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THE EFFECTIVENESS OF THE BRAZILIAN PRISON SYSTEM IN FULFILLING THE SOCIAL FUNCTION OF PUNISHMENT ACCORDING TO THE BRAZILIAN PENAL LAW

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ABSTRACT

This article criticizes the effectiveness of the Brazilian prison system in fulfilling its social function. In order to do so, it engages in a historical journey from the origin of penalties in the Ancient Age, Middle Ages, Modern Age until the present day, using as a guide the recognized works of Michel Foucault and other scholars who share the same Foucauldian principles. The relationship between prison and power that begins the text is mirrored throughout its content in order to solidify the understanding that the prison system reproduces, from one society to another, over time, the same model of repression. The contradictions between the country's legislation on the execution of the penalty and the system's compliance with it constitute the crux of the article, which postulates for a rich and unprejudiced debate with the objective of finding solutions to eliminate the deficits between theory and practice. At the end, the article presents three possible solutions to reduce prison overcrowding, which is considered one of the main problems that deepen the degrading condition of prisoners in terms of human dignity.

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INTRODUCTION

The Brazilian Prison System, analyzed in the light of what our Constitution and infra-constitutional legislation provides, exposes a series of contradictions that are brought in this article as an invitation to reflection and a search for solutions that, in the short and long term, bring hope to society. Although in a reduced form, the history exposed here points out, in a clear line, the very close relationship between the different forms of punishment and the social and economic structure of societies. At the same time, a parallel is made between what the law determines and what the system concretizes, demonstrating that the prison reality is far from fulfilling the legal precepts. We gather knowledge in the works of Michel Foucault and authors such as Luis Carlos Valois and others, scholars, lawyers and prosecutors, equally oriented in the sense of seeking explanations and solutions for the problems experienced in the Brazilian prison system, such as prison overcrowding, the hostility of society, the physical, psychological and social abandonment of the prisoner, the war on drugs, the level of consciousness and education inside the penitentiaries, and the increasingly harsh penalties in detriment of preventive actions that reduce the number of incarcerated individuals.

With this, we try to understand the role that the prison system plays and, more than that, the evident inefficiency of the system in fulfilling its social function, even contributing to the increase in criminality, making the model currently adopted cyclical and unsustainable. What path should Brazil follow towards the social sustainability of its prison model? This question, initially formulated in our research proposal, is unfortunately still far from being glimpsed, but we leave here some suggestions for solutions sustained in the studies of criminology throughout history, present in the selected works and in many others that the length of the article did not allow to include. These are not absolute solutions, nor do we propose an end to all the problems society faces with the human waste that is discarded today. It is intended to be an open debate, without prejudice, without political, religious, or ideological impediments. In the first chapter, we go through the history of prisons, their origin and evolution as society evolved. In the second chapter, we revisit the Brazilian prison environment with its maladies, the non-compliance with the law proving the illegality within legality, as well as the problems arising from the coronavirus pandemic. Finally, we suggest, in the third chapter, some alternatives for the prison crisis, as brief proposals for discussion because the length of the article is short for such complex problems.

The method adopted was the dialectic method with the objective of interpreting the difficulties and the solutions related to the prison problem considering the social, legal and human aspects. The method of procedure was historical-comparative since the facts were presented within a historical perspective for the analysis and interpretation of the phenomena reported facing the Brazilian reality. Finally, as research techniques we used the bibliographic research, surveying and selecting the bibliography, reading and summarizing the information to then develop the article's content.

A Bit of History: It is impossible to study the punitive phenomenon without taking a look at the past and the history of mankind, because the moment man began to live in society, it also became necessary to create rules to control relations between individuals. This approach is justified because the act of punishing someone depends on the organization of groups (civilization) where there is a superior instance with authority over the actions of the subject and, of course, the existence of a set of rules, even if minimal. According to Freud (1996), civilization strives to take away the freedom of the individual and replace it with the conveniences of the community. It is impossible to study the punitive phenomenon without taking a look at the past and the history of mankind, because the moment man began to live in society, it also became necessary to create rules to control relations between individuals. This approach is justified because the act of punishing someone depends on the organization of groups (civilization) where there is a superior instance with authority over the actions of the subject and, of course, the existence of a set of rules, even if minimal. According to Freud (1996), civilization strives to take away the freedom of the individual and replace it with the conveniences of the community. The power of this community is established as "right" in opposition to the power of the individual, and this substitution, of the power of the individual for the power of the community constitutes the decisive step of a civilization (FREUD, 1996).

Prison and Power: The history of punishment, consequently, goes hand in hand with the history of humanity and equally with the power relations that last for all times and cross all civilizations and races. Power, as Foucault says, is in all social relations, and, consequently, in the hands of those who oppress, even if this oppression masquerades as "discipline" that seeks to transform individuals into docile creatures (Foucault, 1987). The history of prisons and power is not a uniform history, for each society has been formed according to its own characteristics, from the most remote ones to the current ones, and in this process they have undergone mutations marked by diverse and complex needs and conflicts. Nor is it about periods that succeeded each other as in an equation, periods coexisted in a dialectical way for a while with different orientations until a predominance was established and a new orientation was born. (PACHECO, 2007; FOUCAULT, 1997) The survival issues in primitive societies led to the creation of rules and means of control, but these forms of control did not have a balance and punishment could come from the victim, the family, or the social group, without proportion to the offense. For didactic reasons this period is usually called "private revenge", characterized by the absence of a constitutive State and by disproportionate punishments. (CALDEIRA, 2009; PACHECO, 2007) A first evidence of proportionality of punishments came with the "Law of Talion". With the maxim "an eye for an eye, a tooth for a tooth", came the forms of control of punishments, making them consistent with the offense committed and giving rise to punishment as retribution for the harm caused. In fact, it is necessary to clarify that, according to Valois (2012) "throughout history, what we least notice is a true proportionality in the application of law. Often the proportionality boiled down to more or less tormenting ways of dying." (CALDEIRA, 2009; VALOIS, 2012) In the period when religion acquired great importance for primitive peoples, punishment aimed to appease the divine wrath. In this period known as "divine vengeance", the priests, recognized as the agents of the gods, were in charge of doing justice and applying punishments. As Pacheco (2007) states, they were severe, inhuman, and cruel punishments. As societies became more organized, larger communities emerged with a tendency

to centralize power. Private wars became obstacles to public peace and the figure of the "chief" or "assembly" began to emerge and punishment "lost its sacred character and became a sanction imposed on behalf of a public authority that represented the interests of the community at large." In this period, didactically called "public revenge", the "chief" "exercised his authority in the name of God" and in His name, practiced all kinds of tyranny. (CALDEIRA, 2009; PACHECO, 2007) In the Middle Ages, Criminal Law was characterized by cruelty, and the Church became one of the most powerful institutions to control human conduct. The Inquisitorial Courts followed the code of Canon Law when applying sentences, and public punishment was consolidated as the only fair and correct one. The punishments were transformed into true spectacles watched by a society eager for revenge. Foucault (1987) explains that in this scene of terror, the people are called as spectators and summoned to watch the spectacle, the public confessions and executions. The people have to know, but they also have to see with their own eyes, so that they are afraid. To be a witness is a right that they have and that they even claim.

It was in this period that the first "antecedent substitute for the death penalty" was produced, applied, initially, to offending clerics who were incarcerated in cells or interned in monasteries. These punishments were intended to "correct", because the clerics were isolated in order to meditate, reflect and repent of the sins committed (CALDEIRA, 2009). Later and still based on the canonical model, this "cellular segregation" came to be applied also to the offending people with the same purpose of remission of guilt. "Its purpose was expiatory and its character sacred". (SANTOS, ALCHIERI & FLORES FILHO, 2010) Canon law continued to exert its influence also during the Modern Age and resocialization showed its traces in the justifications for punishment. At the end of the Modern Age, the "prison institutions" began to appear where criminals were put in isolation so that they could reflect on their faults (CALDEIRA, 2009). About this "need for a punishment without torture" Foucault (1987) reports that isolation ensures the convict's encounter alone with the power that was exercised over him. By replacing torture, prison sentences have continued to play their role in society as powerful tools for the exercise of power. Punishments, "humanized" or not, are sanctions whose purpose has been, at all times, the training of individuals. After the Industrial Revolution, issues concerning the prison system began to be discussed both theoretically and practically. This fact was due to the changes in society which went from feudalism to pre-capitalism. The number of impoverished people and crimes multiplied, and, as it was no longer possible to assign the death penalty to all offenders, it became necessary to displace the power that originally came from the sovereign and direct it to society, without, however, taking away its essence, that is, keeping its strong coercive elements and even making them more fearsome. According to Foucault's understanding (1987, cited by VALOIS, 2020) it is clear in all reform proposals that torture was replaced by prison not to reduce the suffering of the condemned, but of society, judges, and prosecutors. In this sense, the loosening of penalties, as Foucault teaches, had a double movement, because the crimes had also evolved, verifying a decrease of blood crimes, prevailing the crimes against property. "In fact, the passage from a criminality of blood to a criminality of fraud is part of a whole complex mechanism, embracing the development of production, the increase of wealth [...]" etc. (FOUCAULT, 1987, p. 98)

Prison, to use an expression by Valois (2020) "was conceived defective and, therefore, was always fated to be the object of reform". If an archeology of prison were possible, we would find its first reformer in the rubble of the first house of correction, because there has always been someone with the minimum of humanity and spontaneity for a conduct of compassion or solidarity with prisoners, especially the filthier and more terrifying the prison is. Thus, the history of prison has left and will still leave behind many anonymous reformers. (VALOIS, 2020) The main enthusiasts of criminal law reforms at that time were the Italian Cesare Bonesana, (Marques de Beccaria) and the Englishmen John Howard and Jeremy Bentham. Beccaria, author of "Dos Delitos e das Penas," a classic of criminal

law, idealized a criminal system that would replace the inhuman, imprecise, confusing, and abusive previous criminal system," basing his justification for punishment on the idea of a contract between the individual and the State. There begins to infiltrate the system, a reforming purpose of imprisonment, because for him (Beccaria), it was no longer possible the permanence of dirt and hunger in the prison environment. (SANTOS, ALCHIERI & FLORES FILHO, 2010). The second main reformer, John Howard, was considered the Father of Penitentiary Science and had, as a principle, that work, although hard, would be a means for moral regeneration and rehabilitation (SANTOS, ALCHIERI & FLORES FILHO, 2010). Howard talked about prison somewhat based on his own experience, when he was arrested by privateers in 1756, a fact that adds more credibility to the narrative, because people only really care about prison when they know it up close. (VALOIS, 2020) Jeremy Bentham, on the other hand, founded the utilitarian doctrine by assuming that there is a natural tendency for man to guide his actions in the pursuit of pleasure in order to avoid pain. In this sense, rigorous punishments would avoid the pleasure in committing the crime (SANTOS, ALCHIERI & FLORES FILHO, 2010).

The Panopticon system: It is a prison model designed for incarceration with the purpose of carrying out the sentence. It was designed by Bentham, whose idea consisted in the construction of circular buildings like a beehive, around a tower so that prisoners would constantly have the feeling of being watched. For Foucault, prisons according to the idea conceived by Bentham had a disciplinary function. They were, at the same time, surveillance and observation, security and knowledge, isolation and transference. Thus, Foucault understood panopticism as a combination of three elements: control, discipline and correction (OLIVEIRA, 2009; FOUCAULT, 1987) Bentham's panoptic model was not restricted to the architectural structure of prisons. The system was also incorporated into factories, hospitals and schools to create an effective control structure where the individual integrates the figure of the watchman to his imaginary and, as a result, ends up monitoring himself. Bentham's panopticon, regulated by separate cells with no lateral connection and with a permanent but invisible watchman, is a model of order that implies control policies that make revolutions and contagion impossible. (OLIVEIRA, 2009; FOUCAULT, 1987)

The Prison Environment in Brazil: From the XVIII century prison reform to our days, what has changed? The institution of prison as an instrument of punishment became widespread in the world after the French Penal Code of 1791 when a new legislation was created to delineate power and punishment as a function of society. We learn from Foucault (1987) that prison is based on the deprivation of something that belongs to everyone, freedom, so losing it has an equal price for everyone. This relationship between punishment and price is addressed by Foucault when, in explaining that prison is adaptable to our society of economic principles, he shows how frequent is the expression "pay the debt". (VALOIS, 2012) Houses of Correction with individual cells and workshops were established in the Criminal Code of 1830, which instituted the penalty of imprisonment with labor for various crimes. At the same time, the country was developing economically with the production of coffee and industrialization, increasingly driving population growth, but, contrary to the law, the houses for the confinement of prisoners in the early nineteenth century showed depressing conditions for the fulfillment of the sentence by the detainee. (CASTRO E SILVA, 2012) The Brazilian Imperial State, influenced by reformist ideas, introduced the penalty of imprisonment with work, a model seen as a modern punishment, disciplining wills. However, only during the second half of the nineteenth century this new form of punishment reached the Brazilian society, with the construction of the House of Correction of the Court and some other penal units within this conception. (ALMEIDA, 2014) Despite the humanization of the laws along the lines of the European reforms, the dynamics of the slaveholding society were irreconcilable with the humanizing attempts of the laws, and consequently, the punishments applied to offenders kept the same characteristics of the colonial period.

With the first republican constitution in 1891, it was established that "everyone was equal before the law". The republican Constitution "innovated positively by providing for habeas corpus, a legal remedy that aimed to guarantee the protection of individuals against the eventual excesses of the repressive state apparatus. It also introduced the notion of re-socializing activity for prison sentences, which has been reproduced in subsequent constitutions up to the present day. Despite the tribute to the transformative ideals of punishment, these norms coexist with a precarious prison system. As Castro and Silva (2012) argue, there is a gap between formal legislation and punitive practices constituting a characteristic of the Brazilian reality that exists since the colonial period, and extends to the present day. (CASTRO E SILVA, 2012). The Brazilian prison system is today regulated by constitutional determinations, as well as by numerous infra-constitutional laws. Our Constitution, for example, when dealing with penal execution, provides in its article 5, subsection XLVIII, that the penalty must be served in different establishments according to the nature of the offense, age and sex of the convict. And in subsection XLVIX, it assures to the inmates the respect for physical and moral integrity. (BRASIL, 1988)

The Penal Enforcement Law No. 7210/1984 (LEP) also stands out, guaranteeing the prisoner and internee due assistance and other legal guarantees. Article 12 of this law provides for material assistance to the prisoner or internee, which must meet the needs of food, clothing, and hygiene facilities. Making an analysis of this article it is verified that, despite the scope of Brazilian laws and the legislator's intention to establish rules that would grant the detainee the maintenance of their health, hygiene and food conditions, it is verified that prisons, in contrast, provide a degrading and inhumane environment to the prisoner, in view of the overcrowding, the absence of medical care, the precariousness in food and lack of hygiene that trigger various diseases. (MACHADO E GUIMARÃES, 2014; ANGELIS NETO, 2019). Considering the Brazilian reality, the population increase as well as the miserable living circumstances of much of the population, it is revealed that even the policies of building new prison units are unable to contain the growth of the prison population. In this field, LEP itself in its article 85 provides that the physical structure of the prison and its capacity should be compatible and further on, in article 88, that the cells should be individual with a minimum area of six square meters. In practice, however, it can be seen that between overcrowding and the quality of penitentiary services, there is a mutual relationship, contributing to several other problems that make the price of losing one's freedom much more expensive for some. Finally, history shows that in essence, the system has not changed. Since always, and in Brazil in particular, prisons have been a place of exclusion and prison policy is commonly relegated to the background by the authorities. (ALMEIDA, 2014; CASTRO E SILVA, 2012). For this reason, it seems that Foucault's analyses have not suffered the wear and tear of time, because based on these analyses, we understand the birth of prison within a historical dialectic, and it makes us wonder how long society will remain stagnant in a punitive method that has been used for more than three centuries. If prison was an advance, it is now time to overcome it. Still reproducing Foucault, the idea of imprisoning to correct is a paradoxical idea, bizarre, without foundation or justification, it is a police idea (FOUCAULT, cited by VALOIS, 2012).

The Brazilian legislation and the fundamental human rights of prisoners: The human rights of prisoners are foreseen in several legal statutes both worldwide and nationally. In Brazil this concern goes back to the Constitution of the Empire and was repeated in later constitutions and definitively confirmed in the Citizen Constitution of 1988, inspired by declarations of rights arising from social movements of a democratic nature. The Constitution innovated by enshrining fundamental rights and guarantees since its preamble, establishing that the dignity of the human person constitutes one of the foundations of the Federative Republic of Brazil (art. 1, III). At least 15 sections of article 5 deal with the fundamental guarantees of the citizen aimed at protecting the guarantees of the imprisoned man, among them, prohibition of cruel punishment (art. 5, XLVII) and respect for physical and moral integrity (art. 5, XLIX) (BRASIL,

1988). "There is also in specific legislation - the Law of Criminal Enforcement,- the items from I to XV of article 41, which provides for the infra-constitutional rights guaranteed to the sentenced person during the course of criminal execution." (ARGOLO, 2015). Notwithstanding the fact that inhumane treatment and torture practices have been officially banned, the practice, however, is paradoxically different, for "in these more than 30 years, there has been - and continues to be - an enormous difficulty in freeing oneself from the ghosts of the past." (STRECK, 2020)

Illegality within legality: As can be inferred from the above, the Brazilian legal system is not silent on the matter. The Federal Constitution itself, the Penal Code and the Code of Criminal Procedure deal with the matter, and the Penal Enforcement Law is specific on the issue. It is notorious, however, that the physical and material structure of the Brazilian prison system is not compatible with the guarantees provided by the legal system. On the contrary, "the system in the way it is structured triggers a kind of dehumanization process that numbs the moral sense and makes the convicted capable of committing the worst imaginable atrocities." (LIMA JUNIOR, 2018). Besides the lack of structure, the absence of a humanized treatment has been establishing an abysmal distance between the promises signed in the Law of Criminal Enforcement and the reality experienced by people incarcerated in Brazilian penitentiaries. Nothing translates the reality of Brazilian prisons better than the following excerpt expressed by Valois (2012):

The time has come for legal science to take on all the repugnance that prison causes, to open up spaces for expressions of disgust and terror that awaken at the sight of the filthy, unhealthy, promiscuous cells in our prisons, with our fellow human beings huddled together, feeding themselves, sleeping standing up or on top of each other for years.

There is no legality within the prison system because the system itself coexists with situations diametrically at odds with the legislation: subhuman conditions, crowded warehouses, lack of medical care and hygiene, serious diseases and the law of the strongest subordinating some over others. We can see, in the teachings of Mirabete (2008) that the Brazilian repressive model is sick: it sends convicts to penitentiaries with the proclaimed purpose of rehabilitating them to society, but, hypocritically, it knows that this individual, upon returning to social life, will be more unprepared, unacclimated, insensitive and, most likely, more able to commit crime. We add to all this misery, the indifference of society. In fact, worse than indifference, just like the crowds that applauded and incited torture in medieval times, modern societies are clamoring for harsher punishments against offenders. In this sense, it is understood that in Brazil, an unequal society has developed a certain feeling of naturalness towards the suffering of others, as it lived through the condition of a colony of exploitation, of an absolutist monarchy, and of slavery.

Brazilian prisons in a time of pandemic: The Universal Declaration of Human Rights defined that every human being has the right to a standard of living that assures him and his family health and well-being. Our Federal Constitution reflected this right, providing in its art. 196 that: "health is the right of all and duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other aggravations and universal and equal access to actions and services for its promotion, protection and recovery." Besides the Constitution, the Law of Criminal Executions, as already noted throughout this article, also addresses the social right to health of prisoners in its Article 41, item VII. The prison population, obviously, has a greater need for health care than the general population, because besides being under the custody of the State, the system itself puts these people in a situation of vulnerability due to the poor environmental conditions of prisons. The prison environment is one of the determining factors for the proliferation of contagious diseases, a fact that has become more complicated with the pandemic that has shaken humanity as of December 2019. As is well known, covid-19 is a virus with a high potential for transmission

in closed, crowded, and poorly ventilated environments. Under these conditions, confinement inside a prison unit is more serious than any other, since it is a non-voluntary confinement, in enclosures with occupancy rates that exceed capacity and, consequently, with a high possibility of contamination by the coronavirus. For this reason, in Brazil, the virus has revealed the already proclaimed inequality, manifested even more strongly when the numbers of infection inside and outside the prison system are compared. According to data from Agência Brasil (2021), "64,189 cases of the disease were registered in prisons, 48,143 among prisoners and 16,046 among employees of these units. In the juvenile detention system, the total number of adolescents who contracted the disease is 1,629 and the number of employees infected is 5,524. These data reinforce the need for alternatives to the great prison crisis and the importance of reflection and dialogue that, in a certain way, force society to (re)think its way of punishing.

Alternatives for the prison crisis: As discussed in the previous topics, there is plenty of evidence of the failure of the prison system in Brazil and, even more, of the proposed re-socialization. After all, training a human being to live in freedom inside a captivity is more than a contradiction, it is the absolute desistance of the humanity that should exist in each individual. Proving this, the subject that is discussed by some jurists is of no interest to a population that prefers to "forget" the forgotten and move on. Due to this neglect and even due to the clamor for more prisons and harsher sentences, the penitentiaries have become real deposits of human "garbage". Less dangerous prisoners together with big criminals find, in this coexistence, an environment that stimulates criminality. Under these conditions, what are the alternatives to transform this reality?

Alternative Punishment: One solution to this chaos would be to keep in jail only dangerous criminals who offer a risk to society. The Brazilian Penal Code provides the basis for this desideratum by dealing (articles 43 et seq.) with the right-restrictive penalties. It is only necessary to expand the universe within which these alternative sentences can be applied. According to Prudente (2013), although the application of alternative sentences and measures, according to the current legislation, does not mean an immediate emptying of prisons, it prevents the situation from worsening due to prison overpopulation. For the author, considering the economic aspect, government spending per year to maintain the prison population is around US\$ 1.5 billion, and the monthly cost of maintaining the prisoner with an alternative sentence is around R\$ 70 per month. Considering these data, one of the possible solutions to reduce prison overpopulation would be to increase the application of alternative sentences in detriment of prison sentences. It should be added that, alongside investments in alternative sentencing, one can promote reforms in the security policy, so that policing activities focus more intensely on the most serious crimes. "When police activity is not limited to the essential, falling to the extreme of covering any person with 'suspicious characteristics', [...] limiting rights and guarantees in the name of a subjective war [...] the State effectively becomes a police state." (VALOIS, 2016). At stake, according to Rodrigues (2013), is the practice of a criminal political program in which the prison sentence loses its place as a penalty par excellence and thus becomes able to respond, in the most serious cases - in which it must be applied - to the challenge of preventing recidivism. On the other hand, we are moved by the observation that the repressive and security policies do not present satisfactory results: the objectives of crime reduction and protection of society have not been reached and prisons continue to be overcrowded. Nor have the policies of building new prison units proved satisfactory, as Rodrigues (2013) points out, because the economic costs are very high.

Adjustments to the Drug Law: One of the crimes that causes most prison overcrowding is illicit drug trafficking. The data regarding this universe are frightening, but they are irrefutable scientific data. In 2019, the disclosure of a survey conducted by the Oswaldo Cruz Foundation (Fiocruz) in partnership with the IBGE, the National Cancer Institute, and Princeton University (USA), revealed that "4.9 million Brazilians have consumed illicit drugs in a recent period, and

the universe covered respondents between 12 and 65 years old throughout the country." It is evident that the situation is much more serious if we consider the interior of the penitentiaries. Data from the National Penitentiary Department (DEPEN) also referring to the year 2019, present Brazil with 773,151 thousand convicts imprisoned in prison units and police stations, data that place Brazil in third place in the ranking of countries with the largest prison population in the world, surpassed only by the United States and China.(D'URSO, 2020). This reality is also denounced by the National Council of Justice and the National Council of the Public Ministry, which point to 3 types of crimes that lead the prison population mainly. In first place, leading the ranking, we have drug trafficking, followed by homicides and crimes against property.(ALMEIDA, 2019). D'Urso (2020) reinforces this concern by bringing, for reflection, the conclusions of a national report on prison information (2017) prepared by the Integrated System of Penitentiary Information (Infopen):

[...] the total amount of people imprisoned for drug trafficking in Brazil, numbering more than 176,000, represents almost 30% of the prison population. Moreover, with the enactment of law 11.343/06 - the Anti-Drug Law, the total number of prisoners for drug trafficking has increased.

Education and Reform: Data from the Integrated System of Penitentiary Information - Infopen, confirm that 80.95% of the prison population has not completed high school. Only 8.97% are studying, and 78.99% of these are still in middle school. (RUSSEL, apud VALOIS, 2020). Given this disheartening picture, we realize that due to the neglect with regard to assistance to basic human rights, such as health and education, the prison units only remove from the streets, the subjects considered harmful and return them to society better prepared for crime (PRADO, 2015). We also find contradictions between the legal text and prison practice making the resocialization discourse, which in itself is already an inconsistency since it is not possible to produce favorable conditions for the return to society being the subject isolated from it, difficult. Worse when the system does not offer the minimum conditions for the application of what is provided in the LEP, according to which (Article 83 of the Law of Criminal Enforcement) "the penal establishment, according to its nature, should have on its premises, areas and services to provide assistance, education, work, recreation and sports practice. (MACHADO and GUIMARÃES, 2014). Despite being an old concern, the proposal of education in prisons will not instantly produce changes in the behavior of the inmates, if only because any intervention in the field of education brings long-term effects. However, and depending on the proposal, education can promote an awareness of the world and of the infinite relationships that represent life in society, "whether these are power or micro-powers to use Foucauldian language." (VALOIS, 2020) We are definitely living in difficult times in the country with respect to facing the problems arising from growing criminality. In the context of the punitive system, it is evident the correlation that exists between crime and the absence of an education policy aimed at inmates. And if this is not the only solution, it is undoubtedly one of the solutions to reduce the problem of resocialization, recidivism and overcrowding in prisons. The Brazilian State is imprisoning a lot more, if only due to a demand from society, which prefers to hide its waste rather than face directly the problems of the social garbage it produces itself, but despite this, the crime rates have not reduced.

CONCLUSION

In concluding this work, we have the feeling that much more would have to be said and researched, however, we must allow new contributions to add to what has been exposed here. Evaluating the calamitous situation found in the spaces destined to the prisoners, their cells, their rights, their dignity, and all that is lost for those who enter them, constituted moments of great apprehension, mainly because no solutions can be seen in a reasonably short period of time. However, it seemed clear to us that the penitentiary issue is at the

heart of a correct criminal policy, deserving, consequently, that we delve into the theme to better understand it. In trying to explain these contradictions, we are confronted with prison as a space of deprivation that hides ideological, political, and economic interests of the social structure. Given the gravity and magnitude of the imprisonment rates, we see that, in the name of fighting drugs, young people, black people, and the poor in particular, are prisoners of a culture of mass incarceration, as if this were the answer to violence and social inequalities. There is a prison crisis waiting for a profound discussion pointing out the contradictions implicit in the context of the prison system and the ways of confrontation and possible solutions in the short, medium, and long term. The authors whose positions have been exposed here have contributed a lot so that we can, by exploring their interpretations, strengthen our ideal of justice. Humanity needs to recycle its concepts of security, stripping itself of its vengeful past and discovering new ways of seeking to reduce crime, just as it is discovering new ways of treating natural waste. Alongside the feelings of frustration that are natural, because we are dealing here with millenary problems that require very long-term solutions, a new sense of a job well done makes us confident that we are all on the right track. It is understood that the crisis that Brazil's prison model is going through presents a painful scenario in the material, social and legal contexts, but crises are always moments of reflection, forcing us to consider solutions in the search for guaranteeing a minimum of dignity for prisoners and for society as a whole.

REFERENCES

- Agência Brasil. 2021. Deaths by covid-19 grow 190% in the prison system. Available at: <https://agenciabrasil.ebc.com.br/justica/noticia/2021-03/obitos-por-covid-19-crecem-190-no-sistema-prisional>. Accessed on: 03.07.2021
- Agência Brasil.2021. Deaths by COVID-19. GROW 190% in the Prison System.
- Almeida, G. R. 2014. Capitalism, Social Classes and Prisons in Brazil. Anais do XVI Encontro de História da Anpuh-Rio. Scientific Knowledge and Practices. ISBN: 978-85-65957-03-8
- Almeida, P. A. C. de. 2019. DOES MASS INCARCERATION STEM FROM PUNITIVIST WAVE IN BRAZIL? WHAT DO THE DATA FROM THE "JUSTICE SYSTEM" SAY. RJLB, Year 5, no. 5.
- Angelis Neto, P. de. 2019. Criticism of the practical application of the penal execution law in Brazil. Journal Jus Navigandi, ISSN 1518-4862. Teresina, year 24, n. 5826, 4 jun. 2019. Available at <https://jus.com.br/artigos/73105>. Accessed on: 23 Aug. 2021.
- Argolo, C. 2015. Current penitentiary system: incompatibility with the penal execution law. In: jus.com.br. Available at: <https://jus.com.br/artigos/41175/sistema-penitenciario-atual-incompatibilidade-com-a-lei-de-execucaopenal>. Accessed on 03.07.2021
- Brazil, 1988. Constitution of the Federative Republic of Brazil. Casa Civil da Presidência da República. Subchefia para Assuntos Jurídicos. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: 06.07.2021
- Caldeira, F. M. 2009. The Historical, Philosophical and Theoretical Evolution of Penalty. In: Revista da EMERJ, v. 12, nº 45.
- Castro e S., A. M. de. 2012. Do império à república considerations on the application of the prison sentence in Brazilian society. Rev. Epos [online], vol.3, n.1. Available at: http://pepsic.bvsalud.org/scielo.php?script=sci_arttext&pid=S2178-700X2012000100004&lng=pt&nrm=iso. ISSN 2178-700X. Accessed on 21.08.2021
- D'Urso, U. L. B. 2020. Challenges of drug use the prison population. Migalhas. Available at: <https://www.migalhas.com.br/depeso/332723/desafios-do-uso-de-drogas-a-populacao-carceraria>. Accessed on 23.08.2021
- Dutra, V. R. L. 2018. WAR ON DRUGS IN BRAZIL: the impacts of this policy on female incarceration. Article extracted from the Course Conclusion Paper presented as a partial requirement for obtaining the degree of Bachelor of Laws from the School of Law of the Pontifical Catholic University of Rio Grande do Sul.

- Foucault, M. 1987. *Vigiar e Punir: nascimento da prisão*. 27a. ed. Translation by Raquel Ramallete. Petrópolis, Vozes, 288p.
- Foucault, M. 1997. *Microfísica do Poder*. 11th ed., Rio de Janeiro: Graal.
- Freud, S. (1929). *Wretchedness in civilization*. ESB of the Collected Works, vol. XXI. Rio de Janeiro, Imago, 1976.
- Lima Junior, J. C. N. de. 2018. BETWEEN HEAVEN AND EARTH: allomorphy of the prison environment for the (re) legitimization of punishment. In: *Vision of the Public Prosecutor's Office on the Brazilian Prison System*. National Council of the Public Prosecutor's Office. V. 3, 2018. (pp. 111-121)
- Lima Junior, J. D. de. 2018. An Essay for the Reduction of Imprisonment. In: *Vision of the Public Prosecutor's Office on the Brazilian Prison System*. National Council of the Public Prosecutor's Office. V. 3, 2018 (pp.122-136).
- Machado, N. O.; Guimarães, I. S. 2014. The Reality of the Brazilian Prison System and the Principle of Dignity of the Human Person. *Revista Eletrônica de Iniciação Científica*. Itajaí, Centro de Ciências Sociais e Jurídicas da UNIVALI. v. 5, n.1, p. 566-581, 1st Quarter 2014. Available at: www.univali.br/ricc - ISSN 2236-5044
- Mirabete, J. F. 2008. *Execução penal*. 11. ed. rev. e atual. São Paulo: Atlas.
- Oliveira, E. R. de. 2009. Penalties: reason and evolution. *Revista Ensaios* - n.2, v.1, year 2, 1st semester 2009
- Pacheco, E. D. 2007. Historical evolution of criminal law. In: *Âmbito Jurídico*. March, 2007. Available at: <https://ambitojuridico.com.br/cadernos/direito-penal/evolucao-historica-do-direito-penal/>. Accessed on: 02.07.2021.
- Prado, A. S. do. EDUCATION IN PRISONS: CHALLENGES AND POSSIBILITIES OF TEACHING PRACTICED IN PRISON UNITS OF MANAUS. Federal University of Amazonas. Master's Dissertation. Advisor: Prof^ª Dr^ª Maria Auxiliadora de Souza Ruiz.
- Prudente, N. 2013. Brazilian prison system: challenges and solutions. In: Jusbrasil. Available at: <https://neemiasprudente.jusbrasil.com.br/artigos/121942832/sistema-prisional-brasileiro-desafios-e-solucoes>. Accessed on: 03.07.2021
- Rodrigues, A. M. 2013. PRISON OVERPOPULATION. Enforcement Control and Alternatives. *AIDP-GB Electronic Journal of Criminal Law*. Year 1 Vol 1 No. 1 June 2013
- Santos, A. R. dos. 2018. Anti-drug policy and imprisonment in Brazil. Federal University of Uberlândia. Monograph. Available at: <https://repositorio.ufu.br/bitstream/123456789/21845/2/Pol%C3%ADticaantidrogascarcere.pdf>. Accessed on 05.07.2021
- Santos, M. M.; Alchieri, J. C.; Flores Filho, A. J. 2010. Human Incarceration: A Historical Review. *Interinstitutional Journal of Psychology*, 2 (2), 170 - 181.
- Streck, L. L. 2020. The role of law and constitutional jurisdiction. In: *Revista da Defensoria Pública*. Year 11, n.26, jan-jun, 2020. 662p.
- Valois, L. C. 2012. Conflict between Resocialization and the Principle of Legality
