurisdicional refletem e, ao mesmo tempo, colaboram para manter a segregação socioespacial. Assim, a pesquisa forneceu indícios para futuros estudos sobre o tema – que considerem, por exemplo, outras escalas espaciais – e, também, permitiram identificar a “pixação” como uma forma marginal de reapropriação da cidade.

**PALAVRAS-CHAVE:** “pixação”; direito à cidade; mercantilização espacial urbana; segregação socioespacial.

## 1. Introduction

Time and space are presuppositions of the existence of all things and facts. Everything exists in a given place, for a given time interval. So it is, too, with human relationships: they occur in a given place and develop over a given time span.

Due to its material expression, space is the subject of disputes for its physical domain and one of the effects of this competition and/or struggle is to alienate the defeated or hyposufficient from the place where gregarious life takes place, denoting that spatial segregation is, above all, a manifestation of social exclusion. In the current capitalist, globalized and urban society, this segregation creates a paradoxical situation: not everyone who is physically in the urban territory is, socially, inside the city – i.e., they are represented in it. Situated on the physical and social margins of cities, they are excluded and unable to enjoy the city, either through the imposition of visible walls – physical barriers themselves – or invisible walls – a series of social constraints. Both barriers make these subjects invisible, as they prevent their physical presence in certain parts of the city or only admit it when they occupy subordinate and/or barely perceptible social positions.

In this scenario, “pixação” – purposely spelled with “x” – can be seen as a response to socio-spatial exclusion. Through it, young people belonging to the peripheral layers contest the established order and, through direct interventions in the urban landscape/aesthetics, participate in/in the formation of the city. The attitude of leaving a mark, or its own mark on the city, is, as a rule, frowned upon and measures to combat it increase, as illustrated by: the Environmental Crimes Law that typifies “graffiti” as a crime and the municipal laws that aim, based on the police duty-power, to punish the “pixadores”.



A confrontation can be seen there: on the one hand, the “pixadores”, on the other, society and the state apparatus. This opposition is the starting point of the investigation undertaken, because, here, it was intended to understand how socio-spatial segregation, the “attitude of the “pixadores” and the action of the State are interrelated and make Law a tool of hygienist policy. This once again turns the city into a space of only economic value and that, as a result, perpetuates social exclusion and marginalization. With this, we sought, first, to examine how the “pixo” is a way for its actors to reappropriate the cities and, from that point, the way in which the State treats the “pixação” was analyzed.

Due to the breadth of the concepts used and their correlations, the research was developed in an interdisciplinary way and, among the main branches of knowledge handled, we can mention: Urban Anthropology, Urban Sociology, Urban Geography, Urbanism, Urban Law, Environmental Law, Criminal Law and Administrative Law. Furthermore, in view of the proposed objectives, the reasoning used was deductive-interpretative. After all, from the generality of the law and principles, we sought to understand how “pixação” relates to the right to the city and to what extent state actions in the face of this practice maintain a pattern that, far from promoting the inclusion of peripheral populations, contributes so that they do not feel represented in and by the urban landscape.

Bibliographic and documentary research techniques were adopted, in which the law and jurisprudence appeared as primary sources and, as secondary, legal doctrine and extra-legal studies. In this sense: anthropological and sociological studies supported the characterization of the “pixadores”, their practices and motivations; the studies in Urbanism and in Urban Geography allowed to delineate the conformation of the current capitalist city and its excluding patterns; while the legal doctrine provided bases to analyze the selected institutes, laws and jurisprudential decisions.

As for the primary data, the main federal laws concerning the subject were analyzed. Laws and municipal administrative actions related to the theme were also examined, having as a sample the normative framework of the host cities of the first Brazilian Metropolitan Regions, created by Complementary Laws n. 14/73, and no. 20/74, which are: Belém, Belo Horizonte, Curitiba, Fortaleza, Porto Alegre, Rio de Janeiro, Salvador, São Paulo and Recife. It was conjectured that these would be places of marked exclusion and socio-spatial segregation and that, due to their demographic and economic size and their importance as national and regional centers, they would present laws and public policies related to “pixação”. Therefore, the selection was not random, as it allowed us to intuit



that the aforementioned Municipalities would provide a relatively reliable sample of the way the topic is treated in other locations.

This same criterion was adopted in the collection of jurisprudential decisions, also believing that the sample would allow relatively reliable conclusions about the jurisprudential treatment of the issue. In this case, the search took place on the websites of the Courts of Justice of the states that have the aforementioned Municipalities as capitals, using, in the research fields, the words “pichação”, “pixação” and “grafite” – the collection of data on this practice was necessary as it was originally criminalized along with graffiti and later decriminalized. Judgments issued since the enactment of CR/88 until 06/05/2020 were sought, but, as the digitization of processes is relatively recent, the sample was limited to the judgments available on the respective websites.

Furthermore, among the criminal decisions, those containing the address of the “pixado” properties were selected. This made it possible to place them in the municipal territory and compare these data with the IBEU – Urban Welfare Index – created by the Observatório das Metrópoles and which cartographically expresses the spatial distribution of the networks that mark the quality of urban life and contribute to forming the price of land. This confrontation made it possible to analyze the extent to which the repressive state apparatus and the application of law contribute to implementing the aforementioned hygienist logic of segregation.

To expose the results of the investigation carried out, this article was divided into six sections. The first was the present Introduction, which contains the main theoretical and methodological elements that supported the research. In section 2, the current mode of occupation of the urban environment was described, addressing the process of marginalization and physical exclusion of individuals and presenting the elements that make up the right to the city, among which is the reappropriation of space. In section 3, still in a synthetic way, aspects related to “pixação” were scrutinized, through the explanation of the reasons that led to the adoption of this terminology, the characterization of the subjects who practice it and their relationship with the right to the city. In section 4, the legal treatment of “pixo” and other behaviors impacting the urban landscape was examined, which allowed us to draw a parallel between the cases. Section 5 was dedicated to the jurisprudential treatment of the issue, indicating recurrences found in the selected judgments, in addition to carrying out the aforementioned spatialization exercise. Finally, in section 6, the main points addressed are resumed, presenting the conclusions about the investigations carried out.



These inferences allow us to see that it was not intended to exhaust the subject, but, when dealing with it in its various aspects, we sought to present some analytical instruments that may support other discussions on socio-spatial segregation and the construction of the urban landscape and that, may, also, provide means and repertoire for the struggle for more inclusive cities. Having made this caveat, we proceed to the study.

## **2. Urban spatial commodification, segregation and the right to the city**

Following the lessons of Marx (1996, p. 304 and 305), Commodities are the result of the combination of products and labor under the supervision of the owner of the means of production. In this context, labor transforms such products into the final commodity, owned by the capitalist who does not intend to have them for their intrinsic use value, after all: “First, he wants to produce a use value that has an exchange value, an article destined for sale [...]. Second, he wants to produce a commodity whose value is higher than the sum of the values of the commodities required to produce it [...]”.

Cars, for example, are made up of countless products that, when worked on, at the end of the production line, make up a vehicle on wheels, which has a utility, a use value, and is owned by the owner of the means of production. However, what is most important in this case, for this capitalist, is not that the vehicle has some use for him - a use value - but that this use value can be expressed in an exchange value, that is, this merchandise must be salable.

It can be seen that, within the innumerable components of the vehicle, there is also the salaried labor of the one who, on the production line, under payment of a certain amount, spent his time and strength to perform the work. However, the sum of the exchange value of all inputs, including labor, is not expressed in the total exchange value of the vehicle produced. In order for the owner of the means of production to profit, the exchange value of this commodity must be greater than the sum of all these items, so that, even though it is labor that constitutes the use value of the vehicle, which can be expressed by an exchange value, he is not remunerated in this way.

Therefore, the labor time spent by the worker, throughout the production process, is also a commodity that, acquired by the capitalist through the payment of wages, adds value to the final product. Therefore, this only acquires its exchange value through the work incorporated in it and the



materials used in it, and the capitalist, there, appropriates the unpaid portion of the worker, for the value that was added to the product, which is called more -value<sup>1</sup>.

For Harvey (2011, p. 43-44), as profit is the objective of capitalism, capitalists reinvest it in production, in order to always expand it and obtain an increasingly greater advantage, whether over the work of more people. members of the proletariat, or combining work and technologies. The reinvestment of part of the profit, instead of spending on mere consumption, derives, first, from the laws of competition and, second, from the social power that money gives it and which, a priori, knows no inherent limits.

The laws of competition are a stimulus to reinvestment, because if the owner of the means of production does not, inevitably, another will, so that the closure of their production activities becomes only a matter of time – thus, reinvestment is necessary to guarantee the capitalist's participation in the market. In turn, the unlimited social power of money stems from the fact that it allows the acquisition of any other physical asset, but the opposite operation cannot always be done. Therefore, there are no inherent limits to the use of money - seen as a universal commodity - so it is incomparable with any other asset - e.g., it is impossible for an individual to own billions of yachts, or shoes, but the management of billions of dollars is fully viable.

Reinvestment, with increased production, generates new surpluses, in a way that they are reinvested and produce new surpluses, in an eternal cycle. Therefore, so that the capitalist does not succumb to competition and enjoy the power that money gives him, he must accumulate it and allocate it to the constant expansion of production that will allow the reapplication of capital.

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<sup>1</sup> In a simplistic way, it can be said that according to the Marxist conception, goods have a use value and an exchange value. The use value is related to the utility that a certain good will have for the individual, its destination to satisfy a human need. In turn, exchange value refers to the price of a good, its value determined in exchange relations. In both cases, the generation of value depends on human labor, which is why this is the source for the production of wealth, after all, it is what transforms raw materials into useful goods to the producer or to third parties who, therefore, will need buy it from the producer. However, in the capitalist mode of production, there is a division between the holder of the means of production, belonging to the capitalists, and the worker who will sell his labor power to the former in exchange for a remuneration/salary. Capitalists aim at profit and therefore will pay workers the lowest possible wages, which must be sufficient for their daily reproduction – food, clothing, housing – and their reproduction as a class – to care for their offspring who, in the future, will replace them. During their work activity, workers produce more goods than necessary to pay their wages and this “value beyond” is appropriated by the capitalist, making up his rate of return or profit. This “value beyond” is the “surplus value” – whose determination is based on the exchange of commodities produced on the market, where exchange relations are developed and where, therefore, exchange value prevails.

This process of generating exchange value and capital accumulation/expansion needs to be operated in a given location, so that it works over time. Take, again, the case of automobile manufacturing. Its production – like any other commodity – from manufacture to sale, which culminates in the acquisition of surplus value, takes place on the phenomenal plane, therefore, in a given physical space. Thus, not only the products and the work integrate the value of the final merchandise – automobile – but, also, the place where the whole process took place and where this good will be acquired and used by the final consumer.

This need for space extends to the extent that capital needs to be reinvested for its accumulation/expansion, so that production is maximized not only in quantity, but also in the space it occupies, which increases, in a chain, the demand for space. More production requires more space and generates a greater number of goods, which take up even more space and need to circulate in space to reach the place where the consumer is and will use them.

It is, therefore, that time and space, essential to the existence of capitalist dynamics, are enunciated by an exchange value: they are products that, necessarily, make up the value of the commodity. The exchange value of time is, a priori, expressed by the number of commodities that can be produced in a certain interval and, therefore, it must be saved in order to guarantee an increasing production. In turn, the value of space is expressed by the potential to enable the production and absorption of goods, guaranteeing that time will be saved and favoring consumption. In this sense, it can be seen that the city is the place that makes this process possible, in a more adequate and efficient way, because it allows the contraction of the time of circulation of capital: it is where the commerce is and where workers and consumers reside. It is, at the same time, the place where capitalism occurs and its result – capital feeds on it and feeds it, in it the surplus is produced and absorbed. Thus, capital shapes the city and the real estate market is the instrument used for this (HARVEY, 2005, p. 48; 2014, p. 30-31; ROLNIK, 1995, p. 16).

## 2.1 Commodification of urban space and socio-spatial segregation as consequences of capitalism

The exchange value of land results in the formation of the real estate market. This aims to earn profit from fluctuations in the demand for space, according to the occupation and expansion of the city, while controlling these processes and favoring the circulation of capital. As the city does not expand homogeneously and has several centralities, each one under a given changing interest – as, incidentally, occurs with all merchandise – the exchange value is not fixed and unique in all parts





and the market operates with this variability (HARVEY, 2014, p. 48; 2011, p. 75; ROLNIK, 1995, p. 16; SINGER, 2017, p. 37-40).

The value of urban land, determined by what it offers to capitalist activities, can vary according to the interest related to the centrality that this portion of the territory can favor. In a central area for industrial purposes, a property may be attractive for the installation of a factory, but it will tend to be less attractive for housing purposes due to pollution. Therefore, the real estate market values urban space from these perspectives so that it can earn the income it wants, enabling the circulation of capital, defining spaces and transforming the city into a true center of consumption (HARVEY, 2011, p. 75; ROLNIK, 1995, p. 30-84; SINGER, 2017, p. 37-40).

Although private property plays a fundamental role in this description – it can be freely disposed of – the importance of public spaces cannot be disregarded. They are constitutive components of the urban landscape, adding value to land and private properties, which denotes that they are also valued and become as relevant as private spaces. This means that all improvements resulting from private or public works – such as paving, sanitation and lighting – contribute to determining the exchange value, insofar as they participate in defining the proximities and distances that are essential for carrying out economic activities, for choosing the place. where shall one live, &c. (ROLNIK, 1995, p. 63).

Therefore, in addition to earning income from the need for space, the real estate market contributes to the soil – seen as a commodity – the values added by improvements resulting from the aforementioned interventions. This urban land valorization model results in the exclusion of everything that may decrease the exchange value and in the segregation of those lacking sufficient purchasing power to be part of this spatial configuration and, thus, actively participate in this process (HARVEY, 2014, p. 27-66; LEFEBVRE, 2011, p. 11-34 e 105-118; ROLNIK, 1995, p. 63).

Capitalist cities have everything in its place: the place to work and live; the poor and the rich neighborhood; the center and industrial zones. According to Raquel Rolnik (1995, p. 41), it is “as if the city were demarcated by fences, imaginary borders, which define the place of everything and each of the residents”. It is the exchange value of urban spaces, based on what they can offer to the process of capitalist accumulation, one of the central elements in the segregation and distinction of these spaces.

In this way, the rise in property prices in areas better served by public and private infrastructure, equipment and services prevents the poorest from having access to them and this exclusion determines where they will settle: the least valued areas. However, the expansion of the city,



over time, and the need for capitalist accumulation may make these last areas gain a new socioeconomic importance, which will lead to the displacement of these people to areas increasingly distant from those that interest the land market.

Remember that space, from the capitalist point of view, is not valuable in itself. Its exchange value is linked to its essentiality to make capitalist activities viable and is integrated by all the centralities in its proximity and by the improvements and improvements that can corroborate such processes. Thus, central places and, consequently, better served by these networks, are more valuable, and can only be acquired or owned by an increasingly restricted circle of people.

The paving of the street increases the exchange value of the property located on it, since it enables the locomotion and transport necessary for the execution of capitalist activities. Parks installed around an area increase the price of the houses located there, as they form an environment composed of leisure areas or green spaces that reduce the effects of the different forms of degradation and allow the gathering of a significant number of potential consumers. The installation of condominiums for wealthy people impacts the price of land, since it concentrates consumers with high purchasing power or contributes to consolidating a landscape considered aesthetically sophisticated.

The illustrations above indicate that the formation of exchange value of urban land means that the best places are occupied by those who have the purchasing power to acquire them, as land becomes expensive to the point of excluding the unfortunate. Consequently, real estate appreciation pushes the poorest population to live in places of lesser value, as these people do not have enough capital to live in better places, which strengthens the capitalist dynamics.

If the value of city spaces is based on what they make possible to the capitalist mode of production, firstly, they will only be available to those who have the financial conditions to occupy them and, secondly, so that they are valued from this perspective, everything that may decrease its value, it should be excluded. Thus, it can be seen that both aspects are interconnected and, in a way, feed each other: a valuable space excludes the poorest populations, as they cannot acquire it; the distance from poverty tends to increase the value of that space, because if the poorest strata are not present there, it is a sign that the wealthier ones are, or may be.

Therefore, urban spaces lacking in services such as sanitation, paving, lighting, which are not surrounded by leisure and social spaces and which do not have adequate aesthetic standards are devalued and may belong to those who are spatially excluded or semi-included in the city. of capital. Thus, the participation of this group in the current urban way of life takes place through work, which does not mean its complete integration, as it does not fully adapt to the consumerist way of life that



characterizes the contemporary capitalist city. This allows us to recognize the existence of unequal integration: those who manage to consume according to the aforementioned standards fits the model described above, which is opposed to those who do not dress as they should, live as they should or behave as they should.

As they do not fit the above model, these individuals are segregated. They start to live in disordered agglomerations and in “subnormal” housing, located around the valued areas of the city and which, for some reason, are still despised by the formal real estate market. They seek to locate themselves in areas that are as close as possible to jobs and that, eventually, are also well supplied with services and commerce.

These groups represent an apparent contradiction to the current capitalist city order. They deviate from the orderly pattern of construction of valuable spaces and carry the stigma of bad neighbors, who live crammed into houses and shacks built clandestinely and who, therefore, must be kept out of – albeit relatively close to – valued spaces, so as not to reduce their price (ROLNIK, 1995, p. 67-70). Paradoxically, the less valued areas, occupied by these individuals, play the role of adding value to the areas of greater value, since the expulsion of the poorest from a certain place – or invisibility, when the expulsion does not apply – values the space, as it can be occupied by those who adequately adjust to those socioeconomic standards.

As the city is not static and the demand for urbanized land tends to increase, some of the less valued areas, located on the fringes of the most well-supplied areas, when they have exhausted the function they performed during a certain moment of the city's survival, are put down to make room to the expanding city (HARVEY, 2014, p. 49-57). This “creative destruction” pushes all those who do not fully adapt to contemporary urban dynamics to the fringes of the city, causing physical expansion not to encompass spatially marginalized individuals and groups. Thus, the populations that occupy the peripheral areas that have become fronts for the expansion of formal real estate capital, are pushed even further, through the most diverse means, e.g., the expropriation of these areas, arson, etc. All to make living in that place unsustainable and, with that, force populations to be removed and neighborhoods to be demolished so that, in their place, the new expansion area of the contemporary capitalist city can emerge.

This occupation logic is not limited to the location of the housing of the impoverished groups, but encompasses their permanence and frequency in certain places. Their physical presence is only tolerated if these individuals perform work activities in wealthy areas, without, however, enjoying the ambience created by the urban improvement networks. Therefore, except for this



hypothesis, there are no reasons, under the logic of the contemporary capitalist city, for these groups to occupy or frequent these areas.

As the formation of exchange value of space transcends the property itself, its surroundings must favor it – it must be beautified and frequented by the “right people”. Public recreation areas should be taken over by middle-class young and old, with their dogs of different breeds and colors, by middle-aged men and women exercising on sunny mornings. These same people will usually frequent private spaces open to the public – shopping malls and commercial galleries.

The non-frequency or non-use of these spaces by the poorest does not stem from their desire. On the contrary, they cannot stay and they hardly manage to reach these places, either because they live in distant areas, or because their permanence, in some way, is forbidden. On the one hand, real estate appreciation and the precariousness of access to service networks, equipment and urban structures explain the location of these people's residences - they live where the price of land is low, which is linked to the difficulty of accessing the aforementioned networks, e.g., transport and paving, which makes it difficult to move around. On the other hand, the prohibition of permanence can occur in the most varied ways – the individual can be repelled with a strong vigilance over himself or, even, by the embarrassment of going to a place where he does not see himself represented. For example: in shopping malls, those identified as poor may be harassed by security guards or not served in stores; in parks and squares, the treatment can be similar, making it clear to the individual that he does not belong there. The objective is, therefore, to make him not recognize himself in the experience that is presented there, in order to mark that that environment is not part of his reality.

From there, it can be seen that the denial of access to urban land is widespread. It encompasses fences and obstacles to both the permanence and the frequency of impoverished urban strata in valued spaces. Thus, those who do not fully integrate into the hegemonic ways of producing and consuming are segregated from the aforementioned spaces and, equally, are stigmatized for being excluded from these same places.

These ways in which the dominant model builds urban morphology are often fostered by Public Entities. They play the role of formulators and executors of a segregationist urban policy that, based on a technicist logic, makes the city “only in its physical aspect, disconnected from the social elements that produce space, legitimizing and externalizing spatial segregation” (COSTA, 2010, p. 162 and 169-170). In addition, as they have a legitimate monopoly on force, they can actively collaborate with socio-spatial segregation – e.g., by issuing municipal laws on zoning, use and occupation of urban



land, by defining building standards and by using police force. (ROLNIK, 1997, p. 181-217; 1995, p. 52-71; HARVEY, 2014, p. 27-66).

This set of actions is closely linked to the formation of the exchange value of urban land, which is the main factor of segregation and, at the same time, contributes to the formation of disordered urban agglomerations, which contribute to creating the stigma carried by impoverished populations. This stigma motivates the desire to keep these people away, denying them coexistence in spaces intended for the public and it is, in this sense, that Public Entities also exercise the function of segregating, producing the necessary constraints for the segregated to remain in this condition.

However, the periphery is not alien to the city, but is part of it, as a result of the urban occupation mode, even if it is not valued and its residents do not fully adjust to the dominant model. Thus, city and periphery are not antagonistic ideas; on the contrary, the latter is contained in the former and is a condition for its very existence. However, the capitalist production of space creates the periphery/city dichotomy, so that, even with one contained in the other, poor individuals, due to the stigma they carry, are forced to only see themselves represented in their neighborhoods.

This removal of the poorest populations substantiates the denial of the city to these people, because, in the commodified urban land, there is no place for integration, coexistence and construction of their lives. Consequently, this distance reduces these individuals to a supporting role in the entire process of shaping the urban landscape (COSTA, 2010, p. 187-188; HARVEY, 2014, p. 30).

## **2.2 The right of the segregated to reappropriate the city to see themselves in it**

The spatial occupation model exposed above restricts the enjoyment of urban space to a portion of individuals. These individuals have sufficient conditions to, intentionally or not, build the city they want, since these means guarantee them the power to configure the space in their image and likeness. In this context, the spatially marginalized are condemned to live in a world created by those who can build their own city, i.e., the power of the impoverished population to configure space is shaped by wealthy groups, portrays their exclusion and defines creative and alternative solutions. to supply or circumvent the famine situation in which she lives. Thus, the conformation of this “illegal” or “informal” city portrays the aforementioned social relationship of subordination.

The territorial organization of the city, as a whole, can be seen as the exercise of a power that is concentrated in the hands of a part of society, which has the state apparatus in its favor and which ignores the existence of multiple legitimate interests, supported by the Paradigm of the



Democratic Rule of Law (COSTA, 2010, p. 172). In this sense, urban socio-spatial segregation is diametrically opposed to the right to the city, as this dynamic condemns individuals to live off the leftovers of the city. For Harvey (2014, p. 28), if the city is a world created by people and it is where they are condemned to live, the right to the city must transcend the right of access to the resources and spaces contained therein, to be the right to change and make the city according to the desires of those who live in it. Therefore, participation in urbanization processes, from which the city is built under certain values, is the expression of the right to the city. (CARVALHO; MARIANI, 2017):

The right to the city implies that citizens participate in decisions regarding the production and organization of space, giving them the possibility of, in a symbolic dimension, providing them with the appropriation of this same space in order to feel [...] and through the urban landscape (COSTA, 2010, p. 175).

Therefore, if the power to configure and use space is withdrawn from the dominated layers and used only in the sense given by the dominant group, it is in the right to the city that spatially marginalized groups can shape the landscape and reappropriate space. This possibility goes beyond the pre-conformation of the powers of socio-spatial configuration conferred by wealthy groups, to guarantee to the marginalized layers the power to use and signify the urban space, imposing an equitable distribution of the networks of services, infrastructures and equipment, recognizing the multiple forms of urban conformation as legitimate and ensuring free access to urbanized land, public spaces and private spaces open to the public for all.

Although Brazilian urban policy, guaranteed by the CR/88, is based on this understanding of the right to the city and has among its instruments the democratic management of the city, while the standards established by a technicist and excluding urbanism persist, the conditions for the realization of the right to the city will remain reduced. After all, Urbanism provides support for making decisions regarding the aforementioned policy, so that they are adequate to reality, and, through a dialogic process, culminate in the translation of these decisions into the legal code (COSTA, 2010, p. 189).

In this way, by ignoring the city in all its complexity, considering only its physical aspect, the aforementioned decision-making process, although formally democratic, will not bring the factual reality to the normative texts and the acts of Public Entities. It is, therefore, that the apparatus offered for the execution of an urban policy, supposedly democratic, serves as an instrument for real estate capital to occupy the central role in urban management, reaffirming its discourse, in a legal way, but



not necessarily legitimate. After all, this discourse excludes stigmatized individuals, seen as a factor of depreciation of spaces, because, for example, they are seen as potentially dangerous.

In turn, individuals belonging to the excluded strata, in the search for visibility and the ideal treatment of their aspirations regarding the realization of the right to the city, give new meaning to the urban space by means different from those usually adopted. If the technicism of contemporary capitalist urbanization prescribes a pattern of spatial ordering only conducive to the development of activities of interest to the dominant classes, the “disordered spatial conformation” – a hallmark of segregated groups – portrays solutions to spatial marginalization and famine and denotes the resignification that they attribute to space. Thus, one of the consequences of the urban order/disorder dichotomy – in face of the “legal city” model – is to give visibility to the poorest urban populations and, therefore, operate as a mechanism to guarantee the ideal treatment of their desires.

This is how the street, a space for the circulation of goods and consumers, becomes the stage for protests and that shopping malls, spaces for consumption, become a meeting point for young people in the so-called “rolezinhos”. These are illustrations of how city spaces, conceived as a support for today's capitalist activity, are resignified and come to belong and portray these individuals<sup>2</sup>.

Such means have yet another dimension. As these individuals are “labeled” by the dominant model and carry the stigma imposed on them, their mere physical appearance is uncomfortable. By occupying the space, they disrupt the way of living and the pre-established aesthetic standards and make visible what they wanted to hide. What they bring to the urban landscape is seen as “dirt” that must be cleaned, taken away, extirpated. After all, the way they dress, the shape of their homes and the way they behave are seen as inadequate to the hegemonic behavioral model.

If, in the urban landscape, this “dirt” can represent a threat to the aforementioned social control of city spaces, it is in the “dirt” of “pixação” that some young people from the periphery find a way to re-signify and re-appropriate the spaces that are theirs. denied. The scratches and stains they leave are allegedly inharmonious and striking, and they do not intend their marks to be pleasant. It is, therefore, that they invoke the stigma created by society and bring the unwanted “dirt” to the city that they try to make invisible – by marking the landscape, they translate their aspirations to realize the

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<sup>2</sup> These resignifications given to places, whether intended or not, disarticulate the modus operandi of capital for the time they last. Capitalist flows – consumers, commodities, owners of the means of production, traders, etc. – are forced to walk different paths when demonstrations take to the streets. The movement of young people, who gather in malls without the intention of consuming, changes the destination for which these spaces were conceived.



right to the city. Thus, this public claim of the persona produced by the dominant model can be understood as what Bourdieu (1989, p. 107-132) called “revolt against stigma”.

Urban socio-spatial segregation is the instrument of domination that places peripheral urban populations in a weakened social position that is hierarchically inferior to those who own the means of production. However, from the moment these populations modify the landscape, making use of the image attributed to them by the ruling class, they start to occupy an active position in this dynamic, marking their presence (COSTA, 2012, p. 156). -173; BOURDIEU, 1989, pp. 107-132). However, the differences between those who segregate and those who are segregated are not annihilated with the “pixar”, but become more evident, because who the “pixa” is, exactly, is the one whose power to configure the landscape is reduced and/or nonexistent. Therefore, if discrimination against these individuals does not allow them to participate in the formal processes of configuration of the city, it is through the modification caused by the “pixo” that their voices can be heard, not through the messages of the texts and recorded images, but, by what this reappropriation means.

In short: the peripheral citizen “incorporates the stigma” of inadequacy to the hegemonic aesthetic and hygienist standard, abandons the passive posture and, then, marks the city as if he “dirty” it. Thus, he starts to occupy the position of subject who claims the realization of the right to the city, so that the landscape also belongs to him and portrays him. Not that this individual is no longer a subject who claims the right to the city, but, before “pixar” – as a mere bearer of the stigma imposed on him – he passively occupies the places that are destined for him, not being considered as a relevant participant in the dialogic process that must mark the right to the city (COSTA, 2012, p. 158).

The “dirt” seen in the “pixação” by the ruling class has a bit of the personality of the one who makes it and, in a symbolic dimension, places the “undesired” periphery within the city that, at the same time, belongs to and portrays those who are segregated. Thus, if the right to the city must also be understood as the right to produce, change and make the city according to the desires of those who live in it, the “pixadores” seek to take this right into their own hands, not because they want to live in a stained environment, but, because they make clear the stains that exist in a pretended and falsely immaculate landscape.



### 3. The marks in the urban landscape: “pixação”, graffiti and “pichação”

Although from the perspective of current Urbanism the city is produced by and for capital, it is – and must be understood as such – as the space that people build to live. Under the Paradigm of the Democratic Rule of Law, the city must not only support the aspirations of the ruling class, but also support the aspirations and desires of those who are excluded or who find obstacles to participate in the decision-making process on directions of the city and its conformation – which includes the constitution of its spaces, the urban morphology, the aesthetics of the buildings, etc.

It is not difficult to describe the landscape of a city, as it is established in the current molds. Tall buildings that concentrate a huge number of people, busy streets, avenues and bridges crammed with vehicles, billboards, illuminated signs, which try to sell the most varied products, and people circulating at a frenetic pace are some of the elements that form it. However, if someone pays attention to the details of the environment, directing their gaze to the top of one of these buildings, to one of these bridges, or even to a mere pole, they will find a mark left by someone. This inscription, at a certain moment, reflected some desire of its author, and, certainly, presents a disruptive form to the expected aesthetic standard, configuring a desire whose realization finds shelter in the right to the city, or in what is understood as the ideal of happiness. gift.

The act of inscribing drawings or phrases on walls and buildings is usual and accompanies all human history. Even when nomads, the individuals already left marks in the caves and on the stones of the paths where they passed. In ancient Rome, residents repudiated by others had the walls of their dwellings engraved with charcoal. In the city of Pompeii, covered by the lavas of Vesuvius in the year 79 AD, there is a record, still preserved, of inscriptions made on walls, ranging from announcements to love messages. Today, cities are marked by illustrations made with ink, many of which were made by young people from the periphery who record them through the so-called “pixação” (FERREIRA, 2011, p. 2).

These marks left in the city are not always easily understood, although their texts are clear, they may not have meaning for the common individual, but they will always compose a meaning attributed by a certain group of people or, at least, by their author. The “pixação” can be shown in different ways, but it always carries with it the identity of a group, the ideals of its young authors and the possibility of intervention in the urban landscape. (SPINELLI, 2007, p. 113-114).



It can be seen, therefore, that urban intervention through “pixação” has a dual character. On the one hand, it appears as the aesthetic nonsense to the city of capital, functioning as the reverse side of billboards, bringing, in a symbolic dimension, the periphery to the center and modifying the urban landscape so that these individuals see themselves represented in it, hence the need to “pixar” a place of high visibility in the city. On the other hand, “pixação” presents itself as the language of sociability groups composed of “pixadores”, whose support is the city. Thus, “pixadores” communicate, often in an encrypted form, and organize themselves in their own way, through brands. For this reason, individuals who do not belong to these groups often find it difficult to understand their traits (SPINELLI, 2007, p. 113-115).

Both aspects do not exclude or oppose each other, but overlap, integrate and complement each other. Although the language established in the dynamics of “pixação” is restrictive, with traits that are difficult to understand, this also contributed to the highlighting of these brands in the city, which corroborates the aesthetic nonsense that “pixo” intends to carry. In the same way, “pixar” important places in the city, not only exerts the function of placing the periphery in the center, but also contributes to the dynamics of the groups of “pixadores”, because, in doing so, the individual will have notoriety among his peers.

### 3.1 Pichação, “pixação” and graffiti

The word pichação, spelled with “ch” is the official form, according to the orthographic rules of the Portuguese language. This is the form adopted by legislation to criminalize the practice and by society to designate “dirt”, “vandalism” and the illegality committed by young people with paint, spray and other materials. In turn, the spelling with the letter “x”, contrary to the aforementioned rules, is not officially recognized, but it is this form that the practitioners of this intervention employ, it is through it that they identify themselves: the “x”, in the instead of “ch”, it represents the same transgression of its inscriptions, disobeying the standard, including aesthetic, of the cultured norm; moreover, the spelling with “x” differentiates practitioners from the form used by society to designate them in a pejorative way (PEREIRA, 2010. p. 143; SILVA, 2016, p. 27-36).

Therefore, the term graffiti is commonly used to refer to the behavior of “pixadores” and pichadores. The latter do not necessarily come from a peripheral movement, encompassing individuals who use risks in the city for purposes other than the reappropriation of space – e.g., personal revenge. That is, although the word “pichação”, used by the majority of the population, can also cover



“pixação”, it does not exclude forms of visual intervention carried out with a different purpose than “pixo”. This shows that the social terminology used by the group is endowed with specificity, as it designates practices that go beyond the mere marks left in the city and present their own dynamics, endowed with a performative and peripheral discourse, whose support is the city.

The claiming and peripheral character of “pixação” becomes more evident when analyzing its relationship with graffiti. Both forms of intervention in urban aesthetics have the same origin, although in Brazil – sometimes due to the interference of the Public Power itself – they currently name different practices. “Pixação” is seen as vandalism, depredation and defilement, while graffiti designates the practice that was socially well received and that, nowadays, is seen as art (HAMANN; PIZZINATO; TEDESCO, 2017. p. 1-10; PEREIRA, 2005, p. 12; SPINELLI, 2007).

The 1960s and 1970s were crucial to the current development of graffiti. In this period, urban inscriptions increasingly became part of the forms of popular demonstrations and protests, and cities came to be seen as a scenario where the struggle to acquire rights or as a means of claiming rights unfolded. In this context, marking the landscape contributed to increasing the representativeness and visibility of certain groups in the urban space.

In the 1960s, Europe saw the rise of acts against “political authoritarianism” and the “exacerbation of capitalism”, many of which linked art and politics and, through inscriptions in the cities, sought to empower the members of these movements for the struggle that worked. This is the case of the student movements that took place in Paris in 1968, which took to the streets, leaving their marks on them – such as song lyrics and protest messages. Another example is the “punk” movement, which emerged in the United States and was widely disseminated and better established in England, whose members marked the streets with the well-known symbol of the anarchist movement, in which a letter “A” is written with rough strokes and circled by another trait (FERREIRA, 2011, p. 2; PIRES, 2017, p. 50).

However, it was in the USA that the marks left in the cities proved to be more forceful, to the point of acquiring a certain systematicity, in what came to be called graffiti, or graffiti. This cultural scene began in the 1970s, in the Bronx district of New York, where young people belonging to local minorities, linked to experiences of ghettoization and/or segregation - e.g., Moses' proposals to revitalize the area<sup>3</sup> (FERREIRA, 2011, p. 1-10) – contributed to the emergence of “peculiar forms of

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<sup>3</sup> Entre as décadas de 1950 e 1960 o distrito do Bronx, habitado por judeus, italianos e negros de classe média baixa, passou por profundas mudanças em sua configuração. Sob o imperativo de uma pretensa modernização e embelezamento da cidade, o local foi cortado por uma via expressa, o que ocasionou a saída de

sociability and occupation”, among which was Hip Hop. It emerged as a leisure alternative for the impoverished populations who started to live in these spaces that, due to the Hip Hop movement, were gradually re-signified and became stages for cultural meetings, with music, dance and visual manifestations (PIRES, 2017, p. 52).

The resignification of spaces – notably public – and their occupation endowed the Hip Hop movement with a political and transgressive feature. In addition to leisure, the events held sought to denounce the neglect of the State and society with the populations that lived there. The lyrics of the raps dealt with prejudice, police violence and state oppression. The walls, walls and ruins, with the practice of graffiti, began to be drawn with scenes of the district's daily life, being engraved by the marks of the young people who took Hip Hop as a way of life.

Thus, graffiti began to identify the presence of its practitioners in spaces marked by their drawings and signatures, quickly spreading beyond the Bronx. The Hip Hop movement gained freedom, not only because it gained fame as a musical style and commercial niche, but because the marks of the practitioners of this transgressive way of life started to be left everywhere they went. Thus, they re-signified spaces, which became a usual practice since the origin of the movement and, in essence, this remains in current graffiti.

Graffiti is shown to be averse to the way in which the city imposes itself on young people from the periphery. It is characterized as a way of modifying the space, not for the content of its marks, but for the transgressive character that it carries since its origin. Soon, with such a practice, young people began to integrate themselves into the contemporary urban landscape, in a peculiar way, which, before, was impossible.

The marks left in cities by graffiti, as an expression of Hip Hop culture, whether legible or illegible, whether drawings or letters, were not differentiated anywhere in the world and were always seen as part of the same practice. However, in Brazil, these visual interventions, mainly due to a classification difficulty, were seen as distinct: the drawings came to be considered works of art outside the galleries; manifestations with stylized letters, such as “pixo”, started to be categorized as vandalism (PEREIRA, 2005, p. 17-18).

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aproximadamente sessenta mil pessoas da região, seja porque suas moradias foram demolidas, ou, porque o local tornou-se menos frequentado, tendo em vista a fuga do comércio por conta da construção. Os imóveis abandonados, e as ruínas deixadas por este processo, serviram de refúgio para famílias que se encontravam em situação de extrema vulnerabilidade e que fugiam de condições de habitação ainda piores. Além disso, o desemprego e a inflação, crescentes nos Estados Unidos à época, contribuíram para o aumento da violência no local (HARVEY, 2014, p. 33-40; BERMAN, 1982, p. 342; PIRES, 2017, p. 50).



If, today, “pixação” suffers great repression, including its criminalization, the same happened with graffiti. When the practice arrived in Brazil, drawing around the city using ink was seen as something that should not be accepted because it was presented, at the same time, as an expression of a peripheral movement that vandalized the city and as an artistic expression that was not in the galleries. of art, a place that, in theory, it should occupy, if it were classified as such. However, from 1980 onwards, with the development of a Brazilian style of marking the city with paint, graffiti began to be taken as an artistic manifestation, while repression turned, almost entirely, against the new style that emerged, to which called “pixação”. In this way, the relationship between both forms of intervention has become increasingly ambiguous: in many cases, “pichadores” and “graffiteiros” maintain cordial and friendly relations, since many individuals move between the groups; At the same time, there are “graffitists” who rise up against the “pixadores”, seeing them as opponents in the occupation of spaces in the city.

This ambiguity becomes greater when one bears in mind that the visual impact caused by the stylized inscriptions that characterize the “pixo”, as they are intentionally different from the landscape, contribute to a greater tolerance for the drawings and colors of graffiti. This tolerability, based on the understanding that graffiti is an artistic manifestation, provides its legal acceptance, as opposed to “pixação”, which occupies the place of vandalizing practice (PEREIRA, 2005, p. 17-28).

### 3.2 A “pixação” and the “pixadores” in the city

The “pixação” can be defined as a style of aesthetic manifestation, with origins in the graffiti movement that spread in Brazil, mainly from the city of São Paulo, where the sociability groups of the “pixadores” found support for their practices. It is performed by young people who, with paint, rollers, brushes and pens, engrave urban surfaces with stylized shapes – usually using straight and angled lines, and even their own alphabets. The marks refer to the author himself or refer to the groups to which he belongs and, sometimes, contain messages of protest.

The angled, monochromatic marks, with straight and written lines, almost always unintelligible to the less trained eyes, are characteristics of the style that some call “Escola Paulistana” (SPINELLI, 2007). This way of doing it brings what Canevacci (1993 apud PEREIRA, 2005, p. 12) defines as an “Arabic-Gothic” writing that is difficult to understand, configured by the aesthetic style described above, which homogenizes these marks, and by the “phantasmic presence” of the author of the



“pixação”, which attests to its existence anonymously in the urban landscape, through such inscriptions (SPINELLI, 2007, p. 113).

Although the aesthetic of “pixação paulistana” does not summarize all the styles found in Brazilian cities, the “phantasmic presence” is one of the elements that configure this practice. It is the primeval intention of the marks left, because such marks, rarely, say something overtly. The “pixo” will not necessarily bring a discourse in the content of its writing and, hardly, will present itself in an intelligible way. Its intention is contained in the form, which, at first sight, and purposely, causes discomfort because it clashes with the urban landscape, where a characteristic of cleanliness predominates.

Who “pixa” is present, not because he inscribes his name, a phrase, or the name of the group to which he belongs, but because, in the way he makes such an inscription, in a stylized way, in a way, it causes discomfort and directly interferes in the landscape, configuring it. This means that the meaning of the “pixador” discourse is not, as a rule, constructed by the content of the writing, but, by its form, which attests to the existence of the “pixador” subject in the urban space, at the same time that it shapes the landscape.

This peculiar writing – strange and uncomfortable – constitutes the common language of the groups that practice “pixação”. Although the person who inscribes stylized marks in the landscape is anonymous to the rest of the city, the use of this common language provides the recognition and notoriety of its author among those who use this language. Recognition and notoriety are fundamental in the dynamics established among the “pixadores”, and, for these reasons, they take the risk to mark increasingly high and dangerous places, to design what only they understand.

It is common for a “pixador” to win the admiration of his peers for having climbed many floors to carry out a certain intervention, or for having “pixado” a place of difficult access (PEREIRA, 2012, p. 60). The relationships experienced by members of groups exclusively made up of “pixadores” are, in general, respectful and tend to value the work done by older and more industrious people. There are frequent “pixos” that refer to already deceased members of the groups, with phrases such as “be in peace” or “in memoriam”, as well as the preservation of interventions previously made by the already deceased member, condemning the practice of “running over”<sup>4</sup>. Another example of this

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<sup>4</sup> “Atropelar” means to make a new intervention on a previously performed one. This practice is not only condemned with regard to the marks of the deceased, but also of all practitioners of “pixação”. Despite the respect experienced by the “pixadores”, the practice of trampling is a reason for settling scores between groups, which can come to blows and even death.

sociability can be found in the “folhinhas”, notebooks carried by the “pixadores” and marked with pens, filled with marks made by other interveners<sup>5</sup>.

The street is the opposite space to the house, it marks the dichotomies between the public and the private, between calm and movement, between rest and work. The “pixadores”, by arranging their meetings and meeting in the streets, transform this impersonal space into a space for sociability, leisure, movement and action. Thus, they recover the meaning of public roads as spaces of coexistence, devoid of owner and opposite to the calm of the house, where private and individual relationships take place.

As a rule, the streets where the “pixadores” work are not those in their neighborhoods, but those located in the central areas of the city. According to Alexandre Barbosa Pereira (2010, p. 149), this occurs mainly for three reasons. First, “pixação” does not have, in essence, a character of demarcation of territories, although its practitioners seek to demarcate the largest number of spaces<sup>6</sup>. In the background, because the center is the strategic place for the meetings to take place, since they are attended by young people from all over the periphery and, in this way, all the socialization dynamics already described can occur more easily. Finally, and this is the most relevant reason for this essay, “pixar” the center ensures greater visibility for authors and their brands, as “pixadores” and “non-pixadores” move, in some way, through the central areas.

Thus, at the same time that, at night, the street is the place where fear and the possibility of violence reign, for groups of “pixadores”, it is the ideal space to share experiences and to live their style of life. life. Consequently, the city becomes not only the space where they leave their marks, but also the space where their lives take place.

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<sup>5</sup> In them, the “pixador” collects the marks of his partners at night, as a form of reverence and respect for the work of others, and as a way of immortalizing the traits of colleagues who tend to disappear due to the ephemerality of the space in which they are made. The signatures and marks left in the aforementioned notebooks are valuable for those who have them, as much as their own “pixos”, because the more marks and signatures, the greater the number of meetings between the notebook’s owner and other “pixadores”, which means that he is better known and has a larger network of contacts. The “leaves” can even be sold when they are more valuable, because they bear the mark of a better-known “pixador” – e.g., because they face great challenges at night – or because they bear the mark of someone who has passed away. These marks and signatures are taken by the “pixadores” during the “rolês” to carry out interventions in the city, which usually occurs at night and on the street, because the “pixadores”, for the most part, have some occupation during the day, as work and studies, and the street presents itself as the public space par excellence, where groups can meet, roam and “weave networks of sociability”.

<sup>6</sup> In the case of groups of “pixadores”, this does not mean that that place was demarcated as territory belonging to someone.



#### 4. The path to the construction of an illicit: the “pixação” beyond the state sanction

By generating discomfort, “pixação” lays bare the socio-spatial segregation that characterizes the production of contemporary capitalist cities. Precisely because it contradicts the aesthetic standards that characterize these cities, bringing peripheral manifestations to the center, the “pixador” starts to be seen and constructed as a deviant subject. It is in this context that his image of an enemy is constructed that damages other people's property, vandalizes the city and, therefore, needs to be removed from social life.

In Brazil, the construction of this stigma permeates the typification of the practice of “pixação” as a criminal and/or administrative offense. Thus, understanding the legal treatment of “pixo” requires presenting the legislative outline of the issue, starting this journey with its characterization as a crime.

the art. 387, of Decree no. 847/1890, prescribed that “to affix in public places, on the walls and walls of houses, without permission from the competent authority, posters, prints, drawings, manuscripts, or to write letters or signs” was a criminal misdemeanor, the penalty of which was the payment of traffic ticket. These behaviors were not typified by the Penal Code of 1940. Thus, until the 1980s, “pixação” was an indifferent criminal act, whose regulation and sanction were restricted to administrative penalties, based on the police duty-power, and to actions of repairs for damages proposed by the owners of the “pixados” goods.

However, with the development of “pixação” in the 1980s, attempts began to criminalize it, first, by equating it with one of the conducts already typified as criminal. At the time, the most widespread and defended thesis, by jurists and the population, was that, by “pixar”, the author of the intervention, committed the crime of damage, provided for in arts. 163 e 165, Penal Code<sup>7</sup>.

Understood as a crime of damage, “pixação” could lead to its author being sentenced to serve a prison sentence of six months to two years, depending on the application of qualifiers and aggravating factors, together with the imposition of a fine. The action could be private or public depending on the case.

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<sup>7</sup> There were minority positions that placed “pixação” as a kind of “disturbance of tranquility” or “vagrancy”. Those who equated it with the first misdemeanor argued that the owners of properties marked by the practice were annoyed by the behavior of the “pixadores” and that their motive was reprehensible and futile. In turn, those who equated “pixação” with “vagrancy” claimed that the “pixadores” worked during the night and that, the next day, they had no occupation – which, as seen in the previous section, does not match reality (MANCUSO, 1992, p. 163).



The justification for the application of the aforementioned penal type was that the marks left on the walls and walls caused damage to their owners, since the painting of the property, carried out previously, would be defiled. However, these arguments contradicted consolidated doctrinal understandings and collided with basic principles and concepts of Brazilian Criminal Law. Firstly, the criminal type in question uses the verbs “to destroy”, “to make useless” or “to deteriorate”, as designators of illicit conduct, which do not encompass – or are not synonymous – the verbs to dirty or defile that identify the act of “degrading”. *pixar*”.

In this sense, Nelson Hungria (1955, p. 102) taught that to destroy a good consists of taking away its existence – i.e., in the case of a property, it would be to demolish it; whereas, to render a good unusable consists in reducing, even temporarily, its suitability for the purpose assigned to it. The “*pixação*” does not prevent or reduce the possibility of carrying out the activities for which the property was intended, since these, as a rule, are carried out inside and the “*pixação*” is characterized by marks left on the outside. Even the reduction in economic value is questionable, since this will only be relevant in the case of disposal of the asset and, as seen in section 2, several factors interfere in the composition of the exchange value of a property, being the marks of “*pixação*” can be quickly removed. Finally, the deterioration of a good consists of removing its substance without causing it to disintegrate or disappear, “only being diminished in its specific utility or deprived of its economic value”, which, for the reasons above, is also not the case. .

Although it can be said that “*pixação*” attacks the good “*pixado*”, in no way can it be said that it destroys it, or that it reduces its purpose. After all, a wall does not cease to be a wall, nor does it become useless for its purpose of surrounding and protecting the property, because it has been marked with paint:

[with] deterioration is not to be confused with simple defilement [...]. Whoever blurs the facade of a house, throwing stercora or pixe at it, does not commit damage (other than, depending on the case, real injury, infraction of municipal posture or simple civil offense); the same, however, does not happen if, for example, an artistic canvas is soiled or the wine in a barrel is polluted. As long as it indemnifies the substance and utility, it does not constitute damage, as a criminal entity, the simple offense to the aesthetics of the thing (HUNGRIA, 1955, p. 102).

Thus, since there was no legal provision for the aforementioned conduct, the understanding that the act “*pixar*” constituted a crime of damage, using, therefore, an extensive interpretation of the criminal law, contradicted the principle of legal reserve, a corollary of criminal law in the Democratic State of Law – under the terms contained, today, of inc. XXXIX, of art. 5, of CR/88



(BITTENCOURT, 2010, p. 41). In this way, the attempt to adapt the aforementioned act to the crime of damage demanded that it be understood that "pixação" - seen as defiling - was part of the aforementioned criminal type and that the "pixador" was imbued with the will to practice, at least one, of the verbs that are part of the penal norm.

Although some magistrates have adopted the above understanding, in 1990, according to Rodolfo de Camargo Mancuso (1992, p. 162-163), there was an indication of evolution in the treatment of the matter. On this occasion, the Criminal Court of the State of São Paulo resumed the understanding already advocated at the end of the 1970s, in the sense that defiling did not constitute a crime of damage, which indicated the possibility of resuming the recognition of the atypicality of the said conduct.

However, the edition of Law no. 9,605/98, put an end to the aforementioned trend, as well as to the plurality of jurisprudential understandings on the subject. your art. 65 prescribed the "crime of graffiti" assigning him the penalty of detention from three months to one year and a fine. This criminal type, despite some changes, is in force and is prescribed in Chapter V, named "Crimes against the environment", in Section IV, entitled "Crimes against urban planning and cultural heritage" and has the foundation for the protection of the so-called artificial environment. For Paulo Affonso Leme Machado (2014, p. 55-57) and Fernando Capez (2008, p. 30), the discourse of protecting the city as an "artificial environment" finds its basis in a broad interpretation of the word "environment", used by the Law no. 6,938/81, duly approved by CR/88 – which elevated environmental protection to constitutional status and in §3, of art. 225, prescribed criminal, civil and administrative liability for conduct harmful to the environment - which, broadly, encompasses the natural and artificial environment.

Thus, Law no. 9,605/98, is shown to regulate the aforementioned constitutional provision, as it encompasses the typical behaviors that give rise to criminal liability for environmental crimes. In this context, the original wording of art. 65, under the specter of "protection of urban aesthetics" — understood as forming the artificial environment — criminalized "pixação" and graffiti, seen as interventions that defiled urban buildings or monuments. However, this provision was amended by Law no. 12,408/2011, which removed the verb "graffiti" from its caput and assigned it a §2nd that prescribes that authorized graffiti is not illegal and, textually, prescribes that "the practice of graffiti" is characterized as "artistic manifestation".

After this digression, the understanding of the criminal law that incriminates the practice of “pixação” requires the interpretation of the elements that make up this criminal type. Furthermore, in order to understand the treatment of “pixadores”, as active subjects of the criminal type and as passive subjects of criminal proceedings, it is necessary to describe the procedural aspects applied to the issue.

Every criminal rule aims to protect a legal asset considered relevant by the legal system, a protection that culminates in a restrictive penalty for the offender, whose purpose would be, mainly, to prevent the occurrence of the crime, through general prevention - understood as limiting and intimidating - and prevention special – understood as resocializing and coercive. The penal norm would have the role of preventing aggression to the protected legal interests, at the same time that, if this aggression occurs, the one who committed it has a penalty imposed against him, whose function, in theory, is to re-educate him and prevent that he, again, practice the criminal conduct (BATISTA; ZAFFARONI, 2003. p. 38-40; BITENCOURT, 2010, p. 30-32 e 117-119; CAPEZ, 2012, p. 176).

The legal objectivity of the crime of graffiti aims to protect the urban planning, understood as an "artificial environment", protecting the buildings on which the conduct of the subject "pixador" falls. Therefore, the material objectivity of the criminalization of the conduct in question falls on the buildings, which form the urban landscape, in favor of the greater objective of maintaining the visual integrity of the landscape (CAPEZ, 2012, p. 176-177; 2008, p. 154). -156; GOMES; MACIEL, 2015, p. 252-254).

It is because of this objectivity that the aforementioned practice has the collectivity as a passive subject, and not the owner of the marked building, since the city is understood and treated as a constitutionally protected environment and part of the collective legal heritage. As with all crimes provided for by the Environmental Crimes Law, the criminal action, in cases of committing the aforementioned criminal type, is public and unconditional, and the Public Prosecutor's Office, holder of the criminal action, must file the complaint regardless of the victim's manifestation, due to the object and the taxable person in question.

The competence for the instruction and judgment of actions related to the practice of “pixação” belongs to the Special Criminal Court, since, for the purposes of adapting to the procedural rite, the crime in question is considered of lesser offensive potential, under the terms of art. 61. Thus, based on arts. 72, 76 and 89, of the Environmental Crimes Law, will apply to cases of “pixação”, according to art. 27, the criminal transaction, with the composition of environmental damages, and the conditional suspension of the process. However, if the transaction is not accepted, or the



requirements for conditional suspension are not met, the sentence of detention, prescribed in the aforementioned art. 65, which, according to art. 33, CP, must be complied with in a semi-open or open regime.

Based on the criteria prescribed by arts. 7 and 8, the Environmental Crimes Law also provides for the possibility of replacing the custodial sentence with the penalty restricting rights. Furthermore, pursuant to art. 16, the conditional suspension of the sentence — probation — is also prescribed by the aforementioned law, in cases where the convictions do not exceed three years.

Despite this, regardless of the final sanction, it should be remembered that the condemned person, in addition to complying with that sanction, will bear all the effects of the sentence. Among these, there is recidivism and bad antecedents, in addition to the stigma of a condemnatory criminal sentence in their disfavor.

#### 4.1 Visual pollution as a relative administrative offense

The urban visual safety proved to be legally relevant to the point of giving rise to the aforementioned incriminating criminal norm that typified the act of “pixar” – seen as synonymous with “defiling”, since such a practice is considered threatening and/or destructive of the landscape. However, there are elements of this landscape - e.g., signs, billboards and signs - that are also harmful to visual well-being, without this kind of pollution having given rise to such heated discussions about its possible criminal classification.

In order to illustrate this point, first, imagine the installation of a luminous advertising panel installed on the side of a building. Towards the face of this building are several windows of other buildings. During the night, the light generated by the panel falls on these windows so that the residents, even through their curtains, see a beam of light of different colors flashing, which changes over time, as the advertising images change, making it impossible to opening your curtains. At the same time, these luminous sayings will be seen by all those who pass through the public road and the beams of light will be perceptible even by those who are not in that street.

Now, imagine that, in this same building, just below the illuminated panel, someone, using black paint and a roller, engraves a stylized mark on the wall, which may even refer to the alphabet, but with angled lines and supposedly disharmonious. This mark can hardly be seen, at night, by the neighbors of the building or by passers-by and, certainly, regardless of the time, it will not be seen by



anyone who is not in this street. During the day, the brand and the luminous panel will be there, however, both will play an opposite role in the landscape.

When analyzing the effects of such elements in the urban landscape, in a purely aesthetic perspective, it can be said that both interfere, in a negative way, in the environment, either by exaggeration, or by the discomfort they cause to the eyes. However, the form of treatment given by the Public Power to the “pixador” will be, a priori, through the criminal law. Due to the criminal transaction, or the conditional suspension of the process, he will perform certain activities - e.g., as community service -, or pay a sum of money - often for fear of a future conviction -, or even be convicted, effectively, to the fulfillment of a sentence, bearing, finally, the stigma of condemnation.

At the same time, interventions in the landscape of cities for publicity purposes were not the responsibility of the criminal law that seeks to protect urban planning. In these cases, it is up to the Municipalities to regulate the installation of such elements in the city and apply administrative sanctions in the event of non-compliance with these local laws of posture. These same laws regulate, based on the police duty-power, “pixação”, configuring it as an administrative offense, which, due to the independence of the criminal and administrative spheres, will allow the “pixação” to be condemned in both, without being faced with bis in idem.

Among the host cities of the nine first Brazilian Metropolitan Regions, six have regulations that aim to punish “pixadores”, with provision for programs to discourage the practice and the imposition of administrative sanctions, ranging from fines to painting the property. In these same Municipalities there are rules regarding the installation of signs, billboards and signs, as seen in Table 1:

**TABLE 1 - Specific municipal regulatory diplomas on graffiti and outdoor advertising)**

Município	Regras sobre Pichação	Regras sobre publicidade ao ar livre
Belo Horizonte	Lei n. 6.995, de 22 de novembro de 1995 Proíbe a pichação no âmbito do município	Lei n. 8.616, de 14 de julho de 2003 Contém o código de posturas do município de Belo Horizonte;
	Lei n. 10.059, de 28 de dezembro de 2010 Dispõe sobre a política municipal antipichação	
	Lei n. 10.931, de 16 de junho de 2016 Institui política contra a prática da pichação	
Curitiba	Lei n. 15.388, de 14 de março de 2019 Institui o programa rosto da cidade de combate à poluição visual, à pichação e degradação da cidade, no município de Curitiba e dá outras providências	Lei n. 8.471, de 13 de junho de 1994 Dispõe sobre publicidade ao ar livre
		Decreto n. 1.033, de 29 de março de 2007 Regulamenta a lei n. 8.471, que dispõe sobre publicidade ao ar livre
	Lei n. 10.958, de 30 de setembro de 2010	Lei Complementar n.12, de 7 de janeiro de 1975

Porto Alegre	Cria o programa antipichação e dá outras providências	Institui posturas para o município de Porto Alegre e dá outras providências
Rio de Janeiro	Decreto n. 38.307, de 18 de fevereiro de 2014 Dispõe sobre a limpeza e a manutenção dos bens públicos da cidade do Rio de Janeiro e a relação entre órgãos e entidades municipais e as atividades de <i>graffiti</i> , <i>street art</i> , com respectivas ocupações urbanas	Lei n. 758 de 14 de novembro de 1985. Dispõe sobre a veiculação de propaganda nos logradouros públicos e em local exposto ao público
Rio de Janeiro	Lei n. 5.976, de 23 de setembro de 2015 Institui a política municipal contra pichações no município do Rio de Janeiro e dá outras providências	Lei n. 1.921, de 5 de novembro de 1992 Dispõe sobre a veiculação de propaganda em tabuletas, painéis e letreiros nos logradouros públicos, e em local exposto ao público e dá outras providências
	Lei n. 6.326, de 26 de fevereiro de 2018 Cria no âmbito do município do Rio de Janeiro a pichação zero	
Salvador	Lei n. 4.229, de 27 de novembro de 1990 Proíbe a prática de pichação em prédios e monumentos públicos	Lei n. 4.659, de 16 de setembro de 1992 Dispõe sobre o uso abusivo de locais para propaganda de qualquer natureza e proíbe expressamente pichações em muros e paredes
São Paulo	Lei n. 16.612, de 20 de fevereiro de 2017 Dispõe sobre o programa de combate a pichações no município de São Paulo, dá nova redação ao inciso I do art. 169 da Lei nº 13.478, de 30 de dezembro de 2002, e revoga a Lei nº 14.451, de 22 de junho de 2007	Lei n. 14.223, de 26 de setembro de 2006 Dispõe sobre a ordenação dos elementos que compõem a paisagem urbana do município de São Paulo

Fonte: OS AUTORES. Construído a partir de dados extraídos dos sites *oficiais* do Poder Legislativo e/ou Executivo locais.

The information compiled in Table 1 makes it possible to perceive the intense concern of the Municipalities with “pichação”. In Belo Horizonte and Rio de Janeiro, the number of regulatory diplomas on the subject exceeds the number of those relating to outdoor advertising. The case of Salvador corroborates this perception, since Law n. 4,659/92, is not restricted to penalizing those who carry out advertising illegally, also covering “pixadores”. The Municipality of Curitiba, far from contradicting this statement, confirms it, as Decree n. 1033/2007, aims to regulate Law no. 8,471/94, which means that it only operationalizes the application of the latter and, in addition, there are normative diplomas that, without any relation to the theme of “pichação”, prescribe sanctions for “pixadores”, as illustrated in art. 301, of Law no. 11.095/2004, which establishes the Municipal Works Code.

With regard to public policies to combat “pichação”, in Curitiba, there is the “Programa Rosto Cidade”, created by Law n. 15.388/2019, which aims to protect from the action of “pixadores” a



specific area formed by the polygon located in the central area of the city surrounded by the streets: R. Inácio Lutosia; R. Welcome Valente; R. Emílio de Menezes; R. Father Augustine; R. Viscount of Nacar; R. 24th of May; Av. September 7; R. Tibagi and R. Luiz Leão. Among the actions foreseen in the program are the supply of special “anti-graffiti” paints to the owners of properties located in the aforementioned polygon, with expenses covered by budget allocations from the Municipal Environment Department.

Still with regard to the Curitiba measures to combat “pixação”, according to art. 301, of Law no. 11,095/2004, the fine applicable to “pixadores” will vary between R\$5,000.00 and R\$10,000.00; while, under the terms of §4 of art. 7, of Law no. 8,471/94, individuals and legal entities that install advertisements in violation of municipal law will have the advertisement removed and will be fined up to R\$532.75. The comparison of penalties allows us to perceive the lack of equivalence and, therefore, of reasonableness, since the visual impacts that each of these conducts may cause on the environment and on individuals were not considered, and there is no attention to the effect of penalties on the offenders' assets. The fine imposed on “pixadores”, usually poor people, due to their onerous nature, will not be paid without compromising their survival. In turn, the fine applicable to violators of the rules on advertising is negligible in view of the environmental impacts it will cause and, also, the assets of potential violators, as a rule, legal entities that will benefit from the placement of illicit advertising.

One can also mention the “Program to Combat Graffiti” in the city of São Paulo, created by Law n. 16.612/2017, which, in its art. 4, imposes a fine of up to R\$5,000.00 to those who carry out “pixações” in urban buildings. the art. 5 prescribes the possibility for the “pixador” to sign a commitment to repair the landscape, in which case the fine will be removed, establishing as a condition their adhesion to the municipal “Educational Program”, which aims to encourage the practice of graffiti, without there being any any “re-education programs” to advertisers who do not comply with municipal regulations.

the art. 9, of the São Paulo law, prescribes the possibility for the private sector and the Municipality to sign an instrument of cooperation for the recovery of the urban landscape. Through it, the company will supply paint and labor to cover the “pixações” and, in return, will install signs indicating its participation in the program, in order to promote itself and capitalize on its participation, through the link of your brand to the aforementioned measures of a social and/or environmental nature. Therefore, the program aims to put an end to visual pollution resulting from “pixação” through a partnership that will result in the production of visual impacts to promote a business brand.





Thus, the local normative diplomas about the installation of advertising material are not only intended to regulate the activity. The provision of negligible penalties for those who broadcast advertisements that are inconsistent with local rules and the consideration for participation in programs to combat “pixações” denote that these measures also aim to insert such elements into the urban landscape, promoting the advertising of goods and services. to be purchased on the market.

#### 4.2 Federal legislative trends in the legal treatment of “pixação”

The understanding of the city only under its physical aspect, as a space for the viability of capital, permeates all the above dynamics. Despite the constitutional prescriptions on urban policy and its infra-constitutional regulation, by understanding urban space only as a means for the accumulation/expansion of capital, the criminal and local legal system maintains socio-spatial segregation and prevents access/representation/appropriation of the central areas by the peripheral population.

Although it is considered that the typification of “pixação” is part of a system of environmental protection, one of the central elements to foment the criminalization of such conduct was the understanding of the city as a commodity and stage of segregation. The arrival at the typification in question shows the tendency to worsen the way of treating “pixação”, as well as the use of state actions as an instrument for the maintenance and protection of the hegemonic socio-spatial model.

Initially, when there was the position that “pixação” was inserted as a type of crime of damage, it was up to the property owner to take steps to denounce the author of the fact, since the criminal action, in this case, would only be carried out through victim's complaint. With the typification of “pixação” as a criminal offense, even with lower penalties than those applicable to the crime of damage, the regulation was aggravated by changing the passive subject of the crime - society - making the criminal action become unconditional public. – regardless of the manifestation of the owner of the “pixado” property. Thus, the “pixador” is no longer understood “only” as someone who damages someone else’s property, to be stigmatized and treated as someone who defiles a collective good and tarnishes urban aesthetics.



This progressive way of treating the State towards the “pixador” is also evidenced by the current wording given to art. 65, of Law no. 9,605/98. The reception of graffiti as art, made it stop integrating – like the verb “graffiti” – the crime foreseen in the aforementioned law and its execution “with the objective of valuing the patrimony”, consented by the owner, became an exclusionary.

These legislative changes point to a worsening in the treatment of “pixação”, which can be proven by Bill n. 985. Presented in 2015 by federal deputy Domingos Neto, the Bill intended to: increase the prison sentence from six months to two years, in addition to a fine; and inserted, in the aforementioned art. 65, a new paragraph that prescribed to the condemned and to the arrested in the act the loss of benefits arising from public policies – e.g., the Bolsa Família.

The wording intended by the original version of the aforementioned Project not only corroborates the understanding that the treatment given by the State to practitioners of “pixação” has been increasingly repressive, but also makes it clear who is its recipient. After all, as a rule, the residents of the periphery are those who are the beneficiaries of public income transfer policies and who would have the cessation of receiving the amounts as an accessory measure to the criminal conviction.

However, apparently, this trend cooled down during the deliberations that took place in the Chamber of Deputies, as the Project was sent to the Senate with important changes. The text that prescribed more severe penalties for “pixadores” was modified, starting to prescribe, instead of penalties restricting freedom, the repair of damage and “provision of services to the community” to be carried out, “preferably in actions for the conservation of buildings”, property or public roads”, during the “maximum period” of five months, which may be doubled in case of recidivism.

Although the aforementioned amendment to the text of the Bill points to the relaxation of penalties for the crime of “pixação”, this will not happen until it is approved, maintaining the application of the current wording of the Environmental Crimes law. Furthermore, its approval does not have the power to spread an understanding of “pixação” as a form of appropriation of the urban landscape by the peripheral populations or as a manifestation of their revolt against the stigmas imposed on them. On the contrary, by not decriminalizing this conduct, stigmatization is preserved with all the consequences arising from someone appearing as a defendant in a criminal proceeding or having been convicted in the same.

## 5. The treatment of “pixação” by Brazilian jurisprudence

The prescription of a sanction by an incriminating norm, by itself, does not imply the condemnation of those who violate it. Between the commission of the conduct prescribed in the criminal type and the conviction there is an iter to be covered, which, considering the rules to be applied, will determine whether the sanction should be imposed and to what extent.

This role of determining the application of criminal law to specific cases is the responsibility of the Judiciary, which, when provoked, guaranteeing the defense of the accused, in a dialogic way, will seek the truth about the facts. Thus, the arguments used by the prosecution and the defense and those used by the magistrates in the application of the laws say about how they are interpreted, as well as what the purposes - manifest or not, conscious or not - guide the application of the law.

In this way, the analysis of judgments involving cases of “pixação” provides clues about the understanding of the Courts on the right to the city and the way in which the law has served as an instrument for the occurrence of the dynamics described in section 2. In judicial decisions, several other relevant elements can be found – e.g., information on the circumstances in which the “pixação” took place, data on police approach in cases of flagrant, etc.

Thus, in addition to the discussion undertaken in the previous section, here, first, we will try to demonstrate how the right to the city is taken into account in judicial decisions involving cases of “pixação”. In a second moment, among the selected decisions, those handed down in criminal proceedings will be analyzed, adopting a spatial perspective, whose objective is to understand how the State acts in favor of today's capitalist city.

### 5.1 Some recurring elements in the jurisprudence

As mentioned in section 1, the collection of jurisprudential decisions was guided by four successive and cumulative parameters. The first, of an operational nature, restricted the investigation to decisions handed down by the Courts of Justice of the states in which the first Brazilian Metropolitan Regions are located. The second, of a material nature, was the adoption of the words “pichação”, “pixação” and “graffiti” as selection criteria in the research fields, so that only decisions dealing with these themes were made available. The third, of a temporal nature, restricted the collection to judgments handed down between 10/05/1988 to 06/05/2020 and that are available on the websites



of the aforementioned Courts, in order to allow the reading and analysis of the decisions. The last one, of a spatial nature, restricted investigations to the host cities of the first Metropolitan Regions created in Brazil.

The adoption of all these parameters made it possible to select a total of 105 decisions handed down in the period defined above, which were published between the period from 09/16/2002 to 05/06/2020. These decisions can be distributed according to the words adopted in the research - second parameter - and according to the nature of the matter discussed, in accordance with Table 1: (In this space, the table must be inserted:

**TABLE 1 - Second degree decisions available in digital media, by Municipality of the first Metropolitan Regions instituted in Brazil, keyword and subject of the action, in the period from 10/05/1988 to 05 /06/2020).**

Município-sede	Palavras-chave			Matéria		Total
	Pichação	Pixação	Grafite	Criminal	Cível	
Belém	0	0	0	0	0	0
Belo Horizonte	17	0	0	16	1	17
Curitiba	16	0	0	15	1	16
Fortaleza	0	0	0	0	0	0
Porto Alegre	37	0	2	35	4	39
Rio de Janeiro	1	0	0	0	1	1
Salvador	1	0	0	0	1	0
São Paulo	19	0	14	15	18	33
Recife	0	0	0	0	0	0
Total Geral	91	0	16	81	26	107

Fonte: OS AUTORES. Construído a partir de dados extraídos dos *sites* dos Tribunais de Justiça dos Estados onde foram instituídas as primeiras Regiões Metropolitanas brasileiras. Dados coletados entre 06/06/2020 e 10/06/2020.

In fact, it is hardly credible that, in more than 30 years, only 107 cases involving the words “pichação”, “pixação” and “grafite” have been judged by the Courts surveyed, which could compromise the reliability of the data in Table 1. However, it should be remembered that the parameters established for carrying out the data collection, in an objective way, restricted the cases that were analyzed. In this way, data collection focused on decisions rendered on appeal, those in which there was no appeal or whose appeal was not received were not examined. Furthermore, only cases that occurred in the host Municipalities of the aforementioned Metropolitan Regions were surveyed, that is, those that occurred in other Municipalities – whether integrated or mentioned



territorial arrangement – were excluded. Finally, only the decisions fully available on the websites of the Courts were collected – the judgments that were not digitized or that, for whatever reason, were not made available by the jurisprudence search system were not analyzed.

These parameters explain, on the one hand, the reason why decisions were not found in all the municipalities surveyed, which does not mean, in any way, that cases involving the searched words did not occur in these locations - they just could not be filtered out. from the adopted criteria. On the other hand, these gaps point to future research possibilities that consider, e.g., other forms of data collection, other spatial parameters, etc.

The distribution of judgments according to the matter allows us to note that approximately 75.7% of the cases refer to the criminal area and approximately 24.3% are resources in the civil area. Among the 81 appeals in the criminal area, 62 appeals were found – approximately 57.94% of the total number of judgments analyzed and 76.54% of the total appeals in the criminal area. Among the appeals, 41 decisions maintained the convictions handed down by the judge of the first degree or reversed the acquittals granted by the magistrates a quo, which is equivalent to approximately: 38.32% of the total number of judges; 50.62% of decisions handed down in criminal matters; and 66.13% of total criminal appeals.

In the 41 decisions mentioned above, the condemnation of the “pixadores” was based on art. 65 of the Environmental Crimes Act. However, when analyzing the arguments contained in the aforementioned decisions, it is clear that neither the parties nor the judges mentioned the right to the city in their arguments - a silence that was characterized as eloquent, given that the right to the city was not mentioned. in none of the 107 judgments analyzed.

The data related to the conviction, added to the absence of arguments about socio-spatial segregation and the right to the city of marginalized populations, indicates the way in which intervention in urban aesthetics through “pixo” is seen by jurisprudence. It is seen as defiling, and not as a form of expression or symbolic appropriation of space by the marginalized population.

Furthermore, although the data collection covered more than 30 years, it was found that, based on the other parameters, only cases were found whose facts occurred after the enactment of Law n. 9.605/98, when “pichação” was typified and, thus, the thesis of its equating to the crime of damage no longer found foundations. Nevertheless, the analysis of the decisions shows that the prosecutors still insist on denouncing the accused for committing the crime of damage, in concurrence with the crime of “pixação”. Despite the insistence, the Courts have recognized the “specialty” of the aforementioned art. 65, as illustrated by the vote of the judge Diógenes V. Hassan Ribeiro, in the



records of Appeal n. 70049552201, of the TJRS: “This is not a formal contest, as the prosecution asserted, since the conduct practiced only caused a single result, being, therefore, a single crime, which is why the specific rule applies, in detriment of the generic”.

In this case, we can see the spread to the criminal area of a common practice in civil actions for compensation for moral or material damage, in which the practice is to ask for the conviction of the majority of the opposing party, to guarantee the minimum. However, this conduct, in the criminal field, is reckless. Asking for a greater conviction to at least obtain a small conviction denotes the accusatory eagerness of some prosecutors, which goes beyond the limits of the principles that guide the Brazilian penal system.

Another constant found in the 41 decisions of criminal appeals that maintained the convictions handed down by the judge of first degree or reversed the acquittals granted by the magistrates a quo was the adoption of subsumption as a method of applying the law - which was repeated in all the decisions handed down in the criminal scope. That is: first, the allegations of the prosecution and the defense are described; then, the main elements of the appealed judgment are described; then, the transcription of the legal text - the major premise - is carried out, carrying out the "fit" of the proven facts in the process - minor premises - to what the norm prescribes; finally, the applicable penalty is determined.

Thus, the mere adoption of subsuptive reasoning in the application of criminal laws about “pixação” may indicate that the specifics of the concrete case were not considered. This possibility gains strength when it is verified the inexistence of discussions and the opening of differences between the members of the judging collegiate, and, in cases where there is a conviction, the rapporteur is always accompanied by the other magistrates. Another data that gives strength to the aforementioned possibility is the comparison between the reasoning adopted by the judges in the criminal and civil spheres.

As we have seen, most of the cases analyzed in the criminal sphere refer to appeals – a type of appeal in which the analysis of the entire merits of the action is returned to the Court – in which subsumption was the method to reach a decision on the matter. However, this was not the rule when property rights were discussed, more precisely, in the judgments about "graffiti", as illustrated by the judgments that originated in São Paulo, where almost a third of the judgments found dealt with copyrights on graffiti made in the city.



In this sense, take Appeals no. 103408479.2015.8.26.0100 and no. 1005221-33.2013, both from TJSP. In both cases, “graffitists” sought compensation for moral and material damages resulting from the use of their works as a background in campaigns that featured certain magazines. In the votes, the copyright of the “graffiti” was discussed exhaustively, the fixing of compensation for material damages regarding the use of the works by the magazines and the existence of moral damages. Finally, in both cases, the compensation claimed for moral damages remained due, recognizing the misuse of the works, not before, in the decision of the first cited judgment, making clear the artistic character of the urban intervention: “Witness your work as a third-party work disturbs the artist’s inner being (MICHELANGELO even had the experience), which allows us to qualify the episode as a bad feeling and inducing compensatory injury”.

The differences regarding the argumentative burden in the aforementioned civil and criminal cases can be interpreted in different ways that are not necessarily mutually exclusive. As the collegiate bodies responsible for judging each case are composed of different magistrates, the way in which decisions are delivered and the deepening of the discussions tends to be different. In addition, it may be that the processes that deal with the aforementioned patrimonial issues, when compared to those that deal with the crime of graffiti, involve more complex legal discussions, in which nebulous facts abound and more consolidated doctrinal and jurisprudential positions are lacking. Finally, it can be said that heritage issues raise greater discussions in relation to criminal issues related to “pixações” because: the “labeling” of those involved would provide presuppositions that would pre-orient decisions; the crime has a low offensive potential and its consequences in the lives of the perpetrators are small, when compared to more serious crimes; the location of the “pixados” properties would somehow contribute to justify the conviction of the authors without further discussions between the judges.

Regardless of the causes, all these elements allow us to say that the Courts have fulfilled the purpose of the incriminating norm, leaving aside issues such as the re-appropriation of space by the “pixadores” and the right to the city. However, the selected judgments do not allow pointing out only these occurrences, but also authorize an examination that considers the spatialization of cases.

## 5.2 The pattern of location of “pixados” properties found in jurisprudence

The recurrences found in the analyzed judgments provided interpretive hypotheses that relate criminal selectivity and the concentration of service networks, equipment and urban infrastructure in areas of interest to real estate capital. In order to investigate this interrelation, it is necessary to place the cases judged in the territory of the host cities of the first Brazilian Metropolitan Regions, analyzing whether the crimes occurred in areas that concentrate the aforementioned improvements.

Therefore, focusing the analysis on the 81 decisions handed down in the criminal field, those that presented the address of the “pixados” properties were selected, which made up the amount of 55 judgments - which is equivalent to approximately 51.40% of all selected decisions, and 67.90% of those handed down in criminal appeals. These decisions were concentrated in four of the nine municipalities studied – 11 in Belo Horizonte, 9 in Curitiba, 25 in Porto Alegre and 10 in São Paulo – applying, here, the same explanations explained above regarding the data in Table 1.

This information was compared with data from the Urban Welfare Index — IBEU — created by the Observatório das Metrópoles. This index considers mobility, housing conditions, environmental conditions, conditions of collective services and urban infrastructure in each part of the Brazilian metropolitan regions as vectors. It is constituted in the form of a scale that varies from 0.001 (referring to the worst living conditions) to 1,000 (relating to the best living conditions), allowing to classify and locate the areas that offer better or worse material conditions for the well-being of the population. urban life, which, as seen in section 2, has a direct impact on the price of urban land, attracting the interest of formal real estate capital and the wealthier layers of the population.

All this information is explained in the elements below, organized according to the Municipalities in which criminal decisions were found that indicated the address of the “pixados” properties. Thus, Tables 2, 3, 4 and 5 indicate the processes and addresses of the properties, as stated in the jurisprudential decisions published on the websites of the respective Courts and which, therefore, are public knowledge.

In turn, Figures 1, 2, 3 and 4 are composed of two maps of the Metropolitan Regions in whose host cities the aforementioned judgments were found. On the left are maps with the spatial distribution of the IBEU in each of the mentioned Municipalities and, in them, the stronger the blue color, the higher the IBEU in the colored area, and the closer to red, the lower the index. On the right





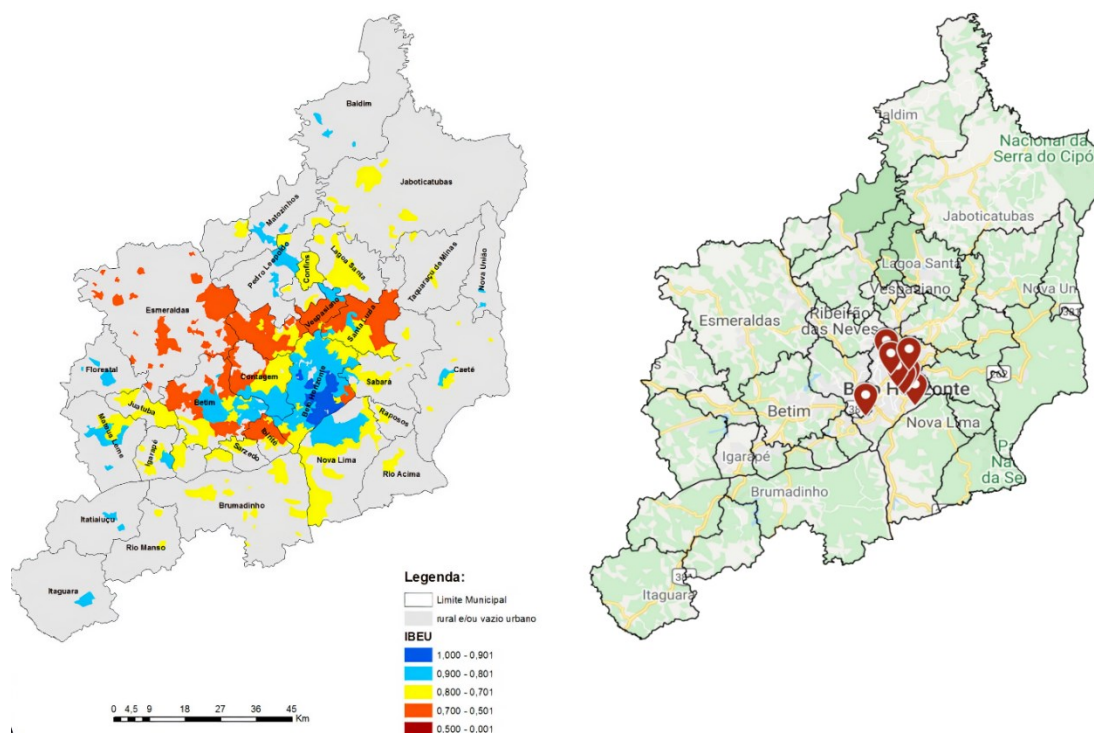
are maps of the aforementioned locations with indications – in red – of the places where the “pixações” judged by the aforementioned Courts took place.

**TABLE 2 – Addresses of “pixados” properties, in Belo Horizonte).**

Processo	Endereço
1.0024.18.089826-4/001	Avenida Cristiano Machado, n. 3.450
1.0024.12.310918-3/001	Avenida Presidente Carlos Luz, n. 3.001
1.0024.17.124940-2/001	Viaduto Helena Greco, Avenida Contorno, n. 10.852
1.0000.18.055118-6/000	Avenida Jose do Patrocínio Pontes esquina Rua Salomão dos Vasconcelos
1.0024.15.116966-1/001	Praça da Liberdade, n. 21
1.0024.16.037010-2/001	Complexo Lagoinha, Avenida Presidente Antonio Carlos
1.0000.17.027723-0/000	Igrejinha da Pampulha
1.0000.16.036561-5/000	Igrejinha da Pampulha
1.0024.10.134074-3/001	Avenida Francisco Sales, n. 898
1.0024.11.031213-9/001	Rua O Garimpeiro, n. 45
1.0024.09.610528-3/001	Praça 7

Fonte: OS AUTORES. Construído a partir de dados extraídos do site do TJMG. Dados coletados entre 06/06/2020 e 10/06/2020.

**FIGURE 1 – Comparison between the IBEU and the location of the “pixações” in Belo Horizonte**



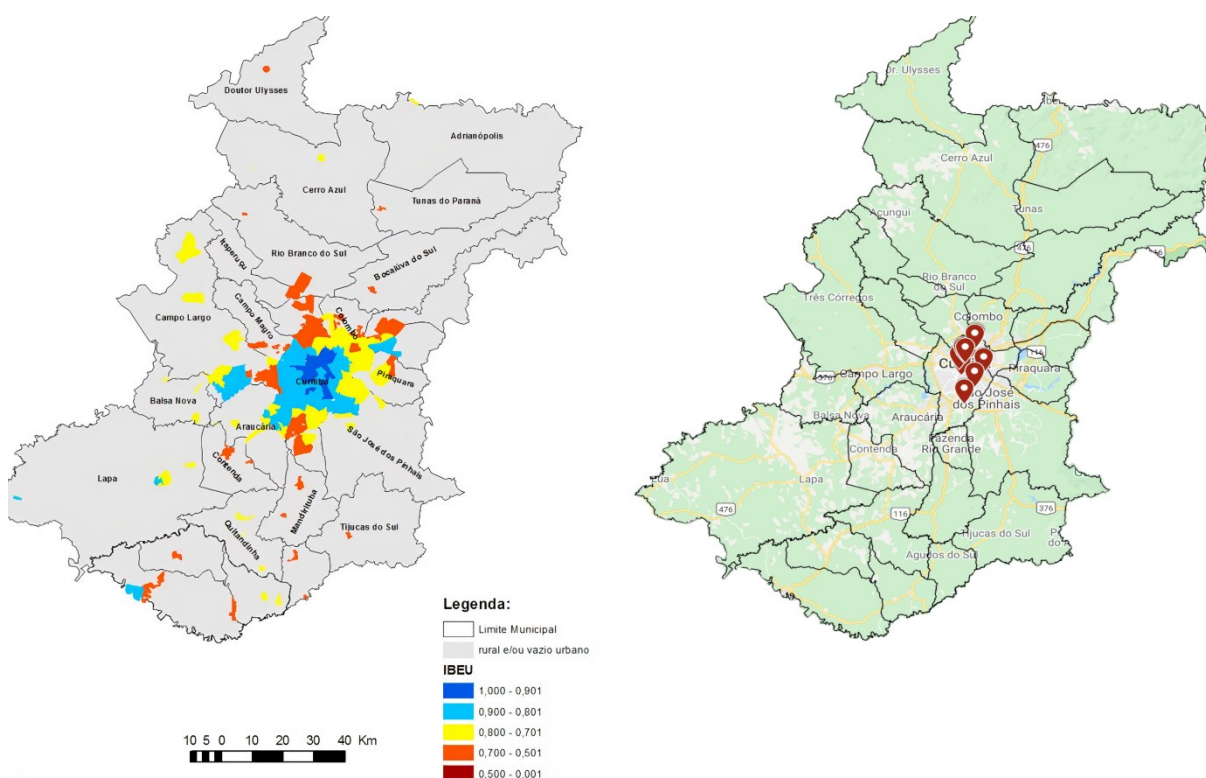
Fonte: OS AUTORES. Built based on the Urban Welfare Index developed by the Observatório das Metrópoles (RIBEIRO; RIBEIRO, 2013, p. 7 and 14) and on data extracted from the TJMG website, collected between 06/06/2020 and 06/10/2020.



**QUADRO 3 – Endereços dos imóveis “pixados”, em Curitiba**

Processo	Endereço
0009982-29.2018.8.16.0182	Rua Canadá, n. 2.128
0052764-22.2016.8.16.0182	Rua Antonio Lago, n. 71
0023531-82.2013.8.16.0182	Rua Marechal Deodoro, n. 666
0021377-57.2014.8.16.0182	Avenida Getúlio Vargas, n. 2.591
1530433-9	Largo da Ordem
0013805-50.2014.8.16.0182	Colégio Maria Aguiar
0021899-21.2013.8.16.0182	Rua Camilo Castelo Branco
1182648-5	Rua Mandirituba, n. 2.100
0006269-39.2011.8.16.0005	Rua Mariano Torres, esquina com a Rua Amintas de Barros

Fonte: OS AUTORES. Construído a partir de dados extraídos do *site* do TJPR. Dados coletados entre 06/06/2020 e 10/06/2020.

**FIGURE 2 – Comparison between the IBEU and the location of the “pixações” in Curitiba**

Fonte: OS AUTORES. Built based on the Urban Welfare Index developed by the Observatório das Metrópoles (RIBEIRO; RIBEIRO, 2013, p. 7 and 14) and on data extracted from the TJPR website, collected between 06/06/2020 and 06/10/2020 .

**QUADRO 4 – Endereços dos imóveis “pixados”, em Porto Alegre**

Processo	Endereço
0142142-56.2019.8.21.7000	Rua Joaquim Nabuco, n. 90
0015709-07.2019.8.21.7000	Avenida Ipiranga, n. 1.365
0070364-74.2018.8.21.9000	Avenida Bento Gonçalves, n. 1.129
0070370-81.2018.8.21.9000	Avenida Farrapos, n. 3.900
0058962-23.2017.8.21.9000	Avenida Venancio Aires, esquina com a Avenida João Pessoa
0329866-77.2017.8.21.7000	Rua Antônio Joaquim Mesquita, n. 120
0156437-69.2017.8.21.7000	Viaduto do Obirici
0033691-19.2017.8.21.9000	Avenida Venancio Aires, n. 261
0202786-72.2013.8.21.7000	Viaduto Otavio Rocha
0041681-66.2014.8.21.9000	Rua Doutor Flores
0180385-79.2013.8.21.7000	Rua Tenente Arizoly, n. 250
0400156-25.2014.8.21.7000	Avenida Ipiranga, n. 2.500
0259439-60.2014.8.21.7000	Rua Nove de Julho, n. 1.300
0016991-70.2014.8.21.9000	Avenida Juca Batista, n. 805
0286462-15.2013.8.21.7000	Rua Sarmento Leite / Praça da Esplanada
0342183-83.2012.8.21.7000	Avenida Loureiro Silva, Largo dos Açorianos
0181174-78.2013.8.21.7000	Avenida Ipiranga, n. 1.450
71004296240	Rua Vigário José Inácio, Centro
70053474128	Praça Pereira Parobé, n. 21
70050746304	Rua Lauro Muller, D.C. Navegantes
71004077947	Rua dos Andradas, n. 1646
70049552201	Palácio Piratini, Rua Duque de Caxias
70046782066	Avenida Carlos Gomes, n. 911
70041490517	Avenida Teresópolis, Praça Guia Lopes
70040386641	Avenida Bento Gonçalves, n. 5690

Fonte: OS AUTORES. Construído a partir de dados extraídos do *site* do TJRS. Dados coletados entre 06/06/2020 e 10/06/2020.

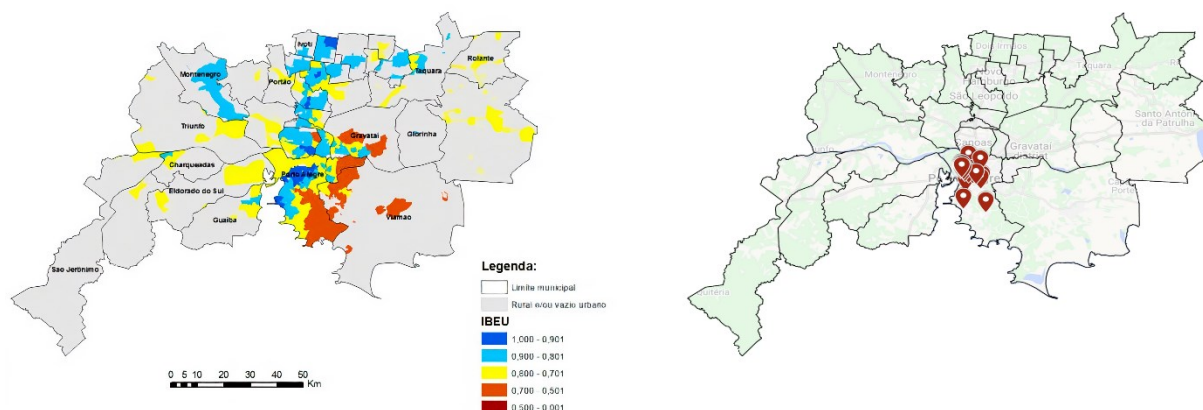


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**Figura 3 – Comparativo entre o IBEU e a localização das “pixações”, em Porto Alegre**



Fonte: OS AUTORES. Construído com base no Índice de Bem-Estar Urbano desenvolvido pelo Observatório das Metrópoles (RIBEIRO; RIBEIRO, 2013, p. 7 e 14) e nos dados extraídos do *site* do TJRS, coletados entre 06/06/2020 e 10/06/2020.

**QUADRO 5 – Endereços dos imóveis “pixados”, em São Paulo**

Processo	Endereço
0040331-15.2016.8.26.0050	Alameda Jaú, n. 1592
0038760-09.2016.8.26.0050	Rua Caetano Pinto, n. 272
0054712-28.2016.8.26.0050	Praça Vladimir Herzog
0004844-41.2017.8.26.0052	Rua José de Souza Ferreira, n. 10
0000312-35.2014.8.26.0050	Alameda Barão de Limeira, n. 372
0072157-25.2017.8.26.0050	Estação Ana Rosa do Metrô
0049839-19.2015.8.26.0050	Viaduto do Chá
0074950-73.2013.8.26.0050	Rua 25 de Março, n. 580
0008440-62.2012.8.26.0002	Avenida Vereador José Diniz, esquina com a Rua Padre Antonio José dos Santos
0049839-19.2015.8.26.0050	Viaduto do Chá

Fonte: OS AUTORES. Construído a partir de dados extraídos do *site* do TJSP. Dados coletados entre 06/06/2020 e 10/06/2020.

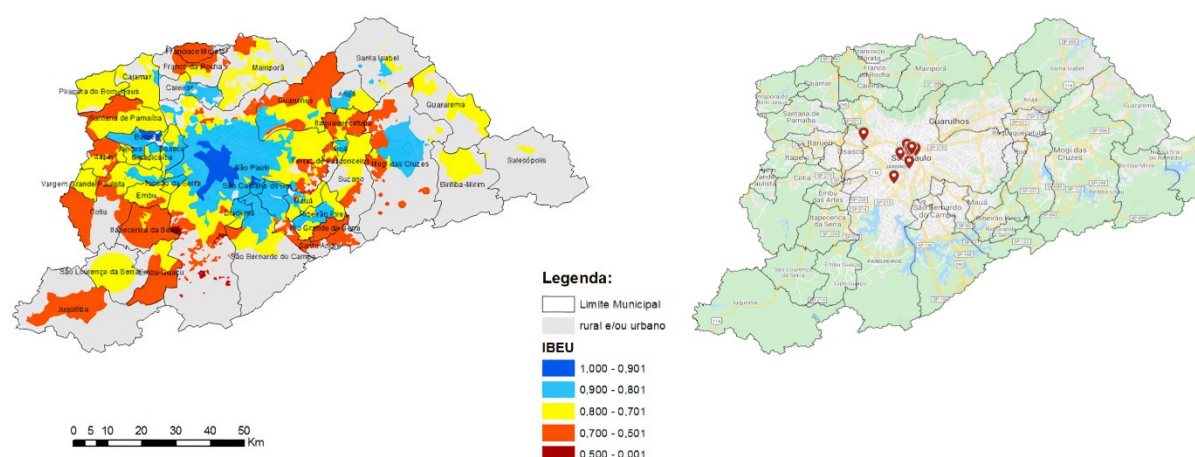
**FIGURA 4 – Comparativo entre o IBEU e a localização das “pixações”, em São Paulo**



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Fonte: OS AUTORES. Construído com base no Índice de Bem-Estar Urbano desenvolvido pelo Observatório das Metrópoles (RIBEIRO; RIBEIRO, 2013, p. 7 e 14) e nos dados extraídos do *site* do TJSP, coletados entre 06/06/2020 e 10/06/2020.

When analyzing the Figures, it appears that the maps referring to the distribution of the IBEU - on the left - demonstrate the concentration of the elements that form the aforementioned index in the central region of the municipalities examined, which denotes how this region stands out in relation to the others in terms of refers to the material conditions offered to its residents. Comparing this information with the maps referring to the location of the occurrences of “pixações” – to the right – it can be seen that the areas of higher IBEU concentrate the addresses of the “pixações” properties. This identification provides evidence that strengthens the interpretative hypotheses that, when dealing with the criminalization of “pixação”, link it to the relationship between criminal selectivity and the concentration of service networks, equipment and urban infrastructure in areas of interest to real estate capital.

These indications become stronger when analyzing some of the information contained in the aforementioned judgments - e.g., the participation of police forces in these cases. Among the cases analyzed, mentions of the existence of police reports written by police that narrate the dynamics of the act and in which reports are read that the police were on duty when they surprised a “pixador” are easily found.

In addition, these police reports and the arrest records of the “pixador” are the main bases on which prosecutors build their accusatory pieces – e.g., Habeas corpus n. 1.0000.17.027723-0/000, judged by the TJMG. In this way, this information indicates that there is a clear portion of the urban territory - the central areas where the wealthy strata live and that are of interest to the real estate

market - in which the "pixadores" are reprimanded by the police force and, later, taken to trial to, finally, be condemned.

Of the 81 judged in the criminal field, in 41, the accused were convicted – which amounts to approximately 50.62% of these decisions and 38.32% of all decisions analyzed. In 35 of these judgments – approximately 37.71% of all selected decisions, 43.21% of criminal decisions and 85.36% of condemning criminal decisions – there was express mention of the police approach that led to the denunciation of the "pixadores", the that allows recognizing the concentration of intensive policing in central areas of cities.

This factor, added to the judicial convictions of the "pixadores" seem to contribute to the dynamics of the formation of the price of urban land, and can be seen as instruments, albeit indirect, of real estate appreciation. After all, on the one hand, a well-policed area is more valuable than others without police. On the other hand, the presence of the police and the risk of conviction contribute to expelling the "pixadores", which allows us to affirm that these mechanisms of state action generate the distancing and segregation of poor populations, through the co-option of the public by the private.

In addition to these findings, the above data raise some questions. The practice of marking walls, facades, walls, etc. it also occurs in peripheral areas. Furthermore, repressive and police forces are the main state presence in these latter areas. Thus, it would be expected that the number of police approaches related to "pixação" in marginalized areas would figure in the judgments raised. However, this did not happen, which may have some explanations.

Perhaps the parameters adopted in the research are not suitable for this selection - e.g., the judgments related to the aforementioned cases may not present the address of the properties. However, this would be strange, since the place of occurrence of the illicit is an important criterion for its determination. Furthermore, there would be no legal reasons for some decisions to provide the location of the property and others not.

Another possibility would be the occurrence of a coincidence. On the one hand, the police forces, when carrying out their rounds in peripheral areas, may not have come across an individual or group carrying out "pixações". On the other hand, the police forces may have surprised the "pixadores", they were duly prosecuted and did not appeal or their appeals were not admitted, which, in both cases, may indicate that: the individuals resigned themselves to the decision, or encountered problems in accessing higher courts, allowing inferences about peripheralization as an obstacle to the exercise of the fundamental rights of access to justice and ample defense.



There is a third hypothesis: policing in peripheral areas is inadequate, with police operations only taking place with specific objectives. This would mean that public security services are not permanently available to these individuals, tarnishing their fundamental right to security and could contribute to the feeling of opposition between the police forces and this population.

There is also the possibility that police officers have encountered cases of “pixação”. In this case, they may have verbally reprimanded the individuals, or applied some type of punishment, which, in the latter case, would constitute a stain on the fundamental right to due process. The police may not have been able to capture the perpetrators of the “pixação” who could have escaped from the place, in which case it could be argued that the efficiency of the police pursuit of “pixação” occurring in peripheral areas is lower than that related to properties located in the central areas. Police officers may also have seen the practice of “pixação” and remained inert, or were satisfied with its interruption without making efforts to capture the perpetrators, in which case there would be a distinction regarding the police approach in the cases in which “pixação” occurs in central and peripheral areas, the explanation for which could be the fear of the police themselves suffering aggression.

However, there is another explanation for this last possibility. The police and, eventually, a magistrate, if the case reached the Judiciary, could understand that “pixação” would only be configured as an illicit when carried out in wealthy areas. This would mean that the “dirt” of the “pixação” would aesthetically adapt to the lack of order and the poverty of peripheral areas, indicating that the urban environment worthy of environmental penal protection is restricted to the formal city frequented and inhabited by the layers with greater power. purchasing.

Thus, if, at first, the judgments provide an image of cities well served by police and security, with patrolling carried out daily, the data above seem to indicate a pattern: the same properties located in areas that concentrate the best living conditions for the its inhabitants are protected by State activity with regard to the fight against “pixação”. Consequently, these indications seem to point to the way in which state repressive activity contributes to the formation/maintenance of the aesthetic pattern of capitalist urban morphology, at the same time as it favors socio-spatial segregation.





## 6. Conclusion

The city is the place built by people and where they are “doomed to live”. In it, the social life, political life and culture of its inhabitants develop, which indicates that it transcends a mere physical aspect. However, the development of the contemporary capitalist model has reduced the city to an economic pole, in which the importance of its spaces is restricted to the exchange value, ignoring the social issues related to the production of these same spaces. This means that the real estate market began to command the production and organization of urban spaces, excluding everything that could lower the price of its commodity — urban land.

With the commodification of urban land and the collaboration of state actions to perpetuate this model, the poor, stigmatized by this dominant pattern, are frowned upon and removed from the city center. In this context, the different reactions of the periphery are inserted, and “pixação” can be considered as a form of re-appropriation of urban space by the marginalized, from an act of revolt against the stigma imposed on them. Through it, the ills of a city with a pretended and falsely immaculate landscape are denounced, the existing inequalities in the city are exposed and the periphery is placed, albeit in a symbolic and graphic way, in the center of the city, to be seen and remembered. With it, the urban landscape is shaped in a symbolic and forced way, by the hands of those who do not have the power to configure it by the instruments formally prescribed. Thus, if the urban conformation of the contemporary capitalist city is segregating and does not allow all individuals to produce, according to their desires, the space in which they live, the “pixo” is able to modify the urban landscape and place its author as a subject. active, producer of the landscape.

In this dynamic, however, a tension is established, in which, on the one hand, are the “pixadores” and, on the other, the formal producers of urban space. The latter rely on state actions that create a kind of urban policy that perpetuates socio-spatial segregation and that demonstrate the co-option of what is considered public by the private sector. In this way, co-optation permeates the understanding of the city only under its physical aspect, depoliticizing the urban issue and disregarding that it is the stage and object of conflicts and disputes between individuals and groups.

It is in this way that the Environmental Crimes Law, based on the idea of the city as an “artificial environment”, explicitly criminalized the practice of “pixação”, but disregarded – or, at least, did not make it explicit as criminal – other conducts that also interfere in the urban landscape, such as the various types of advertisements, whose regulation is solely the responsibility of municipal administrative laws and regulations. Although these local normative diplomas also sanction “pixação”,





it appears that the treatment of both situations is unreasonable, since the fines applied to “pixação” and non-compliance with the rules on urban advertising are not equivalent. This allows us to affirm that such normative diplomas, far from being guided by the administrative protection of the built environment, are aimed at protecting a very specific and delimited part of the urban environment against the actions of a very specific group of individuals.

In addition, the differentiated treatment given to graffiti makes it even clearer which urban aesthetic is intended to be protected. The reception of graffiti as art and the criminalization of “pixação” in Brazil produces a dichotomy – graffiti/graffiti – that does not exist elsewhere, since both practices have the same origin. However, at the same time that the “pixações” are elements of disvalue, as they modify the falsely immaculate urban landscape, the graffiti, because they are presented with drawings and colors and have been well received, have become elements that add value to the goods.

As can be seen, the appreciation of urban real estate permeates the entire dynamic around “pixação”. Populations seen as factors of devaluation are pushed out of city centers, so that they do not occupy spaces destined for the more affluent. The result is the construction of a homogeneous and “hygienic” landscape, marked by the presence of an absence — the absence resulting from the invisibility of the underprivileged layers.

The various spatialization exercises carried out from the analyzed judgments corroborate these statements. The strong police surveillance and the convictions of the “pixadores” not only perpetuate this dynamic but are also elements that contribute, albeit indirectly, to the formation, conservation and increase of the exchange value of the best protected properties. Thus, those who have the best material living conditions see their goods protected from the undervaluation of brands from the periphery.

Despite these mechanisms, “pixação” marks the city because its practitioners cannot participate in the formal processes of management and spatial production. They are not portrayed in the products of the formal real estate market and, thus, do not identify themselves in the middle. In this way, marking the city is shown as an alternative – sometimes as the only one – for them to see themselves represented in and by the landscape. It is in this sense that, outside the law, those who live on the fringes of the city and society found in “pixação” a form, also marginal, of symbolic reappropriation of that space that is denied to them in and by the contemporary capitalist city.

## References

- BATISTA, Nilo; ZAFFARONI, Eugênio Raúl. **Direito penal brasileiro**. 3. ed. Rio de Janeiro: Revan, 2003. v. 1.
- BERMAN, Marshall. **Tudo que é sólido desmancha no ar**: a aventura da modernidade. Tradução de Carlos Felipe Moisés. São Paulo: Companhia das letras, 1982.
- BITENCOURT, Cezar Roberto. **Tratado de direito penal**. 15. ed. São Paulo: Saraiva, 2010. v. 1 (Parte Geral).
- BOURDIEU, Pierre. **O poder simbólico**. Tradução de Fernando Tomaz. Rio de Janeiro: Bertrand Brasil, 1989.
- CAPEZ, Fernando. **Curso de direito penal**. 16. ed. São Paulo: Saraiva, 2012. v. 1 (Parte geral).
- \_\_\_\_\_. **Curso de direito penal**. 3. ed. São Paulo: Saraiva, 2008. v. 4 (legislação penal especial).
- COSTA, Igor Sporch da. O urbanismo e o direito por um prisma interdisciplinar: um estudo sobre a produção normativa para a efetivação do direito à cidade. **Revista de direito administrativo – RDA**, Rio de Janeiro, v. 255, p. 161-192, set./dez. 2010.
- \_\_\_\_\_. A comunidade LGBT e a “revolta contra o estigma” — um ensaio acerca do “estado da arte” da política pública brasileira contra a homofobia. In: COSTA, Igor Sporch da; MIRANDA, João Irineu de Rezende. (Org.). **Direito e movimentos sociais**: a busca da efetivação da igualdade. Curitiba: Juruá, 2012, p. 123-228.
- FERREIRA, Maria Alice. Arte urbana no Brasil: expressões da diversidade contemporânea. **VIII encontro nacional de história da mídia**, Universidade do Centro Oeste, Guarapuava, 2011.
- GOMES, Luiz Flávio; MACIEL, Silvio. **Lei de crimes ambientais**: comentários à Lei 9605/1998. 2 ed. São Paulo: Forense. 2015.
- HAMANN, Cristiano; PIZZINATO, Adolfo; TEDESCO, Pedro de Castro. Intervenções visuais urbanas: sensibilidade(s) em arte, grafite e pichação. **Psicologia & sociedade**. v. 29, 2017.
- HARVEY, David. **A produção capitalista do espaço**. Tradução de Carlos Szlak. São Paulo: Annablume, 2005.
- \_\_\_\_\_. **Cidades rebeldes**: do direito à cidade à revolução urbana. Tradução de Jeferson Camargo. São Paulo: Martins Fontes, 2014.
- \_\_\_\_\_. **O enigma do capital e as crises do capitalismo**. Tradução de João Alexandre Peschanski. São Paulo: Boitempo, 2011.
- HUNGRIA, Nelson. **Comentários ao código penal**. Rio de Janeiro, 1955. v. 7 (arts. 155 a 196).



LARRUSCAHIM, Paula Gil; SCHWEIZER, Paul. A criminalização da pixação como cultura popular na metrópole brasileira na virada para o século XXI. **Revista de direitos e garantias fundamentais**. Vitória, v. 15, n. 1, p. 13-32, jan./jun. 2014.

LEFEBVRE, Henri. **O direito à cidade**: o fenômeno urbano; sentido e finalidade da industrialização; o principal direito do homem. Tradução de Rubens Eduardo Frias. 5. ed. São Paulo: Centauro, 2011.

MACHADO, Paulo Afonso Leme. **Direito ambiental brasileiro**. 22 ed. São Paulo: Malheiros, 2014.

MAGNANI, José Guilherme Cantor. De perto e de dentro: notas para uma etnografia urbana. **Revista brasileira de ciências sociais**, v. 17, n.49, p 11-29, 2002.

MANCUSO, Rodolfo de Camargo. Aspectos jurídicos da chamada “pichação” e sobre a utilização da ação civil pública para tutela do interesse difuso à proteção da estética urbana. **Revista da faculdade de direito, Universidade de São Paulo**, São Paulo, v. 87, p. 155-181, jan. 1992. Disponível em: <<http://www.revistas.usp.br/rfdusp/article/view/67173>>. Acesso em: 05 jul. 2020.

MARX, Karl. **O capital**: crítica da economia política. Tradução de Regis Barbosa e Flávio R. Kothe. São Paulo: Nova Cultural, 1996. v. 1 (Tomo 1).

PADILLA, Vinicius. **A pichação como fenômeno socioambiental na cidade de Manaus**. 2013. Dissertação (mestrado em Psicologia). Faculdade de Psicologia da Universidade Federal do Amazonas, 2013, Manaus, 2013.

PEREIRA, Alexandre Barbosa. As marcas da cidade: a dinâmica da pixação em São Paulo. **Lua nova**, São Paulo, v. 79, p. 143-162, 2010.

\_\_\_\_\_. Quem não é visto, não é lembrado: sociabilidade, escrita, visibilidade e memória na São Paulo da pixação. **Cadernos de arte e antropologia**, São Paulo, v. 1, p. 55-169, 2012.

\_\_\_\_\_. **De rolê pela cidade**: os pixadores em São Paulo. 2005. Dissertação (mestrado em Antropologia). Faculdade de Filosofia, Letras e Ciências Humanas da Universidade de São Paulo, São Paulo. 2005.

PIRES, Álan Oziel da Silva. **A pixação como apropriação da cidade**: o pixador como formador do cenário urbano. 2017. Dissertação (mestrado em História Social da Cultura). Faculdade de Filosofia e Ciências Humanas da Universidade Federal de Minas Gerais, Belo Horizonte, 2017.

ROLNIK, Raquel. **O que é cidade**. São Paulo: Brasiliense, 1995.

\_\_\_\_\_. **A cidade e a lei**: legislação, política urbana e territórios na cidade de São Paulo. São Paulo: Fapesp; Studio Nobel, 1997.

SILVA, Eduardo Faria da. **Pixo**: o lado oculto ao Direito. 2016. Dissertação (Mestrado em Antropologia). Faculdade de Filosofia e Ciências Humanas da Universidade Federal de Minas Gerais, Belo Horizonte. 2016.



SINGER, Paul. **Urbanização e desenvolvimento**. Belo Horizonte: Autêntica, 2017.

SPINELLI, Luciano. Pichação e comunicação: um código sem regra. **Logos 26**: comunicação e conflitos urbanos, Rio de Janeiro, a. 14, p. 111-121, 2007.

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