



Qualis A1 - Direito CAPES

Presentation

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We have started 2021 with new energy, but we still have to face old challenges. The new coronavirus pandemic has been around for a year and we still do not have predictions about the end of this global health crisis. In recent years, we Brazilians have faced a growing political authoritarianism and social polarization wave. Multiple crises are connected in our daily lives and, in many cases, they make the legal arena a space of discussion for alternatives and attempts to change this reality. Armed with this potency, we present the new Revista Direito e Praxis issue of 2021 (v. 12, N. 1, 2021 - Dec-Mar).

We announce a change in our editorial in this new edition. From this number on, the general article section will feature fourteen articles instead of twelve, with the aim of giving more space to the many and excellent articles received and evaluated for our journal. If there is one thing that the challenging year of 2020 has shown us, it is that Brazilian scientific production, also in the field of socio-legal studies with a critical profile, has not lost quality. Much on the contrary, we have observed its multiplication. In this edition, we bring articles that address the regulatory challenges related to the pandemic, with special emphasis on the articles by Deisy de Freitas Lima Ventura, Fernando Mussa Abujamra Aith, Danielle Hanna Rached, “The emergence of the new coronavirus and the ‘quarantine law’ in Brazil” and by Rafael Da Cás Maffini, “COVID-19 and Constitutional Distribution of Competencies”. In addition, this issue presents texts in the field of decolonial studies, social reproduction theory, international law for refugees, the rights of persons with disabilities, transitional justice and the law science theory.

In the translation section, we have contributions in Portuguese of the texts “The fissures and the crisis of abstract work” by John Holloway and “The Concept of autonomy



in contemporary Marxism” by Massimo Modonese. We take the opportunity to thank the translators for their confidence in our publication and for sending the translated manuscripts. As usual, we also bring two reviews of relevant works to the field of Latin American and Brazilian social theory, and to the history of law.

Our first Dossier has a rigorous selection of articles carried out by the researchers from the “Laboratory of Critics and Alternatives to Prison” Group, which has members from UERJ, PUC-Rio and UFF. The dossier articles address, from an interdisciplinary and critical perspective, the limits of the punishing power and of punitive expansionism as well as the abolitionism potency. The dossier articles dialog with post-colonial approaches, from the field of Brazilian social theory, critical criminology and studies on restorative justice. This dossier reinforces the bridges between the field of socio-legal research and critical criminology, which also reflect a central point in the scope of our publication.

We remind you that the editorial policies for the different sections of *Direito e Práxis* can be accessed on our page and that the submissions are permanent and always welcome! We thank, as always, the authors, reviewers and collaborators for trusting in our publication.

Enjoy the reading!

Direito e Práxis Team



Radical criticisms of the punishing power: how to think of abolitionisms in times of punitive expansion?

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Herman Melville¹ brought us the classic story of a curious and lonely anti-hero, Bartleby, a clerk who, facing repeated demands from his boss, a lawyer, answers, simply and absolutely, "I would prefer not to". The echo of the unexpected gesture, and the

¹ MELVILLE, Herman. *Bartleby, o escrivão: Uma história de Wall Street*. Tradução de Irene Hirsch. São Paulo: Cosac Naify, 2005.



insistence for it, disturbs the bucolic scene of common and naturalized agreements, and leaves a symbolic inspiration for, for example, Agamben² to develop a critical reflection on the principle of authority, in a similar tone to that left by Marcuse in his reflection on “the great refusal”, and for Deleuze³ to reflect on the generation of gaps in the structures of communication and language, and on the generation of spaces of complexity in addition to formulas or responses with immediate determinations.

There are those who question the place of the so-called radicality - adjective usually implied with stereotypes and misunderstandings - amid a scorched-earth conjuncture. Without ignoring that the guiding image of the moment in which we live is the expansion of typical capitals of a political economy of pain, and without ignoring that the bio / necropolitics and the historic recycling of the macabre are central marks of governmentality in these “sad tropics”, yes, here is it, once again, a collective contribution that opts not for the way of opening concessions to hegemonic expectations, but rather for the way of “no”, for the way of refusals, for the affirmation of “sentipensante” (thought-feeling) abolitionist paths - these consecrated as radicals for flirting with indeterminations, with multiplicities, and for discarding booklets and formulas whose only successful product is precisely the atrocities that also produce the need for their extinction.

The advent of the Laboratory of Criticism and Alternatives to Prison (Laboratório de Críticas e Alternativas à Prisão) in mid-2018 was fueled by the common perception among the young researchers involved that incarceration and related control devices are historically built and sustained based on the reinforcement of stigmas and violence that target more specific populations - structurally, the black youth. This tragic consensus directs our individual trajectories and our collective thinking-doing to the dimension of the critical affirmation of life, plurality, and existences in multiplicity and beyond-walls. So merciless the opposite scenario, so easy the conjuration, for abolitionisms, of the problem of utopian and inoperable radicality, which deafens the call to escape lines, and so easy, even, the complete or partial enchantment by the formulas presented by specialized authorities, characters self-called as practical monopoly on resolvability

² AGAMBEN, Giorgio. *Bartleby, ou da contingência*. Belo Horizonte: Autêntica Editora, 2015.

³ DELEUZE, Gilles. *Bartleby, ou a fórmula*. In: *Crítica e clínica*. São Paulo: Ed. 34, 1997, p.80-103.



holders, or, in other words (in not always spoken words), as the preservation of average news ones.

In the genealogy of the emergence of abolitionist groups, they engaged in theoretical and practical steps, or, even more, in the extirpation of this differentiation so instrumentalized by delegitimizing attempts. Abolitionists (penal, prison, of repressive cultures, of the punitive imagery, etc.) composed groups such as KRUM, KRIM, Black Panther Party, KRAK, GIP, Nu-Sol, bringing together research, perspectives, attitudes, political projects, often having before them the rise and intensification of the war frameworks linked to authoritarian and punitive practices. It is inevitable the challenging generational efforts with the ruptures and continuities of the times in which we are immersed, with the possibility of moving against it (of moving “a contrapelo”, from Benjamin’s VII tesis: “..., die Geschichte gegen den Strich zu bürsten.” or “..., to brush against the grain of history.”) in a profane sense.

In recent times, we have carefully observed the rise of authoritarian and neo-fascist ideas and practices, always racist and xenophobic, around the world. Trump, Bolsonaro, Duterte, Vox and Le Pen are some of the well-known spokespersons for these movements that have been articulating globally. To understand the moment in which we live, it is essential to look at this phenomenon. There are many nuances to each case, but demands for order, punishment, increase in penalties, security, personal weaponry and repression are at the basis of the rise of the extreme right in the world. In the Brazilian case in particular, punitive discourse has always been central to the figure of Jair Bolsonaro, and it is therefore a basic element in understanding his political rise. It is impossible to understand the rise of Brazilian neo-fascism without calling into question the racist and authoritarian public security discourses, police repression, incarceration and extermination, which have always been present in our society.

It has been known since Georg Rusche⁴ that incarceration rates and the use of the State's criminal apparatus vary according to the economic policies and social structures of a given historical context, and that the economy is not understood without prison and prison without the economy. Historically, periods of intense expropriation of livelihoods have been marked by the drafting and application of “bloodthirsty legislation”.

⁴ RUSCHE, Georg. Labour market and penal sanction: thoughts on the sociology of criminal justice (1933). Tradução de Gerda Dinwiddie. Crime and social justice, n. 10, p 2-8, 1978.



The most contemporary example is the period of consolidation of neoliberalism, which coincides with the explosion of incarceration rates: the counterpart of minimizing the welfare state is the maximization of the penal state. In Brazil, racism, which founds the penal system as an institutional development of control over black bodies, finds in neoliberalism the sophistication of social control practices extended to a whole mass of individuals launched into the progressive informality of the labor market, inseparable from the criminalization of their ways of life and the differentiated management of illegalities⁵. In this sense, it is no mere coincidence that the austerity policies brought about by the labor and social security reforms are accompanied by the approval of the anti-crime project, reinforcing the dynamics between racism, the consolidation of an economic policy of neoliberal rationality and the even greater expansion of punitive power in the country that has the third largest prison population in the world and the highest number of extrajudicial executions by state agents.

If each historical conjuncture will have its own demand for order, the articulation of neoliberal arguments with police arguments had already given us the key to what we would see under the Bolsonaro government: a perfect paradox if we observe that the growing social demand for public security is proportional to the growing insecurity produced by contemporary capitalism⁶. On the other hand, the progressive period (2003-2016) did not break with the punitivist paradigm, on the contrary, it produced the expansion of the Penal State, with increase in incarceration, militarized occupation of slums, an increase in police operations that produced death, repression of demonstrations etc. Without breaking with the criminal policy paradigm of control of undesirables, the bases that support the current Bolsonarism and its necropolitics⁷ remain intact, despite the many alerts from social movements, sectors linked to critical criminology and penal abolitionism and some organizations of human rights.

The simple effort made by LabCap is mirrored and therefore joined with the energy of these critical purposes, as well as the previous initiatives that inspire it. In March 2019, the Laboratory held the 1st International Anti-Punitive Critical Seminar at the State University of Rio de Janeiro (UERJ) and at the Pontifical Catholic University (PUC-Rio), with

⁵ FLAUZINA, Ana Luiza. *Corpo negro caído no chão: o sistema penal e o projeto genocida do Estado brasileiro*. Rio de Janeiro: Contraponto, 2008.

⁶ BATISTA, Vera Malaguti. *Crime e guerra no Brasil contemporâneo*, 2019.

⁷ MBEMBE, Achille. *Necropolítica*. *Arte & ensaios*, n. 32, 2016.



the presence of researchers from all over Brazil and also from other countries. Considering the event, it was aimed the creation of a dossier that would give vent to the debates and to other related conversations, a desire that today is materialized here, in this partnership with the Revista Direito e Praxis (Law Science and Praxis Magazine).

Therefore, the present dossier **“Radical criticisms of the punishing power: How to think of abolitionisms in times of punitive expansion?”** seeks to translate a little of the multiplicity of abolitionist perspectives, as well as their tensions, and to reaffirm their need beyond the checks and balances imposed by the conjuncture or, perhaps, precisely because of their existence. The invitation arises from the challenge and commitment to formulate radical criticisms of the power to punish and reflections on abolitionist agendas, tasks that are especially relevant in the current situation. These perspectives confront the accumulation of violence that founds and feeds the Brazilian social formation, in its institutional-state scopes and also private ones, that are based on the structural violence within the scope of punitive power in its dimensions of race, gender, sexuality and / or territoriality and, also, following the abolitionist agendas of punishment, prison and police, based on the current situation.

We open the deck of manuscripts with the article by Jehanne Hulsman and Diogo Justino **“They’re talking about penal abolition: The rise of authoritarianism and the urgency of reimagining different paths as alternatives to the criminal justice system”**. In this article, the authors, from an elaboration that presents current and historical global dilemmas regarding the rise of authoritarianism (considering, in particular, Central Europe and Latin America), rekindle central elements to diverse abolitionist perspectives, emphasizing that of Louk Hulsman, reference of the most fundamental for all of us and honored, as much as his daughter (co-author of the article), between the lines of the mentioned event and of this consequent dossier.

The following article, **“Global prison: dichotomies of confinement today”** (**“Prisión global: las dicotomías del encierro em la actualidad”**) is also a contribution of foreign authorship. Diana Rastrepo Rodríguez, researcher and professor at the Universidad de San Buenaventura Cali in Colombia, brings the debate about the dichotomous elements that exist in incarceration in contemporaneity. In her argument, she highlights how punishment continues to behave as a tool for selective social control while dissociating individuals between good and bad. The author reveals how the spread of pedagogical punishment allows these violent practices to remain in force in



contemporary times, even being able to create new segregationist spaces such as the idea of a global prison.

The third contribution here is the article **“An anti-colonial imagination: the epistemology of penal abolitionism around the meanings of violence”** by Vitória de Oliveira Monteiro, Roberta Amaral Damasceno and Rômulo Fonseca Morais, members of the Cabano Group of Criminology (Grupo Cabano de Criminologia), in Pará. With an epistemological construction on abolitionisms, the authors narrate that “violence” is a key category for reading the world, but also for reading possible fissures in that same world, and abolitionisms, in their plurality, with their linguistic and strategic borders, margins and borders, assist in this movement. The mark of the Cabanagem movement, which occurred in the 19th century, in the old Province of Grão-Pará, its meanings and symbols, remains as a common thread of this debate. The authors also provoke minimalisms and reformisms in their legitimating limits.

Monique Cruz (Justiça Global and UFRJ) is the author responsible for the fourth work presented in this collection, entitled **“The founding particularities of the Brazilian punitivism”**. In this article, the author shares some of her vast experience in prison units in the city of Rio de Janeiro and builds a provocation on the need for abolitionist perspectives to intertwine with the specifics of struggles in Brazil. The discussion about the Brazilian socio-spatial formation and examples of struggles undertaken by black women justifies the provocation.

We also have the contribution of Carla Benitez (Federal University of Jataí) with the article **“Structural permanence and absence of disruptions in criminal and public security policies in the Partido dos Trabalhadores governments (2003-2016)”**. The author discusses the punitive policies implemented by the Workers' Party during her presidency (2003-2016) in order to clarify how, in the face of the first social-liberal management, practices of criminal upsurge and militarization of public security continued to be implemented. That said, it deepens the debate over patriarchal and racist capitalism that eagerly keeps the segregating functions of punishment even in a more stable economic period. The relationship of a peripheral, dependent and unequal country appears as structural for the colonial and racist perpetuations to have been built also in this historical period.

The sixth work published here is authored by Rodrigo Portela Gomes, Fernanda Lima da Silva and Maíra de Deus Brito, from Coletivo Maré, from the University of Brasília,



and is entitled **“Black survivance: the challenges of citizenship when dealing with violence”**. In this article, the central concern is with the racial mediations made by the studies on violence in Brazil, and with the legitimated contradictions present even in studies that propose themselves to be critical regarding the racial problematization. The authors unveil white matrixes in this field of discussion, mobilize concepts such as "black citizenship" and choose violence practiced by agents of the Brazilian State in the context of the pandemic as events that lead to the proposed reflection.

In the article **“Beyond the “legal world”: a dialogue with members of multidisciplinary teams serving in Brazilian domestic violence courts”**, the authors Marília Mello, Carolina Salazar and Fernanda Rosenblatt from Grupo Asa Branca de Criminologia (Asa Branca Group of Criminology) (Pernambuco) discuss viable alternatives to the punitive system for the perpetrators of domestic violence, in seven Brazilian capitals. The proposal of the work is to map in the specialized spaces - inaugurated a little over a decade ago - what transformations were developed by the Criminal Justice System to deal with those who practiced domestic violence. The purpose of this reflection is built on the analysis of conversations from the empirical research groups and also from the insights extracted from interviews with judges who work in the area.

The dossier concludes its contributions with the article by Professor Ellen Rodrigues from the Federal University of Juiz de Fora entitled **“The 30th anniversary of the Statute for Children and Adolescents and the possible perspectives from Restorative Justice: abolitionist inflows in times of punitive expansion based on academic extension programs”**. The contribution of the author in reflections on the Brazilian Youth Justice from the promulgation of the Child and Adolescent Statute of 1990 stands out. The analysis carried out by the author is sustained both empirically, through NEPCrim and Além da Culpa groups, and through the use of specialized bibliography on Restorative Justice (RJ). The considerations of the work deal with the challenges, contributions and future perspectives of the application of the RJ in order to promulgate libertarian practices averse to the political punitivism implemented from colonial Brazil to contemporary times.

With these stimulating discussions, we realize that the peculiarity of developing abolitionist attitudes is to perceive not only the prison and the criminal justice, but also the whole punitive system, including forms of sociability, as “problem situations” which can be unfolded at macro / structural and micro / relational levels. The relationship with



hegemonic logic and its melting pot of devices is not one of inconsequential disregard, but of complexification, criticism, revelation and tensions. It is important to highlight, also from the energy left by this set of works, that there is no single, univocal and unequivocal abolitionist essence; otherwise, the abolitionist field itself, invested as a route, is constituted by disputes and difficult dialogues that are fundamental to it. There is no universalizing attitude that seeks to totalize all its characteristics, serving the field, in the end, as an “inverted mirror” of the codes and their institutionalizing structures. The strength of this possibility is in the compromised openings, in pointing out concrete paths, in reinforcing other sensitivities and their reflexive and practical correlations.

The repressive solutions adopted immediately after conflicts - and the very fixation on the idea of “solution at any cost”, whose source is the great modernity addiction to effectiveness, efficiency, progress and moralizing and civilizing joy - are one of the damaging effects of the historical political-criminal processes, being a mechanism that paralyzes and incapacitates society to realize itself and to position its structures and relationships in other scenarios, including scenarios that indicate the dismantling of many of these structures and relationships. The process of criminalization of individuals reinforces, perversely and ironically, what it opposes, and distributes direct destructive effects both to those who suffer from punishment and to family members, friends, beloved people, to workers involved in institutions and, finally, to the whole community; it is generic the sharing of ruins and rubble. For this reason, abolitionist possibilities are mainly intended to invite us to consider other ways of dealing with conflicts, respecting their complexity, and even delegitimizing some of the pillars of the marginalizing language present in criminal reports, such as the concepts of “criminality”, “crime”, “criminal”, “dangerousness”, “gravity”, “culpability” and dichotomies engendered as “good versus bad”.

This dossier joins the long agenda that seeks practices of freedom and restoration to the detriment of the pedagogy of punishment. With the attention to the fact that the extinction of prisons is not the endpoint, but an exclamation mark in the midst of a sea of possible tensions, recycling acts and instrumentation tasks by the control society, we speak here collectively for other sensitivities, other relational structures, other perspectives on accountability and human conflicts. Here we deliver a small contribution to this path of criticism of the prison and of any monument of repressive culture, all of them monuments of barbarism, guided, as shown by the works presented here, by the



white fear, in hegemonic demands for order, in historical authoritarian continuities. We speak out, from confrontation distance, through fertility, through colour/courage, through emancipatory inventiveness, through other ways of demarcating a “I would prefer not to”.



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