

HISTORY, PRISONS AND PUNISHMENT: HISTORICAL ARRANGEMENTS OF BRAZILIAN INCARCERATION

HISTORIA, ARRESTO Y CASTIGO: ARREGLOS HISTÓRICAS DEL ENCARCELAMIENTO BRASILEÑO

HISTÓRIA, PRISÕES E PUNIÇÃO: ARRANJOS HISTÓRICOS DO ENCARCERAMENTO BRASILEIRO

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ABSTRACT

This paper has as an aim discuss not only how the prison system has evolved through the Brazilian history, but also how social movements had their own influence towards the subject. Incorporating citations, this paper points out the main historical problems of the prisons listed and general issues which are explained. The approach towards the treatment of Brazilian inmates also shares the space with the discussion about how governments have seen this population and what kind of reality such social groups faced in different periods of Brazilian history.

KEYWORDS: Incarceration; Punishment and Brazilian Prisons.

RESUMEN

Este artículo tiene como objetivo discutir no solo cómo el sistema penitenciario ha evolucionado a lo largo de la historia brasileña, sino también cómo los movimientos sociales han tenido su propia influencia en el contexto. Mediante la incorporación de citas, este artículo señala los principales problemas históricos de las cárceles enumerados, además de los problemas generales que se exploran y explican. El abordaje del trato recibido por los detenidos brasileños también comparte espacio con la discusión sobre cómo los sistemas de gobierno han visto a esta población, y qué tipo de realidad han enfrentado estos grupos sociales en diferentes períodos de la historia brasileña.

PALABRAS CLAVES: Encarcelamiento, Castigo y Penitenciarías Brasileñas.

RESUMO

Este artigo tem como objetivo discutir não apenas como o sistema prisional tem evoluído ao decorrer da história brasileira, mas também como movimentos sociais tiveram sua própria influência no contexto. Ao incorporar citações, este artigo aponta os principais problemas históricos de prisões listadas, além de problemas gerais os quais são exploradas e explicadas. A abordagem sob o tratamento recebido por detentos brasileiros também compartilha espaço com a discussão sobre como os sistemas governamentais tem visto esta população, e que tipo de realidade tais grupos sociais enfrentaram em diferentes períodos da história brasileira.

PALAVRAS-CHAVE: Encarceramento, Punição e Penitenciarías Brasileiras.

1. BRAZILIAN PRISON SYSTEM: A HISTORICAL APPROACH

We are not sure if the process of being born was planned or an event that happened by chance for the Brazilian country. The epic of the navigations placed in the 15th century was always filled with mystery, misleading situations, and danger. Therefore, it would not be different to Brazil — the country would rise surrounded by uncertainty; which leads to the belief that the pioneers did not have the real dimension of the natural riches which would be explored.

Thinking about Brazil's history using the History of Maritime Expansion in the Modern Age as a point of view means going beyond the history of Portugal. It means that something new was happening in Europe. In addition, if Portugal did not engage in the maritime projects that already existed, other countries were completely able to do so. The presence of other European nations in Brazil, especially during the 16th and 17th centuries such as France and The Netherlands was a great indicator of such reality.

In the first four centuries of its existence — 16th, 17th, 18th, and the first half of the 19th century —, Brazil had slavery as the main production system. With Brazil's Proclamation of the Republic in 1889, its abolition of slavery, and the industrialization process being an effective procedure in developed countries, the country adopts at its own pace the use of wage laborers and established labor law and amplifies the civil rights towards the population. Introducing itself to the economic system used by the capitalists.

However, Brazil's history between the 16th and 19th centuries was directly linked to Portugal's history. At first, during the 16th century, its social, economic and administrative relations were conducted from the same point of view: the monarchical system which existed between colonies and metropolises. Portugal takes place as the metropolis and Brazil as the main Portuguese colonyⁱ, for the reason that it is easy to notice the metropolis' real interest; gold and spices.

Brazil's 'discovery' in the 16th century is proof of the progress of European maritime expansion. The same process carries with it expressions linked to the line of thought eventually known as eurocentrism. This line of thought was characterized by a political, economic and social influence/domination, materialized by Europe over different areas and populations geopolitically attractive and fragile.

During the Imperial or Monarchical period — 1822 to 1889 —, a significant change can be noticed in the old Brazilian colony. In this period, it can be observed a progression when it comes to the right to life especially since during this century happened the abolition of slavery in Brazil, as a way to attend to international demands — predominantly formed by the Industrial and French Revolutions.

Still, during the early days of the imperial period the proclamation of the first Brazilian constitutionⁱⁱ. The constitution gives the impression to the native society of some participation related to the country's progression; it divides the powers into branches and among them the Legislative Branch, which will receive the first social and economic demands of a nation in development.

These social demands exist in the context of the transformation of human relationships in a vast portion of the civilized world, especially because of the improvement of industrialization. The process of abolition of slavery in Brazil is built during this period with a strong social appeal, not only between the enslaved portion of the population but also between those that felt sensitive towards human pain, plus the ones that saw the substitution of slaves for wage laborers, an opportunity to obtain some monetary advantage.

Thus, being part of a society that is about to adopt an industrial economy with wage laborers, Brazil could not allow tortures and scourges that go against The Declaration of the Rights of Man and of the Citizen. With this in mind, the Legislative Branch during the Imperial period proposes some legislation aiming the combat slavery. They are: Law nº 581 of September 4th, 1850, Law nº 2040 of September 28th, 1871, Law nº 3270 of September 28th, 1885, the end of corporal punishment based on the Law nº 3310 of October 15th, 1886, and at last, the Law nº 3353 of May 13th, 1888ⁱⁱⁱ.

With the raising of social demands and economic and administrative quarrels, the Law's role was essential. The first Law Schools that appeared in Sao Paulo and Olinda focused on legal studies in our country with the objective of meeting regional needs according to geographic localization — São Paulo would reach the South and Olinda the North of the country.

Brazilian Law, not so different from the rest of the people, has a special history with particularities. It is discussed in large quantity about its existence, especially if there is originality or if it is an expansion of Portuguese Law. However, a



point in common between legal scholars is supported by César Tripoli (1936), there is no denying that *Brazilian Law only began to exist when there were legal norms in Brazil, whether they were issued by the Portuguese authority in Portugal or by the Brazilian authority in Brazil.*

Not only the Brazilian Law but also the Laws of the countries that were in the process of industrialization had to reformulate themselves beyond new social conflicts and the most diverse forms of disputes with justice. The domain of capitalism brought with itself the growth of the urban population, the increase in labor disputes, social exclusion, and therefore, the increase in criminality.

As well described by Wacquant (1999, p. 19):

The doctrine of ‘zero tolerance, an instrument for legitimizing the police and judicial management of poverty that disturbs — the visible one, the one that causes incidents and disorder in the public space, feeding, therefore, a diffuse sensation of insecurity, or simply tenacious discomfort and inconvenience —, propagated itself through the globe at a surprising pace.

In that regard, it is instituted in Europe and the USA and then in other countries in development, the penitentiaries. Known before as prisons, the penitentiaries since antiquity were used to keep individuals in debt with society. However, it was only a way to be sure that the imprisoned person would wait until the justice’s decision, which means the penalty corresponded with their crime — which could reach death itself.

2. PRISON AS A PENALTY

During the Modern Ages, incarceration was constituted as a penalty. The idea of social control was linked to the new world order: industrialization. The penitentiary^{iv} will be adapted to the serving of the penalty in a rational way with the aim of restringing freedom. *Physical suffering, the body pain are not the constituent elements of the penalty.* (FOUCAULT, 1999, p.15).

The reformers John Howard (1726-1790) and Cesare Beccaria (1738-1794) were great influences in Europe during the 18th century. As experienced jurists, they presented the main concepts of combat against torture, replacing it with an objective and rational penalty.

The penalty will be intrinsically attached to the time factor, which means the condemnatory penalty will have a duration based on the criminal typology, or the crime itself. Crime and penalty will go hand in hand, aiming for the control of the individual to safeguard propriety and life. To guarantee society’s safety and possible contamination.

Also, modern prisons not only guaranteed public order but also reached control exposure to violence. The scourges in public, the bloody spectacles, and the body markings were gradually replaced by molding through incarceration. *And yet the fact remains that a few decades saw the disappearance of the tortured, dismembered, amputated body, symbolically branded on the face or shoulder, exposed alive or dead to public view. The body as the major target of penal repression disappeared* (FOUCAULT, 1999, p.12).

In Brazil, since 1830, even with the adoption of the Criminal Code^v the death penalty was still part of the reality. However, it could be noticed that lighter penalties were incorporated such as the prison itself and pecuniary. All are based on the processes of reforms that occurred in Europe.

The prison penalties linked to work were part of the reality during the Imperial period in Brazil. This model had a double character: repress and rehab. At the same time, it presented itself as a modern penalty since its orientation was not to torture but to correct it.

Later in history, the *Casa de Correção da Corte* — or Court Correction House^{vi} — was built. It was built in the state of Rio de Janeiro following the steps of the architectonic System Panopticon^{vii}, presented by the jurist Jeremy Bentham. For the administration of the daily activities, the Court Correction House adopted the *Auburn*^{viii} model, applying the rigid discipline: silence and in some cases, work. *During the 19th century one of the greatest achievements of the Empire in the 1830 decade — the Court Correction House^{ix}.*



The Court Correction House^x divided the incarcerated population between two groups; one with criminal condemnations and the second with correctional condemnations. The first formed by people that committed crimes, were submitted to work and if they disobeyed orders they would be punished with discipline; correctional condemnations were designed for minors, the homeless population, or idle individuals that disturbed the order. Both groups got recluses in cells during the night, independently of the activities.

With the growth of the incarcerated community, the Correction House had to apply some administrative control devices, such as the creation of the *Comissão de Inspeção* and also establish through decree — January 14th, 1882 — a new budget management which had as a responsible the Legislative Branch.

The complaints about the growth of the incarcerated population were not over. The existence of a prison unit, elaborated and built with this aim, attracted a social magnet. All wanted to see themselves free from some kind of 'progress holder', *and also be able to coerce the popular economic class who could try to attack the established order* (MOREIRA DE ARAÚJO, 2009, p.96). Gelsom de Rozentino de Almeida reaffirms (2014, p. 1):

Its assignment from the end of the 18th century onwards, is highlighted as well as part of the process of reproduction of capitalist relations of production and the regulation of the laboring class [...]. The Society's objective when proposing the creation of the Correction Houses was to make the empire civilized, maintain public order, repress begging, and above all, eradicate the 'vice' of vagrancy by transforming the inmates into 'poor people of good manners'. However, this objective would only be achieved through a prison house with jobs that could provide a good society with the 'correction' of deviants, in a high number in times of political, social and economic crisis. Based on liberal principles, the defender's proposal had as an aim the maintenance of order.

The order received was to arrest them! Even if it caused damage to public coffers. However, the Ministers of Justice saw it with a new perspective: the exaggerated growth of processes and lack of efficiency, as Moreira de Araújo (2009, p.96) affirms:

In all the reports produced by the ministers of justice throughout the 1830s, we found many complaints about the excessive number of penalties with labor existing in the Criminal Code. Some ministers, with more emphasis, mentioned that the best choice would be the exile penalties — in this way the urban centers would get rid of criminals and at the same time, the empire would have hands for labor in agricultural colonies or public works placed in the most distant places.

These controversies provoked a number of discussions regarding the next steps of the public penitentiary policies in imperial Brazil. The arising of a Republic by itself provoked clashes in all spheres. Revolts and riots were felt in the main regions of the country. The thought of the end of slavery was already a reality. The historian Boris Fausto^{xi} points out that all these aspects led to a major change in the reality of the future nation:

A few years later, in 1848, emerged in Pernambuco the *Praieira* Revolution [...]. It is important to notice that 1848^{xii} was not an ordinary year; a considerable number of democratic revolutions went throughout Europe. In Olinda and Recife, one indicates that an anonymous author, in opposition to the revolutions, had called many years before the malicious Pernambucano steam. The steam was now also composed of social criticism and socialist ideas.(FAUSTO, 1995, p.185).

External pressure was an essential factor in the extinction of traffic [...]. After effective decisions to combat trafficking were applied, slavery was destined to find its end [...]. Thus, inside the most dynamic areas of the country, changes in the direction of capitalist modernization, which means, the first attempts at creating a labor market were born [...]. (FAUSTO, 1995, p.195-196-197).



While coffee kept its march in the West of São Paulo and the proposals for the gradual abolition of slavery took their first steps, an international event would profoundly mark the history of the Second Empire. The event was the Paraguayan War [...]. It is known in Spanish America as the War of the Triple Alliance (FAUSTO, 1995, p.208)

Between 1885 and 1888, the abolitionist campaign gained impulse [...]. In 1888, only the representatives of the old coffee-growing areas were attached to slavery [...]. The fate of the ex-slaves varied according to the region of the country (FAUSTO, 1995, p.219-202).

The end of the monarchic regime resulted in a number of factors whose weight is not the same [...]. After November 15th, 1889 the various groups which disputed the power had different interests and differed in their conceptions of how to organize the Republic (FAUSTO, 1995, p.235-245).

Established a new scenery in Brazil right after the wars, conflicts and social conflicts, lots of questions without proper answers and one of them was; what can we do with the inmates? Whether they are generated by social problems or generated by the transition from the Empire to Republic!

There is no doubt that the Brazilian penitentiary model needed changes; at least to keep up with the increase in the incarcerated community^{xiii}. The criminal demands have diversified and both genders were present at the convictions, whether they were free or slaves^{xiv}.

Even though these internal pressures for changes in the Brazilian model of penitentiary have occurred, the context of these civilizations which were seeking industrial development, such as Europe and Brazil since the country was strongly bonded to Portugal, it was not a priority to the Brazilian Empire — or it never was, the Empire only resort to the topic when they have a particular interest.

Recalling Nunes Maia (2009, p.5) 'they keep talking about prisons, about better prisons — who would they be better to? To what? — but they keep relegating them to neglect, like an uncomfortable appendage that they would like to forget, which they do not know how to get rid of. If not the prison, what could it be?'

So, the republican dawn was made! On November the 15th, 1889 the Proclamation of the Republic of the United States of Brazil. The Brazilian proclamation of the Republic was greeted with delight in Argentina and brought Brazil and the United States closer (FAUSTO, 1995, p.248). And in the next year, the Head of the Provisional Government of the Republic of the United States of Brazil, the general Deodoro da Fonseca, noticing the urgent necessity of reformation of the penal regime, decrees: the Penal Code of the United States of Brazil, which the main article is the extinction of the death penalty^{xv}. Beyond that, it enabled the abstraction of new criminal tendencies, even being the initial, principles of citizenship.

Throughout the First Republic —from 1889 to 1930 —, the new Criminal Code suffered some criticism from traditionalist elites^{xvi}, since the possibility of amplification of rights to 'delinquents' and 'troublemakers' would make possible the increase of urban turmoil's. Therefore, the elites — holders of the country's main means of production were worried about the disturbances of 'order and progress'^{xvii}. *It could be said that the elite which had control of the country's progression insured in their project to the society a notable place, among them and principally the Penitentiary^{xviii}.*

The anarchist ideals arrived gradually with the European immigrants. They heated the syndicates with their speeches that supported laborers and recruited all that had an interest in a new perspective of the labor's world. '*A União*' — or *The Union* —was one of the first associations of class in São Paulo. *Inside its rows, some of the most important figures of syndicalism used to line up^{xix}.* (MARAM, 1979, p.29).

Together with the previously presented movement, the *Revoltas Populares* or Popular Revolts added a new source of worry to the rulers of the period. These rebellions were: *Revolta dos Canudos* or Revolt of Canudos (1896), *Revolta da Vacina* or Vaccine Revolt (1904), and *Revolta da Chibata* or Revolt of the Lash (1910).

Hence, as a way of restraining the 'obstacles to progress', the Brazilian government directs the public politics of security to the implantation of repression mechanics and crime control:



During the so-called First Republic, the 1890 Code was systematically criticized, but curiously, it did not get alterations. If on the one hand, the attempts to reform the Code during the First Republic were not successful, on the other hand, the dissemination of ideas about Criminology ended up influencing the conception of public policies focused on security, orienting the creation or reform, as well as the functioning of institutions such as the police, prisons, asylums and other internment institutions (ALVAREZ, 2003, p.3).

Another short-term alternative found by government authorities was the introduction of Prison Farms or Correctional Colonies. Not an option for the Imperial State^{xx}, during the Republican period — more specifically in 1893 —, the creation of Prison Farms was authorized in Brazil. The search for prisons far from the big cities was a priority for the Justice Ministers^{xxi} and the government.

Um dos marcos da terceira fase foi a organização do FECONEZU (Festival Comunitário Negro Zumbi), evento organizado por diversas entidades e coletivos do movimento negro. Assim como o TPB, o FECONEZU tornou-se um modelo de organização coletiva popular para a vivência e convivência, de preservação e de resistência do negro brasileiro. O festival contou com dezenas edições, sempre de forma itinerante, por diversas cidades do interior paulista. O primeiro, em novembro de 1978, na cidade de Araraquara, tinha por objetivo finalizar as comemorações em homenagem aos 283 anos da morte de Zumbi. As principais publicações e discussões do Festival eram de exaltar a luta de Palmares contra a escravidão e o racismo, e apresenta o povoado como um núcleo de liberdade dentro do sistema escravista; tendo como lema “O melhor do FECONEZU é sua gente”.

3. THE “ECONOMY OF SUSPENDED RIGHTS”: THE PUNISHMENT INDUSTRY

The 20th century arrived, and the changes could be noticed. The fascination with the inventions that came from industrialization — heavy machinery, optimization in production, and consumer goods — distracted the population momentarily.

On the other hand, the arising of foreign immigrants and rural residents in big cities with the promise of being absorbed by the diverse economic departments attracted a huge amount of people — and problems. As Boris Fausto says (1995, p. 275): *‘around 3.8 million foreigners arrived in Brazil between 1887 and 1930 [...] The First World War reduced the number of immigrants, but after the end of the conflict (1918) we noticed a new immigratory wave that lasted until 1930’*^{xxii}.

At the beginning of the 20th century, a new criminological discourse arrived in Brazil as well: the medicine in criminology. *The delinquent or criminal is treated like a patient that needs to be cured*^{xxiii}. This medical precept sustained itself in a convincing base, with a scientific fundamentalism that was utilized by the repressive institution: *the criminal is a patient, the penalty is a treatment and the prison must cure, and not punish*^{xxiv}. This argument was essential to strengthen psychiatry in Brazil and also diffuse the judiciary mental hospitals.

Mental Hospitals became stronger in Europe at the end of the 18th century with the help of the French medic *Philippe Pinep*^{xxv}. The so-called mental or psychiatric medicine arrives in Brazil during the 19th century^{xxvi}, promoting a different treatment compared to the one offered by the Correction House, since the Mental Hospitals had as a principle the cure, which means *they supported the forces of health and the natural tendency of disease towards healing*^{xxvii} and the *Correction House were a place to punish criminals*^{xxviii}.

However, mental hospitals were not sufficient to accept the crescent crime escalation in Brazil. There is no doubt that they were even being limited, an alternative to incarceration for those who could not share the space with the ones with proper ‘sanity’ nor would be walking around on the streets of big centers.

Undoubtedly, this criminal crescent had as a reason for the populational growth — either by natural causes or the migratory wave which started during the 19th century —, and thus, for the social clashes generated by this growth, having as result the disrespect towards the social pact; seen during the moment as an infraction to the law:



The 1900 Census counted over 17,438,434 residents. During the first half of the century, the population tripled (51,941,767 residents in 1950) [...]. In other words, 10% of the population growth in the period is due to the migration of foreigners, which actually began in the 19th century — after the formal abolition of slavery and the resulting shortage of agricultural labor. In 1934, the government established a quota system to control immigration [...]. Some charts have such detailed information that even in 1907, it was possible to know the most varied individual characteristics of the inmates [...]. The prison population was predominantly male [...]. When it comes to race, 35% were white; 22% blacks and 43% were mixed race [...]. Among those inmates, 70% were illiterate [...]. In 1907, 100% of the prisoners were convicted for having committed crimes against a person. Among the 2,833 convicted at the time, 2,422 had committed murder, 53 attempted murder, 223 bodily harm, and 135, 'carnal violence'.

The focus of the State of São Paulo on the agricultural sector and then in the industrial sector during the first half of the 20th century attracted a vast part of the population of immigrants, *Italians came principally to São Paulo [...]. In 1920, 71,4% of the Italians in Brazil lived in São Paulo*, but also from other regions of the country, having as contribution the phenomenon of urbanization.

The State of São Paulo got surrounded by a considerable number of activities and consequently, tensions and social problems. The city's elite reacted quickly and demanded actions to stop the situation's progress. So, on November 24th Law nº 267-A authorized the construction of the *Penitenciária Central de São Paulo* — or Central Penitentiary of São Paulo. However, the inauguration only happened on May 21st, 1920.

The Penitenciária Central de São Paulo — or Central Penitentiary of São Paulo — was an important factor in the national penitentiary system. Built with modern architecture, having social progress as its aim, it represented an innovation to public security. The grandiosity of the building gave it the title of *O Complexo Penitenciário do Carandiru* — or *Penitentiary Complex of Carandiru*:

A According to Accacio Nogueira, the Penitenciária do Estado - or State Penitentiary — had three purposes: economic, social and scientific. The first one, technical preparation of the inmate for work had as an aim to discipline the workforce, inducing him to abandon old habits and to work regularly. With this, the 'reintegration of the inmate' into the labor market could be achieved and their expenses reduced. The second aimed to re-educate the inmate to an honest life through work, education, and religion. Thus, an attempt was made to impose on the prisoner, stigmatized as lazy and indolent, the habit, discipline, and subordination to work. The third was intended for observation and criminological and psychological studies of the inmate (AZEVEDO, 1997).

The Central Penitentiary — Carandiru — was forged with the best material in the market, following the technical security guidelines, and in some sectors, the materials used were from overseas. As Azevedo (1997) affirms:

The Penitenciária do Estado is part of the Carandiru prison complex, which comprises the Casa de Detenção — or Detention House —, the Penitenciária Feminina - or Women's Penitentiary —, the Centro de Observação Criminológica - or Criminological Observation Center - and the Penitenciária da Polícia Civil - or Civil Police Penitentiary. This complex covers an area of 427,600 square meters, 20% of which is a built-up area, surrounded by primary vegetation of 85,621 square meters. The internal space of the State Penitentiary is limited by two walls ten meters high and five meters underground. It also contains a patrol path where the sentry guards of the Military Police circulate, and an empty space of 4.30 meters between them, to prevent attacks by inmates in case of escape. At the four corners of these walls, watchtowers were built. The Penitenciária do Estado has, along the wall up to the building, architectural lines that form a perfect composition with the safety and ornamentation standards that integrate the set.

This national penitentiary system went through some transformations over the years until it turned into the *Penitentiary Complex of Carandiru*. *O Estadão*, a newspaper from São Paulo published: *The Penitentiary Complex was enlarged. The Casa de Detenção which was inaugurated on September 11th, 1956 was considered one of the most secure prisons in the world.*



Its grandiosity — not only physical but also in demands, conflicts, and incarcerated population — would not be able to support the crescent numbers of violence in its interior:

Jail^{xxix} is a place inhabited by evil [...]. The Casa de Detenção had a bigger population than many towns; 'I've been inside for many years, Doctor,' he once told me, 'and I've never seen anyone kill a man on his own. Some twenty or thirty'll mill about and take a swipe at the one who's gonna die. It doesn't matter how strong he is, he can't defend himself. Prison warps men's minds so much that the guy'll be getting a workin' over and people who've got nothin' to do with the story'll jump on the bandwagon and take a stab at him too, out of sheer cruelty. (VARELLA, 2012, p. 5-10)^{xxx}.

The trigger for the biggest massacre in history inside Brazil's prison environment occurred on October the 2nd, 1992. Those facts were enough to start a long and gradual process of reduction of Carandiru's activities; until its complete end with the building's implosion on December the 8th, 2002:

'The Uprising'

That afternoon, in Nine, Furaco 2000 and Burgo Paulista were playing one another in the pavilion internal football tournament. Upstairs, the prisoners were straightening up their cells. All calm, as the director had imagined. While the game was in progress, unexpectedly, as all of the most serious events in prisons are, Beard had a fight with Coelho on Rua Dez on the second floor, one armed with a knife, the other with a piece of wood. A run-of-the-mill fight, if it hadn't been for its terrible consequences [...]. Due to the disorder that broke out, the inmates who had been playing football headed back up to the second floor and the confrontation took on more serious proportions. (VARELLA, 1999, p. 214)

'The Attack'

The riot squad was quick to arrive at the third floor. [...] A uniform opened the window in the door, stuck in his machine gun through and shouted, Surprise, the Devils here to carry you lot off to hell! He sprayed bullets here and there. It was already after three o'clock in the afternoon when the riot squad stormed Pavilion Nine. The attack was carried out with military precision: it was quick and lethal. Its violence didn't give anyone the opportunity to defend themselves. (VARELLA, 2012, p. 218-219).

""The Aftermath'

Whoever's still alive, get up, strip and come out naked! [...] The officers lined up the prisoners in the inner courtyard of the pavilion and ordered them to sit with their arms crossed under their thighs and their heads between their knees. Anyone who looked up to see what was going on was beaten with batons and bitten by the dogs. They sat there in the courtyard for hours, naked, in silence, with the agitated officers and dogs around them. [...] It was all so crazy and fast, and they made us shout, Long live the squad! Long live the squad! [...]. The bodies had to be carried down to the ground floor by the prisoners themselves [...]. So much HIV inside, if I get out alive, I'm gonna end up getting AIDS. That was when a uniform ordered us to pipe the bodies up properly in school [...]. On 2 October 1992, 111 men died in Pavilion Nine, according to the official version. The inmates claim there were more than two hundred and fifty deaths, counting those who left wounded and never returned. There is no reference to the wounded in the official records. No military police officers were killed. (VARELLA, 2012, p. 221-224).

The 20th century Brazil was marked by the huge number of construction of penitentiary buildings; practically all Brazilian states had penitentiary buildings built or enlarged. They generally followed the North-American and European guidelines. One of these buildings is the new Penitenciária José Gabriel Lemos Brito — or José Gabriel Lemos Brito Penitentiary in Salvador, Bahia which was built in 1950. In 1951 it was relocated to a new location further away from the center of Salvador and '*was conceived having as inspiration the architectonic System Panopticon by Jeremy Bentham*' (GOMES, 2009, p.92).



Currently, the State of Bahia has a considerable number of prisons, with 22 penitentiary establishments distributed in different divisions: penitentiaries, prisons, custody hospital, and medical centers, among others.

Another interesting structure, which follows the movement of the crescent *prison industry* in Brazil is the Talavera Bruce penitentiary for women, inaugurated in 1942 in Rio de Janeiro —its name pays tribute to judge Roberto Talavera Bruce. This prison is destined for the women condemned to closed regime. The penitentiary professor José Gabriel de Lemos Brito (1886-1963) *'emphasises the necessity of separating men and women and put the women far from the masculine penitentiaries so it can be avoided the pernicious influence the women could cause'* (PORTO SOARES, 2014, p.1). In the year of 1966, the building received the name of Instituto Penal Talavera Bruce — or Penal Institute Talavera Bruce — having in consideration its administrative autonomy.

A great event in Brazil's history during the second half of the 20th century would change the incarcerated profiles when it comes to penal treatment: *the implantation of the Brazilian Military Dictatorship between 1964 and 1985*. The penitentiaries started to receive not only criminals who attempted against life and property but also the ones who went against the *Status Quo* — the political prisoners. Establishing, *'through the political machine of repression which guaranteed the safety of the military regime to the torture of political prisoners'* (FERREIRA JÚNIOR, 2000, p.5).

The Military Dictatorship implemented *'during 1968 the AI-5, which among other providences excluded the right of habeas corpus, contributed to the increase of the incarcerated population which was not necessarily being judged for crimes and trials res judicata'* (RIBEIRO, 2010, p.4).

Another interesting piece of information happened with the Brazilian Native Americans. As the journalist André Campos describes in his reportage entitled *'The dictatorship created prisons for Native Americans with forced labor and tortures'*, he brings a report which says that the Native Americans *were thrown in prisons during the military regime. after being accused of consumption of alcohol, pederasty, and idleness.*

The ethnic "concentration camps" in Minas Gerais represented a radicalization of repressive practices [...]. According to official records, some Native Americans stayed for more than three years and there were individuals about whom the alleged crime was unknown [...]. In addition to the beatings, there are reports of persecutions accompanied by gunshots and of prisoners who never returned were seen (CAMPOS, 2013).

These 21 years (1964-1985) of the dictatorial period in Brazil represented complete neglect of the principles of appreciation and respect for life. Nevertheless, it represented a breach of convention — to prevent and repression of genocide crimes by the United Nations, of December 9th, 1948 — in which Brazil is a signatory.

These characteristics are more appealing to the fact that Brazil goes against the world conjuncture during the second half of the 20th century; since there was a resumption of discussions on the preservation of life — the consolidation of treaties, such as the Universal Declaration of Human Rights — triggered by the end of World War II.

Thus, the arising and growth of new political agents and new social forces — a great number of these were created during the combat against the Military Dictatorship and influenced by the world discussions about the preservation of life and the Universal Declaration of Human Rights — this is where Brazil outlines a new path to be followed in the context of preserving the right to life, among other issues, of Criminal Treatment.

The Constitution of the Federative Republic of Brazil of 1988, which is the result of these social clashes mentioned before, is the first in its history to establish in its Art. 4, Item II, the *prevalence of human rights as a principle of the Democratic State in its international relations*. It reaches the legal consecration of the desires of the arising society. This legal support gave the needed assistance to the Brazilian population to fight for social justice and the preservation of the fundamental, civil, and political rights of men and citizens. Still, it amplifies the attention to the historically excluded groups such as women, infants, and the incarcerated population.



4. CONCLUSION

Not so different from other penitentiary contexts around the world, the context we observed is an evolution of the human degradation generated by humankind. Through the centuries, the prison environment gains contours of extreme oppression and control of bodies. Adding the current orders to this context such as the moment of industrialization and the exacerbation of capitalism worldwide. The prison environment suffers direct influence and follows the *Status Quo* orders. Especially in Brazil, the prison environment is improvised inside the fortresses during the colonization period following the logic of mercantile exploitation. Then, it adapts to the basements of public buildings. And at last, during the 20th century, it tries to follow the penitentiary movement of the developed countries, in addition to not being able to maintain most of the same physical structures in the 21st century, a Penal Code from 1940, disseminated and amplified violence, which results in the third largest incarcerated population of the world.

5. BIBLIOGRAPHIC REFERENCES

- ALVAREZ, M. C; SALLA, F. A; SOUZA, L. A. F. *A sociedade e a Lei: o Código Penal de 1890 e as novas tendências penais na primeira República*. In: Justiça e História, v. 3, n. 6. Porto Alegre: 2003.
- AZEVEDO, José Eduardo. *A Penitenciária do Estado: a preservação da ordem pública paulista*. Revista do Conselho Nacional de Política Criminal e Penitenciária, vol. 1, nº 9, Brasília, jan/jun.1997, p. 91-102. Disponível em: <https://sociologiajuridica.net/a-penitenciaria-do-estado-a-preservacao-da-ordem-publica-paulista/>. Acesso em: 23/10/2022.
- BENTHAM, Jeremy et al. *O panóptico*. 2. ed. Belo Horizonte: autêntica editora, 2008.
- BECCARIA, César. *Tratado de los delitos y de las penas*. Argentina: EDITORIAL HELIASTA, 1993.
- CAMPOS, André. *Ditadura criou cadeias para índios com trabalhos forçados e torturas*. Concurso de Microbolsas: Agência Pública, 2013. Disponível em: <<http://apublica.org/2013/06/ditadura-criou-cadeias-para-indios-trabalhos-forcados-torturas/>>. Acesso em: 23/10/2022.
- FACCHINETTI, Cristiana. *Philippe Pinel e os primórdios da Medicina Mental*. Rev. Latino-americana de Psicopatologia Fundamental: São Paulo, v. 11, n. 3, p. 502-505, setembro 2008. <http://www.scielo.br/scielo.php?pid=S1415-47142008000300014&script=sci_arttext>. Acesso em: 23/10/2022.
- FAUSTO, Boris. *História do Brasil*. São Paulo: Editora Universidade de São Paulo, 1995.
- _____. *Crime e cotidiano: a criminalidade em São Paulo (1880-1924)*. São Paulo: Brasiliense, 1984.
- FERREIRA JÚNIOR, Amarílio. *Tortura no Contexto do Regime Militar*. Santa Catarina: Revista Olhar - ANO 02 - N. 4 - DEZEMBRO/2000.
- FOUCAULT, Michel. *Vigiar e punir: o nascimento da prisão*. Rio de Janeiro, 1999.
- RIBEIRO, Flávia Maria Franchini. *Memórias os cárceres: breve análise comparativa entre os relatos de presos políticos no Estado Novo e na Ditadura Militar*. 2010.
- GARCIA-PABLOS DE MOLINA, Antonio. *Tratado de Criminología*. Valencia: Tirant lo Blanch, 1999.
- GARLAND, David. *Punishment and modern society : a study in social theory*. Oxford, Clarendon Press, (1995).
- _____. *As contradições da 'sociedade punitiva': o caso britânico*. Curitiba: Revista de Sociologia e Política, 1999.
- _____. *The culture of control: crime and social order in contemporary society*. Chicago. University of Chicago Press, 2001.
- GOMES, Milton Jordão de Freitas Pinheiro. *Prisão e ressocialização: um estudo sobre o sistema penitenciário da Bahia*. Salvador: UCSal: PPGCF, 2009.
- HOWARD, J. *El estado de las prisiones en Inglaterra y Gales*. México: Fondo de Cultura Económica, 2003.



LOMBROSO, Cesare. *Its causes and remedies*. London: Brown and Company, 1911.

MARAM, Sheldon Leslie. *Anarquistas, imigrantes e o Movimento Operário Brasileiro, 1890-1920*. Rio de Janeiro: Paz e Terra, 1979.

MOREIRA DE ARAÚJO, Carlos Eduardo. *Cárceres imperiais: a Casa de Correção do Rio de Janeiro. Seus detentos e o sistema prisional no Império, 1830-1861*. Tese. Campinas – SP, 2009.

NUNES MAIA, Clarissa et al. *História das prisões no Brasil. Vol. I*. Rocco. Rio de Janeiro: 2009.

_____. *História das prisões no Brasil. Vol. II*. Rocco. Rio de Janeiro: 2009.

PORTO SOARES, Antônio Pedro Campello Pereira et al. *Penitenciária Talavera Bruce: cartografia da ditadura*. Rio de Janeiro: MEPCT/RJ, 2014.

ROZENTINO DE ALMEIDA, Gelsom. *Capitalismo, Classes sociais e Prisões no Brasil*. ANPUH-RIO, 2014.

SILVA JUNIOR, Dinaldo B.. Human rights and the open regime of Brazil: proposals for the State of Amapá. Thesis. University of Valencia/Spain. Doctoral Program in Human Rights, Democracy and International Justice, 2017.

SUZIGAN, Wilson. *A Industrialização de São Paulo: 1930-1945*. Rio de Janeiro: Revista Brasileira de Economia, 1971.

TRÍPOLI, Cesar. *Historia do direito brasileiro: ensaio*. Imprensa: São Paulo, Revista dos Tribunais, 1936.

VARELLA, Dráuzio. *Estação Carandiru*. São Paulo: Companhia das Letras, 1999.

WACQUANT, Loïc. *As prisões da miséria*. São Paulo: ZAHAR, 2001.

_____. *Os condenados da cidade*. Rio de Janeiro: Revan-FASE, 2001.

NOTAS

ⁱ The Book *a História do Brasil — or The History of Brazil* — by Boris Fausto identifies that the attraction to gold and spices made Portugal consider the colony Brazil as the most important inside the colonial context of its period. In the first chapter, the author points out that Gold and Spices are associated with the idea of a rare product, therefore Gold and Spices were precious goods in high demand during the 15th and 16th centuries, especially inside the Brazilian colony.

ⁱⁱ The Constitution of the Brazilian Empire, elaborated by a Council of State and granted by Emperor D. Pedro I, on March 25th, 1824 with characteristics of a Monarchic system, has in its text strong expressions of allusion to the Emperor as a savior, since the initial text of the promulgation starts with “Acclamation of the Peoples, Constitutional Emperor and Perpetual Defender of Brazil: We make known to all Our Subjects, that the Peoples of this Empire have required Us, together in Chambers, that We as soon as possible swear and make swear the Project of Constitution”. Another important characteristic of this constitution was the opening of the society’s participation in the country’s decisions with the division of powers into branches, namely: the Legislative Branch, the Moderator Branch, the Executive Branch and the Judicial Branch.

ⁱⁱⁱ The highlighted Laws are known as the Abolitionist Laws. The first Law of 1850 deals with the end of the slave trade from Africa to Brazil, known as Eusério de Queirós Law, as a tribute to the Minister and Magistrate Eusébio de Queirós Coutinho Matoso da Câmara. The second one of 1871 entitled the Law of Free Birth provided that from this date onwards every infant born to a slave woman would have their freedom. The Law of 1885 or the Sexagenarians Law authorized the freedom of slaves older than 60 years old. And lastly, the 1888 Law, is considered the most important of them all in Brazil. Known as *Lei Áurea* — or Golden Law —, was sanctioned by the regent of the Empire Princess Isabel, who was rapidly became known as the Redeemer.

^{iv} No matter how different, or even opposite the purpose: whether it be that of punishing the incorrigible, guarding the insane, reforming the vicious, confining the suspected, employing the idle, maintaining the helpless, curing the sick, instructing the willing in any branch of industry, or training the rising race in the path of education: in a word, whether it be applied to the purposes of perpetual prisons in the room of death, or prisons for confinement before trial, or penitentiary-houses, or houses of correction, or work-houses, or manufactories, or mad-houses, or hospitals, or schools. It is obvious that, in all these instances, the more constantly the persons to be inspected are under the eyes of the



persons who should inspect them, the more perfectly will the purpose of the establishment have been attained. (BENTHAM, 2008, p.19-20).

^v The Brazilian Empire's Criminal Code of December 16th, 1830 was the first code of the Empire, replacing the 5th book of the Philippine Ordinances regarding the penalty of deprivation of liberty and adding the work obligation. Then, the Additional Act of 1834 allowed the building of 'casas de prisão, trabalho e correção' — or 'prison, labor and correction houses' — as a way of guaranteeing the execution of the sentence.

^{vi} Court Correction House of Rio de Janeiro, also known as Correction House, was created on July 6th, 1850 by the decree nº 678 which also approved its first regulation with the objective of being a model prison of the Empire where the sentence would be executed with labor; being considerate one of the 'most useful and necessary works for the country due to the influence of the penitentiary system on the habits and morals of the inmates'. Available at <http://linux.an.gov.br/mapa/?p=6333>. Accessed April 5th, 2015.

^{vii} Penitentiary System developed in England during the 18th century, having a circular shape. This model was conceived by the control of every action of the inmates' logic since an observer would stay at the center of the pavilions with a multidimensional vision.

^{viii} Installed in Auburn — a city in the state of New York — in 1818, this system was considered as a rigid model of administration in prisons. Having as a motto *silent system*, the discipline was extreme to the point that the inmates could not communicate with themselves.

^{ix} Thesis defended in 2009 by Carlos Eduardo Moreira de Araújo entitled *Imperial Prisons: the Court Correction House of Rio de Janeiro. Its inmates and the prison system in the Empire, 1830-1861*.

^x The work of Professor Gelsom Rozentino de Almeida entitled *Capitalism, Social Classes and Prisons in Brazil: The Process of Formation of the Penitentiary System in Brazil*, which traces an interesting panorama between work and incarceration. The Correction House emerged from this perspective: aggregates convicted of crimes and unemployed under the aegis of discipline and correction work, even if it is forced.

^{xi} Boris Fausto's book *A História do Brasil* — or *The History of Brazil* — provides a broad discussion about the main themes of Brazilian history and historiography. It brings a detailed political analysis of the subject, highlighting it by periods: History of Brazil as a Colony (1500-1822), Empire (1822-1889), and Republic (1889-1990s). The book provides not only a coherent approach but also an understanding of Brazil's relationship in the international context.

^{xii} During the year 1848, Europe experienced a series of events that influenced other countries directly — including Brazil, even having a minimal relationship with those involved. An economic crisis in France — which resulted in the well-known People's Spring — was enough to abolish serfdom in Austria and Hungary, end the monarchical absolutism in Denmark and bring significant changes in the economy of Germany, Italy, Poland, among others.

^{xiii} In the year 1836, in the city of Rio de Janeiro, through the report of the map extracted from the website <http://brazil.crl.edu/bsd/bsd/u1826/000043.html> indicates a significant number of crimes committed. By 1838, the number reaches a quantity higher than double. And in 1873, this number reaches the amount of 2011 detainees, has an expressive value of almost 20 times more than the year 1838.

^{xiv} The 1874 report by the Rio de Janeiro Casa de Detenção — or House of Detention — draws attention to the increase in people detained since the Criminal Code of 1830; Furthermore, it demonstrates that the number of women involved in crimes is growing, regardless of whether they are free or slaves. This information is available at: <http://brazil.crl.edu/bsd/bsd/u1826/000055.html>.

^{xv} On this website: <http://legis.senado.gov.br/legislacao/listapublicacoes.action?id=66049>, it is possible to have access to the full text. An evolution of the right to life can be observed with the extinction of the death penalty, under the title Art. 71. The early years of the Brazilian Republic are interesting from the point of view of promoting laws. On February 24th, 1891, the first republican constitution was promulgated among other provisions, it established the division of the three branches — or powers — into executive, legislative, and judiciary, harmonious and independent from each other, check Fausto, Boris. *História do Brasil*. São Paulo, Editora Universidade de São Paulo. 1995.

^{xvi} Read the work *A sociedade e a lei: o código penal de 1890 e as novas tendências penais na primeira república* — or *Society and law: the penal code of 1890 and the new penal trends in the first republic* —, by Marcos César Alvarez et al, available on the website: <https://nev.prp.usp.br/publicacao/a-sociedade-e-a-lei-o-codigo-penal-de-1890-e-as-novas-tendencias-penais-na-primeira-republica/>

^{xvii} The motto *Ordem e Progresso* — or order and progress — is present on the Brazilian National Flag. It is a direct influence of the positivist theory of the 19th century and it was introduced in the Proclamation of the Brazilian Republic and it remains to this day.

^{xviii} Luiz Antônio Bogo Chies has a coherent and elucidating work about Fernando Salla's *The Prisons in São Paulo: 1822-1940*. It summarizes the historical issues of the emergence of the penitentiary system in Brazil.

^{xix} The União dos Trabalhadores Gráficos — or Graphic Workers Union — founded in 1890 was probably the most powerful and organised union at the time. Five years after its foundation, police repression put it into a phase of



lethargy. Check MARAM, Sheldon Leslie. *Anarquistas, imigrantes e o Movimento Operário Brasileiro, 1890-1920*. Rio de Janeiro: Paz e Terra, 1979.

^{xx} Check Moreira de Araújo (2009), *Cárceres Imperiais: a Casa de Correção do Rio de Janeiro. Seus detentos e o sistema prisional no Império 1830 - 1861*.

^{xxi} Check Moreira de Araújo (2009, p.96).

^{xxii} Check Table 4. *Imigração Líquida: Brasil, 1881-1930* (in thousands) by Leslie Bethell IN: FAUSTO, Boris.

^{xxiii} Check Gelsom Almeida Rozentino (2014), *Capitalismo, Classes sociais e Prisões no Brasil*.

^{xxiv} Psychiatry becomes a repressive complement to the State, giving repression a scientific character. Check Gelsom Rozentino de Almeida (2014), *Capitalismo, Classes sociais e Prisões no Brasil*.

^{xxv} The psychiatrist Pinel created the first therapeutic method of treatment for people with mental disorders. He also used the same scientific rigor to analyze and classify the patients' symptoms and provide them with their mental health back. Check FACCHINETTI, Cristiana. *Philippe Pinel e os primórdios da Medicina Mental*. 2008.

^{xxvi} It appears in Brazil during the 19th century, specifically on December 5th, 1852; having its first building in Rio de Janeiro — the Hospício Dom Pedro II.

^{xxvii} Check FACCHINETTI, Cristiana. *Philippe Pinel e os primórdios da Medicina Mental*. 2008, p.504.

^{xxviii} Marilene Antunes Sant'Anna's master's thesis analyses the process of origin of the Correction House of Rio de Janeiro, highlighting the institution's finality. IN: Moreira de Araújo (2009) *Cárceres Imperiais: a Casa de Correção do Rio de Janeiro. Seus detentos e o sistema prisional no Império, 1830-1861*.

^{xxix} *Cadeia* — or jail — is a name that has been immortalized in the collective imagination since they the first model of detention in Brazil. However, it can not be confused with the Penitentiary as they have some different characteristics.

^{xxx} The highlighted quote is from the book *Estação Carandiru* (1999) — or *Lockdown: Inside Brazil's Most Dangerous Prison* — by Dráuzio Varella, doctor and author. The book is basically a report of the various experiences he has had since the 1980s. Working directly with those incarcerated in the public health segment, he developed some projects in this area; the main one being preventing and combating the spread of HIV in the penitentiary community.

