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## STATE AND PUBLIC SAFETY: LOOKING AT BRAZIL IN THE CONTRACTUALIST AND FOUCAULTIAN PROPOSALS

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### ABSTRACT

The trajectory of humanity is traced in the search for a safe life and in the course of the history of social thought proposals for State action in promoting social safety were built. The purpose of the article now presented was to return to classic contractualist thinking and Michel Foucault to analyze the Brazilian reality. The result showed the difficulty of the Brazilian State in implementing its constitutional precept and guaranteeing a safe life for its population. It is concluded that the Federal Constitution, a contract placed for social guarantees, is restricted to the role and, in the 21st century, Brazil did not leave the condition of punishment of bodies by torture, narrated by Foucault.

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## INTRODUÇÃO

Dealing with Public Safety is always a great challenge for scholars in the area, as well as for all professionals who dedicate themselves, everyday, to the fight against criminality, be it organized or not; as well as, intervening in the various social disturbances due to the State's failure to act in areas such as education, work, food, health, leisure, among others. Despite the aforementioned point of view, the origin of this discussion pervades the relationship of human beings with others and their goods, being more specific, in relation to the property itself. The concern with private property has always been something that has bothered the mankind and has led the humanity to fight great battles to make possible to keep the possession and control of material goods. For the English philosopher John Locke (1632/1704), private property is seen as a natural right, in equivalence to other rights, such as life and freedom. However, Locke (1978) emphasized that a property would be fair and valid only to the extent that it helped the human being in existence and in his own livelihood. Therefore, humans were not allowed to exacerbate possession that would undermine the natural rights of other human beings. However, the human trajectory was followed by struggles and disputes in the

middle of the scenario of oppression and exacerbation of violence between peoples. Among countless wars waged by humanity, the struggle for land is still recurrent. Throughout history, often immersed in democratic relations, social movements of landless rural workers are still subjected to scenarios of violence, in the midst of battles and bloodshed, in the process of disputing the occupation of land necessary for their existential reproduction which should be achieved through fair land reform, thus seeking to achieve the purpose proposed by Locke (1978). However, the struggle of human beings is not restricted to land ownership, and therefore, other conflicts afflict the mankind and distance it from the possibility of a safe existence. The situation experienced by humanity raises another discussion, namely, the representativeness itself in a system that along the years was forged democratic. For Chomsky (2005), a true democracy does not exist, because capital is in the hands of a few, not many, and it is money, not political power itself, that is the center of our societies. The reality lived by humanity is reflected in Brazil and demonstrates the distance of human beings in sharing a world with social justice and in the intention of understanding the intricacies of public safety institutions in the protagonism of a safe existence is what the present analysis discusses the classic contractualist thinking and Michel Foucault's theory about the role of the State in guaranteeing social safety.

## RESULTS

It is known that it is the nature of human beings, in the course of their existence, the concern with personal and patrimonial safety, which is often exercised individually, seeking to guarantee physical and patrimonial integrity. According to Foucault (1987), in ancient Rome emerged the first Corporation structured as a police body, through the centuries, a group formed by men recruited from the Roman Army, who became part of an organized and militarized police corp, whose mission was to carry out the patrolling cities. In his main book, *The Prince* (1532), Niccolò Machiavelli (1469/1527) already said that "without something to command and dominate, conflict and anarchy will reign". The Italian thinker pointed out that the main foundations of all states, both new and old or mixed, are good laws and good weapons. Since he served the Republic of Florence, Machiavelli (2010) has always considered necessary that political and military power establish a unity and that weapons, in his view, served as an instrument to provide the concrete life of laws. According to the author, in order to constrain human beings to a certain conduct, established by good laws, the prince (governor) needed to have an instrument of force and this must be materialized in good weapons. Therefore, with this vision, Machiavelli (2010) made it clear that good laws were not enough to guarantee the order and discipline so desired by the prince, and yes, there was a need of a State in which good weapons were present as a way to promote an effective political action, including, being pointed out as an essential condition for the existence of the principality.

Contributing to the discussion of safe life, it is also necessary to deal with the state of nature approached by Hobbes (1588/1679) in *Leviatã* (1983), because for jusnaturalism the human being can do all things using any means to achieve. The English philosopher emphasizes in his book that to exercise safety over the object in dispute, the human being uses force to maintain possession over the good, often resorting to the use of violence, resulting in the well-known phrase "man is the wolf of the man himself". Thus, for Hobbes (1997), there was a need to regulate these relationships by imposing respect and order, as a guarantee of coexistence with others through mutual help relationships. However, this role should belong to the State, based on what he called the social contract, where there would be the replacement of the unlimited power of man by the power of the police, abolishing natural law by juspositivism. It is observed with the idea of the social contract the necessity of a third party, in this case the State, to regulate the relations between human beings and between them and the political entity. It is worth mentioning that for the main contractual philosophers the purpose of the emergence of the State is seen differently, because for Hobbes (1997) the main idea was to preserve one's own life, however for Locke (1978) the objective would be to preserve property and for Rousseau (1978), concluding the contractualist thinking, the idea was in the preservation of civil liberties. So, the idea of the police or of the police power itself arose from the need for the State to intervene in individual relations as a way of safeguarding and guaranteeing the rights of a community. Therefore, within this meaning, the social pact presented by Rousseau (1978) is the one that best defines the use of police power, not only with a focus on controlling individual freedoms, but rather, reinforcing citizenship ideals with the promotion of isonomy and of democracy among human beings. It is important to highlight in this process of domination and social control the great book of Michel Foucault (1926/1984), entitled "Discipline and Punish" (1987), which sought to present the process of social control exercised by the monarch until the beginning of the 18th century. The book is divided into four parts: the torture; the punishment; discipline and prison.

In the first chapter entitled "The body of the condemned" (Foucault, 1987), the ritual of cruelty to which those accused of crimes were subjected is astonishing, because the most important thing there was to demonstrate the "power of the monarch" in solving possible deviations in conduct, practiced by any member of the people who decided to go against their norms and determinations. The

punishments did not cease with the death of the condemned person, but were always followed by acts of extreme perversity against the physical body without life, as if the error committed was connected with the body. Furthermore, it is in the part that deals with discipline that Foucault's book (1987) shows the control exercised by the government over its governed. In the French philosopher's analysis of the disciplinary system, prison should follow the same line of training to which the military, students and priests are subjected. The objective would be a greater control of the sovereign over the free time, not only of the prisoners, but of all those who somehow attempted against his power. *Discipline and Punish* (1987) represents prison as an institutional model of disciplinary society acting on the most valuable asset of any individual, that is, their freedom. In the aforementioned book, prison is seen as an excellence penalty that affects everyone equally, since it acts on the deprivation of liberty, having in itself the same "price" for any individual. What is interesting in this respect is the correlation produced between the punishment applied in days, months and years, with the time of serving the sentence, as a form of social reparation and most importantly the idea of "paying the debt" by the condemned. Obviously, the system of imprisonment mentioned by Foucault (1987) must be seen as an evolution in serving the sentence due to its more humanitarian ethos, however, it cannot be dissociated from the need for social control carried out by the State. Thus, the transformation of the means of production and the need to preserve the goods and interests of the bourgeois class justify development through the aspect of humanizing the penalty, while maintaining the idea of prison.

## DISCUSSION

In Brazil, the role of the State for the promotion of social security and social control is set out in the Federal Constitution (1988) in its Chapter III of Title V, dedicated to the Social Defense of the State and Democratic Institutions, to address the theme of Security Public. The Citizen Constitution declares that public safety is duty of the State, the right and responsibility of all and aims at the preservation of public order, the safety of people and property. The Brazilian constitutional precept strengthens the tradition of classical thought in the contractualist approach, presenting in the centralized figure of the State the instrument for social order and punitive control. However, the social scenario distances reality from the constitutional terms arising in Brazil presents a dangerous compromise of democratic foundations. These are challenges for the Brazilian State to guarantee socioeconomic development and social security. The role of the State makes a decisive contribution to social dynamics and there are several examples in the trajectory of humanity. This discussion has spanned centuries with multiple propositions about the specific forms of action of the State in promoting prosperity and the common good. Brazil has already advanced in the legal instrument, in the Citizen Constitution (1988), a basic document for national democracy, it remains to make its mechanisms work and to promote social justice with a safe life for its population, reaching the intricacies of the struggle for the land loaded with symbolism. From the right to guarantee the means of human reproduction (Cardoso, 2012) to the rights of the prison population still violated by the supplicant condition, distant from human rights as explained by Foucault (1987, p. 18): "Therefore, a 'supplicant fund remains 'in modern criminal justice mechanisms - a fund that is not entirely under control, but is involved, more and more widely, by a penalty of incorporeal".

## CONCLUSION

The *Prince* of Machiavelli (2010) is undoubtedly a must-read for anyone dedicated to the exercise of governance. Despite it has been written in the 15th century, it remains very up to date, as he tries to present things as they are instead of trying to align political life with some ethical or spiritual ideals. How to justify in Brazil in the 21st century the figure of a president who governs with the following slogan: "Brazil above everything and God above all" (Personal

information, 2020). The idea of the “divine right” or “natural right” of monarchs to rule was already rejected by John Locke and Thomas Hobbes, because for them sovereignty was with the people, however they accepted that the ruler could receive the consent to govern. Brazil in the 21st century has a relative popular sovereignty, because in the face of the dissatisfaction of some, impeachment is applied as a solution to put in power those who can represent the interests of the ruling class. The punitive system presented by Foucault (1987) is still a model of imprisonment used by the State to exercise its social control. The State tries to convey the idea that the objective of the system is only to correct and reform the offender, and never to apply only punishment. However, in Brazil in the 21st century we are not only punished, on the contrary, it is believed that we are in the period of torture since massacre, charred bodies, torture and other capital punishment are common in prisons in our prison system.

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