

PRIVATIZATION OF BRAZILIAN PRISONS: THE TWO SIDES OF THE CURRENCY

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ABSTRACT. Since the beginning of the 1990s, in Brazil, privatization has proved to be an emergency exit to crisis of services that the State cannot offer efficiently, such as Education, Health, Transportation, and more recently Social Security. The agenda in question is now Public Safety. Failing to meet the demand for lawsuits that pass through the Judiciary, Brazilian prisons are becoming increasingly overcrowded; the services lagged; Constant rebellions, high crime rate, denial of human rights and structural violence, glaring. Thus, this article aims to reflect on both sides of the 'currency' of prisons privatizations in the Brazilian scenario. He used the research with a qualitative approach and bibliographical character with the support of theoretical references from the specialized literature in the area, besides the technical documents, official reports from the Government and NGOs that carry out social control works. The research has shown that privatization seems to be the best way out in the short term and can solve a number of social problems, but how can one think of the profitable return that all privatization requires if its main objective is to reduce the target population? So either this alternative will create a market that, if it turns out, will end itself, or we will end up creating an even more perverse logic of incarceration.

Keywords: Crime; human rights; violence.

PRIVATIZAÇÃO DAS PRISÕES BRASILEIRAS: OS DOIS LADOS DA MOEDA

RESUMO. Desde o início da década de 1990, no Brasil, a privatização se mostrou como saída emergencial para a crise dos serviços que o Estado não consegue oferecer de modo eficiente, como educação, saúde, transporte, e mais recentemente a seguridade social. A pauta em questão agora é a segurança pública. Não conseguindo atender a demanda de processos que passam pelo Poder Judiciário, os estabelecimentos prisionais brasileiros estão ficando cada vez mais superlotados; os serviços defasados; constantes rebeliões; alto índice de criminalidade; negação dos direitos humanos e violência estrutural gritante. Assim, o presente artigo tem como escopo refletir sobre os dois lados da "moeda", acerca das privatizações das prisões, no cenário brasileiro. Foi utilizada a pesquisa com abordagem qualitativa e de caráter bibliográfico, com respaldo de referências teóricas da literatura especializada na área, além de documentos técnicos, de relatórios oficiais do governo e de ONG's que realizam trabalhos de controle social. A pesquisa evidenciou que a privatização parece ser a melhor saída em curto prazo, podendo resolver diversos problemas sociais. No entanto, como pensar no retorno lucrativo que toda privatização exige, se seu objetivo principal é a diminuição do público-alvo? Logo, ou essa alternativa criará um mercado que, se der certo, dará fim a si mesmo, ou acabaremos criando uma lógica de encarceramento ainda mais perversa.

Palavras-chave: Crime; direitos humanos; violência.

PRIVATIZACIÓN DE LAS CÁRCELES DE BRASIL: LAS DOS CARAS DE LA MONEDA

RESUMEN. Desde el inicio de la década de 1990, en Brasil, la privatización se mostró como salida de emergencia a la crisis de los servicios que el Estado no puede ofrecer de manera eficiente, como Educación, Salud, Transporte, y más recientemente la Seguridad Social. La agenda en cuestión ahora es la Seguridad Pública. No logrando atender la demanda de procesos que pasan por el Poder Judicial, los establecimientos penitenciarios brasileños se están cada vez más superpoblados; Los servicios desfasados; Constantes rebeliones, alto índice de criminalidad, negación de los

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derechos humanos y violencia estructural, flagrante. Así, el presente artículo tiene como objetivo reflexionar sobre los dos lados de la moneda de las privatizaciones de las prisiones en el escenario brasileño. Se utilizó de la investigación con abordaje cualitativo y de carácter bibliográfico con respaldo de referencias teóricas de la literatura especializada en el área, además de los documentos técnicos, de informes oficiales del Gobierno y de ONG que realizan trabajos de control social. ¿La investigación evidenció que la privatización parece ser la mejor salida a corto plazo, pudiendo resolver diversos problemas sociales, sin embargo, como pensar en el retorno lucrativo que toda privatización exige, si su objetivo principal es la disminución del público objetivo? Por lo tanto, o esta alternativa creará un mercado que, si es cierto, dará fin a sí mismo, o acabaremos creando una lógica de encarcelamiento aún más perversa.

Palabras-clave: Crimen; derechos humanos; violencia.

Introduction

The crisis of the Brazilian prison system has been evident in recent years. Since the massacre in Carandiru, Brazilian society has awakened to the reality of its prisons, from which there are constantly reports of riots, crimes, escapes and acts of cruelty and violence, among the many failures to comply with basic rights of the prison population. The report released by the Ministry of Justice in 2015 states that Brazil has the fourth largest prison population in the world, with 607,731 people incarcerated. Of these, 40% are temporary prisoners, that is, they are awaiting trial (Ministry of Justice, 2014).

In addition, this reality is tied to other problems, such as overcrowding – perhaps the main difficulty –, that leads to issues such as violence within prisons; Lack of perspective for its population; human rights violation (precarious conditions of hygiene, food, etc.), as well as the slowness of Justice and the lack of speed in the progress of cases/processes accumulated. One of the solutions envisaged by the Executive Power is the privatization of prisons, since the State is failing to fulfill its role of administrator of public prisons. Thus, private institutions would assume their management, to effectively, enforce the Penal Execution Law (PEL) No. 7210/1984, the Brazilian Penal Code (BPC) and the Brazilian Federal Constitution of 1988, thus exempting the State from these responsibilities.

Still according to the report, the future of the prison system is devastating: if it continues at this rate, by 2022 the country will house more than one million people in a system that operates well above its real capacity. In 2014, Brazil already had a deficit of 231 thousand vacancies; and the state of São Paulo had the largest deficit in the country, with 206.9 thousand prisoners and 123.4 thousand vacancies. There is an overload of 83.5 thousand inmates. Secondly, there is the Northeast, with 38.8 thousand vacancies less than necessary, followed by the Midwest (19.6 thousand), the North (16.2 thousand) and the South (15.3 thousand). (Ministry of Justice, 2014).

Thus, the issue is blatant: if the study of viable solutions for this problem is not conducted now, for urgent measures to be taken, in a few years there may be not a crisis, but a collapse of the prison system in the country. This will directly affect the population living in a state of widespread panic, thanks to the massive and often distorted dissemination of Public Security and service sector problems, especially affected by the waves of crime and the engine of the Brazilian economy, responsible for more than 60% of the Gross Domestic Product (GDP). (Ministry of Justice, 2014).

Thinking about violence in general is an instigating task: the various ways in which it develops; the nuances it presents and the way it is dealt with in Brazilian society – always in a repressive, discriminatory and exclusionary way. The prison system is the ultimate form of violence by the Democratic State of Law.

In this process, this article aims to discuss and reflect on both sides of the “coin”, regarding the issue of privatizations of prison units in Brazil, showing how these are presented, in the current Brazilian context, and how, for the Capitalist system, privatization becomes a way out of these problems, a solution for the many problems that afflict Public Security, especially the country's prison system. The following question then arises: to what extent does private initiative manage to assume the State role, making effective constitutionally guaranteed rights, without losing what is essential in capitalism itself, the profit?

In this line of reasoning, the text was structured into sections. In the first section, the concepts of violence and prison purposes will be presented; after that, the current situation of the Brazilian prison system will be placed, using the Final Report of the PCI (Parliamentary Committee of Inquiry) launched

in 2015 and the presentation of updated data. Next, the reality of US private prisons, a model that Brazil uses, as a basis, to seek the privatization of its prison system, will be described. Finally, the final considerations, based on the presented data, will be made. These are not intended to exhaust the theme, but provide new questionings and reflections for other studies and researches.

Method

It is the research that feeds the teaching activity and updates it, in the face of the reality of the world. Therefore, it must be linked to thought and action. In this theoretical study, the research, as to the objectives, is of an exploratory nature, in the conception of Prodanov and Freitas (2013, pp. 52-53): “the exploratory research has a flexible planning, which allows the study of the theme from different angles and aspects.

Regarding the technical procedures, the research is bibliographical and has as one of the objectives: “to make a history on the subject; update ourselves about the chosen theme; find answers to the problems formulated; raise contradictions on the subject; avoid repetition of works already done” (Amaral, 2007, p. 05).

Regarding the approach, the research is classified as qualitative, and, according to Yin (2016), one of the characteristics of this type of study is the comprehensiveness of the contextual conditions in which people live, in addition to the effort “to use multiple sources of evidence, instead of being based on a single source” (p. 7). It is believed, therefore, that the qualitative research allows a deeper study of relationships and processes, which cannot be reduced to mere numbers, since it works with a universe of meanings, values and attitudes present in the concrete reality. Thus, the article brings in its course categories such as criminalization as theoretical notion of analysis, privatization, prison/imprisonment, among others, which give support to the writings on the theme.

Structural violence and modern prison

Since loneliness is the invisible burden of the human being, violence is the shadow present in all of society. Violence is sometimes characterized as a crime; others are naturalized as social conduct. The theory of social “labeling” or *labeling approach* – a phenomenological current that emerged in the 20th century, alongside the modern notion of prison – states that the causes of the crime are not important, only the process of criminalizing conduct. Crime is what society classifies as such. For instance, if drug use were legalized, drug trafficking would cease to be a crime; if drug trafficking ceased to be a crime, murders for debt, territory, among other things, would cease to exist and would be regulated in the formalities of the law. Therefore, crime is considered a social construction, and not a harmful conduct in itself. Its interpretation varies according to the historical-cultural context of a given society, which defines which behaviors are tolerated and those that will be criminalized. For this reason, according to this theory, we cannot talk about “criminal conduct” or “criminal individual”, since the system of regulations itself will indicate not only the crimes, but the persons, groups and/or organizations framed by them, affirming, thus, that crime has a circumstantial character; however, the criminal is permanently labeled, no longer able to depart from his designations (Baratta, 2002).

For Becker (1963), misconduct is not in the act committed, nor in the one who commits it, but in the visible consequence of the social reaction to a given behavior. Likewise, Becker (1978) argued that being deviant or criminal is thus the result of a social labeling, not the logic corollary of a conduct practiced.

It should be noted that, since the first settlements of human beings, it was necessary to establish rules for the good coexistence. The punishments to those who disobeyed these rules varied between death, physical punishment and social exclusion – punishment usually was in accordance with the type of crime committed. During the Middle Ages tortures and the cruel variety of executions were common. With the evolution of the concept of human rights, especially in Western societies, the punitive methods were being softened: if punishment or execution was necessary, it should be accomplished in a practical and efficient way. When beheading was considered a barbaric form of execution, guillotine replaced it in response; when guillotine became obsolete and any type of execution became a threat to

human rights, it was thought of an institution that at the same time could house the offender and correct his deviant behavior. In the conception of Foucault (2009),

...torture lies on the quantitative art of suffering.... Torture makes to correlate the type of physical injury, the quality, intensity, the time of suffering with the severity of the crime, the criminal person, the social level of his victims... it is a differentiated production of suffering, an organized ritual to mark the victims and the manifestation of the power of punishment... (p. 31).

The treatment provided to prisoners varied from the torture of their bodies to their transformation into domesticated and socially useful individuals, through physical and psychological coercion, always seeking the preservation of norms, conduct and laws established by society (Oliveira, 2013). The history marks several scenarios and models of prisons, as emphasized by Carvalho Filho (2002):

In the 18th century, the humanitarian period of prisons was initiated – not because they became truly human, but because the truths that everyone felt and whispered about the abuses of imprisonment were exposed to the public. In the 18th and 19th centuries, reform movements in Europe arose, combating the harshness of prisons, the complication of investigative processes, the backwardness of judicial systems, and the reputation of prisons as places to serve re-socializing sentence (p. 6)

These ideas had continuity with Jeremias Bentham, who introduced the *panopticon architectural* model, which, for Foucault (2009), “is a new “political anatomy”, whose object and purpose are not the relationships of sovereignty, but disciplinary relations. The control of society over individuals does not simply operate through consciousness or ideology, but begins in the body with the body...” (p. 172). It is perceived that the disciplinary power, through an architectural idea, was configured throughout the historical process of the prisons, prevailing the discipline over/about the sovereignty, with the subordination of the bodies, to control the convicted, especially his body and, if possible, his thoughts and subjectivity.

Prison in Brazil had its contours delineated at the heart of the Brazilian slave society of the 19th century. In addition to being considered as the fruit of the influences of the criminalist theories that emerged at that time, configured in the world-dominating perspective of seeing crime as a “disease”, the criminal as a “sick person”, the punishment as a “remedy” and prison as a “hospital” (Carvalho Filho, 2002, p. 40).

In Brazil, this correctional model never worked well. Prison has become a synonym for a perverse and inhuman environment and mechanism of social control of the people who occupy a place of subordinate, excluded, marginalized and disqualified in society. In other words, imprisonment is, in the first place, a form of punishing, a punishment that reveals how society views repression of those who are believed to have violated certain laws (Garland, 2008). There, they throw into imprisonment bunches of men, of whom 94% are male; 67% black, against 31% white, and young (56% are between 18 and 29 years old); and with low schooling (52% have incomplete primary education); in other words, those who cannot fit into the normatively white and consumerist society. Currently there are 300 prisoners for every one hundred thousand inhabitants in the country (Ministry of Justice, 2014). According to the last count of the population, counted and estimated by IBGE in 2016, the Brazilian population is approximately 205,720,000 inhabitants.

The current Brazilian prison system is outdated, obsolete, but even so it is used in many sectors as the most effective response to violence – from sensationalist police programs, which inflame from the population clamor to the arbitrary use of incarceration on the part of magistrates – to arrest is always the way out used for the resolution of any conflict, at least for those who cannot afford a lawyer and bail. It is worth noting, based on Article 71 of PEL: the Brazilian Prison System is regulated by Law No. 7210 of July 11, 1984, which determines how the sentence, its social character and the idea of rehabilitation should be executed and fulfilled (Law No. 7210, 1984).

In other words, the jurisdiction of prisons is not in the hands of the Public Power as a whole, supported by the public policies that guarantee the rights and social development of the prisoners; on the contrary, it is in the hands of the Judiciary, which concentrates its actions and does not work in conjunction with other social policies. Modern prison, with its genesis in the 19th century, was conceived within two parameters, simultaneously encompassing two distinct functions: first, deprivation

of liberty, because it is characterized as an egalitarian sentence in the liberal economic model, where all persons are considered “Free”; second, “the technical transformation of the individual” as the purpose of the prison – those who enter there must be “repaired”. In the perspective of Foucault (1975), prison routine plays an important role in the process of constructing power and normalization of conducts.

According to the Report of the National Survey of Prison Information - INFOPEN/2014, conducted by the Ministry of Justice, in the country, the number of people deprived of their liberty in 2014 was 6.7 times higher than in 1990. Since 2000, prison population grew by an average of 7% a year, totaling 161% growth, ten times higher than the total of growth for the Brazilian population, which increased by only 16% in that period, by an average of 1.1% year.

The problems experienced in the Brazilian prison system have existed since its social formation and institutionalization; however, the difficulties of this system have become chronic, so that, currently, the country's prison units are in adverse conditions. This reality can be evidenced daily by the violation of human rights, massive imprisonment, overcrowding of prisons, institutional violence (often concealed by naturalizing hierarchical relations in prison context). The fragility of the prison system, perceived by the very unrest that exists in the structure of the institution, is demonstrated by Foucault's (1975) understanding when he says that prisons are places of detention, imprisonment and segregation of persons. This punitive and exclusionary aspect also reverberates in the daily life of society. In addition, corroborating with the thought placed, we have the failure of this system and the extreme vulnerability of the state apparatus regarding the lessons of Wacquant (2001):

The Brazilian penitentiary system accumulates an effect of the worst cages in the Third World... a staggering overcrowding of the establishments, which translates into abominable living and hygiene conditions, characterized by lack of space, air, light and food... pandemic violence among prisoners in the form of ill-treatment, extortion, rape and murder, due to overcrowding, lack of separation between the many categories of offenders, forced inactivity... and lack of supervision (p. 11).

In addition, it is observed that the excess of bureaucracy is an obstacle in the public administration, which prevents the effective fulfillment of the laws in a fast and operative way. In other words, there is a paradox between the bureaucratic context of the public service and what governs the Brazilian Constitution, regarding the access to Justice. The laws were changed, but the technical devices of management and administration is the same (or almost the same, with new terms). We were given the task of Democracy, in a country that began to crawl in that direction; for that reason, to create theoretical and technical contributions of how the new *republic* should work is a challenge to the current generations.

The answer to these problems usually comes in unison, chanting one song: privatization of the public thing. Since the state is unable to fulfill its role as administrator of prison institutions, making them real deposits of human beings, private initiative often is presented as the only effective alternative to all prison problems. Privatization of prisons has as one of its main objectives the reduction of state costs with prisoners. However, before businessmen, prisoners are seen as a commodity, with massive incarceration and consequently profit, because the more prisoners they have, the more states will have to pay, as is the case of the Penitentiary Complex of Ribeirão das Neves located in Minas Gerais, that the State guarantees the minimum occupancy of 90%.

Recent experiences of privatizations of prisons in Brazil have shown some indicators of the accomplishment of some of the rights of the prison population that PEL provides, such as, for example, educational and labor activities. However, in the early days of 2017, in the Anísio Jobim Prison Complex, in Manaus, of a private nature, we witnessed a riot generated by the rivalry between two local criminal groups, fighting for the control of the Amazon region, for the practice of illegal activities, especially drug trafficking. It originated conflicts and left more than 60 prisoners dead². This riot presented indications that it would occur, but it was not an isolated case, due to the fact that the prison

² Rodrigues, A. (2017). Secretário confirma pelo menos 60 mortes durante rebelião em presídio de Manaus. Recuperado em 05 de julho. de <http://agenciabrasil.ebc.com.br/geral/noticia/2017-01/secretario-confirma-pelo-menos-60-mortes-durante-rebeliao-em-presidio-de>.

system is designated as the area where human rights are most violated, an issue that is already part of daily national and international news.

As Minhoto (2000) asserts, the State is delegating its most primitive function, its punitive power and the monopoly of violence. The State, scrapped and above all saturated, assumes its inefficiency and transfers its elementary function to companies that can accomplish the service in a more “practical” and “humanized” way. This takes place through a profit-making mechanism, the central scope of neoliberal policy. Nonetheless, an important issue must be raised: to what extent can private enterprise manage to assume the state’s role, making constitutionally guaranteed rights effective, without losing what is essence in capitalism itself, the profit? That is, how can the state outsource a service that, if properly applied, will gradually reduce its target public and, thus, going against the prerogative of market expansion?

The process of state privatization in Brazil is not a recent phenomenon, but it is intrinsic to the process of globalization of capital. Such a process assumes, in this context, the consolidation of neoliberal reform, the absence of a public dimension in the actions of the State, in its different levels and spheres.

The brazilian prison system in the contemporary scenario

In order to understand the current situation of the Brazilian Prison System, it should be assumed that Brazil adopts a logic of incarceration, that is, it does not adequately and sufficiently address the use of alternative sentences, which leads to mass incarceration and, consequently, ends up swelling the prison system. This logic can be seen in the number of prisons for provisional detention: there are 725 across the country, representing 51% of the units. In addition, of the 1,420 prison units in Brazil, 260 are for the closed regime, against 95 for the semi-open regime and 23 exclusive for the open regime (Ministry of Justice, 2014). For Thompson (1980), to this day, nowhere, at any time, not in the richest countries and in the greatest times, some prison system exhibited a set of resources that were considered at least satisfactory (p. 17).

The director of the National Prison Department (Depen), Renato de Vitto, also agrees that there is a wave of incarceration in the country: “We are naturalizing over incarceration in Brazil and this is worrying. We arrest too much and wrongly. The system fails to focus on crimes against life” (Pellegrini, 2015, s.p.). We are the fourth prison population in the world and, at the same time, our homicide rate is epidemic. In seven years, the prison population increased by 74%. Most of the prisoners, as already mentioned, are male, young and black; but one thing has changed in recent years: the number of female arrests has risen by 146% over the same period. In addition, most arrests are motivated by drug trafficking and crimes against property (UNDP, 2015).

Currently, the country has about 40% of those arrested who have not even been tried in the first instance. This, “... in addition to contribute to the overcrowding of prisons and raising the costs of the system, exposes a large number of individuals to the consequences of imprisonment” (Ministry of Justice, 2014, p. 13). To analyze the implications of mass incarceration in Brazil, a Parliamentary Committee was set up to investigate the reality of our prison system. Regarding the Final Report of the Parliamentary Committee of Inquiry - PCI, set up in 2015, some speeches stood out among the commonplaces. Among them, there is the speech of the President of the National Federation of Prison Service Unions (FENASPEN), Fernando Ferreira, who highlighted the absence of the State in the prison system, besides the degrading conditions of the prisoners and the lack of attention to the prison servants. For Fraga & Brito (2015):

The condition to which the prisoner is subjected for fulfilling his sentence is terrifying. In addition, the conditions of work available to the prison servant to develop his function are far from ideal [sic] ... With respect to the problems of the prison system, we can mention the absence of a uniform public policy, regarding the entire prison system... Each state has a distinct prison system. In addition, the lack of professional regulation for correctional officers, as a career, has hampered the adequate performance of their duties. There are hired, outsourced, private employees performing the functional duties of correctional officers (p. 87).

Fraga and Brito (2015) also point out the lack of security presented in prisons. In addition, the insufficient number of servants was also emphasized, which ends up overloading the correctional officers with a strenuous working day, and the excess of bureaucratization for the availability of resources. The president also emphasizes in his speech “the presence of the State is that of the absent State...” (Fraga & Brito, 2015). Rolim (2004) adds that many prisoners are in difficult situations, such as relay to sleep, precarious conditions of environment and physical hygiene, coexistence with infectious diseases and not being classified for study or work.

In view of the degrading situation presented by the several reports of the PCI, Carlos Alberto Luna, former Secretary of Resocialization and Social Inclusion of the State of Alagoas, defended the thesis of the “shared management”. “... In the shared management and partnerships, in turn, this transfer is partial and totally permitted by law” (Fraga & Brito, 2015, p. 102). Subsequently, the former Secretary then presented the same problems abovementioned in the speech of the President of FENASPEN – lack of resources, overcrowding, ill-treatments of the prison population, lack of servants – and, on the basis of this, he proposed as an alternative the following proposal:

... the assignment of part of the responsibilities, which are today of the State (mainly as regards the provision of services, material, medical, health and legal assistance), to the private sector through shared management. In this model, the State partially transfers powers and delegations to the private partner, with the conclusion of a contract, through a bid provided for by law and following all the rigors of the Brazilian legal system. The State remains responsible for what cannot be delegated (external security of the prison units, the activity of the prison staff in the transport, escort and interventions, when necessary), while the private initiative acts providing services (Fraga & Brito, 2015, p. 103).

The privatizations of these services have been going on in the country for more than twenty years, but in a smooth way, as Luna reported, especially due to the preconception regarding myths related to costs, which, according to the former Secretary, it is performed unfairly; to illegality, since there is no law that regulates this specific type of partnership; and, finally, for the competence of the private initiative to act with the public (Fraga & Brito, 2015).

It does not detract from the services that the shared management can offer to the prison population, but making this type of management a reality in all Brazilian prisons is to reject the progress of the public policies in the country. The same assignments that can be made to the private sector can be transformed into partnerships with several public policies; after all, nothing prevents a prisoner from receiving medical and/or legal assistance from public agencies, which have their reason to exist in the provision of services to the society. As long as it is based on the argument that the public sector does not offer quality service and therefore we should migrate to the private sector, or that this must assume the role of the public things, we are ceasing to charge and demand from the State its duty in meeting the interests of the population.

The President of FENASPEN himself points out as a problem the lack of permanent employees and, above all, qualified for the provision of these services; who are no different from the private employees, who will be hired to perform certain work without realizing the nuances of prison reality, something that is only faced and experienced by the servants who deal with that daily. As for cleaning, hygiene and food services, which increasingly tend to enter into outsourced contracts in the public context, there is also no impediment to having them performed by the prisoners themselves, since we are dealing with people who are kept by the State, and not protected. These rights also come in the form of duties to themselves, to the other and to the community in which they are inserted. If the goal is resocialization – or a socialization focused on citizenship – prisons should stop being seen as storage location of people and begin to be worked as spaces of coexistence. The Public Prosecutor of the Public Prosecutor's Office of the state of Alagoas, Cyro E. Blatter, also favored co-management in his report for the PCI. He “said that the State is not a good administrator (by the machine itself, by its own inefficiency, by the difficulty of making the machine to work)”. In addition, “he presented data showing that in legal establishments managed by co-management, legal assistance, medical care and social assistance are provided much more effectively than in prisons managed exclusively by the State” (Fraga & Brito, 2015, pp. 106-107).

Within this logic, it is worth noting that only in 1988, when the new Brazilian Federal Constitution came into force, did Brazilian society conquer the right to be heard in its fullest and, with this, to seek the Judiciary to avail itself of these rights. This intense search for access to justice and the new configuration of society began to curb judicial proceedings, which until today cannot respond to the actions efficiently. Thus, the challenge is to implement a new management model in order to facilitate fluidity in the bureaucratic sphere of Brazilian justice (Grangeia, 2009).

In this sense, the purposes of the state are not accomplished; not only because of the problems mentioned, but because they stem from an intrinsically unequal society: the very economic model that favors social inequality is paradoxical to the democratic State based on the rule of law. If everyone should be treated equally, how to proceed within a system that values economic and social inequality among human beings, attributing them value according to their possessions? In his report, Blatter, cited by Fraga & Brito (2015), still used as an example the North American model, stating that since the 19th century there have been cases of outsourcing in the prison system.

With the leases [of US prisons], in 2012, they had about 170,000 prisoners, so the business was considered profitable, even because the cost varies from \$ 3,000 to \$ 4,000 per prisoner... Today, a prisoner costs about R\$ 2,400 in a public prison in the State of Alagoas and about R \$ 3,500 in a prison of co-management. He affirmed, however, that this value should not be considered a cost, but an investment, since an adequate treatment of the prisoners ends up ensuring the security of society (Fraga & Brito, 2015, p.106).

Within this perspective, Marcos Fuchs, deputy director of the NGO *Conectas* and member of the National Council of Criminal and Prison Policy, said that “deputies see prisoners as a commodity and the prison system as an expanding market to be explored” (Conectas, 2015).

The experience of countries such as the United States proves that economic interests are absolutely irreconcilable with the objectives of the prison system, which should be rehabilitation and resocialization. After all, it would not make sense to invest on a market without, at the same time, working for its expansion – which, in this case, means depriving more and more people of freedom. There is a clear conflict of interests (Conectas, 2015, s.p.).

However, to think that privatization of prisons will reduce the number of prisoners in Brazil or in any other reality in the world, is a way of hiding the real interests of a small elite that historically controls the logic of capital, its enlarged reproduction, that is, more profit. In the words of Barroso (2009),

in the capitalist system, it is easy to perceive that those who are really imprisoned, that is, those who suffer from prison are the non-consumers, the poor, the black, the unemployed, etc .; in short, all those forgotten by society, because it is cheaper for the state to arrest than to make a policy of social reintegration... (p. 92).

Data on privatization experience in the usa and observations on the brazilian perspective

The NGO *In Public Interest* prepared reports on the situation of US private prisons and highlighted some interesting points regarding the cost-benefit analysis of privatization in the state of Florida. In the first point, it says that private prisons do not save the public money. According to the state law, these units must cost at least 7% less than public prisons; but there are gaps that end up reducing this price, in the private sphere and, at the same time, overloading the public system. For example, privatized prisons can choose the public they wish to serve, thereby excluding prisoners with health problems or those who pose a serious security risk. In 2013, an eight-month investigation conducted by the *Palm Beach Post*, which examined accounts of private Florida prisons using data from the *Florida Department of Corrections* between 2009 and 2012, found that four out of the six private prisons of the state were not able to reach the 7% quota of cost savings, while the other two were unable to reduce anything at all (ITPI, 2014).

In the second point, the analysis highlights that privatized units do nothing to reduce recidivism without empirical arguments to prove the reduction when compared to public prisons. The third point, one of the most perverse, is that the companies responsible for the units have the profit as motivation to

keep a greater amount of prisoners behind the bars. In 2010, according to the report, the main companies in the United States, among them the *Correction Corporation of America – CCA*, tried to approve, together with some parliamentarians, the bill No. 1070 (*Arizona Senate Bill 1070*), which supported police to arrest or detain anyone suspected of being an “illegal immigrant”, with no criminal precedent involved. The NGO says that the resurgence of immigration laws is currently the new formula for keeping prisons full and the market warm (ITPI, 2014).

Another point cited was with regard to the employees who work in these units, indicating that, generally, they are less qualified because they do not receive the same level of training as their colleagues in public prisons. In addition, those who are transferred from the public to the private units end up losing rights and become vulnerable, both financially and personally, with the possibility of responding to lawsuits by their contractors.

In Brazil, public servants are governed by Law No. 8122/1990, while private employees are governed by Decree-Law No. 5252/1943, which approves the Consolidation of Labor Laws (CLT). Therefore, public servants enjoyed greater autonomy and stability in relation to private employees and, depending on the field of activity, receive other types of coverage by the State. However, issues are being debated in the current scenario of the country, in the face of Outsourcing and labor reforms, processes that change the conjuncture of labor relations in the public and private spheres. (ITPI, 2014).

From this perspective, it can be seen that the offensive of restructured capital, under financial dominance, in the capital-labor realignment has disassembled organized labor, which on the defensive undergoes changes and loses part of its political power, which in turn, in its productive process, creates new and restricted labor relations with flexibilization of labor rights, precariousness, outsourcing, temporary contract, for short periods, employment relationship without contract and high turnover rate. This is due to the new requirements of the machine downsizing; reduction of jobs and incorporation of high technology, based on microelectronics; restructuring of large economic groups, considering only the vertiginous increase in productivity. (ITPI, 2014).

The report also cites a crucial point, both in American and Brazilian reality: private prisons do not have the same level of transparency in accountability as public institutions. In the United States, the companies behind the management of these units are protagonists of a variety of corruption scandals. One of the most notorious cases came from the state of Pennsylvania, where in 2011 former Judge Mark Ciavarella was convicted of receiving \$ 1 million to send hundreds of youths and children to private units for crimes that deserved nothing more than a warning. The young Edward Kenzacoski, just 17, committed suicide after being sent to one of these units for a mild misdemeanor, the first on his resume as a Greco-Roman star. In fact, because they are private entities, they are not under the same system of laws that require accountability of public bodies. The CEC, for example, has almost \$ 1.2 billion in debt, which must be paid off through public investments in the area, rather than directed toward maintaining the physical and human resources of prisons. (ITPI, 2014).

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In August 2015, Brazil received the visit of the special rapporteur on torture, the Argentine Juan Méndez. His visit resulted in a report presented to the UN Human Rights Council, asking sharply for a reduction in the number of the prison population in the country, as well as an end to torture and ill-treatment of the prisoners. Among the points discussed was the privatization of prisons (one of the units visited by the rapporteur was fully privatized). He said he was skeptical about the model, given the problems already encountered in other countries. He also says that privatization can aggravate the problem of overcrowding in public prisons and turn the delimitation of responsibilities into cases of abuse.

³ Bates, B. (2011, 21 de fevereiro). 'Cash for kids' judge took \$1m kickback from private jail builder to lock children up. *Mail online*. Recuperado de <http://www.dailymail.co.uk/news/article-1359154/Cash-kids-judge-took-1m-kickbackprivate-jail-builder-lock-children-up.html>. Acesso 26 de outubro de 2016.

The rapporteur also states in his conclusions that, in terms of legislation, guarantee of rights, prevention and institutional reforms, Brazil has made significant progress in the role, but its implementation is far from happening. He also argued that police killings cannot be considered isolated cases, since they perceptibly follow a perverse logic against minorities, mainly of a racial nature. In addition, he said that impunity remains as a rule, and not as an exception, in the judicial system, mainly because of poor procedures and practices, in relation to monitoring and documentation.

As for the recommendations, the first – and the rapporteur is emphatic on this point – is that, despite the legislation, the Brazilian Government must ensure the effective implementation and reinforce existing legislation, removing all obstacles related to resource scarcity or inadequate political priorities. That is, the first UN recommendation regarding the inefficiency of the Brazilian prison system is in line with the conclusion of the aforementioned PCI report. Other important recommendations were: to introduce effective measures to end the overcrowding, as well as the accumulation of processes and bottlenecks in the judiciary, with reference to alternative experiences and practices in other states and countries. Introducing an effective public policy on drug use and trafficking, legally determining the concept of “possession of drugs”, based on fixed amounts, as well as strengthening alternatives to punishment – read “imprisonment” – such as prevention and treatment for the use of drugs.

If the issue of privatization is profitable return, then let it be to society as a whole. Pellegrini (2015) points out other exits to the prison chaos – as he himself defines – based on experiences in cities in the state of Santa Catarina and in the state of Espírito Santo. The Curitiba prison, located in São Cristóvão do Sul/SC, a municipality with only five thousand inhabitants, has in its productive units that employ the inmates their second largest source of wealth. This is because the Penal Execution Law establishes that “prisoners working receive 75% of a minimum wage and do not need registration in the work card, which removes labor costs” (Pellegrini, 2015, s.p.).

In Espírito Santo, since 2010, the state government promotes the “social seal”, a certificate granted to companies that have employed, in the last six months, at least “five prisoners from the semi-open regime and ten from the closed regime, among other requirements. In exchange, [the company] is authorized to use the stamp on its products and advertising campaigns” (idem). In 2015, the state of Espírito Santo had 230 affiliated companies, of which 56 had the seal, and employed 2,700 prisoners.

Within these processes, we can mention restorative justice, as a counterbalance to punitive justice, which permeates the Brazilian judiciary. According to Judge André Augusto Bezerra, president of the Association of Judges for Democracy (AJD), criminal justice is “a sentence imposed on defendants, [which] functions as an instrument of revenge of the State” Rodrigues (2014, p.12). In relation to Restorative Justice, the magistrate explains that in this new practice, the judge serves as mediator: “The judge talks to the victim, listens to the defendant and acts as a mediator of the conflict. Today, the judge is authoritarian, is above the parties. In restorative justice, he promotes mediation, and the parties do justice” (p.28).

In addition to the judiciary, restorative justice has also been applied by members of society, thus preventing mild cases from reaching the system only to inflate it. Father Valdir Silveira, national coordinator of the Prison Pastoral, defends this model of justice and promotes the creation of communities outside the Judiciary, to avoid trial by the penal system and, at the same time, to empower society before the State. Thus, it is not necessary to privatize, but to make effective a Public Security Policy that unburdens the Judiciary System, promoting actions that bring agility to the judgments and convictions; that guarantee equal access to justice, and that work together with other public policies.

Final considerations

Privatization becomes a double-edged sword in a naturally excluding political-economic system, and an immediate response to the structural problem of the collapse of the Brazilian judicial system and the re-socializing prison model. Speaking directly, truthfully and without euphemisms, imprisonment has always been a way of putting the “deviant individual” away from society. The idea of social (re)insertion served more as a hypocritical excuse for incarceration than an end itself.

Thus, it is not strange that the idea of privatizing – or outsourcing the services – Brazilian prisons is also based on the hypocritical excuse of offering better conditions to the prison population; to unburden the prison system and promote actions aimed at the realization of human rights, such as education, work and occupation of the prison population. These would only be consequences behind the main motivation: profit and market expansion. Bauman (2010) argues that capitalism is always searching for virgin land and new pastures to explore, and, as all good parasite, it thrives for some time until it has no more to exhaust and seeks new forms of subsistence.

It is precisely at that point that the contradiction is found: if one of the aims of privatizing the prison system is precisely to reduce the number of prisoners, how will this market thrive, that is, how will it continue to make profit, if the main objective is to reduce the demand with which it works? In this way, its scope will not be to reduce the number of prisoners, but to work to ensure that the existence of this market is stable and perennial. Once the state has invested in the privatization/outsourcing of prisons, it will increasingly stop investing in the areas that prevent the epidemic of violence against the assets we have today, which are Health, Education, Culture and Leisure, among others.

The unequal society produces and reproduces the social relations of violence, in which the individual is inserted. It is therefore necessary to work on social relations in order to work on the human person, and not to deprive him of any and all contact with society, which occurs in a contrary way in Brazilian prisons, which have as premise to guard people who committed crime, but without compensating them the rights guaranteed in Article 41 of PEL and in other Brazilian and international legislation, such as the Minimum Rules for the Treatment of Prisoners approved by the Economic and Social Council of the United Nations, on July 31, 1957.

The reduction in the number of prisoners in Brazil will not occur through the creation of a new market, but with the investment by the State in public policies that prioritize the human being and their relationships. Privatizing and/or outsourcing services will bring short-term benefits that will not be sustained as the prison population does not reoffend. Then, for this measure to be sustained, there must be more and more inmates, new or recurrent, and a society based on fear, insecurity, fetishization of the enemy armored by the image of the Other; and, finally, more social isolation, more incarceration, and an objective of reducing numbers that will not be fulfilled, in the current political, social and economic scenario that dominates the Brazilian reality.

Historically, the Brazilian prison system has become the fruit of decades of growing social inequality, of a State absolutely inert and incapable of fulfilling its legal/constitutional obligations. Therefore, this prison system is in serious structural crisis, marked by so many contradictions in all dimensions of society. Therefore, there is no one easy answer.

Like any study, this study presents limitations, where it is suggested development for new researches and reflections on the thought of Waiselfisz (2013) that institutionalized violence argues that the State is necessary to collective life, and, at the same time, promoter of policies of social welfare and violence, being responsible for the deaths that occur in wars between States and for the implementation of policies that cause social misery. Violence breeds fear and fear creates more violence, becoming a vicious circle.

References

- Amaral, J. (2015). Como Fazer Uma Pesquisa Bibliográfica. Recuperado de https://cienciassaude.medicina.ufg.br/up/150/o/Anexo_C5_Como_fazer_pesquisa_bibliografica.pdf.
- Baratta, A. (2002). *Criminologia Crítica e Crítica do Direito Penal: introdução à sociologia do direito penal*. Rio de Janeiro: REVAN: Instituto Carioca de Criminologia.
- Barroso, D. V. (2009). *Criminologia: do estado de polícia ao estado de direito*. Florianópolis: Conceito Editora.
- Bates, B. (2011, 21 de fevereiro). 'Cash for kids' judge took \$1m kickback from private jail builder to lock children up. *Mail online*. Recuperado de: <http://www.dailymail.co.uk/news/article-1359154/Cash-kids-judge-took-1m-kickbackprivate-jail-builder-lock-children-up.html>. Acesso 26 de outubro de 2016.
- Bauman, Z. (2010). *Globalização: as consequências humanas*. Rio de Janeiro: Jorge Zahar editora.
- Becker, H. (1978). *Los extraños*. Buenos Aires: Tiempo Contemporáneo.
- Becker, H. (1963). *Outsiders: estudos de sociologia do desvio*. Rio de Janeiro: Zahar.

- Carvalho Filho, L. F. (2002). *A prisão*. São Paulo: Publifolha.
- Conectas Direitos Humanos. Segundas intenções: CPI erra ao apontar privatização como saída para problemas no sistema prisional. Recuperado de <http://www.conectas.org/pt/acoes/justica/noticia/40221-segundas-intencoes>. Publicado em: 06 de agosto de 2015.
- Foucault, M. (1975). *Estratégia, Poder-Saber*. Rio de Janeiro: Forense Universitária.
- Foucault, M. (2009). *Vigiar e Punir: Nascimento da Prisão*. Petrópolis: Vozes.
- Fraga, A. & Brito, S. (2015). *Relatório Final: CPI – Sistema Carcerário Brasileiro*. Brasília: Câmara dos Deputados.
- Garland, D. (2008). *A cultura do controle*. Rio de Janeiro: Editora Revan.
- Gil, A. C. (2014). *Métodos e técnicas de pesquisa social*. São Paulo: Atlas.
- Grangeia, M. D. (2009). *A Crise de Gestão do Poder Judiciário: o problema, as consequências e os possíveis caminhos para a solução*. ENFAM – Escola Nacional de Formação e Aperfeiçoamento de Magistrados.
- Humanos, C. D. (06 de Agosto de 2015). *Segundas intenções: CPI erra ao apontar privatização como saída para problemas no sistema prisional*. Recuperado em dia do mês, 2015, de <http://www.conectas.org/pt/acoes/justica/noticia/40221-segundas-intencoes>. Acesso 24 de out de 2016
- ITPI, I. T. (2016). *Prison Privatization: Bad for Florida, Bad for Taxpayers*. Recuperado de <http://www.inthepublicinterest.org/wp-content/uploads/floridaprivateprisonsfactsheet42111.pdf>. Acesso 20 de out de 2016
- Lei nº 8.112/1990 (1990, 11 de dezembro). Dispõe sobre o regime jurídico dos servidores públicos civis da União, das autarquias e das fundações públicas federais. Recuperado de http://www.planalto.gov.br/ccivil_03/leis/L8112cons.htm. Acesso 24 de out de 2016.
- Lei Nº. 7.210 de 1984 (2017, 26 de junho). Lei de Execução Penal. Recuperado de http://www.planalto.gov.br/ccivil_03/LEIS/L7210.htm. Acesso 30 de out de 2016
- Ministério da Justiça. (2014). Departamento Penitenciário Nacional. *Levantamento Nacional de Informações Penitenciárias – INFOPEN*. Junho de 2014. Recuperado 25 de outubro de 2016 de <http://www.cartacapital.com.br/sociedade/brasil-possui-a-quarta-maior-populacao-prisional-do-mundo7555.html/relatorio-infopen/view>. Acesso 02 de nov de 2016.
- Minhoto, L. D. (2000). *Privatização dos Presídios e Criminalidade: a gestão da violência no capitalismo global*. São Paulo.
- Nacional, M. d.-D. (2014). *Levantamento Nacional de Informações Penitenciárias – INFOPEN*. Recuperado de <http://www.cartacapital.com.br/sociedade/brasil-possui-a-quarta-maior-populacao-prisional-do-mundo7555.html/relatorio-infopen/view>. Acesso 24 de nov de 2016.
- Oliveira, H. C. (2013). *A Linguagem no Cotidiano Prisional: Enigmas e Significados*. Jundiaí, Jundiaí/SP: Paco Editorial.
- ONU (s.d.). *Human Rights Council. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil*. Recuperado de <http://www.conectas.org/arquivos/editor/files/G160141RelatorioTorturaVisitaBR2015.pdf>.
- Pellegrini, M. (2015, 8 de outubro). Uma saída para o caos carcerário: Parcerias entre estados e empresas transformam prisões, antes indesejadas, em fontes de renda para municípios e dão segunda chance a presos. *Carta Capital*. Recuperado de <http://www.carta-capital.com.br/sociedade/umasaida-para-o-caos-carcerario-6455.html>. Publicado em: 08 de outubro de 2015.
- PNUD (03 de junho de 2015). *População carcerária no Brasil aumenta 74% em sete anos: A maioria dos encarcerados é jovem e negra, e os crimes que mais motivam o encarceramento estão relacionados a questões patrimoniais e drogas*. Recuperado de <http://www.pnud.org.br/Noticia.aspx?id=4084>. Publicado em: 03 de junho de 2015. Acesso 24 de out de 2016
- Prisons, I. T.-I. (2014). Recuperado de http://www.inthepublicinterest.org/wp-content/uploads/Prison-CostsBackgro under-Brief_Template2.pdf.. Acesso 24 de out de 2016.
- Prodanov, C. & Freitas, E. (2013). *Metodologia do trabalho científico: métodos e técnicas da pesquisa e do trabalho acadêmico*. Novo Hamburgo, Novo Hamburgo: Fevale.
- Regras Mínimas para o Tratamento de Prisioneiros aprovadas pelo Conselho Econômico e Social da ONU. (1957.). Recuperado de <http://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/comite-brasileiro-de-direitos-humanos-e-politica-externa/RegMinTratRec.html>. Acesso 24 de out de 2016.
- Rodrigues, A. (2017). *Secretário confirma pelo menos 60 mortes durante rebelião em presídio de Manaus*. Recuperado de <http://agenciabrasil.ebc.com.br/geral/noticia/2017-01/secretario-confirma-pelo-menos-60-mortes-durante-rebeliao-em-presidio-de>. Acesso 24 de nov de 2016.
- Rodrigues, L. (2014, agosto). Justiça restaurativa contra encarceramento em massa. *Revista Caros Amigos*, Edição Especial: O Judiciário no Banco dos Réus. Ano XVII, nº 69.
- Rolim, M. (2004). Justiça Restaurativa: para além da punição. *Instituto de Acesso à Justiça*.
- Thompson, A. (1980). *A questão penitenciária*. Rio de Janeiro: Forense.
- Waiselfisz, J. J. (2013). *Mapa da violência 2013 - mortes matadas por armas de fogo*. Recuperado de

http://www.mapadaviolencia.org.br/pdf2013/MapaViolencia2013_armas.pdf. Acesso 24 de out de 2016.

Yin, R. K. (2016). *Pesquisa qualitativa do início ao fim*. Porto Alegre: Penso.

WACQUHANT, Loic. (2001). *As prisões da miséria*. Tradução de André Telles. Rio de Janeiro: Zahar.

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