



THE HISTORICAL CONSTRUCTION OF THE BLACK PEOPLE AS A TARGET OF MASS INCARCERATION IN BRAZIL

Construção histórica do negro como alvo do encarceramento em massa no Brasil

Marcus Alan Melo Gomes

Universidade Federal do Pará - UFPA, Belém, PA, Brasil

Lattes: <http://lattes.cnpq.br/0371519214729478> ORCID: <https://orcid.org/0000-0002-3699-5164>

E-mail: marcusalan60@hotmail.com

Renan Daniel Trindade dos Santos

Universidade Federal do Pará - UFPA, Belém, PA, Brasil

Lattes: <http://lattes.cnpq.br/5648762462987617> ORCID: <https://orcid.org/0000-0001-8462-5785>

E-mail: renantrindade1@gmail.com

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Marcus Alan Melo Gomes e Renan Daniel Trindade dos Santos

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ABSTRACT

Brazil experienced one of the most enduring historical processes of enslavement of blacks, which extended from the 16th century to the end of the 19th century, when there was the formal abolition of slavery. In the face of the abrupt rupture, it is not difficult to conclude that many sectors of Brazilian society have inherited the mentality of slavery, after all it has been almost four centuries of social and economic formation from the enslavement of black people. The penal system, analyzed here from prison, previously represented by the slave quarters where blacks were punished by their lords, has not escaped this phenomenon. Later that punishment passed was monopolized by the State, criminalizing freed blacks and still slaves for the practice of begging, vagrancy, capoeira. Nowadays this slavery heritage is reflected in the Brazilian prison population, of which 66.7% are of black origin. Based on these findings, this article discusses the problem: Is it possible to point to a historical construction of blacks in the Brazilian penal system? Marx, Ianni, Schwarcz, Souza, Zaffaroni, Flauzina, among others, were used as a theoretical framework to point out the historical and racialized selectivity of the Brazilian penal system. Therefore, the research took a bibliographic form, especially from the Brazilian Yearbook of Public Security of 2020, which points out the population growth of black people in the country.

Keywords: slavery; punishment; blacks; incarceration; penal system.

RESUMO

O Brasil vivenciou um dos mais duradouros processos de escravização, se estendendo do século XVI ao final do século XIX, quando houve a abolição formal da escravidão. Diante da ruptura abrupta, não é difícil concluir que muitos setores da sociedade brasileira herdaram a mentalidade escravocrata moldada e difundida em séculos de formação social e econômica do país. O sistema penal não escapou a esse fenômeno, aqui analisado a partir do cárcere e sua relação com a senzala. Mais tarde a punição foi monopolizada pelo Estado, criminalizando negros libertos e escravizados pela prática de mendicância, vadiagem, capoeira. Contemporaneamente esta herança se reflete na população carcerária brasileira, da qual 66,7% são de origem negra. A partir disso, este artigo debate o problema: É possível apontar uma construção histórica do negro no sistema penal brasileiro? O marco teórico da pesquisa se concentra no pensamento de Karl Marx, Octavio Ianni, Lilian Schwarcz, Jessé Souza, E. Raul Zaffaroni, Ana Flauzina para apontar a seletividade histórica e racializada do sistema penal brasileiro. O artigo se desenvolve a partir de pesquisa bibliográfica e documental, mediante exame dos dados reunidos no Anuário Brasileiro de Segurança Pública de 2020, que indica o aumento da população carcerária negra no país.

Palavras-chaves: escravidão; punição; negros; encarceramento; sistema penal.



1. INTRODUCTION

For three centuries, Brazil's social and economic life was determined by decisions taken in the European metropolis, seat of the Portuguese empire, for whose interests Brazilian territory served as a colony of exploitation, and where the labor employed in the extraction of wealth was, in most of them, enslaved blacks.

Black people were treated as inferior and domesticable beings. They were subjugated with violence and brutality. Any sign of subversion should be neutralized in order to achieve the stabilization of racial hegemony, both in the productive and social systems.

First, this control was exercised within the scope of private relations, but as Brazilian society gained complexity, the State assumed the role of punitive agent. The historical factors that initially subjected the enslaved to a sub-human treatment later influenced on the criminalization of blacks when slavery was formally abolished (begging, vagrancy, capoeira, etc.).

Brazil advanced from a period of slavery that started in the mid-1500s and reached the 21st century without being able to overcome a past that left its marks in the present day. Initially a vulnerable group, a true victim of the historical punishment irrationally justified by the color of their skin, the black population became a stamp to the news as the enemy of society, and whose image was converted into the stereotype of the criminal (FLAUZINA, 2006).

The prison-based penal system, as a product of a racialized social structure, could not be detached from the country's recent past. The debate about mass incarceration is, therefore, inextricably linked to the historical construction of a punitive culture that fell on the black population.

In view of this, the hypothesis presented here is that, as Brazil did not experience a process of social or historical rupture with the slave model, the penal system ended up absorbing and naturalizing the punishment of black people, using it to put into practice its selectivity, which makes current prisons a reinvention of the "senzala" (slave quarters), with mass incarceration as its main tool, which is analyzed here using the Brazilian Public Security Yearbook (BUENO; LIMA, 2020). This document, based on data from the National Penitentiary Department, found that 66.7% of the Brazilian prison population are black and that there was a growth rate of 377.7% of blacks in the country in the period from 2005 to 2019,

indicating that racism chooses them as the preferential target of punishment, as had occurred since the beginning of slavery in the Portuguese colony.

Thus, this article starts from the premise that the contemporary penitentiary scenario, marked by mass incarceration, cannot be explained only in the current historical moment, but must be understood from the historical and social construction of Brazil, closely linked to the slavery of blacks and the forms of punishment that made forced labor and racial hygiene in urban centers possible.

The theoretical framework is based on Ianni (1978), Marx (2017), Souza (2017), Flauzina (2006), Zaffaroni (2001), among others, as a way of analyzing the historical construction of the punishment of blacks in Brazil, and evidences that there was an antagonistic and complementary reality between colonizer and colonized, or between colony and metropolis, since the existence of one depended on the other, and the way to punish the enslaved black in this context was in the private sphere, within the scope of the “casa-grande” (big house) and slave quarters, in which violence and extermination were forms of exercise of power and control.

With Carmichael and Hamilton (1967), it is intended to work on the way institutional racism took place in the penal system as a result of the monopoly of punishment by the State considering the criminalization of begging, vagrancy and capoeira.

Finally, the Brazilian Public Security Yearbook (BUENO; LIMA, 2020) will serve as a basis to demonstrate that the way to punish black people today is, above all, using imprisonment, with high incarceration rates and constant growth from 2005 to 2019, reaching a level of 377.7%.

Therefore, the methodology will be bibliographic based in order to carry out the analysis and understanding of the data on the incarceration of blacks who are exposed so expressively, and if this would reflect the way in which the figure of the black as a vulnerable subject to punishment was historically constructed by the penal system.

2. THE ANTAGONICAL REALITY BETWEEN COLONIZER AND COLONIZED

Between the 16th and 18th centuries, Europe experienced an expansion of manufacturing until reaching the industrial revolution and, consequently, industrial capitalism. In the same period, the territories colonized by the Europeans had slave labor as the foundation of their productive activity and social organization (IANNI, 1978).

The expansion of the colonization process created the structural conditions for the later development of capitalism, giving rise to actual fields of production in the colonized territories, from which it extracted as much wealth as possible, promoting the primitive accumulation of capital in European metropolises, especially in England (IANNI, 1978). In this primitive accumulation of capital lie the historical origins of wage labor, as well as the concentration of resources in the power of certain people. In this sense:

This primitive accumulation plays in political economy approximately the same role as original sin in theology [...] the process that creates the capitalist relationship can only be the process of separation between the worker and the ownership of the conditions for carrying out his work, process that, on the one hand, transforms the social means of subsistence and production into capital and, on the other hand, converts direct producers into wage workers. The so-called primitive accumulation is therefore nothing more than the historical process of separation between producer and means of production. It appears as “primitive” because it constitutes the prehistory of capital and the mode of production that corresponds to it. (MARX, 2017, p. 785-786).

The separation between worker and ownership of the means of production began with the expropriation of land from the peasantry and the expulsion of the rural population, which, without material conditions of subsistence, now needed to be inserted in the new productive logic of the urban environment: industrial capitalism (MARX, 2017). The expropriation of land reduced the number of peasant cultivators, while at the same time concentrating them in the hands of the new master, converted into an industrial capitalist.

The concentration of land in the hands of a few did not reduce previous production, as the promotion of new cultivation techniques promoted improvements. Furthermore, this new model of land tenure made employees work more intensively (MARX, 2017).

The transformation of the rural population into a wage-earning population was not the main effect of primitive accumulation. The livelihoods of these people have also been reconfigured. If before it was production itself that ensured subsistence, with the expropriation

of land the peasant started to receive from the industrial capitalist the value of his work in the form of a salary (MARX, 2017).

What is the relationship between primitive accumulation and the phenomenon of colonization? The colonizing commercial process was basically characterized by what Octávio Ianni (1978) calls *commercial capital*, which would guide the slave regime in the colonies.

The commercial capital, in short, was based on the trade of silver, gold, tobacco, sugar, cotton, among other products that were commercialized in the period of the great navigations. It was what provided wealth to European metropolises and ended up creating the necessary conditions for the transition to the capitalist mode of production by the propulsion of primitive accumulation, which created an internal market, as the population was now salaried.

In this sense, we can assure:

In fact, the events that transform small peasants into wage earners, and their means of subsistence and work into material elements of capital, create for the latter, at the same time, its internal market (MARX, 2017, p. 818).

This is because before the peasants and their families held the means of production and handling of raw materials, from which derived their livelihood, and now these elements have become merchandise. In fact, raw materials and means of subsistence that were already in the bosom of peasant families for their own consumption, but were transformed into goods that find their destination in the internal market, since part of the families no longer produces the necessary elements for their own subsistence, only products delivered in exchange for the salary that will ensure their subsistence.

Enslaved labor was closely subordinated to the way commercial capital was delineated in Europe, given that the organization of enterprises, maintenance and the cost of purchasing slaves originated from this extraction of wealth from the colonies.

Ianni (1978) also points out that the process of circulation of commercial capital was established in several ways, such as: the profit obtained by the merchant was realized through the increasing quantities of goods coming from the slave labor colonies, thus, as it was enslaved labor, the merchant obtained profit by buying cheaply and selling more expensively, always seeking to increase his profit margin, that is, a surplus of product due to surplus labor with a high profitable result.

It is here that the way in which the enslaved begins to act in relation to the production of goods is located:

For these to be produced in the colonies of the New World, it is necessary to tie the worker to the other means of production. He cannot be employed, because the availability of vacant land would allow him to evade, transforming himself into an autonomous producer. Hence the open, or disguised, enslavement of indigenous and blacks in the *encomienda*, *hacienda*, plantation, mill, farm and other modalities of social and technical organization of production relations and productive forces (IANNI, 1978, p. 10).

And so, with the search for increased profit and constant primitive accumulation, it produced an increasing commodity of cheap origin that was absorbed by commercial capital in the colonizing countries. Therefore, it is not difficult to conclude that the dynamics of commercial capital led to the emergence of large capital from the colonizers in the slave trade, creating a triple bond between the European metropolises, Africa and the colonies.

This dynamic provided the maintenance of the slave regime, as well as the intensification of primitive accumulation to create an environment conducive to the development of capitalism in Europe through the reflux of plundered goods in the colonies. And that is why Ianni (1978) states that this process of expansion of commercial capital provided the maintenance and development of an antagonistic reality between Europe and the colonies, causing a relationship of coexistence and interdependence between the slave regime and the free labor, already present in mercantilism.

The overwork of the enslaved directly propitiated the creation of the working body in European metropolises, the antagonism with the strengthening and arrival of the capitalist mode of production becoming increasingly evident. This antagonism, although decisive, could not be sustained only in primitive accumulation.

Slavery, in this scenario, was the basis that operated the machine of primitive accumulation and commercial capital, in which control and violence over the black bodies enslaved in the colonies were the driving force behind the production of wealth.

2.1. The slave regime: the institution of brazilian social formation

Jessé de Souza (2017) points out that everyone is built from social institutions that drive and determine us, it is not about blood or cultural heritage, but about institutionalized construction and socialization.

In view of this, the author explains that slavery was the first institution that regulated all other institutions since the “discovery” of Brazil. The form of family, economy, politics, justice had as socializing bases the institution of slavery.

However, to understand this, it is necessary to deconstruct the thought that the Brazilian people are a cultural heritage of Portugal, as this way of thinking would remove the real effects of the slave regime, after all, Portuguese society at the time of commercial capital did not live under the aegis of slavery, as well as something to a high degree topical and transitory of this regime.

It is therefore necessary to leave the perception that Brazilian society would be a continuation of a society without slavery bases (SOUZA, 2017). It is also necessary to understand the other institutions that circulated around the brazilian slave regime and how they were framed in history. The first point to be addressed is the family in the slavery period and the subjects that circulated in it.

When we talk about the family in the slave regime, we must visualize a social institution generated in patriarchy, in which the chief, lord of the lands and slaves, had undisputed authority under his domains, often having his own army to exercise his power. (SOUZA, 2017).

Patriarchalism was responsible for the social organization of Brazil at the beginning of the slave regime - colonial period, in which this figure developed without any material limit or even resistance, as it brought together the whole society and not just the nucleus formed by the master, wife and children. . In this context, there was also the absorption of some intermediary subjects by this family nucleus, such as bastards and domestic slaves (SOUZA, 2017). Thus, what is immediately perceived is that the family nucleus was expanded or reduced according to the wishes of the patriarchal master, as the family organization as a social institution revolved around it.

That family and social structure explains why the slave society cannot be considered an extension of Portuguese society. Patriarchalism made it possible to solve the problem of colonizing distant and vast lands: the delegation of the task of managing everything to a single person – the patriarchal lord.

This being so, the exercise of unlimited power already demonstrates that there was no superior element, as existed in Portugal, exercised by the justice of the Church. There were also no mechanisms for collecting then unpayable debts, for example. So, for the purposes of colonization, it was much more effective to allow than to restrain privatism and bossiness in social relations (SOUZA, 2017).

This policy of delegating unlimited powers to the patriarchal lord created an environment based on the socioeconomic conditions of slavery that provided the emergence of an arbitrary and segregating figure.

The expansion of the family nucleus at the discretion of the patriarchal lord was operated by a relationship of trust with some enslaved, as it was necessary to monitor the work, chase and capture slaves who fled, military services in confrontation over land limits, etc., services that would be better performed if done by someone from the expanded nucleus of the family. In addition, this status of belonging to the family nucleus of the patriarchal lord brought with it a kind of social ascension in that context (SOUZA, 2017).

Souza (2017) considers this a sadomasochistic relationship, because it presupposed a bond of command and abuse in exchange for certain “benefits”. One was not directly enslaved like the others and still helped to maintain the system that revolved around the patriarch. This was the Brazilian social formation until the early 1800s, when such sadomasochistic logic, based on a relationship centered on the person of the patriarchal lord, faced important changes: Brazil became the seat of the Portuguese empire and internal trade began to open to Europe.

Thus, it begins the conflict between the effects of primitive accumulation provided by the slave regime, which ended up providing conditions for the emergence of capitalism in Europe, and, on the other side of the Atlantic Ocean, the social structure centered on one person.

This conflict will occur with the passage from the rural environment (where the mills functioned, etc.) to the Brazilian urban ancestry, and also from the discovery of large mines of wealth, which would require greater control, hitherto non-existent, over the patriarchal family, in other words, the privatism of the patriarchal master begins to cede (SOUZA, 2017).

The retraction of privatism can be seen, for example, when the rural debts of the patriarchs began to be collected by the police force at the behest of the portuguese crown, which in this period was about to settle in Brazilian lands, transferring the dynamic economic axis from the northeast to the southeast (SOUZA, 2017).

With urbanization, the arrival of the portuguese crown and the change in the economic axis, a social hierarchy was formed, derived from the conflict with privatism and its retraction, marking modern Brazil, as the patriarchal lord is no longer the absolute reference, being replaced by a social system governed by abstract and general rules, in order to obtain greater control over wealth (SOUZA, 2017).

In addition, it is important to realize that there was also a conflict of evaluative interest, since urbanization and this surveillance over the privatism and bossiness of the patriarchal lord bring typically european and urban political aspects, such as individualism (legal protection of individuals) and rural traditionalism led by the patriarchalism originated in the colonial system. However, as Souza (2017) points out, based on “Sobrados e Mocambos”, by Gilberto Freyre, the slave-ownership system, by giving in to the transformation of urbanization, brought the shattering of a social organization that until then was organic, in other words, despite the real antagonism, there was balance. And this process of splintering, due to the conflict of patriarchal privatism with european individualist values, caused several fragments to spread through brazilian reality.

This phenomenon helped the erosion of patriarchal power and the emergence of the imperial figure, a more impersonal figure that represents the State, which began to interfere in the way of life of the patriarchal family, operationalizing the children of the lords, since specialized labor was needed to bureaucratically manage the State, hence the need to train judges, inspectors, and other purely state functions (SOUZA, 2017).

These are changes that start from the top towards anyone down, suffocating all social spheres, and as it started to infiltrate the patriarchal family, which was the institution of social organization, whoever was outside, remained outside.

The disparities were thus accentuated, making the relationship of race and class in the Brazilian reality more explicit, since the white, son of the patriarchal lord, would now have the opportunity to contribute to state management, therefore, it would be a useful person, and on the other side, diametrically and socially opposed, there was the black, brought in to be enslaved, being useless.

Thus, the imagination arises that the black would be someone primitive, uncivilized, who would not be able to perform activities within what is expected of citizens in a civilized society, which was even more accentuated with the arrival of Europeans in the second half of the 20th century XIX to compose the useful workforce (SOUZA, 2017).

Let us remember that this period was marked by the expansion of the capitalist mode of production, suffering great influences from the industrial revolutions, at the same time that slavery was abolished in Brazil, without any policy of inclusion or reparation for the mitigation of almost four centuries of violent exploitation of enslaved bodies.

2.2. Post-abolition and the black in society

It should be noted that the moments after abolition also brought with them the social shattering that took place in the 19th century, as well as putting the black, again, in a situation of vulnerability.

The abolitionist movement reached its apex in the Lei Áurea of May 13, 1888. However, the treatment given to freed black people worsened the social breakdown that took place in the first half of the 19th century, as:

The masters were exempted from the responsibility for the maintenance and safety of the freedmen, without the State, the Church or any other institution assuming special duties, which had the purpose of preparing them for the new regime of organization of life and work (FERNANDES, 2008, p. 29).

It means that from one moment to the next the freed black man became master of his own destiny and of his dependents, what was a great difficulty, since the situation had placed him under circumstances in which the arrival of Europeans and the the absence of public policies of insertion in the social environment were reasons why he could not interact in the new model of competitive economy, now driven by the useful white labor.

Such a situation was only possible because there were two different production sites, which differently absorbed the labor of the now freed black. In a first context, there was production at low levels and here the slavery rooted order was still maintained as the now freed had to choose between submitting to a condition of production that in substance was analogous to the previous one or deepening the degradation of slavery at its economic and social position of abandonment.

In another context, there was the highest level of production with economic growth and the first forms of work organization to be able to create a market, circumstances that were provided by primitive accumulation. And here the freed slaves had to compete with the “civilized and useful” labor brought from the European continent (FERNANDES, 2008), which was more accustomed to this new model of production based on capitalists.

It should be noted that while in Brazil there was a slave regime that provided the conditions for this new stage, Europe was antagonistically experiencing the emergence of the working class that depended on the maintenance of slave colonies to be able to establish itself, in addition to the subsequent industrial revolutions that provided the formation of a workforce in the molds of capitalism, as well as the idea of forming a consumer public.

Thus, it is not difficult to conclude that this competitiveness between the freed black and the European worker was harmful to the positioning of the former in the new logic of production. The black had no alternatives, only an almost certain fate of submission and prolongation of dehumanization by his exclusion as an agent of work.

The quickness with which the excluding mode of production of freed blacks changed and the great process of urbanization of Brazilian society meant that blacks lived in cities, physically and numerically, but were unable to progress socially in the urban environment.

It is from this process of social exclusion caused by the rapidity in the change of production with the freed black seen as not useful to the new urbanization model that a black deficit was originated, what was extended through the 20th century, due to Brazil has not experienced a process of social rupture (BARROSO, 2001) that made it possible to overcome the negativities brought about by the slave regime.

The country did not overcome its slavery experience neither faced it with the necessary seriousness, making the racialized marks of social relations persist until today, materializing as one of the pillars of the mass incarceration of the black population.

Some questions are therefore necessary. How did these historical relationships act as a form of repression and penalization of enslaved black people? And after the abolition of slavery, was there a substantial change in the system of oppression against blacks?

3. THE HISTORICAL FORMS PUNISHMENT OF BLACK BODIES

3.1. The mercantile colonial system

The territorial and mercantile expansion (16th to 18th centuries) achieved by European countries meant that around 1500 the "discoverers" arrived on Brazilian soil, making this territory one of its exploration colonies, under the command of Portugal.

However, the encounter between colonizers and native populations was not peaceful. The bloody clash was inevitable as the colonization system adjusted itself through violent domination as a technology over local people (FLAUZINA, 2006).

After a first violent clash, the slave trade and enslaved labor assumed the role of protagonists in an exploratory colonial system, lasting for more than three centuries.

The management of the Latin American colonies was guided by a discipline and violence policy based on the inferiority of the native people and the enslaved black people, so that without these two technologies of power, the European colonists would hardly have achieved such success in transforming the colonized countries in a kind of geographic concentration camp (ZAFFARONI, 2014).

Still in this sense, Zaffaroni (2001), based on Foucault, explains that the Latin American penal system at the time would be a form of kidnapping institution, where the power of control, from the appropriation of bodies, was the essential technology for the success of the colonialist system, thus generating the disarticulation of the dominated individuals, nullifying their culture and unfolding in their extermination.

The case of Brazil presents very important singularities. Firstly, because it was the geographic space in which the largest mode of slave production on the American continent was installed, both for its temporal longevity and for its expansion and territorial predominance (GORENDER, 2016).

For this reason, the Brazilian slave model can be considered a formulation for the original accumulation of capital from the exploitation of bodies:

colonial slavery was able to engender an internal process of formation of the capitalist mode of production. The original accumulation of capital took place within the very heart of colonial slavery, to a greater extent than in other areas of the Americas. On the second half of the 19th century, the nascent capitalist mode of production still developed within the framework of the dominant slave economy (GORENDER, 2016, p. 158).



One of the justifications for the implementation of this process of dehumanization of black bodies – concomitantly with the idea of racial inferiority – was the Christian precepts imposed by the Catholic Church, ratifying the slavery discourse as in the case of the Catholicization carried out by missionaries (NASCIMENTO, 2002).

In that way, the Catholic Church not only reinforces its missionary ideal, but often acts as an enthusiast of the terror caused to black people, it also serves as a voice of justification for this system (NASCIMENTO, 2002), even because in this regime in which you patriarchal exercised absolute powers the Church could not interfere much beyond its missionary objectives to succeed in the colonization project of a region of vast lands and without major interventions in privatism.

This mercantilist colonial model, lasted from 1500 to 1822, only became possible due to the progressive disintegration of European feudalism and brought with it many characteristics of this, such as the forms of punishment (FLAUZINA, 2006) that ended up being reproduced here in a different way.

In that period, repression was not public, that is, the system of punishment materialized in private relations. The feudal Iberian characteristics brought to the colony were manifested in the following way: blacks were submitted to the will of their lords, translating the old lord-vassal domination, now transposed into the figure of the big house over the slave quarters. However, this relationship between the big house and the slave quarters/patriarchal and enslaved lord enjoyed something else: absolute patriarchy, in which the lord decided who were the members of his family nucleus, expanding it according to his discretion and objectives, since the same it needed enslaved people who exercised certain functions of trust for the maintenance and strengthening of the slave system, which often resulted in punishments in the private sphere.

This private repression was so evident that almost all the Afonine (1447–1521), Manueline (until 1603) and Philippine Ordinance (1603 to 1916 in Brazil in civil matters, being revoked by the Civil Code of 1916) had little effect as far as to the ways of punishing, although they regulated punishments aimed at the enslaved detractor¹. Thus, private deprivation takes the place of Ordinances due to privacy and is concentrated in the person of the lord of the big house (GRINBERG; MATTOS, 2018).

¹ Punishments were also intended for those who infringed excessive punishment – torture – towards the enslaved, as well as denying the masters the right of life and death over their enslaved (GRINBERG; MATTOS, 2018).

Not even the Catholic Church – the largest institution at the time – was able to exert significant pressure on the lords, due to the freedom and great power they had.

In this sense, there was also a paradox around the legal treatment given to the enslaved: sometimes they were a thing, sometimes they were people, sometimes both. This reality marked the entire period of the slave regime. It was said that the enslaved was a thing, that walked by itself (livestock), but unable to own property or contract any obligations. In the criminal sphere, he was considered a person, whose responsibilities could put him on trial by the justice of the time and subject him to conviction, in addition to direct penalties (GRINBERG; MATTOS, 2018).

In this way, the discourse of dehumanization of the black was established in the colonial period from two dimensions. The first was based on a private punitive system coming as a sophisticated inheritance of the Iberian feudal relations of the vassal lord to translate into the relations big house x quarters/patriarchal lord x enslaved. The second adopted the control of bodies as a technology of “kidnapping” and disarticulation of the dominated, through what can be called an institution of kidnapping:

Among the 'sequestration institutions' – designations of total institutions by Foucault – the colony is not present, which, in our opinion, must be rethought from the perspective of a gigantic 'kidnapping institution' with very particular characteristics. It is not possible to consider alien to this Foucauldian category, despite its immense geographic and human dimension, an exercise of power that deprives of self-determination, that assumes the political government, that submits the institutionalized to a productive system for the benefit of the colonizer, which imposes its language, its religion, its values, which destroys all community relations that seem to it to be dysfunctional, which considers its inhabitants as sub-humans in need of protection and which justifies as a pious enterprise any genocidal violence, as the argument that, in the end, it will result in for the benefit of the victims themselves, led to the truth (theocratic or scientific) (ZAFFARONI, 2001, p. 74-75).

Therefore, violent domination was the essential technology for the prevalence of the colonialist system, from the disarticulation of individuals considered inferior, the annulment of their culture and their subsequent extermination as a way of guaranteeing colonialism.

3.2. The Brazilian Imperial System

From the moment that Brazil began to detach itself from the European metropolis, the colonial-mercantilist system began to show signs of decay, and this happened on the eve of the independence of the then colony, what would bring with it the imperial system. However, despite the change in the system, the forms of domination and dehumanization of blacks were not abandoned (FLAUZINA, 2006).

And that was how the Empire was established in Brazil: a large part of the European continent had already abolished slavery in its colonies, but Brazil took different paths because giving up the slavery system would mean at that moment abdicating a highly racialized and that benefited only a minority of the population. Hence why Flauzina (2006, p. 54) states that “the Empire not only assumes, but also sophisticates the colonial project”.

The imperial system fosters the idea of self-preservation of what had already been built, maintaining power over the enslaved, because an alteration in the structure would be as violent as a physical violation to those who benefited from all this technology of domination and this made the destiny of the black something immutable: eternal servitude.

This period also coincides with the beginning of the urbanization process of Brazilian cities, and also with a greater circulation of blacks in these places, given that the Empire did not free itself from the slavery of the previous regime. Alencastro (apud FLAUZINA, 2006) points out that Rio de Janeiro, then the imperial capital, had at the time 110,000 enslaved for 226,000 inhabitants.

From this moment that the relationship between big house x quarters as a system of punishment starts to live side by side with a bias of public punishment, that is to say, the embryonic emergence of institutional racism in the penal system.

Racism, according to Stokley Carmichael and Charles V. Hamilton (1967), is reinvented in several ways based on its historical construction of oppression of non-white and can be understood as a predication of decisions and policies on racial considerations with the purpose of to maintain subordination and control over a particular racial group.

Institutional racism is the result of a system of political decisions, which take into account race as a way of maintaining the privileges of the dominated, that is, a form of subordination of black bodies, based on the institutional structure of the State and society to

perpetuate the condition of inferiority of those who historically have always been seen this way (CARMICHAEL; HAMILTON, 1967).

Thus, if on the one hand, in the Brazilian empire the enslaved black was under the rule of his master, the freed black becomes the target of criminalization, as is the case of vagrancy, which emerged as a misdemeanor in article 295 of the Imperial Criminal Code², as well as the begging provided for in article 296³ of the same law (Brasil, 1830).

Remember that, as stated earlier, the shattering of the old model of society that existed before the arrival of the imperial family meant that the black, in addition to being enslaved, was treated as a non-useful being for the organization of the State. This is because, by the arrival of the Empire, it was necessary to organize an apparatus of personnel that dominated areas of the structure and public services, such as jurists, administrators, etc. centralized power in the hands of the patriarchal lord.

Therefore, beggars and vagrants, criminalized by the legal provisions mentioned above, corresponded, in large part, to blacks, who began to compose the margin of all the social fragmentation arising from this new structure of society.

Still as a form of criminalization of blacks, the Imperial Criminal Code provided for exclusive punishments for enslaved people, such as whipping, which was the main form of punishment⁴.

In addition, after the colony's independence, capoeira became a problem that grew for the State in terms of public security, because with the arrival of more and more blacks in the imperial capital, Rio de Janeiro, the gathering of enslaved groups urban centers for capoeira practice have become more frequent (PIRES; SOARES, 2018). There were even punishments

² Article 295. Not to take any person to an honest and useful occupation, of which he passes to subsist, after being warned by the Justice of the Peace, not having sufficient income.

Penalty - imprisonment with work for eight to twenty-four days.

³ Art. 296. Begging:

1° In places where there are public establishments for beggars, or where there is a person who offers to support them.

2° When those who beg are in terms of working, even if there are no such establishments in the places.

3rd When they feign wounds, or other infirmities.

4th When even invalids beg in a meeting of four, or more, not being father, and children, and not including in the number of the four the women, who accompany their husbands, and the young men, who guide the blind.

Penalties - of simple imprisonment, or with work, according to the state of the beggar's forces, for eight days to a month.

⁴ Article 60. If the defendant is a slave, and incurs a penalty, other than the capital, or of the galleys, he will be condemned in the lashes, and after suffering them, he will be handed over to his master, who will be obliged to bring him with an iron, for the time, and in such manner as the Judge may designate.

inflicted on those who were caught performing capoeira movements, such as three hundred lashes in the Presiganga dungeons, which was a ship anchored in Guanabara Bay where slaves caught in capoeira were taken, that is, it served as a kind of prison ship (PIRES; SOARES, 2018). Many were also condemned to perform forced labor, such as the construction of the Imperial Dike, which was the first dry dock in Brazil, in Snake Islands, in São Paulo (PIRES; SOARES, 2018).

Although there was condemnation and punishment for anyone caught in the practice of capoeira, there is no mention of capoeira as a crime in the Imperial Criminal Code. The criminalization of capoeiristas took place, therefore, without any legal provision, demonstrating the actions of the State in relation to anti-black practices, as highlighted by Carmichael and Hamilton (1967), thus evidencing the institutional racism of the punitive system in the period of Empire.

Therefore, blacks, when not enslaved, were left to their own devices, falling into the shackles of the imperial penal system, which worked according to a logic of sanitizing urban centers.

And it is in this way that the punitive imperial architecture begins to shape itself. Far from the eyes of the population, now promoting the control of bodies through prisons and state management since the privatization of the great lord also shattered with the change in the organization of society.

At once, a scenario of punishment and cleaning of the cities was set up, allowing the continuity of the punishment of black people, now under the actions of the State, embedded in institutional racism, and deepening the foundations of a historically racialized society, that is, the State institutionalized the forms of control and appropriated them.

In the second half of the 19th century there was an outbreak of laws regarding the abolitionist movement, such as the Eusébio de Queiroz Law (Brazil, 1850), which extinguished the slave trade; the Free Womb Law (Brazil, 1871), which made the children of enslaved women free; and the Sexagenarian Law (Brazil, 1885), which freed enslaved people aged 60 and over.

Thus, the Golden Law of 1888 (Brasil, 1888) cannot be considered the only legislative instrument that aimed to eliminate slavery, since abolition did not take place in a single moment, but through a succession of facts and normative instruments. The abolition of slavery was an inevitable measure in an unsustainable system.

In this way, the Brazilian imperial system was consolidated, maintaining its nostalgia for colonial slavery as long as it could, with the emergence and growth of a repressive system housed in the structure of the State as an agent of control that worked with the agents of private control, inherited from the Iberian feudal period.

3.3. The Republican-Positivism System

The post-abolition period, from 1891 onwards, is marked by the attempt to erase the dehumanizing past of blacks. On May 13 of that year, Rui Barbosa, Minister of Finance at the time, signed Circular n° 29, ordering that the remnants of the slave-holding colonial past should be left behind. And from this, any trace should be seen only as a historical fact, because the ideal would be to rewrite the history of the country. And it is in this climate of “progressivism” that the Republic would be born (FLAUZINA, 2006).

Still in this sense, the 1890 republican anthem, two years after the Golden Law, contained the following stanzas: “We don’t even believe that slaves once / There were in such a noble country!” (SCHWARCZ, 2012, p. 22). Note that the exclamation brings an effusive intonation, a way of believing that the dehumanizing past of blacks could be forgotten.

Therefore, Rui Barbosa, in 1890, issued the order for the incineration of all documents and records belonging to the national archives and referring to the slavery period (SCHWARCZ, 2012).

At this point, Schwarcz (2012) states that the project led by Rui Barbosa to erase the slaveholding past was not successful, however he made clear the intention that “erasing a certain past and the present meant another beginning from scratch” (SCHWARCZ, 2012, p. 42).

But Rui Barbosa was not a single voice on these issues. Oliveira Viana, in the works *Southern Population* (1920) and *Race and Nation* (1934), brought the idea that miscegenation was hostile to civilization and progress, and that only a non-mestizo civilization would have the capacity to bring progress to the country (SHWARCZ , 2012).

It is also worth mentioning, in this sense, the Penal Code of 1890, which brought in its article 402⁵ the prohibition of the practice of capoeira (Brasil, 1890), unlike the imperial period,

⁵ Carrying out agility and bodily dexterity exercises in the streets and public squares known as capoeiragem; running around, with weapons or instruments capable of causing bodily harm, causing riots or disorders, threatening a certain or uncertain person, or instilling fear of some harm:
Penalty - cell imprisonment for two to six months.

where there was no such legal provision. This period became known as the death of capoeira, because with legal provision because, with legal provision, the State clearly demonstrated its intention to stifle the practice of such a culture (PIRES; SOARES, 2018).

Between the years 1890 and 1938, in Rio de Janeiro, there were about 560 criminal cases, according to article 402 of the Penal Code of 1890 (Brasil, 1890), whose accused subjects were mostly men between fifteen and forty years old, and in great number, street workers, not coincidentally associated to vagrants and beggars.

Therefore, the nostalgia of the slavery period still echoed in the republican ideals, once there was not a ready social rupture to glimpse the overcoming towards the construction of a less racialized society.

At this moment, it was no longer a matter of using only the control and repression technologies of the colonial and imperial system, but new tactics that could be aligned at two distinct points.

The first, right after the abolition, and the second, further ahead, stimulated by the punitivist ideals that circulated in the 30's of the 20th century and that ended in the following decade with the enactment of the Penal Code of 1940, still in force today.

The Brazilian context, after the abolition, went through several structural and economic changes. The enslaved black labor force had been, in theory, eliminated. Industrialization began to breathe in our territory, together with an agro-exporting economy. Therefore, the way of working had to undergo a remodeling.

If in the urban centers there was legitimization to the persecution of freed blacks in the abolitionist act - which did not aim at their integration into society - in the countryside, the labor force mostly used was that of immigrants.

In this way, two markers were created: the white European immigrant who supplied the labor force in this new reality, and was therefore productive, and the freed black man, taxed for vagrancy and social undesirability, and therefore being easily embraced within the logic of a punitive system that was framed in racialized pillars, that is:

Sole paragraph. It is considered an aggravating circumstance that capoeira belongs to some band or group. To the chiefs, or heads, will be imposed the double penalty.
 Art. 403. In the event of a recidivism, the penalty provided for in art. 400.
 Sole paragraph. If you are a foreigner, you will be deported after serving your sentence.

One can discern two very distinct images that characterize the post-slavery period: on one hand, the immigrant, signifying wealth, free labor, life; on the other hand, the freedman, the one who has no income and who can signify vagabondage and, therefore, the need for labor under duress. In short, the immigrant means order, progress, and the black could become disorder, regression (AZEVEDO, 2004, p. 191).

This can be seen, for example, with the edition of Decree n° 3.745 of November 4th, 1899, whose 6th article⁶ excluded the right to bail for defendants who were vagabonds or homeless (Brasil, 1899).

It is not hard to see that these norms sought to sanitize the urban centers by criminalizing people considered vagrants or homeless, at a time when the slave system collapsed and blacks were left to their own devices, not included in society, creating a kind of Brazilian apartheid formed by belts of color and inequality in urban centers.

In these terms, the penalty of imprisonment, which had already been a reality since the 18th century, when the logic of the big house and the small henhouse started to act together with state punishment, was, in this republican moment, the main technology to control undesirables.

Thus, the punitive system started to exercise control over black bodies by means of prisons, avoiding any act of vindication by this part of the excluded population through the criminalization of behaviors that were typical of freed black people, since they did not have a home and a minimally formal job, due to the post-abolitionist context of non-integration of these individuals.

It is also at this time that theorists such as Nina Rodrigues, based on Lombrosian criminology, tried to defend that criminality is determined by biological issues, and thus developed a positivist criminology in Brazil, whose object of study was the black man (SCHWARCZ, 2012).

Thus, we have a reality that is more attached to the slavery past than detached from it, carrying, therefore, racialized and punitive aspects transmitted since the colonial period, making it possible to note that there was no abandonment of the Iberian and feudal bond inherited by

⁶ The defendants that are not vagrants or homeless will be released, regardless of bail:

I. In criminal offenses punishable by a maximum of three months in cellular jail, accompanied by a fine of up to 100\$, or without it;

II. When the penalty is only a fine and the fine does not exceed \$100,000;

III. When the penalty is a fine accompanied by another penalty other than cellular imprisonment and the latter does not exceed \$100,000.

Sole paragraph. Réis will always be released, regardless of bail, when the penalty does not restrict freedom or consist of a fine.

the colonial system, nor was there any break with the punishment that was once determined by the antithesis of the big house-slaves.

In a second moment, starting in the 30s of the 20th century, Brazil experienced constant structural changes. If in the economic field it stopped being just a producer of raw materials and sought more investments for industrialization, in the social field the labor laws were seen as an achievement, in addition to the social security laws, starting to form what is known as an Interventionist State (FLAUZINA, 2006).

It is also at this time that the imaginary of the idea of racial democracy intensified, which gained ground after the work first published in 1933, Gilberto Freyre's *The Masters and The slaves* (2006).

In this work, although the author does not use the term racial democracy, he builds the idea that despite the slavery past, Brazil, at that time, was ruled by a harmony between races, with economic and social opportunities for blacks and non-blacks alike. That is, a myth of equality for all was created, which would make social mobility possible, eliminating the vestiges of a racially enslaved past.

Another pillar of Freyrian's work is that miscegenation would have created a tolerant population, and that unlike the United States, here there would be no violent forms of expressions of racism, which ended up projecting the imaginary that Brazil would be a country without racial conflicts.

It was also during this period, more precisely between the 1920s and 1930s, that the discourse of racial democracy began to be propagated, leading to the narrative that reparation or any inclusive public policy for blacks was not necessary (FLAUZINA, 2006). This discourse was absorbed even by the Afonso Arinos Law (Brasil, 1951), which dealt with conduct related to criminal contraventions for the practice of racism.

The 1940 Penal Code was also enacted at this time, decriminalizing, for instance, capoeira (Brasil, 1940), which had previously been a crime under the 1890 Penal Code⁷ (Brasil, 1890).

⁷ Article 402. Performing in the streets and public squares exercises of agility and bodily dexterity known as capoeiragem; running around with weapons or instruments capable of producing bodily harm, provoking riots or disorder, threatening a certain or uncertain person, or instilling fear of some evil:

Penalty - cellular imprisonment for two to six months.

Sole paragraph. It is considered an aggravating circumstance that the capoeira belongs to some band or mob.

To the leaders, or heads, the penalty shall be doubled.

As for vagrancy⁸, capoeira and vagrancy had a separate chapter in the Republican Penal Code (Brasil, 1890), but no longer exists in the 1940 Penal Code. However, it can still be found in the 1941 Law of Criminal Misdemeanors, in which the concept of dangerous is attributed to anyone convicted of vagrancy or begging⁹, both of which were criminalized by the same law in Articles 59 and 60¹⁰, respectively (Brasil, 1941).

It is not difficult to conclude that these criminalizations ended up affecting the now-freed blacks, because with the rise of the new production model that socially and economically reshaped Brazil, these people could not enter the competitiveness created in this system, thus living on the margins of opportunity, carrying on their shoulders the responsibility for the vestiges of years of slavery lived in the country.

It is also noticeable that Brazil still kept under its institutional aegis the cult of the Europeanization of the social formation of its people, excluding the importance of the Black/African influence in this whole context, in a country whose roots were rooted in the slavery regime.

This can be seen, for example, from the Decree-Law n° 7.967 of 1945, which dealt with immigration issues, praising the European characteristics of the immigrants, overvaluing their ethnic profile¹¹ (Brasil, 1945).

⁸ CHAPTER XIII

OF VAGRANTS AND CAPOEIRAS

Art. 399. Leaving the exercise of a profession, office or any work in which one earns a living, not having means of subsistence and a safe home to live in; providing one's subsistence through an occupation prohibited by law, or manifestly offensive to morals and good manners:

Penalty - cellular imprisonment for fifteen to thirty days.

§1º By the same sentence that convicts the offender as a vagrant, or vagabond, he will be obliged to sign a term of occupation within 15 days, counting from the sentence's execution.

⁹ Art. 14. Besides the individuals referred to in paragraphs I and II of art. 78 of the Penal Code, the following are presumed to be dangerous

I - the person convicted of a misdemeanor committed while intoxicated by alcohol or a substance with similar effects, when the intoxication is habitual;

II - those sentenced for vagrancy or begging;

¹⁰ Article 59. If someone habitually indulges in idleness, being valid for work, without having an income that assures him sufficient means of subsistence, or provides for his own subsistence through illicit occupation:

Penalty - simple imprisonment, from fifteen days to three months.

Sole Paragraph. The subsequent acquisition of an income that assures the convicted individual sufficient means for subsistence, extinguishes the penalty.

Article 60 - Begging, due to idleness or greed:

Penalty - simple imprisonment for fifteen days to three months.

¹¹2th article. In the admission of immigrants, attention will be paid to the need to preserve and develop, in the ethnic composition of the population, the most convenient characteristics of their European ancestry, as well as the defense of the national worker.



Thus, the State would be supported by the idea that it would be fighting racism, promoting racial equality, linking the situations involving racism to the private sphere of relationships, that is, the private individual would be the author of racist attitudes, but not the State, bringing Freyre's idea of racial democracy (2006) to the debate, since the issues involving any form of racism had already been overcome.

4. The Brazilian punitive system and its slavery heritages

Brazil did not experience the great industrial and social revolutions of the previous centuries, nor did it have any break towards a less racialized society, the formal abolition in 1888 being its main political breakthrough in this sense.

This is why Barroso (2001, p. 15) points out that:

Throughout the 20th century, the discourse on the state went through three distinct phases: pre-modernity (or liberal state), modernity (or social state) and post-modernity (or neo-liberal state). The inevitable, disconcerting conclusion is that Brazil reaches post-modernity without having managed to be either liberal or modern. Heirs of an authoritarian and populist tradition, elitist and exclusive, selective between friends and enemies - and not between right and wrong, just or unjust -, soft on the rich and hard on the poor, we reached the third millennium late and in a hurry.

Thus, it can be deduced that the punitive institutions in Brazil have not strayed from their past, maintaining the historical oppression of the vulnerable classes.

In a country already marked by social asymmetries, which has not followed the steps of the economic movements of the central countries¹², because it is closely linked to the slavery past, the punitive system still feeds on the asymmetries created by historical leaps and bumps without overcoming them.

The racialized discourse finds in this new model the function of deliberate surveillance directed at the part of the population that has not been incorporated into social development historically.

This surveillance policy aimed at excluded populations and in peripheral areas reveals, above all, a racialized selectivity as a technology of body control, which moves in the same

¹² One can cite as an example the industrial revolutions, which began on the European continent, when on Brazilian soil there was still the context of African trafficking for the purpose of slavery.

way and at the same speed as the actions of a governmental state that tries to fit into an international alignment of its actions.

In Brazil, this deliberate penal surveillance contributes to the criminalization of historically marginalized people, contributing to the creation of the stereotype of the black as a criminal subject.

The inexistence of public policies for the insertion of blacks in society made them the main object of the new punitive system: the mass incarceration of undesirables, because they could not insert themselves in the new logic of a society that creates constant exclusions, and thus they would be the edge to be trimmed by the punitive system.

The rejection of the black became a real phenomenon precisely because, based on this social and historical formation of Brazil, as well as on the circulation of the black in urban environments, a collective social discomfort was born (which can be seen, for instance, with the deliberate surveillance of capoeira during the imperial and republican periods).

And in the case of the indigenous people, who were also enslaved in the Brazilian reality, this undesirability could not be felt with the same intensity or in the same way, because with the breaking up of society at the coming of the Portuguese Crown, the indigenous people no longer figured as the main enslaved labor force, since in the previous centuries there were already legislative instruments that ensured their freedom.

And today, due to the non-breaking and overcoming of racialized discourses, although the domination executed from the slave trade in the colonial-mercantile period is abandoned, the State assumes the power to maintain the black - historically vulnerable - as a dominated subject, now through prisons.

The non-overcoming of the slavery past, which built in the black person the figure of the subject to be infringed and fought, passing through private punishments and arriving to the prison as it is known today, created a favorable environment to have a penal system marked by the mass incarceration of black people.

It is not as if the system as we know it today created this method, it is even deeper: there is the optimization of state tools so that black people are targets of criminalization and incarceration processes that have lasted for almost five centuries.

It has gone through different economic regimes, modified social relations, changes in the form of government, differentiated *modus operandi* of punishment, but the target of punishment has always been the black population.

It is at this point that Vera Malaguti Batista (2003) states that the criminalization of historically vulnerable subjects in Brazil has a strong link to the slavery past, remaining even as a way to compensate for the ownership that was exercised over the enslaved.

If before, the relationship between the big house and the quarters authorized the punishment and torture of the enslaved, the current model of the punitive system allows the use of these same methods to symbolically exercise over the descendants of the enslaved a form of power and property, which has, as one of its great marks, mass incarceration.

This phenomenon becomes evident the data on the current situation of the Brazilian prison population, systematized in the Brazilian Yearbook of Public Security (BUENO; LIMA, 2020) released by the National Penitentiary Department is examined.

The study gathered data for the period 2005 to 2019 and revealed alarming numbers regarding the increase in the prison population in the national territory, especially regarding the percentage of black people who are in prison from the penitentiary system, as well as under police custody, since the mentioned work aims to expose the suppression of freedom, and not only prisoners by criminal conviction.

In total, the black prison population ascertained by the survey was computed at 91,843 inmates, in the year 2005, which corresponded to 58.4% of the total population in all units of the federation.

In the year 2019, the study found that this same index jumped to 438,719 in absolute numbers of black people incarcerated, representing a percentage of 66.7% of the total inmates in the country.

On the other hand, if the incarceration rate of white people is taken into consideration, it has decreased percentually, as in 2005 the rate of white people in prison was 39.8% and in 2019 it was 32.3%.

Analyzing from 2005 to 2019, one has the variation of 377.77% more black people incarcerated in the country, which shows that there is a specific way of punishing that increasingly incarcerates black people.

The numbers prove that the punishment of black people in Brazil has only been re-signified, it has gone from the private sphere (big house and quarters) to the public aspect, in which the State has monopolized this right to punish.

The criminal justice system, especially the prison, shows itself as a highly racialized base, where black bodies are piled up. It is a historical fact, after all, being black in Brazil has always been seen as punishable, be it whipping, slavery, or prison.

The edges left by a society that did not face its racialization erected since the slave regime are trimmed by this justice system that only accumulates more and more numbers.

5. Closing Remarks

There is a lot of discussion nowadays about the position in which the black population is placed in the position of dangerous subject and that mostly makes up the Brazilian prison population. However, we cannot boil this down to just numbers and percentages.

Behind the numbers that demonstrate the mass imprisonment of black people in Brazil, there is a historical and social analysis that makes us see, at least, how we got to this point.

This form of analysis allows us to show that it is a racialized policy that has always seen the black population as the criminal, the beggar, the vagrant, etc., creating the imaginary of a stereotype that black people are susceptible to being tamed, punished and imprisoned.

It is a policy that extends from the beginning of slavery in Brazil, around 1500, to the present day, with only a change in the form of punishment that was linked to the political system of the time.

At first, we have the presence of the lord, head of the great families, who exercised all power without any limit over the lands and their enslaved people, thus, the punishment was given in the private sphere, almost a legacy of the European dynamics. of submission made in the lord and vassal relationship, but here with the addition of the racialized criterion, as it was understood that enslaved blacks were liable to be tamed and to serve solely to produce wealth in the colonies to foster the growth of European metropolises.

Later, we had the political change in society with the arrival of the Portuguese crown to Brazil, which ended up breaking, from top to bottom, the entire patriarchal structure that revolved around the lord.

With this, the State began to assume the role of punitive agent, legislating on the penalties applicable to the enslaved and freed black population, often passing through the hygienism of urban centers, as the coming of the Portuguese Empire to Brazil forced an

urbanization of the country, causing blacks to be seen circulating in the main cities of the country.

And even with abolition on May 13, 1888, the scenario did not change, as the black population was left to fend for itself, now having to compete with more qualified labor coming from the European continent, which further deepened the issues social and penal.

So, nowadays, when alluding to blacks as a stereotype of criminals, it can be said that the State, based on an ideology aimed at reducing crime rates, which falls mainly on the peripheries, where the large concentrations of blacks and poor in Brazil, seeks to contain them through prison.

The exercise of power over black people still persists in relations of punishment, no longer in the mold of the patriarchal family of the mid-1500s, but in a more optimized way, away from the eyes of the population and inside the prisons.

The mass incarceration of blacks in Brazil represents total domination and the tool of submission to the State. It is the most effective form of control, as the State has the monopoly of punitive power and exercises it in relation to a target audience.

Thus, we have a racialized prison system marked by the mass incarceration of the black population, which is nothing more than one of the effects of the construction of the imaginary of the black as an enemy in criminal law, which is not a current phenomenon, as there is a direct relationship with the first differences that were made at the time of the colony and European metropolises, in view of the lack of coping with the ills brought about by the slave model as the formative basis of Brazilian society.

The numbers of the penal system are the true inheritance of a system of slavery that has not been overcome, they reveal that the subjects who were once merchandise, who later began to be dressed in a stereotype of vagrant, vagabond, beggar, criminal, due to the racialized historical construction of Brazil, are now part of the great mass incarcerated in prisons.

REFERENCES

AZEVÊDO, Célia Maria Marinho de. **Onda negra, medo branco: o negro no imaginário das elites no século XIX**. São Paulo: Annablume, 2004.

BARROSO, Luis Roberto. “Fundamentos Teóricos e Filosóficos do novo Direito Constitucional Brasileiro”. Revista da EMERJ, Salvador, v. 04, n. 15, 2001, p. 11-48, set./out.

BATISTA, Vera Malaguti. **Difíceis Ganhos Fáceis: Drogas e Juventude Pobre no Rio de Janeiro**. Rio de Janeiro: Editora Revan, 2003.

BRASIL. Código Penal dos Estados Unidos do Brazil. Decreto nº 847, de 11 de outubro de 1890. Rio de Janeiro, 1890.

BRASIL. Decreto nº 3.475, de 4 de novembro de 1899. Regulamenta o art. 5º da lei n. 628, de 28 de outubro do corrente anno. Rio de Janeiro, 1899.

BRASIL. Decreto-Lei nº 2.848, de 7 de dezembro de 1940. Código Penal. Rio de Janeiro, 1940.

BRASIL. Decreto-Lei nº 3.688, de 3 de outubro de 1941. Lei das Contravenções Penais. Rio de Janeiro, 1941.

BRASIL. Decreto-Lei nº 7.967, de 18 de setembro de 1945. Dispõe sobre a Imigração e Colonização. Rio de Janeiro, 1945.

BRASIL. Lei de 16 de dezembro de 1830. Código Criminal do Império do Brazil. Rio de Janeiro, 1830.

BRASIL. Lei nº 581 de 4 de setembro de 1850. Estabelece medidas para a repressão do tráfico de africanos neste Imperio. Rio de Janeiro, 1850.

BRASIL. Lei nº 2.040 de 28 de setembro de 1871. Declara de condição livre os filhos de mulher escrava que nascerem desde a data desta lei, libertos os escravos da Nação e outros, e providencia sobre a criação e tratamento daquelles filhos menores e sobre a libertação annual de escravos. Rio de Janeiro, 1871.

BRASIL. Lei nº 3.270 de 28 de setembro de 1885. Regula a extinção gradual do elemento servil. Rio de Janeiro, 1885.

BUENO, Samira; LIMA, Renato Sérgio de (coord.). **Anuário Brasileiro de Segurança Pública 2020**. São Paulo: FBSP, 2020.

CARMICHAEL, Stokely. HAMILTON, Charles V. **Black Power: the Politics of Liberation in America**. Nova York: Vintage Books, 1967.

FERNANDES, Florestan. **A integração do negro na sociedade de classes**. São Paulo:



Editora Globo, 2008.

FLAUZINA, Ana Luíza Pinheiro. **Corpo Negro Caído no Chão: O Sistema Penal e o Projeto Genocida do Estado Brasileiro**. Dissertação de Mestrado apresentada no PPGD/UNB. Brasília: 2006.

FREYRE, Gilberto. **Casa-grande & senzala: formação da família brasileira sob o regime da economia patriarcal**. São Paulo: Global, 2006.

GORENDER, Jacob. **A Escravidão Reabilitada**. São Paulo: Expressão Popular, 2016.

GRINBERG, Keila; MATTOS, Hebe. **Código Penal Escravista e Estado**. In: GOMES, Flavio dos Santos; SCHWARCZ, Lilian Moritz (Orgs.). **Dicionário da Escravidão e Liberdade**. São Paulo: Companhia das Letras, 2018.

IANNI, Octavio. **Escravidão e Racismo**. São Paulo: Editora Hucitec, 1978.

MARX, Karl. **O Capital. Volume I**. São Paulo: Editora Boitempo, 2017.

NASCIMENTO, Abdias do. **O Brasil na mira do Pan-Africanismo**. Salvador: EDUFBA, 2002.

PIRES, Antônio Liberac Cardoso; SOARES, Carlos Eugênio Líbano Soares. **Capoeira na escravidão e no pós-abolição**. In: GOMES, Flavio dos Santos; SCHWARCZ, Lilian Moritz (Orgs.). **Dicionário da Escravidão e Liberdade**. 1. ed. São Paulo: Companhia das Letras, 2018.

SCHWARCZ, Lilian Moritz (Orgs.). **Dicionário da Escravidão e Liberdade**. São Paulo: Companhia das Letras, 2018.

SOUZA, Jessé. **A elite do atraso: da escravidão à lava jato**. Rio de Janeiro: Leya, 2017.

ZAFFARONI, E. Raúl. **Em Busca das Penas Perdidas**. Rio de Janeiro: Editora Revan, 2001.

ZAFFARONI, E. Raúl. **O Inimigo no Direito Penal**. Rio de Janeiro: Editora Revan, 2014.

Sobre os autores:

Marcus Alan Melo Gomes

Doutor e mestre em Direito das Relações Sociais (área de Direito Penal) pela PUC-SP. Professor Associado do Instituto de Ciências Jurídicas da Universidade Federal do Pará (UFPA). Professor permanente do Programa de Pós-Graduação em Direito e do Programa de Pós-Graduação em Segurança Pública da UFPA. Professor Visitante Sênior na Universidade do Porto e na Universidade Lusíada do Porto. Líder do grupo de pesquisa Saberes Criminológicos e Política Criminal. Juiz de Direito em Belém. Universidade Federal do Pará - UFPA, Belém, PA, Brasil
Lattes: <http://lattes.cnpq.br/0371519214729478> ORCID: <https://orcid.org/0000-0002-3699-5164>
E-mail: marcusalan60@hotmail.com



Renan Daniel Trindade dos Santos

Graduação em Direito pelo Centro Universitário do Pará (2011/2016), Mestrado em Direito pela Universidade Federal do Pará (2017/2019), Advogado Criminalista

Universidade Federal do Pará - UFPA, Belém, PA, Brasil

Lattes: <http://lattes.cnpq.br/5648762462987617> ORCID: <https://orcid.org/0000-0001-8462-5785>

E-mail: renantrindade1@gmail.com

Os autores contribuíram igualmente para a redação do artigo.

