

Reflections on the penal state in Brazil



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ABSTRACT

This work aims to apprehend the elements that result from the passage from the welfare state in developed countries to what some contemporary authors, especially Loïc Wacquant, have come to call the Penal State. This model of State began to be

defined and require systematic analysis and studies due to the unprecedented increase in the number of people incarcerated in the world, which signals punitive increases in mediations that concern social relations. However, some reflections around these analyses do not contemplate, at all, realities such as the Brazilian one, because some of its mechanisms are historical in the country. It is for this reason that this work seeks to point out some reflections regarding the debate on the Penal State in Brazilian society.

Keywords: Penal State, Neoliberalism, Criminalization of poverty.

1 INTRODUCTION

We have seen in recent years that the central debate in electoral campaigns and government programs in the world has been based on the defense of an effective and intransigent policy of public security, militarized. A slightly closer look would question the reason for a political discourse based on the resurgence of law and order mechanisms. And the answer may appear about various biases. One of them may be the need to control the insecurities, fragilities and fragmentations that have been occurring in labor relations and in the changes in relation to the living conditions of the working class, and the other would go through the role that penal policies have come to have in the process of consolidating the new phase of expansion of capitalism.

This last bias constantly masked by the media and disseminated in political discourses is actually an economic restructuring that aligns itself with a political and legal restructuring, whose form found to gestate the consequences of the antagonistic needs of the capital/labor relationship, intensified from the implementation of the neoliberal policy, and with it the dismissal of the security arising from the social aspects of the State and labor, It has been by means of penal and punitive increment. It is thus that the penal system becomes an institutional resource used to combat the fear of uncertainties caused by structural changes that have culminated in the criminalization of poverty, which is the result of the dynamics and political decisions integrated to capitalist development.

In this work we start from the perspective that neoliberalism increases the advance of the Penal State in the world. Thus, it is necessary to point out some of the characteristics of neoliberalism, such



as: the deterioration of spheres of life and work, the dispossession of social rights, the privatization of state spheres and the reduction of the State about the social dimension. One of the jargons propagated for the expansion of the Penal State is the discourse of "law and order", especially about the "dangerous classes", to contain the feeling of insecurity and fear provoked by the economic crises and their social modifications.

2 ELEMENTS TO UNDERSTAND THE PENAL STATE

For some theorists, such as Loïc Wacquant, the penal state is the state that comes closest to the neoliberal ideology incorporated in the world since the 1970s, when the Fordist/Keynesian model begins to present its limits about capitalist accumulation, that is, the extraction of profits by the economic sectors. As we already know, the model was the one that supported the construction of the *welfare state*. This state model combined with the Fordist model presented as main characteristics the mass production for mass consumption, the consolidation of labor guarantees, indirect wages and full employment¹.

The crisis of the Fordist/Keynesian model and of the *welfare state* opened space for old proposals, such as those coming from the Mont Pèlerin Society, to be seen as the newest theoretical reference for the way out of the crisis that affected the rates of accumulation. These ideas were based on the opening of the market to the most distant horizons in which capitalism could reach without the protective barrier of the State² and on the ever-increasing increase of technology, which reduced the need for variable capital and placed thousands of people in the so-called industrial reserve army, intensifying productive processes, generating surplus value, on the one hand, and debasement of living conditions, on the other.

De Giorgi (2004) identifies some significant transformations from the Fordist/Keynesian transition to the neoliberal one, namely: generalization of social insecurity, extreme occupational flexibility, precariousness of the working condition, expansion of unemployment and underemployment, overlap between the "formal" and "informal" economies.

The intense changes resulting from the implementation of the neoliberal ideology needed to expand forms to contain the consequences that would be provoked by it. Therefore, the management of these consequences, combined with fear and insecurity, were the riots for the implementation of a *managerial-security-penal state*.

This accumulation of unemployed workers would not be easy to be contained, being necessary for this a strong State in its coercive and manipulative mechanisms, because this same State in order

¹ Some theorists have questioned this condition, as they point out that the same condition did not extend to the whole of society.



not to lose its legitimacy needs to find justifications for society to agree with the attitudes taken. In this way, two mechanisms were created to deceive reality. One was to focus on the preservation of private property, the individual and freedom, and the other was to sharpen the fear, insecurity and risks already repeatedly highlighted by the media. The main form launched by the State to combat "evil" or the "enemy" was the recrudescence of repressive law and violence. And as Rusche and Kirchheimer (2004) have rightly pointed out, only a specific development of the productive forces allows the introduction or rejection of corresponding penalties. Argüello (2013) also contributes to this sense, by observing that

The technocratic response to the problem of criminality focuses on the effects of crime (a projected and politicized image of the victim, fear, security costs), rather than on the structural (economic and social) and political-ideological roots of the issue. They attack criminals instead of structural violence (social inequality and poverty), which is the reason for defining and selecting certain individuals as such, simultaneously with the immunization of others. (ARGÜELLO, 2013, p.1).

The risks no longer come from economic conjunctures and political decisions, the risks are transferred to the precarious subjects of society, they are specific people, of specific color, coming from specific localities. Therefore, to ensure the containment of the consequences generated by mass unemployment, the imposition of precarious work and the retraction of the social protection of the State, it is that the strategy of criminalization of poverty is widely used. The issues of the public sphere began to be increasingly directed by the logic of penalization and criminalization.

Wacquant (2007) demonstrates well how the expressions of the social issue came to be treated in the "new government of social insecurity", which for the media and other sectors of society began to be presented as criminal insecurity. We know that these have a material and subjective basis and that he found in mass incarceration one of their expressions, in addition to naturalizing social inequalities and depoliticizing the analysis of phenomena.

The new government of poverty invented by the United States to reinforce the normalization of social insecurity thus gives a whole new meaning to the notion of "helping the poor": punitive restraint offers help not to the poor, but to the poor, through the "disappearance", by force, of the most problematic and the shrinking of the number of people who benefit from social policies, on the one hand, and on the other, by the swelling of the dungeons of the prison castle (WACQUANT, 2015, p. 12).

De Giorgi (2004) argued that in 1960 prisons were losing sense of existing, but by the 1970s they had made unimaginable leaps. The same can be seen when Michael Foucault pointed out that part of the specialty of prisons would lose their sense of existing, because the spaces of control would be imbricated in society through the mechanisms of surveillance. However, this is not what was witnessed in the unfolding of the story. The prison, contrary to the assumption made, was being increasingly implemented as a method of control and discipline. For Wacquant (2015), Foucault neglected both the



keen selectivity of penalization and the enduring centrality of punishment in the symbolic projection and material exercise of state power.

Dealing with the limits between democratic regimes and the expansion of criminal law in capitalist sociability is that with the destruction of jobs, as they were understood in Fordism, what became possible to manage poverty and workers was the constitution of authoritarian policies of neutralization and incarceration, which once again demanded on the expressions of the social question coercive control, both as a police issue and as a criminal matter. De Giorgi (2004) in his analyses goes on to call "punitive democracy" this new moment driven by the growth of incarceration in democratic societies.

Prison would then be the measure adopted with the aim of storing selective incivilities and reproducing the relations of inequalities. In addition to being the newest source of exploitation of precarious labor, at low cost and extensive extractions of surplus value, when the privatization of prisons is established. Like the old houses of correction, contemporary prisons have become a kind of center of production.

For Jinkings (2007), the socialization functions previously existing in prisons seemed to be no longer necessary, considering that they functioned as a form of resocialization of the inmate, seen as a potential worker who needed to be disciplined, for nothing more than control and storage of the "dangerous classes".

For De Giorgi (2004), the prison has been replacing the urban "ghetto". For him, the neoliberal prison came to criminally manage the "side effects" of the neoliberal regime, pointing out that what became evident with the recrudescence of the use of the prison was a *true civil genocide of the marginal classes*.

Incarceration has become a powerful instrument in the management of the social issue previously linked to access to social rights and social assistance programs. Now, it is associated with the increase in police and institutional violence. The consequences and manifestations of this punitive violence are, of course, more intense in countries where social inequality, poverty and the fragility of democratic aspects prevail. That's what we'll see next.

3 REFLECTIONS ON THE PENAL STATE IN BRAZILIAN TERRITORY

Brazil has seen its population succumb from the beginning, either by the expansion of land concentration, or by the expropriation of the means of production, or by working conditions, most of whose history has been associated with the enslavement of human beings. The workers were constantly faced with situations of revolt and misery. This historical tangle in which Brazil was being built brings marks such as authoritarianism, accumulations of violence and intense and multiple inequalities.



This may be one of the reflections to be raised about the debate of the Penal State in Brazil, its social and historical formation, signaling in the sequence for the non-constitution of a welfare state. A large part of the Brazilian population did not benefit from any of the country's development attempts, on the contrary, it suffered the reprisals and violence that the Brazilian state, since its constitution, has been able to execute on the national population, defined as an enemy. Therefore, what underlies the deterioration of the world of work in the advanced countries has not even been constituted on national soil, namely: the changes resulting from the exhaustion of the pattern of Fordist/Keneysian accumulation and the advance of neoliberalism. In addition, here there were no basic reforms that would mitigate the concentrations and disparities of income, such as agrarian reform.

Another issue that needs to be thought of from the Brazilian particularity with regard to the Penal State, pointed out by Wacquant (2007), is that prisons in Brazil have other objectives regarding the functionality of the prison, going beyond the objective of serving to pressure workers to accept precarious jobs (*worfare*) even as a condition for receiving welfare benefits, as occurred in the United States, in the process of dismantling social protection mechanisms.

Precarious jobs are already the tonic of Brazil, as well as the overexploitation of the labor force² that also makes up the trajectory of workers in dependent economies. Another phenomenon is the rate of homicides committed by the agents of coercive power. In addition to the numerous cases of torture and beatings, which do not reach death, committed by the agents of the State³.

According to material published in UOL Notícias, dated July 15, 2021, highlighted from the analysis of the data produced by the Brazilian Forum of Public Security, the exponential increase in police lethality, in addition to which there was an exponential increase in police violence in at least 18 of the 27 units of the federation, visible by the number of deaths per security agent. This cannot be dissociated from the increase in militarized tendencies of public security policies and legal mechanisms, such as the exclusion of illegality.

Also, according to the cited article, Rio de Janeiro remains the state with the highest number of deaths by police in 2020. However, Amapá has led the percentage of violent deaths caused by the

² According to Amaral and Carcanholo (2012), the overexploitation of the labor force is a structural mark of a country's condition of dependence. The cited authors list four main ways of characterizing the overexploitation of labor power, namely: by increasing the intensity of labor power, by prolonging the working day, by appropriating the fund intended for workers that now becomes an accumulation fund for capital, and by not paying the real value of labor power. As Marini (1973) points out, the mechanisms identified by the intensification of work, the prolongation of the working day and the expropriation of part of the work necessary for the worker to replenish his labor power configure a mode of production based exclusively on the greater exploitation of the worker, and not on the development of his productive capacity, for he is obliged to spend more labour-power than he ought to normally provide, thereby causing his premature exhaustion; in addition to being withdrawn, even, the possibility of consumption of what is strictly indispensable to preserve its workforce in a normal state (MARINI, 1973).

³ At least 6,100 people were killed by Brazilian state police in 2021. Available at: <https://nev.prp.usp.br/homicidios/monitor-da-violencia-04-05-22-uso-inadequado-e-abusivo-de-forca-letal-para-cada-policia-morto-ha-34-pessoas-mortas-por-policiais-no-pais/#:~:text=Dados%20do%20Monitor%20da%20Viol%C3%Aancia,a%20cada%20100%20mil%20habitantes>. Access on: 20 Feb. 2023.



police. "In the northern state of the country, 31.2% of all homicides were committed by police officers. In this regard, Goiás comes next, with 29.1% of all deaths attributed to security agents" (MELLO, 2021, s/p). In addition, it is noteworthy the fact that 78% of the deaths committed by police were of black people. This reveals racist structural aspects, which have repercussions on institutions, social and work relations, among others.

Violence, inequality, precarious living conditions, concentration of income and land are expressions of the social issue that persist in Brazilian society. These expressions have always been treated as police cases, at certain times in a less incisive way, and at other times, such as the current one, in an incisive way, such as the current conjuncture. For an understanding of the political and social aspects of this phenomenon, it is necessary to apprehend the intensification of the contradictions and social regressions that neoliberalism and the expansion of profit rates have demanded of sociability.

4 FINAL CONSIDERATIONS

With this work we seek to express some reflections of the debate of the penal State in Brazil starting from the main elements raised by some authors who called the current moment the *managerial-security-penal State*. We point out that the intensification of coercive control over the population through the discourse of criminal insecurity, removed reflections that would tension the structural abysses of class and the increase of social insecurities.

The Penal State is one of the mainstays of the neoliberal policies adopted by the State after the decline of the *welfare state*. It is the State that comes closest to the current needs of capital because it lowers the standard of living of workers, deprives social and labor rights and transforms economic changes into daily insecurity, employing the culpability of this in the most impoverished segments. In this way, it removes from the debate aspects of the State's responsibility with social protection.

The characteristics of Brazil point to much more tense and coercive situations, than the countries analyzed by Loïc Wacquant when characterizing the Penal State, because the disparity of income concentration, the historical institutional violence, and the models of authoritarian policies, block the democratic and participatory aspects of society, in addition to hindering access to what is constantly produced socially. Punitive segregation in Brazil has occurred since the formation of tenements, visible by the lack of access to the city, formal work, and social rights. What is observed on national soil is a real war of the State against its own population.



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