

Understanding the Impacts of Organized Crime on the Brazilian Prison System: A Criminological Analysis¹

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The aim of the present paper is to analyze how criminal organizations influence the daily life of Brazilian prisons and how ineffective the solution presented by the government is in terms of trying to control the conflicts and rebellions in which they are routinely involved. To this end, we will study the emergence of the main criminal organizations in Brazil, namely the “Comando Vermelho” and the “Primeiro Comando da Capital (PCC)”, in order to determine what factors influenced their founders to converge their interests and form these groups, which are currently no longer limited to the intra-prison space, but rather control entire slums in large Brazilian cities, controlling not only drug trafficking, but also the daily lives of their inhabitants. Subsequently, based on the theoretical framework of penal abolitionism, we will demonstrate that the solutions presented by the government are incapable of controlling the emergence and action of criminal organizations.

¹ The part of the results was partially presented at the International Scientific Conference: “LIFE IN PRISON: Criminological, Penological, Psychological, Sociological, Legal, Security and Medical Issues” (Belgrade, December 2 and 3, 2024), organized by the Institute for Criminological and Sociological Research

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Keywords: *Criminology, Criminal organizations, Organized crime, Brazilian Prison System, Thomas Mathiesen*

Introduction

The aim of the present paper regards criminal organizations in Brazil. More specifically, it analyzes how these groups not only are born and gain notoriety in those environments, but also literally control Brazilian prisons. As we will demonstrate, however, their actions and their dominance already go beyond the prison walls, affecting entire communities.

According to data from Infopen, in 2014 Brazil had a prison population of 607,731 (six hundred and seven thousand, seven hundred and thirty-one) inmates, of which 41% (forty-one percent) were still awaiting trial, that is, they had not yet been convicted. These statistics also highlight the high deficit of places in the Brazilian prison system, since there were only 376,669 (three hundred and seventy-six thousand, six hundred and sixty-nine) places, which results in a deficit of 232,062 (two hundred and thirty-two thousand and sixty-two) places in prisons to meet this demand (Ministério da Justiça, 2014, p. 11-12).

The results of this situation, as one might imagine, are prisons and penitentiaries in subhuman conditions, where inmates live in unsanitary conditions, in small and overcrowded cells. In addition, it is difficult for the government to control these establishments, since the number of employees is insufficient to meet the number of inmates, and they often do not receive adequate training. This situation facilitates, as will be demonstrated throughout the paper, the emergence of internal centers of power, which end up forming groups and establishing leadership, with a clear objective of defending themselves and obtaining better conditions.

However, once the boundaries of prisoners' self-defense have been crossed, these organizations often find themselves involved in various forms of crime, such as drug trafficking, which further accentuates the struggle for power in prisons, with a view to financial gain.

In 2017, the already well-known Brazilian prison situation became even more evident, when, on January 1st, a conflict between factions occurred in the Anísio Jobim Penitentiary Complex, in the city of Manaus, in which 60 (sixty) inmates were killed, becoming the second largest massacre in the history of the country. In the same week, in retaliation for the previous attack, 33 (thirty-three) people were executed in the agricultural penitentiary of Monte Cristo, in the state of Roraima. Later, another 26 (twenty-six) were executed on January 14th, in the penitentiary of Alcaçuz, in Rio Grande do Norte (Oliveira, 2017).

As will be shown throughout the paper, the policy commonly adopted by the Brazilian government to try to solve this issue is the constant investment in the construction of new prisons, a pro-incarceration policy that is not new, according to data from the National Survey of Penitentiary Information (Infopen) — a statistical information system for the Brazilian penitentiary system, made available by the National Penitentiary Department in partnership with the Ministry of Justice —, according to which, in 2013, the federal government invested approximately R\$1.1 billion reais in the construction of new prisons (Brasil. Ministério da Justiça e Cidadania, 2014a, p. 6).

It turns out that, even with this constant investment of resources in the construction of new penitentiaries, the deficit of vacancies is far from being filled. In this sense, the following table shows the situation of the prison population in the Brazilian penitentiary system and the lack of places:

Table 1 — People deprived of liberty in Brazil in December 2014.

Total prison population	622.202
State Penitentiary System	584.758
Security Departments/Police Station Cells	37.444
Federal Penitentiary System	397
Vacancies	371.884
Vacancy deficit	250.318
Occupancy rate	167%

Source: Brasil. Ministério da Justiça e Cidadania, 2014b: p. 18.

At the time of the data collection, all Brazilian states had overcrowded prisons, with the state with the lowest occupancy rate being Espírito Santo, with 1.23 prisoners per place, and the state with the highest, Rondônia, with 2.92 prisoners per place (Brasil. Ministério da Justiça e Cidadania, 2014b, p. 18).

When the prison system faces a crisis, the Government's response is to build more prisons. However, despite the large financial investment repeatedly made by the Brazilian government, the deficit in vacancies is still 250,000 people. It is also important to observe that this is not an issue restricted to certain locations, but rather one that is present throughout the country.

In order to provide a perspective of the historical evolution of the situation, the following graph shows the gradual increase in the total number of

prisoners, prison vacancies and pre-trial detainees from 2003 to 2014 in Brazilian prisons.

			2003
			2004
			2005
			2006
			2007
			2008
			2009
			2010
			2011
			2012
			2013
			2014
Temporary	Number of vacancies	Total number	
67.549	179.489	308.304	
86.766	200.417	336.358	
102.116	206.559	361.402	
112.138	236.148	401.236	
127.562	249.515	422.590	
138.939	266.946	451.429	
152.612	278.726	473.626	
164.683	281.520	496.251	
173.818	295.413	514.582	
195.036	310.687	548.003	
216.342	341.253	581.507	
249.668	371.884	622.202	

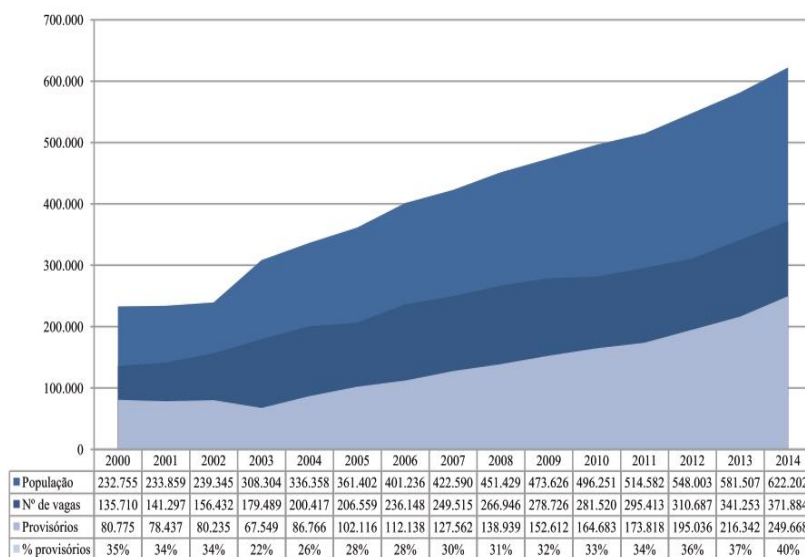
Source: Brasil. Ministério da Justiça e Cidadania, 2014b: 22).

According to the data presented, between 2003 and 2014, the prison population increased by 101.81%, while the number of places increased by 107.19%. Considering the constant increase in these figures, it can be concluded that the system is characterized by overcrowding (Brasil. Ministério da Justiça e Cidadania, 2014b, p. 22).

The construction of new prisons or the creation of new places in existing penitentiaries has high economic and social costs, and it seems that expanding the system indefinitely is neither possible nor desirable.

The prison policy model adopted in Brazil is ineffective in solving the problem of overcrowding, and only maintains the precariousness of the Brazilian prison system. Therefore, the purpose of this investigation is to establish a connection between incarceration and the emergence of criminal organizations in Brazil, in addition to a critical analysis of this phenomenon from an abolitionist perspective.

Graph 1 — Comparative evolution of the number of people in the prison system, number of vacancies and pre-trial detainees in Brazil.



It is important to note that although criminal organizations are usually associated solely with drug trafficking, the problem in question currently goes much further, involving several other criminal behaviors. In fact, as *Bruno Shimizu* denounces, although it is commonly understood that these groups are "parallel to the state", what is noted, on the contrary, is a relationship of symbiosis, since the corruption of police officers and state agents is an essential element for the success of these organizations. In addition, there is a true negotiation of disciplinary power, converging formal and informal powers in the search for a certain point of balance (Shimizu, 2011, p. 88-90).

In this sense, according to *Sykes*, since prison administrations are unable to control all prisoners, they often cede part of their power to informal leaders, negotiating and making concessions in order to enable a minimum of control over the establishment (Sykes, 2007, p. 40-62). Furthermore, according to *Ana Gabriela Mendes Braga*, the "blind eye" turned by formal bodies of power regarding the existence of informal powers in prison is due not only to the impossibility of overcoming this reality, but also to the advantages of this framework for the organization of the prison itself, resulting not only from the illicit advantages arising from corruption, but also from the control of the diffuse crowd (Braga, 2008, p. 205f).

In view of this scenario, in the first chapter we will analyze how criminal organizations emerged and were established in Brazil, noting that they have always had one thing in common, namely, the need felt by prisoners to resist the violations of their rights. In the next chapter, we will conduct a criminological analysis of the phenomenon of criminal organizations, seeking to explain why they were formed and what makes them continue to exist today.

Finally, in the last chapter, we will analyze the issue in light of penal abolitionism — a movement that proposes the abolition of criminal law and criminal penalties applied by the State —, more specifically the abolitionist proposal of *Thomas Mathiesen*. One of the abolitionist current's greatest concerns is the harm that prison sentences and incarceration represent to the individual. Prison causes personal, family and social losses to the convicted person, and the penal system creates a feeling of stigmatization that contributes to their social exclusion and a marginalized way of life.

The emergence of Brazilian criminal organizations

“Comando Vermelho”

As already mentioned, the vast majority of criminal organizations in Brazil originated as a group of inmates who, at a certain point during their sentence, decided to organize themselves in order to obtain better conditions in prisons. One of the best examples of this is the *Comando Vermelho*, which has a strong presence in prisons in Rio de Janeiro and currently still "controls" several favelas in the city.

As *Carlos Amorim* explains, in 1979, the Ilha Grande Prison, in the State of Rio de Janeiro, had the capacity to house 540 (five hundred and forty) prisoners, but there were 1,284 (one thousand two hundred and eighty-four) living in terrible conditions. It was, according to the author, the poorest and most unhealthy prison in the State, where the most dangerous convicts were sent (Amorim, 1993, p. 16).

It turns out that, during the Brazilian military regime, many people convicted of political crimes were also sent there, due to a government policy that attempted to equate these crimes, especially those committed by the “political left”, with the so-called common crimes (Amorim, 1993, p. 19). In this sense, Decree-Law 898/69 was approved, which in its Article 27 expressly provided for the conduct of robbing financial institutions, which was widely practiced by the Brazilian left at the time, as a form of

protest⁶. As *Bruno Shimizu* explains, the expression “whatever their motivation was” aims precisely to equate political prisoners with those who committed robberies for purely financial purposes (Shimizu, 2011, p. 116-117)⁷.

As for the “Comando Vermelho”, the convictions resulting from the National Security Law had a strong influence on its origins. In the Ilha Grande Prison, prisoners were divided territorially, according to their affinities, into groups known as “phalanges”. In 1979, the prison was strongly controlled by the so-called “Falange Jacaré”, a group well known for the atrocities committed against other prisoners, such as rape, prostitution, sale of other inmates for sexual purposes and murder. The only declared enemies of this phalange were those locked in the so-called “fundão”, who were practically isolated from the rest of the prison, incommunicable. It was precisely there that, strongly influenced by left-wing organizations, the so-called “Falange LSN” was formed, which would later become the “Comando Vermelho” (Amorim, 1993, p. 24-25, Shimizu, 2011, p. 118-119).

With the political prisoners, the inmates learned several techniques to increase the effectiveness of their ventures, such as escape techniques, organizing more elaborate robberies and assembling more effective devices at home. But, even more importantly, they realized that if they joined forces, they would have a strong power to gain traction with the prison administration, especially considering the possibility of joining forces with the political prisoners, with whom the military regime was concerned, since any harm to their physical integrity could attract the attention of foreign agencies, such as Amnesty International. Thus, several hunger strikes were organized, which resulted in improvements for the inmates (Amorim, 1993, p. 27-44).

With the emergence of several demonstrations calling for an end to political crimes, those convicted under the National Security Law chose to distance themselves from common prisoners, forming an isolated and virtually incommunicado group. They aimed to draw the attention of

⁶ “Art. 27. Assaulting, robbing or vandalizing a credit or financing establishment, whatever the motivation: Penalty: imprisonment, from 10 to 24 years” [free translation] (Brasil, 1969).

⁷ “Thus, robbers of financial institutions were invariably prosecuted under the terms of the National Security Law, whether or not there was a political or revolutionary motive underlying the act. Thus, the dictatorship refused to recognize the political nature of the arrest of members of left-wing organizations, thereby denying the existence of political repression during the exceptional regime” [free translation] (Shimizu, 2011, p. 118-119).

international organizations to the existence of political prisoners in Brazil, not wanting to be confused with common inmates. However, this situation strained their relations with the latter group, a fact aggravated by the construction of a wall in the “fundão” sector and, later, by the approval of the “Amnesty Law”⁸, which only benefited the political inmates (Amorim, 1993, p. 27-44, Shimizu, 2011, p. 119-120).

Although they were already separated from political prisoners, the common prisoners in the “fundão” sector had already acquired the necessary techniques to organize themselves, being known as “Red Phalange”, due to their supposed political orientation (Shimizu, 2011: 121), and the press began to call them the “Red Command” – Comando Vermelho (Lima, 2001, p. 95).

The most important episode, however, for its emergence, occurred on September 17th, 1979, when, after a failed escape attempt, which did not materialize due to a denunciation by another prisoner, the Comando Vermelho ordered an attack as a form of revenge, in an episode known as “Saint Barts' Night”, taking control of the Ilha Grande Prison after eliminating the main leaders of the so-called “Falange Jacaré” (Amorim, 1993, p. 45-50).

The Comando Vermelho’s policy was then established in the Ilha Grande Prison, an ideology that ended up spreading throughout the prison system in Rio de Janeiro, which was aggravated by a poor judgment made by the government of Rio de Janeiro, who transferred inmates due to the incident⁹. As a result, the group’s policies gained notoriety, increasing its number of members (Shimizu, 2011, p. 122-123, Amorim, 1993, p. 50-51).

It is important to note, therefore, that contrary to what is commonly reported in the press, Comando Vermelho was not always directly linked to drug trafficking, having been founded, on the contrary, with clear

⁸ “Art. 1. Amnesty is granted to all those who, in the period between September 2, 1961 and August 15, 1979, committed political crimes or crimes related to these, electoral crimes, those who had their political rights suspended and employees of the Direct and Indirect Administration, of foundations linked to public power, employees of the Legislative and Judicial Powers, the Military and union leaders and representatives, punished based on Institutional and Complementary Acts” [free translation] (Brasil, 1979).

⁹ As Carlos Amorim explains, the group’s slogans are: “1. Death for anyone who assaults or rapes their comrades; 2. Incompatibilities brought from the streets must be resolved on the streets, because rivalry between gangs cannot disrupt life in prison; 3. Violence only to try to escape; 4. Permanent fight against repression and abuse” [free translation]. He also explains that shortly after, the group’s official slogan was created: “Peace, justice and freedom!”, which to this day can still be found on walls and trains in the capital of Rio de Janeiro (Amorim, 1993, p. 50-51).

objectives of “self-defense” for the inmates, who saw in unity among themselves a possibility of improving conditions in prison¹⁰.

Primeiro Comando da Capital - PCC

Just as had happened with the Comando Vermelho, the so-called Primeiro Comando da Capital (PCC) emerged within the prisons of São Paulo, with the main purpose of protecting prisoners from the inhumanities committed against them by other inmates and also by the police and prison administration.

It originated in the Penitentiary Readaptation Center attached to the Taubaté Custody Center, in the state of São Paulo, popularly known as “Piranhão”, because it housed the most dangerous convicts in the state. This establishment soon gained notoriety for being one of the cruelest in the country, due to the atrocities committed there, such as daily beatings, isolation of inmates, difficulties in contacting lawyers and family members, and torture (Teixeira, 2017, p. 119-126). As Camila Caldeira Nunes Dias explains, the establishment operated similarly to a “strong cell”, with inmates locked up for up to 23 (twenty-three) hours a day and allowed to take short sunbaths in small groups, with communication between them prohibited. Visits were limited and prisoners were beaten with iron bars, and they also received poor and scarce food. Hygiene conditions were precarious, with insects being inserted into food and the toilet flushed by prison staff from outside the cell at their discretion (Dias, 2011, p. 101-102).

It was in this context that, in 1993, the founding pact of the PCC was sealed, with the aim of seeking better prison conditions by directly combating those primarily responsible for the situation at the time. Among the faction's declared objectives, taken from its own “manifesto” promulgated at the time, was the deactivation of the Taubaté Custody House and the protection of inmates in light of the recent events at Carandiru¹¹.

¹⁰ According to Bruno Shimizu, it was only under the leadership of Rodrigo Lemgruber, in the 80s and early 90s, that drug trafficking activity stood out in the group (Shimizu, 2011, p. 123-124).

¹¹ “13. We must remain united and organized to prevent a similar or worse massacre from occurring again than the one that occurred at the Detention Center on October 2, 1992, where 11 prisoners were cowardly murdered, a massacre that will never be forgotten in the conscience of Brazilian society. Because we at the Command will change the inhumane prison practices, full of injustice, oppression, torture, and massacres in prisons. 14. The Command's priority is to pressure the

The first episode of the inmates' revolt became known as the “battery”, when they spent one week banging on their bars in protest against the beating of a newcomer (Jozino quoted by Latuf, 2015, p. 124-125). As a result, the inmates obtained some improvements, including permission to play soccer. It was during one of the championships organized within the establishment that a team was formed with inmates from the state capital, which became known as the PCC (Primeiro Comando da Capital). It was from this union that the organization emerged, which went beyond the sports sphere and sought to obtain better conditions for the inmates (Jozino quoted by Shimizu, 2011, p. 135).

As *Bruno Shimizu* explains, despite the size and complexity that it acquired, the public authorities initially adopted a defensive position, denying any speculation in the press about the existence of a group that controlled the prisons in São Paulo. This situation was only changed with the mega-rebellion that occurred in 2001 (Shimizu, 2011, p. 138-139).

According to *Camila Caldeira Nunes Dias*, in that year, using cell phones as the main means of organization, the group promoted a rebellion that affected 29 (twenty-nine) prisons in the State of São Paulo, which resulted not only in direct damage, namely deaths, injuries and damage to public and private property, but also in the dissemination of the PCC and its ideology (Dias, 2017, p. 171). It is estimated that the number of rebels was close to 28,000 (twenty-eight thousand prisoners), in 19 (nineteen) different municipalities (Porto, 2007, p. 75).

In May 2006, however, an even larger rebellion occurred, once again organized by the PCC. On this occasion, between the 12th and the 20th, approximately 73 (seventy-three) prisons rebelled and 439 (four hundred and thirty-nine) people died. These deaths were also accompanied by waves of violence and attacks against police officers and prison guards, private buildings, buses and civilians (Camilo, 2009, p. 63). It is speculated that the uprising only ended after an agreement between the faction's leaders and public authorities (Souza, 2007, 230-231), being also speculated the existence of a possible arrangement regarding a division of internal control of the prisons, transforming the faction into a private manager of them (Caldeira quoted by Shimizu, 2011, p. 144).

State Governor to deactivate that Concentration Camp "attached" to the Taubaté Custody and Treatment Center, from which the seed and roots of the command emerged, amid so many inglorious struggles and so much atrocious suffering” (Folha Online, 2001).

Criminological perspectives on criminal organizations

The previous chapter sought to explain the political and social context in which the two largest Brazilian criminal organizations emerged, the PCC and the CV. The PCC was created with the purpose of dismantling the “Piranhão” — a custody unit identified by prisoners as a place where acts of torture were routinely practiced — and also as a way of uniting the prison population in order to prevent tragedies such as the “Carandiru massacre” from happening again. The CV, on the other hand, developed during a period of military dictatorship, in which antidemocratic state practices prevented any contact between prisoners and the rest of society. Therefore, it is not wrong to say that the organizations’ objective was to safeguard rights, with the practice of crimes being a contingent activity that should not be confused with the purpose of these groups. The creation and dissolution of Brazilian criminal organizations is a recent phenomenon, which is why criminological studies on them are still scarce.

However, other groups dedicated to criminal activities have already been studied in different historical contexts. The criminological school that seeks to analyze such organizations is the “group criminality”, and has been present since the Italian positive school, the delinquent subculture and the labeling approach.

Regarding the Italian positive school, Cesare Lombroso understood that the association of delinquents “brings forth a malignant ferment” that highlights the individual’s savage tendencies. It was understood that the objective of such associations was, almost always, the appropriation of others’ property, that is, the grouping would serve to confront state protection. In his research, Lombroso also mentions the Italian criminal association called “Camorra”, characterized as a group of prisoners and ex-prisoners, formed in small groups, independent of each other, but subject to a hierarchy (Lombroso, 2013, p. 185-186).

Lombroso’s considerations provide initial notions for group criminality, but they were still far from delving into the subject in depth. Enrico Ferri, also from the Italian positive school, admits the existence of non-biological factors in the act of delinquency. For the author, the occasional criminal would be subject to being led by the environment to criminal practices (Ferri, 2001, p. 40).

Despite the additions brought by the Italian positivists, it is with the sociological schools of the consensus in criminology that a more in-depth study of group criminality emerges, mainly with the investigations of *Albert Cohen* on the delinquent subculture. *Cohen*, when studying crime in the United States, identified that juvenile delinquency resulted from the

impossibility of young people from lower social classes to achieve the American dream. Those young people internalized the idea of the “ethics of success” and were in a sprint for social progression in a class-based society in which progress was extremely unlikely (Dias & Andrade, 2013, p. 294-295). That way, poor young people become frustrated by their failure because since they were unable to achieve “success.”

Subcultures then emerge from the frustration of these young people in not being able to achieve the values imposed by society, leading to an inversion of the polarity of social values. In other words, there is a denial of the values of a falsely meritocratic society. The delinquency of subcultures does not occur due to the supposedly deviant values of the underprivileged classes, but rather as a consequence of the pressures and demands on the lower classes, who do not have the same financial conditions as the more powerful ones. According to *Cohen*, the basis for the violent and destructive behavior of the crowd lies in the preexistence of unresolved tensions, as well as a period of "grinding" during which a set of common feelings is developed and reinforced (Cohen, 2005, p. 55-56).

Since the theory of delinquent subcultures emerged from an analysis of young Americans in the last century, we understand that it would not be appropriate to apply it directly to explain the criminality of Brazilian criminal organizations. As it was already demonstrated, those groups emerged as a form of defense for prisoners against rights violations, and not as a rejection of dominant social values.

It is also worth mentioning another criminological school that sought to analyze group criminality, namely the labeling approach. According to this theory, deviant behavior would be a creation of society, in such a way that the elite ends up deciding what behaviors it considers acceptable and, on the other hand, criminalizes undesirable ones. The so-called “outsiders” would therefore be deviant groups that disobeyed the behaviors imposed by society (Becker, 2008, p. 29). It seems to us, however, that this approach would also not be adapted to the phenomenon of criminal organizations, although they are characterized as marginalized groups in society. This is because their primary purpose - at least the original one - would not be criminal practice, but rather the self-defense of incarcerated individuals.

In order to solve this issue, *Bruno Shimizu* analyzes criminal organizations based on their elements of solidarity and gregariousness. Using a psychoanalytic approach, he draws a connection based on Freudian mass psychology. According to the author, solidarity is observable in criminal organizations through the standardization of egos, consisting of relationships of affection between members, justifying their maintenance. Gregariousness,

in turn, would be the tendency to group together, an instinct responsible for making man a collective animal (Shimizu, 2011, p. 165).

It is worth noting that group psychology and ego analysis were analyzed by *Sigmund Freud*, aiming to explain how an individual behaves when he or she is part of a mass, that is, a group of people focused on a specific purpose, even allowing him or her to commit cruel, brutal and destructive acts for the sake of the collective, giving up his or her individuality (Freud, 1996, p. 85).

Brazilian prisoners are subject to situations of extreme human degradation resulting from prison overcrowding and state abuse. The environment in which they live is conducive to revolt and the need to assert independence, which occurs in defiance of the social values responsible for the legitimacy of the functioning of the penal and penitentiary system (Shimizu, 2011, p. 188).

From this perspective, the State assumes the role of a traumatizing agent, while the criminal organization can be seen as a way of living with everyday trauma. In situations where the State assumes that role, imposing a complete refusal on the subjects and acting with unspeakable violence, its paternal image merges with the memory of violence. In a remodeling of the Freudian myth, therefore, the children, identified by hatred, begin to conspire the death of their father. This creates a mass susceptible to all the collective psychic phenomena described by Freud (Shimizu, 2011, p. 188-194).

Few examples seem clearer than the Brazilian prison system when it comes to demonstrating the potential of the State to become a traumatic agent, since the “war against criminals” carried out by the Brazilian State ends up operating its penal system almost as a genocidal apparatus (Shimizu, 2011, p. 195).

It is against this “tyrannical” State that represses the people subjected to it that the founders of the criminal organizations sought to impose themselves while planning the founding of the resistance groups (Shimizu, 2011, p. 1999). The pro-incarceration policy adopted in the country and the degrading conditions of the Brazilian prison system are the origins of those groups, which are instruments of defense of the prisoners, who unite in the form of a mass, to resist the oppression of the “father”.

However, once the organizations are formed, it is possible to observe within these groups the reproduction of several of the power structures against which the masses themselves rebelled. The organization takes the place of the “tyrannical” State, establishing an extremely rigid code of conduct, with brutal punishments for those in non-compliance (Shimizu, 2011, p. 1999).

The “PCC statute” is an example of this phenomenon. Structured in several articles, it must be obeyed by the members of the criminal association, thus resembling a law that must be followed by the members of a State.

A handwritten copy of the statute was recently seized at the Monte Cristo Agricultural Penitentiary. Part of its text is quoted below:

Bylaws:

Article I - All members must be loyal and respectful to the PCC.

Article II - Always fight for peace, justice, freedom, equality and unity, aiming at the growth of our organization, always respecting the ethics of crime.

Article III - All members of the command have the right to express their opinion and have the duty to respect everyone's opinion, and within the organization there is a hierarchy and discipline to be followed and respected. Any member who tries to cause division within the command by disrespecting these criteria will be excluded and decreed.

Article IV - We make it clear that we are not members of a club, but rather members of a criminal organization that fights against oppression and injustice that arises on a daily basis and tries not to affect it, therefore the command does not tolerate complacency and weakness in the face of our cause. [...]

Article XVII - Any member who leaves the organization and joins another faction or rats out someone related to the command will be sentenced, and anyone who messes with our family will have their family exterminated. The command has never messed with anyone's family and does not accept it, but traitors and rats will not have peace. No one is forced to remain in command, but the command will not be betrayed by anyone [free translation](Macedo, 2017).

It is immediately clear that there is a hierarchical organization that tries to reproduce the state model. The criminal organization, created to resist the oppressive state, has a statute with rules that are much stricter than those imposed by the latter, with brutal punishments not only for those who fail to comply, but also for their families. Such a model, in fact, ends up intensifying even further, as Shimizu rightly observes, the lack of freedom of the members of the mass (Shimizu, 2011, p. 200).

Critical analysis of the solution proposed by the Brazilian Government

As explained above, the issue of criminal organizations is not new in Brazil. It has been developing for several decades due to, among other reasons, the poor conditions in Brazilian prisons, which are overcrowded and poorly structured. One of the most recent manifestations of this crisis, as mentioned above, were the conflicts in early 2017 in prisons in the north and northeast of Brazil, which resulted in dozens of deaths.

As a solution to the problem, the Brazilian government proposed, through its Minister of Justice at the time, the construction of new prisons, seeking to create new vacancies and redistribute inmates. In this sense, it was intended to allocate R\$200,000,000.00 (two hundred million reais) for the construction of 05 (five) prisons, each with an approximate cost of R\$45,000,000.00 (forty-five million reais) and housing between 200 and 250 inmates each. The idea was that these establishments would serve highly dangerous criminal leaders. There would also be a transfer of approximately R\$800,000,000.00 (eight hundred million reais) to the states of the Federation, so that they can build state prisons (Cipriani, 2017).

This would not be, in our view, the most appropriate solution to the issue. As *Thomas Mathiesen* explains, although there are many divergences regarding the alternatives to deprivation of liberty, with some advocating abolition, others a reduction of the system and some prison reform, at least within the scope of critical doctrines there is unanimity regarding one point: the refusal to build new prisons. According to the author, prison would be a giant on clay ground, since, despite appearing to be a solid system, it actually has deficient pillars, which would be the very objectives of incarceration, which prove, in practice, to be totally irrational (Mathiesen, 2005, p. 7)¹².

Among the arguments usually presented to justify incarceration, that of rehabilitation or intimidation of the individual is disproved by empirical studies that prove that prisons, contrary to what is intended, have counterproductive effects. In this sense, the study by *Lloyd W. McCorkle* and *Richard R. Korn* states that the prison system provides the incarcerated with a way of life that prevents them from internalizing and converting

¹² The author explains that “The Achilles heel, the mudslide of the prison, is its utter irrationality in terms of its own stated goals, a bit like the unproven witch hunts. In terms of its own goals, the prison contributes nothing to our society and our way of life. Report after report, study after study, in their dozens, hundreds and thousands, clearly show this” [free translation] (Mathiesen, 2003, p. 89-90).

social rejection into self-rejection. On the contrary, it encourages the prisoner to further reject those who harbor this feeling towards him (McCorkle, Korn quoted by Mathiesen, 2003, p. 90).

It is also important to highlight that, according to *Mathiesen*, the idea of rehabilitation is as old as prison itself, but it has different approaches from time to time, according to the market interests of the period. Thus, it can be seen that rehabilitation models are not designed according to the needs of the individual. An example of this is that in the 1600s, the “principle of profitable work” was defined according to the mercantilist and economic policies of the time. Currently, however, the “principle of discipline and education” as forms of rehabilitation is the result of the need to respond to the crisis in the penitentiary system, making it necessary to prove to society that the State is still capable of maintaining order within prisons (Mathiesen, 2006, p. 42-43).

With regard to general prevention, another argument commonly used to defend incarceration, it is important to clarify, initially, that the possibility of punishing a person in order to serve as an example to third parties, preventing them, who had no connection with the initial act, from committing crimes is morally questionable (Mathiesen, 2006, p. 76). Furthermore, it should be noted that the idea intended by general prevention is not transmitted directly to society, always depending on the media to perform this function. However, these media are usually configured by large business corporations, with economic and audience interests¹³. This means that, in the filtering processes (selection of the most sensationalist and dramatic news) and focus (highlighting news in which these characteristics are more pronounced), there is an evident distortion of the communication to be transmitted to the general public, and it cannot be guaranteed that general prevention has its effects at the levels and within the desirable and appropriate limits (Mathiesen, 2006, p. 71-73).

It should also be stated, according to empirical research cited by *Mathiesen* and *Schumann*, that the preventive effects of incarceration on third parties are very modest in terms of the increased probability of imprisonment and are practically non-existent in relation to the severity of the sentence. Furthermore, the preventive effects appear to be stronger in groups of people who, in general, are already law-abiding, and are statistically less “predisposed” to criminality (Schumann quoted by Mathiesen: 2003, p. 91).

¹³ “...the interests in question may be summarized as a combination of news and sales interests: a combined emphasis on striking news and news that sells” (Mathiesen, 2006, p. 71)

Another argument deconstructed by *Thomas Mathiesen* is that incarceration would be beneficial because it deters offenders. The author explains that this detention can be divided into two models: selective detention, which would be the prediction of high-risk violent offenders based on their background, and collective detention, which involves the use of detention against entire categories of likely repeat offenders. For the author, the first category is extremely difficult, especially due to the so-called “false positives” and “false negatives”, that is, prediction errors (Mathiesen, 2003, p. 94-95). The result of such mistakes would be the imprisonment of several people who would never commit new crimes, since it is a hypothetical future¹⁴.

In turn, collective prohibition, in addition to having its morality highly questioned, shows very modest results, according to studies by the “Criminal Career Research Panel”. Between 1973 and 1982, in the United States, the number of prisons doubled, while the crime rate did not decrease, but increased by 29%. It is also reported that if these prisons had not been built, the rate would have been only 10% to 20% higher. This represents a very small gain for such an investment, in addition to being easily circumvented, since generations of criminals are renewed (Blumstein quoted by Mathiesen, 2006, p. 136-137).

Finally, the claim that imprisonment is a way of balancing justice, specifically between the weights of the reprehensible act and the punishment, must be challenged. According to the author, with the replacement of corporal punishment by prison sentences, punishment began to be measured by the time taken from the subject. However, for this to happen, two premises are necessary: that time is an objective entity, equal for everyone; and that it can be evaluated on a scale of rationality, with an absolute zero. According to the author, these two premises are false, since sufficient prison time is not intersubjective, but rather varies from person to person. Furthermore, prison time is not a rational scale,

¹⁴ “To Christie and many others the problem of the false positives-the fact that many who are actually not dangerous will have to be detained if we are to detain a few who are - constitutes a serious question of principle: what is the justification for locking up many who are actually not dangerous in order to secure ourselves from a few who are?” (Christie quoted by Mathiesen, 2006, p. 87). The author also explains that: “The problem is this: what is the basis, in terms of principles, for the sentencing to prison for acts which otherwise, without the sentence, may or will occur in the future? The prevention of future acts is here not just a more or less vaguely formulated goal, but the explicit grounds or reason for the particular sentence. What is the basis for grounding a sentence in future acts?” Mathiesen, 2006, p. 87).

since it is characterized by the individual's suffering and the imposition of force by the government, and these measures cannot be quantified in a proportional manner (Mathiesen, 2006, p. 136-137).

It can be seen that prison is not justifiable by either the theories of individual prevention or social defense, and is, in its own purposes, a fiasco. According to *Mathiesen*, denial or ignorance of this situation occurs in and due to three spheres: firstly, in the public sphere, influenced especially by the mass media. For the author, the information passed on by the prison system is systematically filtered and distorted by the press. If the content of the media stopped being merely superficial entertainment and was concerned with the critical formation of its audience, there would be positive results in the other two layers to be mentioned, since the first, in the author's opinion, is the most important and the one that exerts the most influence (Mathiesen, 2003, p. 101-105)¹⁵.

The second scope of denial would be the institutions specifically focused on preventing and persecuting crime, such as the police, courts of justice and prison staff. Prison system administrators defend it for three reasons: either because they have been co-opted by the system, becoming part of it; out of loyalty to it; and because of the rigid system of discipline to which they are subjected (Mathiesen, 2003, p. 98-99).

Finally, the influence of particular groups, such as research groups and academia itself, is undeniable. Supporting his thesis, *Mathiesen* explains the concept of “doxa”, which would be a suffix designated to describe something that is unquestionable during a certain period of time. Directly related to it, “orthodox” ideas would be those in which the details are discussed, but only the most superficial ones, keeping the basic premises unchanged, while in “heterodox” ideas, fundamental issues about the basic premises are raised. The problem is, according to the author, that the academic stratum that is best informed about the harmful effects of the prison system is systematically migrating towards the realm of orthodoxy and even doxa, as opposed to the critical doctrine of the 1970s. (Mathiesen, 2003, p. 99-101).

That being said, the Brazilian policy of building new prisons in order to control the penitentiary crisis and remedy the historical problem of

¹⁵ “The prison is a profoundly irrational system in terms of its own stated goals. The difficulty, however, is that this knowledge is largely secret. If people really knew how poorly the prison, like other parts of the criminal control system, protects them—indeed, if they knew how the prison only creates a more dangerous society by producing more dangerous people—then a climate for the dismantling of prisons would necessarily begin now” [free translation] (Mathiesen, 2003, p. 95).

controlling criminal factions in these spaces is shown to be irrational, since, as demonstrated, not only are they a favorable environment for the emergence of those groups, due to the constant disrespect for human rights that are committed in them, but also because incarceration itself is an institution that is increasingly less sustainable as a way of solving crime.

Conclusion

As demonstrated in this article, the issue related to criminal organizations operating in Brazilian prisons has been discussed for a long time, but it is apparently far from being resolved. On the contrary, as observed at the beginning of 2017, there has been a strengthening of these groups, which have already gone beyond the walls of penitentiaries and exercise control over various areas of activity in communities in large cities.

In response to these massacres, resulting from clashes between rival groups, the Brazilian government announced the transfer of a significant amount of funds for the construction of new prisons, ensuring an increase in the number of places and the redistribution of inmates. However, although the relationship between the emergence of criminal organizations and the poor conditions in which inmates are held is well-known, we do not believe that this solution is the most appropriate for the case.

In the terms set out above, firstly, it was clear that prisons are the ideal setting for the emergence of those groups, given the already highlighted poor conditions in which they live and the constant need to unite with other inmates, in order to be less vulnerable to the risks to which they are subjected in prison, whether from harm to their physical safety perpetrated by other inmates or by the administrators and employees of the establishment. In this sense, it is very common, for example, for newcomers to prison to seek, from the very beginning, to join an organization, even if they had no prior interest in getting involved with organized crime, but rather, with the sole and exclusive aim of surviving, protecting themselves from attacks and rape.

Furthermore, it has become clear that the prison system as it is currently organized is a total failure, since it does not fulfill its prevention and resocialization functions, but rather often has counterproductive effects, pushing young people who would otherwise not commit crimes further into the “world of crime”, or causing them to commit crimes even more serious than their initial ones.

Therefore, although there are constant disagreements about which paths should be followed regarding alternatives to prison, there is a consensus, at least within the scope of critical doctrine, that prisons as a whole have

failed, and it is therefore irrational to believe that building new ones will solve the problem of organized crime. On the contrary, it is undeniable that, in the current context of the Brazilian prison system, incarcerating any person, regardless of their social status, criminal record or conviction, makes them a potential future member of a criminal organization. Thus, it is clear that the construction of new prisons should not be encouraged, so that the large amount of money allocated for this purpose by the Brazilian government could be applied to more effective measures to address the issue, such as social work in communities, aimed at meeting their basic needs, which in the absence of state support, are often met by groups; and, mainly, improving the quality of life of those already incarcerated, ensuring that they receive, in fact, humane treatment and respect for their fundamental rights and basic needs, in addition to internal activities that effectively help in their resocialization, guaranteeing access to education, culture, entertainment and work.

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