Theme: Criminology in Latin America:
Between cultural imports and paths of decolonization
Guest Editors:
Matías Bailone, Ana Míria Carinhinha and Cléber da Silva Lopes
# TABLE OF CONTENTS

## Special issue:
- Criminology in Latin America: Between cultural import and paths of decolonization

## Editorial
- Criminological Encounters in a time of social distancing
  *Mattias De Backer and Lucas Melgaço*

## Articles
- Operationalizing injustice. Criminal selectivity as a tool for understanding (and changing) criminalization in Argentina
  *Valeria Vegh Weis*
- Broken windows in the Rio de la Plata: Constructing the disorderly other
  *Sebastián Sclofsky*
- Peripheral criminal injustice. How international support for criminal procedure reform in Ecuador worsened an already weak penal system
  *Jorge Eduardo García-Guerrero & Stefan Krauth*
- O exame criminológico no Brasil à luz da criminologia clínica de inclusão social proposta por Alvino Augusto de Sá
  *Andressa Loli Bazo, Maria Isabel Lima Hamud, Natália Macedo Sanzovo*
- Novas perspectivas sobre os estudos das tendências de homicídios
  *Felipe Mattos Monteiro*
- O contraprograma dos drones: Usos das Tecnologias de vigilação nos presídios brasileiros
  *Simone da Silva Ribeiro Gomes*

## Interview
- Criminology in Latin America: a dialogue with Eugenio Raúl Zaffaroni.
  *Interviewed by Matías Bailone*
- Hope in the trenches of resistance: Interview with Talíria Petrone
  *Interviewed by Ana Míria Carinhanha and Lucas Melgaço*
- A esperança nas trincheiras da resistência: Entrevista com Talíria Petrone
  *Entrevistada por Ana Míria Carinhanha e Lucas Melgaço*
TABLE OF CONTENTS

Special issue:
Criminology in Latin America: Between cultural import and paths of decolonization

Book Review
¡Bienvenidos al lawfare! Manual de pasos básicos para demoler el derecho penal (by E. R. Zaffaroni, C. Caamaño, & V. V. Weis).
A Book Review by Marcos Aldazabal

Policing or perpetuating violence? State-sanctioned milícias and police in Rio de Janeiro, Brazil [Review of the book A república das milícias: dos esquadros da morte à era Bolsonaro (by B. P. Manso)].
A Book Review by Jessie Bullock

Art Intervention

Police: Forgotten soldiers
Zare Ferragi

Forum:
Digital technologies in community policing
Guest-edited by Lior Volinz and Lucas Melgaço

Articles

Critical criminological research on environmental and social harm: Some lessons learnt and suggestions for future research
Anna Di Ronco

Policing by another name and entity: BIAs, delegation, and public and private technologies
Debra Mackinnon

Social media, local justice, and citizen-led digital policing
Katerina Hadjimatheou

Technical solutions to social problems: On digital participatory surveillance and the threat of the homeless
Lior Volinz

Digital literacy and information inequality in Dutch WhatsApp Neighbourhood Crime Prevention groups
Anouk Mols
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We would like to thank Tiago Macambira for allowing us to use his photograph on this issue's cover. Follow him on: https://www.instagram.com/tiago.macambira/

Criminological Encounters is hosted and supported by the Crime and Society Research Group (CRiS) of the Vrije Universiteit Brussel (VUB)
Criminological Encounters in a time of social distancing

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It has been a challenging year and a half for the entire world, and also for the editorial team of Criminological Encounters. For this reason, we want to start this preface with the expression of heartfelt thankfulnessto all the reviewers who have, in these difficult circumstances, found the time to assess new submissions and offer advice to their authors. Without this totally free and voluntary labour our (or any) journal would cease to exist.

With this, we also want to stress that Criminological Encounters is a not-for-profit initiative, led by a passionate editorial team who contribute to the journal’s progress in their spare time, because they believe the dissemination of research results, often funded by public authorities and, therefore, by citizens, should not be controlled by big publishing companies and stored behind paywalls. Reviewers, contributors and members of the editorial team are not only putting in their time, they become a part of a community of people who believe in the democratisation of knowledge. For that same reason, Criminological Encounters is radically open-access. That is also why it offers a platform to scholars from anywhere on the globe and to contributors with a non-academic background.

It is comforting to see that we are not alone in this endeavour. Criminological Encounters is now a member of the Criminology Open Association of Diamond Outlets (COADO; www.coado.org), a network led by Criminology Open initiative (www.criminologyopen.com) and which assembles journals which, like ours, are free to read and publish in.
To take this story one step further, the editorial team has decided that from now on authors and reviewers are given the option of engaging in open rather than double-blind review. In practice, this means that, if both author and reviewer agree to their identity being revealed to the other, the review process becomes an open and constructive dialogue between colleagues wanting to produce the best possible paper. Open review has the additional value of giving credit to the work undertaken by reviewers. The editorial team would like to open a new section in the journal called “commentary”, a space where reviews of published papers are given an audience. Ideally, commentaries are in turn the object of new discussions between authors, all published openly in the journal’s new section.

Criminological Encounters, volume 4, issue 1, consists of 19 contributions, in two thematic sections. The first is a special issue on “Criminology in Latin America”, with 6 full articles, 2 interviews, 2 book reviews and 1 art intervention, guest edited by Matías Bailone, Ana Míria Carinhanha and Cléber da Silva Lopez. The second is a forum, consisting of five short papers on “Digital Technologies in Community Policing”, guest-edited by Lior Volinz and Lucas Melgaço. It is with great pride that we can present this rich collection, after such a challenging time. Enjoy the read!
**Mattias De Backer** is a postdoctoral researcher at KU Leuven and the Université de Liège. He holds a Master’s in Philosophy (UGent), a Master’s in Urban Studies (VUB), and a PhD in Criminology (VUB). He has worked in the fields of social and cultural geography and criminology, on topics such as public space, urban youth, social control and territory, migration and diversity, participatory and creative research methodologies and post-structuralist philosophy. With Lucas Melgaço, Mattias is editor-in-chief of the open-access journal Criminological Encounters. He has published the edited collection “Order and Conflict in Public Space” with Routledge (2016) and the book “Radicalisering: donkere spiegel van een kwetsbare samenleving” with Academia Press (2020).

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Latin American criminology has struggled between originality and import, between political commitment and ideological asepsis. In this special edition, we want to discuss the particularities of this subcontinent that has so much to offer to countries on the margins of planetary power.

Criminology in Latin America developed within the walls of law schools, under the strong influence of positivist criminology. This influence can be found in many southern capitals in the 19th century like Rio de Janeiro and Buenos Aires, but also in the surge of critical movements in the 1970s. Latin America, like all territories of colonization, but also affected by the new forms of cultural and financial colonization of the 19th and 20th centuries, saw the development in their national academies of a way of understanding the criminological phenomenon linked to the needs of their ruling classes.

Therefore, as Rosa del Olmo, one of the most prestigious voices of critical criminology in our region, said in a fundamental book to understand the particularities of Latin America, the way of understanding crime and criminals in our countries was indissolubly associated to the so-called Lombrosian
criminological positivism (Del Olmo, 1981). And in many of our countries, this arrival of thought inspired by Italian alienists and obscure theorists, who were worried about the multitudes and their politicization, came to serve unscrupulously the needs of the anti-popular oligarchies of the nineteenth century and much of the twentieth century. In countries such as Brazil, Mexico, Bolivia and Peru, moreover, this was mixed with the racist and anti-Americanist beliefs that swarmed in those years in law and medical schools, and in all the social hygienist policies that shaped institutions such as police forces and penitentiaries. Many of the problems of institutional violence, police abuse, prison issues and the organization of judicial and psychiatric institutions, come from that long period in which criminology was only the loyal servant of the needs of the ruling classes to repress the urban crowds and segregate the asocials.

That is why the mission of the first critical thinkers in this region where power and knowledge are so intricately related was not an easy one. In the wake of the emergence of the social and political movements of the 1960s, the politicization of the region’s youth, and the political processes of decolonization and popular governments, new dissent views on the official approach to the problems of crime and punishment emerged in Latin America. The local reception of the theories of symbolic interactionism and British critical criminology led to the translation of texts from these traditions into Spanish and Portuguese, which widely influenced Latin American Criminology. This influence was not enough to free Criminology from law schools, where critical thinking would take much longer to arrive (Bailone, 2020). While in the United States and Europe Criminology began to develop as an autonomous academic discipline under the strong influence of the Social Sciences, in Latin America it remained linked to the legal field and in places like Brazil it never became a distinct academic discipline (de Freitas & Ribeiro, 2014).

Notwithstanding the disciplinary development of Criminology within Latin American law schools, local criminological production has also benefited, since the 1970s, from research carried out in the Social Sciences. These works form a robust and fragmented subdisciplinary field, which has been called the sociology of crime and violence (Briceño-León 2016; Alvarado, 2020). As Alvarado (2020) points out, the development of this subdiscipline followed its own paths in several countries. Worthy of mention are Brazil, Mexico, Argentina and Colombia, which concentrate most of the social research on criminological themes such as perceptions and fear of crime; interpersonal or collective aggressions; criminal organizations; urban, regional and border crime and violence; police organizations; punishment and prison system; and youth violence.

This subdisciplinary field is now consolidated, formed by an epistemic community endowed with institutional resources and that has been using a plurality of theories and methodologies - although qualitative studies concentrated in a single country still predominate - to explain the various forms of violence that exist in the region. Part of this epistemic community has also been engaged in the production of useful knowledge to break the silence and censorship with which it has been intended to hide the violent reality of Latin America; useful for giving a voice to victims of crime and abuses committed by the police and the institutions of the Criminal Justice System; and useful for rebuilding the social fabric, reconciling conflict actors and pacifying society (Briceño-León 2016, p. 27).

The articles gathered in this special issue reflect the unique path of criminological studies in Latin America described above. Sébastien Sclofsky, in “Broken windows in the Rio de la Plata: constructing the disorderly other,” discusses the relation between Broken Windows theory, the quest for zero-tolerance or avoidance of any image of impunity, and the development of Uruguay’s security policies in the last decade.

Valeria Vegh Weis, in “Operationalizing Southern Criminology. Theoretical Tools to Understand (and Change) Criminalization in Latin America,” writes about the systematic injustice of “criminal selectivity” in Argentina. She describes how it displays at primary (the enactment of statutes by legislators
and the executive power) and secondary criminalization (the enforcement of the law by police officers; the court process by prosecutors, defense lawyers, judges, and juries; and the administration of punishment by correctional officers or parole boards) and contests the unfair patterns and unequal functioning of the criminal justice system.


Marcos Aldazabal wrote a book review of Raúl Zaffaroni, Cristina Caamaño e Valeria Vegh Weis work: “¡Bienvenidos al lawfare! Manual de pasos básicos para demoler el derecho penal”, published in Buenos Aires by “Capital Intelectual”. They speak about the empowerment of Courts for key political actors; the use of the judiciary by elites and the growing role of the Constitutional and Supreme Courts in determining the political arena: “the judicialization of mega-politics”. They highlight two main points: “an in-depth analysis of the criminalization of politics”, and the accessibility of the book “that addresses the general public and allows non-specialized readers to get a first insight in a situation that, due to its impact into politics, affects every citizen’s life”.

In "Novas perspectivas sobre os estudos das tendências de homicídios: uma análise das trajetórias latentes das taxas de homicídios no estado de Santa Catarina – Brasil," Felipe Mattos Monteiro used Group-Based Trajectory Modeling to analyze, beyond general trends, the growth of homicide rates in Santa Catarina between 1992 and 2017.

Simone Gomes presents the dynamics of surveillance technologies used by inmates and prison officers in Brazil, as well as their impact on the prison system. In “As múltiplas vias das tecnologias de vigilância nos presídios brasileiros”, she discusses how criminal factions present creative and technological solutions by sharing social control within prisons. Gomes did this based on empirical and qualitative research that was carried out in prisons in the cities of Manaus, Fortaleza, Rio de Janeiro and Rio Grande.

In “O Exame Criminológico no Brasil à Luz da Criminologia Clínica de Inclusão Social Proposta por Alvino Augusto de Sá”, Andressa Loli Bazo, Maria Isabel Hamud and Natália Sanzovo highlight critical aspects from the practices proposed by Alvino Augusto de Sá in his technical evaluations of prisoners from the perspective of the Clinical Criminology of Social Inclusion.

Zare Ferragi, in “Police: Forgotten Soldiers”, uses photographs taken in 2009-10 to reflect the meaning of community-policing for Brazil. He analyzes the institutional response by the São Paulo state Military Police (or PMESP – Polícia Militar do Estado de São Paulo) to the adoption of community policing practices imported from the Japanese koban system (neighborhood police-based system), as an approach to respond to urgent social demands. He wonders how policing can be an ally to confront strong social inequalities – poverty, income distribution, unemployment, among others.


This issue also features two interviews. In “Criminology in Latin America: a dialogue with Raúl Zaffaroni”, Matías Bailone spoke to one of the most renowned jurists and criminologists in the Spanish-speaking world about his academic and professional trajectory and his impressions about critical
Crinimology in Latin America.

Ana Míria Carinhanha and Lucas Melgaço conducted the interview, “Hope in the trenches of resistance”, with the Brazilian federal deputy: Talíria Petrone. They talked about her life story and work in the Brazilian congress, her friendship and political partnership with human right’s activist and politician Marielle Franco, and about the difficulties and perspectives in fighting for democracy and social inclusion in a scenario of hatred and violence.

References


Matías Bailone (1980), PhD, is a professor of criminal law and criminology at the University of Buenos Aires. Postdoctoral researcher at the Institute of European and International Criminal Law of the University of Castilla-La Mancha. His areas of research are international criminal law, state crimes, genocide and critical criminology. He is currently Legal Secretary of the Supreme Court of Justice of the Nation of Argentina. General Secretary of the Standing Committee of the United Nations Crime Prevention in Latin America (COPLAD - ILANUD, San Jose of Costa Rica). He has published several books in Spain, Argentina, Peru and Chile.

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Operationalizing injustice. Criminal selectivity as a tool for understanding (and changing) criminalization in Argentina

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Keywords: criminal selectivity, Argentina, criminal justice system, criminalization, over-criminalization, under-criminalization

Abstract
This article proposes that the groundbreaking concept of “criminal selectivity” (Zaffaroni 2000, 2011, 2011b), not yet extensively used in the English literature, could benefit from a critical conceptualization and operationalization. The hope is that the resulting tools might facilitate the identification of the unfairness patterns and the subsequent transformation of the criminal justice system unequal functioning. To do so, this contribution will explore the framework of the notion of criminal selectivity to later describe how it displays at the two stages of the criminal justice process, i.e., primary and secondary criminalization. On the one hand, “primary criminalization” involves the enactment of statutes by legislators and the executive power. On the other hand, “secondary criminalization” encompasses the enforcement of the law by police officers; the court process by prosecutors, defense lawyers, judges, and juries; and the administration of punishment by correctional officers or parole boards. As none of these instances can possibly hold all the possible negative social behaviors accountable, an inquiry arises: what are the criteria to criminalize some behaviors and not others? Digging into this question, the article will provide some conceptual precision in relation to the mechanisms through

1 A Portuguese version of this article is being published at the Revista Brasileira de Ciências Criminais (2021)
2 Funded by the Federal Ministry of Education and Research (BMBF) and the Baden-Württemberg Ministry of Science as part of the Excellence Strategy of the German Federal and State Governments
which criminal selectivity operates. It will be argued that this filtering process works disregarding some behaviors and actors (under-criminalization) and focusing on others (over-criminalization) and that this different attitude responds to socio-economic grounds rather than to the involved social harm. Finally, building upon the described conceptual tools, the article analyzes the criminal justice system in Argentina.

Introduction

"Don't shoot again!". These are the words of a young man lying on the ground with a fresh gunshot wound in some random street in Buenos Aires, Argentina in 2017. The police officer, Luis Chocobar, shoots despite the plea. The young man dies. A video recording of this event goes viral when the police officer is publicly congratulated by the then Minister of Security, Patricia Bullrich, and received by the then President of the country, Mauricio Macri, in the government palace. This political support becomes known as the "Chocobar doctrine", meaning the overt legitimation for the police to shoot in case of doubt (Fava, 2018; Murano, 2018). Meanwhile, the jobless young man is labelled as a criminal and becomes a representative of the 70% of the prison population who have committed only minor crimes against property (SNEEP, 2018).

The contrasting fates of the police officer and the young man are not isolated events, but are part of a systematic injustice that can be conceptualized as "criminal selectivity" (Zaffaroni, Alagia, Slokar 2000, Zaffaroni 2011a, 2011b). This notion, to be further developed throughout this article, describes the systematic unfairness in the creation and enforcement of criminal law that works to the detriment of the subsets of the population who are most vulnerable, in terms of their socio-economic status, gender, age, religion or ethnicity. This article proposes that this ground-breaking concept, which is not yet extensively used in the English literature, could benefit from a critical conceptualization and operationalization. The hope is that the resulting tools might facilitate the identification of the patterns of unfairness and the subsequent transformation of the unequal functioning of the criminal justice system.

To do this, this contribution will explore the framework of the notion of criminal selectivity and will later describe how it is manifest in two stages of the criminal justice process, that is, primary and secondary criminalization. On the one hand, "primary criminalization" involves the enactment of statutes by legislators and the executive power. On the other hand, "secondary criminalization" encompasses the enforcement of the law by police officers, the court processes carried out by prosecutors, defence lawyers, judges, and juries, and the administration of punishment by prison officers and parole boards. As none of these instances can possibly hold people to account for all the types of negative social behaviour that exist, the following question arises: what criteria are used to criminalize some types of behaviour and not others? Digging into this question, this article will provide some conceptual precision in relation to the mechanisms through which criminal selectivity operates. It will be argued that this filtering process works by disregarding some behaviour and some actors (under-

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3 Following this case, the Ministry of Security issued a protocol entitled Reglamento General para el Empleo de las armas de fuego por parte de los miembros de las Fuerzas Federales de Seguridad [General Regulations for the Use of Firearms by Members of the Federal Security Forces]. The regulation authorizes law enforcement agencies to shoot when “the alleged offender is escaping after causing or trying to cause either the death of or severe injuries to another person” or when the suspects outnumber the police. This protocol was issued two issued it to avoid mass protests.
criminalization) and focusing on other behaviour and other actors (over-criminalization), and that these different attitudes respond to socio-economic grounds rather than to the social harm that is involved.

It is notable that even though these mechanisms are present in criminal justice systems all over the globe, their intensity is particularly striking in Latin America, and Argentina is no exception here. Relying on the principle of less eligibility that was elaborated by Rusche and Kirchheimer (1938/2004), it is not surprising that, as the most unequal region in the world (Lissardy, 2020), Latin America is also the territory that suffers from the most unequal deployment of criminalization. To demonstrate this trend, and by building upon the conceptual tools described above, the article will end by analysing how the criminal justice system works in Argentina. Although the examples deal with this country in particular, most of the reasoning can shed light on the general situation of the region. Overall, the article seeks to contribute to the analysis of the criminal justice system in Argentina (and, indirectly, in other Latin American countries) by proposing that the operationalization of the concept of criminal selectivity might form a suitable theoretical framework for making sense of the extent of the injustice and, hopefully, for changing it.

The conceptual framework: Criminal selectivity within the dynamics of conflict and control

Following Alessandro Baratta, criminology can be understood as the complex and dialectic interaction between conflict and control within a specific socio-economic framework (1986/2001: 227). This means that a comprehensive criminological perspective should include the study of both conflict and control.

What are conflicts about? Social conflicts describe the broad arenas of struggle, which include socio-economic, cultural, ethnic, gender, and religious aspects. As an example, immigration as a social conflict in Europe involves dimensions such as religion (e.g., the Catholic and Muslim worlds), ethnicity (e.g., Black, Brown and White subsets of the population), gender (e.g., the nexus with religion and the double burden attached to female migration) and class (e.g., Europeans with a guaranteed standard of living and immigrants fleeing from armed conflict, political persecution, or extreme poverty). Despite these multiple dimensions, most social conflicts, including immigration, are usually reduced to criminal conflicts. Immigration, for example, has been approached through the criminalization of unlawful entry, the dissemination of moral panics against terrorism, and the expansion of militarized policing, among other mechanisms (see Franko, 2019). The fact that criminal conflicts are, first and foremost, social conflicts also means that they are context-sensitive: they change according to the place and the time. Continuing with the example, immigration is not such a major social or criminal problem in Latin America as it is in western Europe, and it was not always such a problem in Europe either. To this we should add that what is regarded as a criminal conflict generally follows the dominant interests in a given society. Thus, it is more likely that, within a predominantly Caucasian and wealthy Europe, governments end up criminalizing the entry into the country without the necessary documentation yet do not criminalize the denial of food to a person in need.

Looking at control, there are also two dimensions: social control and criminal control. There is a great deal of discussion about the concept of social control. The first to use the term was Spencer in 1879, and it was later used by Ross in 1896 (Anitua, 2005). Decades after this, the structural-functionalist theory understood the law as the main instance of social control. The discussion expanded and, because of the multiple uses of the term, Cohen ultimately labelled it “a Mickey Mouse concept”, saying that it has been used to characterize “all social processes that induce conformity, from childhood socialization until public execution” (1985: 5), or, in simple words, for almost everything to the point
that we no longer know what it is. Van Swaanning followed this logic and explained that social control, as “an Orwellian conspiracy of the State and its accomplices is too negative and [...] does not reflect the currently fragmented and partly privatized forms of social control at the national level” (1997: 38). In contrast to the loose and undefined usage, Cohen understood social control as the organized ways in which society responds to the behaviour and the people considered deviant, problematic, worrying, threatening, conflictive, or undesirable in one way or another (1985: 1). Pavarini proposed the notion of “formal social control”, which is the control applied by the agencies institutionally appointed to ensure social discipline through formalized procedures and forms of intervention (1980: 109). For the Italian thinker, everything that does not fit into this notion is informal social control (Pavarini, 1980). Lastly, Melossi (1990) distinguished between “social control of action”, meaning the internalization of current values, and “social control of reaction”, which represses those behaviours contrary to the established order. Social control of reaction is divided into “informal or diffuse social control” (family, religious groups, the media, work, school, and sports clubs) and “formal or institutionalized social control”, which is made up of non-punitive and punitive state institutions (ministries, government, and criminal justice agencies).

It is notable that social and criminal control have increased, both qualitatively and quantitatively, since the events of 9.11 and the emergence of the so-called “war on terror”, with its deployment of surveillance technologies and practices all over the globe (Wilson & Norris, 2006). In particular, a special focus of the global securitization agenda has been the expansion of counterterrorist legislation, even in Latin American countries where terrorism is not a major concern. Paradoxically, while terrorism remains an unclear notion in international law, it has been used by governments in the Latin American region as a concrete label to enforce social and criminal control, via militarized police, against social groups engaged in conflict. In Argentina, the neoliberal administration that was in power from 2015 to 2019 used semi-military police (the Gendarmerie) to confront social movements and indigenous peoples struggling for their rights, by labelling them as “terrorists” and using the global counterterrorism discourse and instruments as a legitimizing platform. Applying this logic, the terrorist label – which, as has been said, is unclear at the international legal level – was nevertheless used to describe those struggling for their rights as violent and anti-democratic in the domestic scene, raising social and criminal control to an even more striking level (Vegh Weis, 2020).

As can be seen, the discussion is complex. For the time being, social control can be conceptualized as comprising criminal control and the so-called “ideological apparatuses of the state” (Althusser, 1968), that is, the extra-punitive mechanisms that include the labour market, the media, the areas of the law apart from the criminal law, religion, social reactions, family, and the education system at the domestic and the global level. This means that social control is almost omnipresent and is exercised by both the criminal justice system (when it is crime control) and also by socio-economic institutions and even by our friends, who condition us to behave in one way or another, whether we are aware of this or not. In turn, crime control is the state exercise of coercion specifically oriented towards the treatment of criminal behaviour. Crime control is not blind, but is traversed by criminal selectivity through the mechanisms of under- and over-criminalization at the primary and secondary criminalization levels.

In particular, the understanding of criminology as the study of conflict/control must reject over-simplified statements such as the one that proposes that crime conflict is always functional to the capitalist system of production because it enables the crime control and social control that, in turn, ensure the docility of the workforce. As has been pointed out, nothing is valid for all places and all times. Thus, although crime conflict and crime control are necessary to sustain the capitalist system as a whole, dialectically, in their specific forms, they generate contradictions. If this were not the case, we would not waste time by trying to reduce crime at all. Indeed, crime also affects capital by demanding investments in safety measures and security services. Furthermore, there are conflicting interests be-
between the dominant sectors themselves and between them and the subaltern classes. Therefore, in some situations, certain levels of crime may be deliberately allowed, while, in others, an almost absolute exercise of crime control is more functional to the socio-economic system.

In short, criminology can be conceptualized as the dynamic between conflict and control, but how do these dimensions relate to criminal selectivity, and how did this concept emerge?

**Background to the concept of “criminal selectivity”**

At the beginning of the twentieth century, William Bonger, coming from an orthodox Marxist perspective, developed certain elements that underlie the notion of “criminal selectivity”. He focused his attention on who determines which activities constitute crimes, rejecting the universality of moral opinions. He analysed the criminalization of strikes, among other behaviours, asserting that “power is the necessary condition for those who want to classify certain conduct as a crime” (1905: 379). Bonger explained that European crime statistics for 1900 showed that 55% of criminalized people had been convicted of the crimes of vagrancy and begging, and that crimes against property were the next most common (1905: 546). Needless to say, these statistics demonstrated that the crimes of the poor were the only ones being counted, while the crimes of the powerful were ignored. As Bonger stated, the crimes shown in the statistics were not the only ones being committed, and they were definitely not the most grievous. In turn, he suggested, there were more harmful crimes committed by the wealthier classes that could be termed “crimes of greed” (1905: 572). By hiding these crimes, the statistics reflected a false association between crime and poverty, ignoring the fact that even in desperate situations alternative outlets may arise and that the crimes against property that existed were being committed in a context of absolute deprivation. Moreover, the statistics hid the fact that the dramatic increase in crime was not the direct result of a growth in the number of offences but was also a result of increasing criminalization: the recently created law enforcement agencies were persecuting the poor even more strongly than they had been persecuted before.

Another Dutch scholar, the criminologist Clara Wichmann was the first to analyse the class interests that underlie the process of criminalization (van Swaanningen, 1997: 96). She highlighted the fact that there was no causal relationship between crime and punishment, and she called attention to the fact that neither poverty nor repression were labelled as crimes, despite the social damage that they engendered.

Shortly after this, Evgeny Pashukanis (1924) went back to Chapter II of Marx’s *Capital* to analyse the notion of fetishism as an outstanding feature of capitalism. Pashukanis used this concept to explain that fetishism permeates the entire law, assuming that men are equal and legal relationships are equitable transactions, even though in reality that is far from true. The Russian thinker stated that capitalist relations are secured and strengthened on the basis of these false legal considerations. Within criminal law in particular, Pashukanis explained, punishment is presented as a “fair transaction” between the state and the offender, in which the former imposes a sentence on the latter to compensate for the offence. This agreement is based on pre-established formalities, known as criminal procedure codes (1924: 156). This statement can only be regarded as fetishism because the state and the offender are not equal, not all offenders are treated equally by the state and the guarantees of the criminal procedure codes are not enforced when the offender is powerless.

Later on, Thorsten Sellin (1949) distinguished between “real” and “apparent” criminality, introducing more tools for understanding unfairness within the criminal justice system. A contemporary of Sellin, Edwin Sutherland (1940), warned about the existence of so-called “white-collar crimes” that were...
mostly ignored by the criminal justice system. Indeed, he pointed out the existence of a “dark figure” in statistics, meaning that not all behaviours were effectively criminalized.

In the 1960s, the so-called “labelling approach theory” was developed. Frank Tannenbaum, Edwin Lemert, Erving Goffman, and, in particular, Howard Becker, were among the main scholars of this new school. Becker introduced the notion of “deviance” and stated that this concept goes beyond the notion of crime to include all kinds of socially condemned activities, such as speaking to oneself in the street, not complying with the rules of etiquette, or breaking the rules on a sports field (1962: 15/17). He pointed out that whether an act is considered to be deviant or not does not depend exclusively on the nature of the act (that is, on whether or not it violates the norm) but mostly depends on how other people consider it (1963: 14). Moreover, Becker clarified that there are some people with enough power to decide on what is to be considered deviant. In that regard, Becker coined the concept of “moral entrepreneurs” to refer to those individuals or groups who directly or indirectly help to build standards regarding what is considered as undesirable, deviant or criminal (1963: 182). Overall, Becker highlighted the need to shift the attention from the deviants to these moral entrepreneurs, who are the ones defining our values and our patterns of criminalization. He stated: “It is very interesting that most of the scientific research and speculation about diversion deal more with the people who break the rules than with those who produce or apply them” (1962: 182, translation is mine). Thanks to Becker and other scholars, the labelling approach theory emerged, and criminological thought finally stopped asking “who is the criminal?” and started asking “who is considered the target, and by whom?” (Anitua, 2005: 363).

During the 1970s, Michel Foucault (1975) referred to the “differential administration of illegalities” as an axiomatic element of modern criminal law, reinforcing the understanding that the law does not use the same parameters to treat all behaviours. The distinction between “tolerable” and “intolerable” illegalities, Foucault argued, responds to the interests and practices of the ruling classes. Therefore, the criminal justice system works as a thermometer of the bourgeois tolerance, either authorizing or banning certain practices according to class interests. To provide an example, in his lecture of March 14, 1973, published in the book The Punitive Society (2013), Foucault analysed how, in the nineteenth century, the criminal justice system regarded the act of depredation as an illegality because the workers’ reluctance to work as hard as they were expected harmed the accumulation of wealth of the factory owners. Needless to say, the exploitation of the workers and the lack of sufficient rest were not considered illegalities.

Contemporaneously, the emerging critical criminology school helped to identify some of the macro-social effects of the unfair functioning of the criminal justice system. Kevin Bales (1984) studied the intersection between legal and illegal businesses in the capitalist system, and how this intersection was not targeted by crime control. William Chambliss (1994) focused his attention on the application of penal control in US ghettos, in contrast with the lack of monitoring of the crimes committed by influential individuals. Steven Spitzer (1975) proposed the development of a Marxist criminological theory to distinguish the categories of people on whom crime control rests. Roberto Bergalli (1982) called for a reflection on those socially harmful acts that are not criminalized, despite being the most damaging and numerous, because they are functional to the economy.

Between the 1970s and the 1980s, abolitionist scholars distinguished between “criminalization” and “decriminalization”, in a counterpoint to the concept of criminal selectivity. This school argued for the decriminalization of behaviours that do not harm others, particularly so-called victimless crimes such as drug-related offences. One of its exponents, Nils Christie (1993), warned about the link between increasing criminalization and crime control as an “industry”. In turn, Louk Hulsman argued that the fact that most crimes do not appear in the statistics (because they never reach the criminal justice
system) might be seen as a positive phenomenon: they are social problems that are effectively treated through informal mechanisms outside the criminal law (1993: 185). Lastly, scholars who have argued for a criminal justice system strictly based on penal guarantees, such as Luigi Ferrajoli (1999) and Zaffaroni (1998), have also helped to reveal the unfairness of the everyday outcomes of the criminal justice system.

As a result of these twentieth century contributions, the unfairness of crime control has become clear, and relevant conceptual tools have emerged, including what we regard today as primary and secondary criminalization.

**What are the stages of criminal selectivity? Primary and secondary criminalization**

The notion of “primary criminalization” was coined by scholars from conflict theory and is defined as “the process in which powerful groups manage to influence legislation, using penal institutions as a weapon to combat and neutralize behaviors of opposing groups” (Vold, 1958, quoted by Baratta, 1986: 133-4). Later, the scholar who has already been mentioned as a representative of the labelling approach theory, Becker, noted that “the rules that these labels [referring to the process of labelling by penal agencies] generate and sustain are not aligned with everyone’s opinion. On the contrary, they are subjected to conflicts and disagreements, they are part of the political process of society” (1962: 37). He added that, before an act is seen as deviant and before any type of person is labelled and treated as marginal, someone must have created the norm stating that the specific behaviour was deviant. The deviation is, therefore, the product of an initiative and, without this initiative, deviation, understood as a consequence of the violation of a norm, would not exist (1962: 181). Baratta argued that “primary criminalization” refers to the rules that define the processes of criminalization and decriminalization (1986: 95); in other words, it describes the production of rules against antisocial actions (1986: 168). These rules, Baratta clarified, are made by those belonging to the hegemonic social class and are functional to the demands of capitalist accumulation (1986: 185). He added that “immunity zones are created for behaviors whose harm is particularly directed towards the lower classes” (1986: 185).

Within the Latin American literature, Zaffaroni, Alagia, and Slokar defined “primary criminalization” as “the act and the effect of a criminal law sanction that materially incriminates or permits the punishment of certain persons [by the] political agencies (parliament and executive branch)” (2000: 7). They elaborated on this by stating that primary criminalization is a formal act that is fundamentally programmatic. When the law states that an action must be punished, a programme is only enunciated, but the programme must be carried out by agencies that are different from those that initially formulated the programme. The essential characteristic of primary criminalization, they argued, is that it is such an immense programme that it would be impossible for the law enforcement agencies to carry it out to its full extent. The disparity between the number of crimes that take place in society and those that come to the attention of the enforcement agencies is enormous and inevitable (Zaffaroni et al., 2000).

“Primary criminalization” can therefore be defined as the primary filtering process through which only a small proportion of the negative social behaviour or social harms that take place in society are covered by the law. In other words, “primary criminalization” describes the filtering system in place that labels only some harmful conduct as criminal behaviour. This filtering process is twofold. On the one hand, only certain harmful behaviours are subjected to criminal sanctions. Generally, these are the offences that are perpetrated with simple or primitive resources, that demand easier gathering of evidence, that produce low social–political conflict, and that are typically committed by those in the most vulnerable subsets of society. In contrast, those behaviours that are more complex, that demand
higher levels of know-how when they are investigated, that do not produce social unrest, and that are usually committed by individuals of higher social status, are not at the core of the legislative process. On the other hand, among the behaviours addressed by legislation, different punitive consequences are attached, which respond not only to the social harm involved but also to class and racial interests. The result of the process of primary criminalization might be described as “unequal legal treatment of negative social behaviours” or, in brief, “inequality under the law”.

The notion of “secondary criminalization” was outlined by Becker when he explained that deviation is caused by the response of people to certain types of conduct that are labelled as deviant (1962: 37). He added that, once the rule exists, it is applied to certain people of the underclass to increase the population that the norm has created (181-2). In turn, Baratta defined the process of “secondary criminalization” as “the criminal process involving the action of the bodies of inquiry and culminating in the judgment” (1986: 168). Zaffaroni, Alagia, and Slokar argued that “secondary criminalization” consists of a punitive action exerted on specific individuals, which occurs when law enforcement agencies detect a person whose behaviour is attributed to some primarily criminalized act, investigate him/her (in some cases depriving him/her of his/her freedom of movement) and subject him/her to the judicial and correctional agencies (2000: 7). Therefore, “secondary criminalization” is the result of the limited operational capacity of law enforcement agencies in the face of the vast programme installed by “primary criminalization”. In particular, the police are responsible for “choosing” those individuals who are made subject to secondary criminalization. Generally, these individuals are those who perpetrate simple, easily detectable, criminal acts, and who cause fewer problems because of their inability to access political, judicial, economic and media authorities (Zaffaroni et al., 2000: 7-9). In turn, the courts only decide on a few cases that have already been selected by the police. Finally, the prison system collects a fraction of those selected by the previous agencies (Zaffaroni et al., 2000: 13). It should be noted that some scholars refer to the prison agencies as “tertiary criminalization”. Baratta, in particular, presented this third moment of the criminalization process as a separate one, and defined it as the mechanism through which the prison sentence or the security measures are enforced (1986: 168).

Thus, as it is pragmatically impossible to prosecute every criminal offence that is perpetrated every day in a given jurisdiction, “secondary criminalization” is needed. This process consists of a second instance of filtering that is responsible for selecting which of the countless behaviours are going to be effectively criminalized. This filter has also been conceptualized as “selective enforcement”, and is carried out by three processes that could be referred to as “law enforcement profiling”, “courts’ discretion”, and “differential penalization” (Vegh Weis, 2017a, 2017b). These processes are not bias-free but are, in turn, conditioned by class, race, gender, ethnicity, age and religion. The targeted individuals are those who represent “the aesthetic public image of the offender, with classist, racist, age and gender components” (Zaffaroni et al., 2000: 9). At the other extreme of the selective process, the authors of state crimes, white-collar crimes, organized crime, or war crimes, who do not match the threatening image of an offender, are rarely targeted by the enforcement agencies.

In particular, these criminalizing processes are supported by special representatives of each of the interest groups – who can be called “moral entrepreneurs” (Becker, 1962) – who have promoted “moral panics” (Cohen, 1974). The notion of “moral entrepreneurs” describes those individuals with the power to define and label others, who are likely to promote and build the sanction and the implementation of standards in the proposed sense (Becker, 1962: 19). Moral panics are condensed political struggles to “control the means of cultural reproduction” (Cohen, 1974: 8). These notions can be traced back to Marx’s work, *Diggession: (On Productive Labor)* (1861-1863/1989: 360-361), where he warns that “[t]he criminal produces an impression, partly moral and partly tragic, as the case may be, and in this way renders a ‘service’ by arousing the moral and aesthetic feelings of the public”. Regard-
less of the ironic tone of the passage, Marx states that there are social processes during which an event is identified as threatening and as arousing “moral and aesthetic feelings” in the whole population.

Indeed, Marx, one of the most critical scholars of the unfairness within the capitalist system of production, himself suffered from criminalizing “moral and aesthetic sentiments”. The anecdote recalls that, when miserable circumstances had completely absorbed the family’s resources, Marx went to sell the silver tableware belonging to his wife’s family. As soon as he entered the premises of a pawnshop with the dishes on a Saturday night, the manager called the police and described Marx as a “foreign Jew”. The father of materialism did indeed belong to a religious minority, did not dress very well, and did not speak English. This incident led to him being held by the British police for two days. Only on the Monday was the founder of scientific socialism able to demonstrate conclusively, with the help of “respectable” friends who lived in London, that he was not a thief, and that the silver was, in fact, his legal property (Enzensberger, 1974: 390).

At this point, we have made it clear that analyses of the unfairness of the criminal justice system have been evolving since the beginning of the twentieth century, although the term “criminal selectivity” was coined only recently. We have also learned that criminal selectivity operates through two filters, at the level of “primary criminalization” and “secondary criminalization”. However, one key question remains unanswered. What are the mechanisms that define what is allowed through these two filters?

How does criminal selectivity operate? Over-criminalization and under-criminalization

This section introduces the concepts of under-criminalization and over-criminalization to clarify what is left within the boundaries of crime control at both the primary and the secondary levels. Under-criminalization refers to the restrictive criminal treatment of behaviours perpetrated by privileged sectors of the population – defined in relation not only to their class but also to their gender, sexual orientation, and religious and ethnic belonging – regardless of the social harm involved in those behaviours. Under-criminalization takes place as a result of the limited legislative treatment of those behaviours usually perpetrated by members of these privileged sectors (primary under-criminalization) and their limited prosecution by law enforcement agencies including the police, courts and prisons (secondary under-criminalization).

Over-criminalization refers to the emphatic prioritization of the criminal treatment of those behaviours that are perpetrated by especially vulnerable sectors of the population – defined in relation not only to their class, but also to their gender, sexual orientation, and religious and ethnic belonging – regardless of the minor social harm that their behaviours entail. Over-criminalization takes place as a result of the increasing legislative treatment of those behaviours that are usually perpetrated by members of these underprivileged sectors (primary over-criminalization) and their excessive prosecution by law enforcement agencies (secondary over-criminalization).

In short, the notion of under-criminalization explains how certain types of conduct are minimally addressed by the law (primary under-criminalization) and minimally enforced (secondary under-criminalization) despite the social harm involved. Under-criminalization is therefore not connected to the harmfulness of the behaviour but relates to the demographic features of the subset of the population associated with that behaviour. On the other hand, over-criminalization explains how other types of ordinary activities are subjected to over-inclusive legislation (primary over-criminalization) and overtargeting (secondary over-criminalization), even when they do not produce social harm. This means that what is left outside or inside the scope of the criminal justice system does not respond to a more harmful stand toward vital assets. The wellbeing of individuals and societies is not what is at stake at
the moment of define the target of the criminalization processes. Instead, these are defined by the socio-demographic characteristics of victims and victimizers. The reasoning is that more criminalization tends to focus on those victims and victimizers who are less functional to the socio-economic system. That is why we can refer then to cases of over-criminalization (in relation to the actual social harms perpetrated).

Concerning the crimes that are usually over-criminalized, it is worth proposing a final distinction between coarse crimes and criminalized survival strategies. Coarse crimes refer to those behaviours that are perpetrated in a rudimentary manner, without much planning, and that usually affect property. These conducts are disproportionately over-criminalized in relation to the social harm that they produce (a repairable effect on property). Criminalized survival strategies refer to activities designed to ensure revenue when formal employment is not accessible. Although they do not directly affect other individuals, they are strongly over-criminalized (e.g. begging and vagrancy). To dig into the concept of over-criminalization, it is interesting to revisit the notion of “less eligibility” to account for the modification in the conditions of punishment in each historical period. Karl Marx outlined the notion of less eligibility in Capital (1867/1998: 896-904). He stated that the general situation of the marginal classes tends to improve when a stable dynamic of capitalist valorization ensures long periods of economic growth and social stability. In turn, the general situation of the marginal classes tends to deteriorate when the crisis of a specific mode of capitalist social formation urges a revolution in the production system and causes the development of a new regime of accumulation. The concept was further developed in an article by George Rusche (1933/1980) and disseminated in the work Punishment and Social Structure (1938/2004), co-written with Otto Kirchheimer. The authors suggested that, to serve as a deterrent, punishment must offer worse conditions than those offered by the labour market to the lowest stratum of the working class (1938/2004: 4). This interesting notion of “less eligibility” could be even further expanded to demonstrate the links between social and criminal policies. Social policies are considered in relation to crime control, suggesting that the lowest stratum of the employed working class marks the limit of social assistance. That is, social policies must offer worse conditions and remain “less eligible” than the conditions of the occupied working class to ensure that workers accept the conditions of the market. Meanwhile, crime control must offer worse conditions than social policies to serve as deterrence.

Thus, in Argentina, current social plans such as the Universal Child Allowance (roughly 37 US$ per month in December 2020) offer less money and greater bureaucratic requirements than the worst jobs available in the labour market (which paid roughly 160 US$ per month in December 2020) in order to force people to get those jobs, despite the miserable income and the oppressive labour conditions (CELIV, 2020). At the same time, prisons tend to offer worse conditions than social assistance, even when this entails human rights violations and poor living conditions (CELS, 2020). Thus, Argentinian prisons offer worse food and poorer accommodation than what people can afford with the Universal Child Allowance, and the Universal Child Allowance offers fewer chances than the lowest paid jobs available in the market.

In short, the notion of “criminal selectivity” constitutes a key element when analysing the criminal justice system. The concepts of under-criminalization and over-criminalization, in dialogue with the lesser eligibility principle, help clarify the mechanisms through which criminal selectivity operates at the primary and secondary criminalization levels. Overall, “criminal selectivity” may be described as

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4 See more at https://elsalario.com.ar/Salario/salario-minimo
the mode according to which the criminal justice system operates in its different instances of criminalization (primary and secondary), based on the overly-punitive treatment of those acts committed by individuals who are in a vulnerable position because of their class, gender, age, ethnicity or religious membership (over-criminalization) and on the absence or minimization of the punitive treatment of acts committed by those individuals who have a socially advantageous position in relation to their class, gender, age, ethnicity or religious membership (under-criminalization).

Criminal selectivity in the Argentinian criminal justice system

So far, this paper has offered theoretical tools to enable a better analysis of the functioning of the criminal justice system (i.e., criminal selectivity, primary and secondary criminalization, over-criminalization and under-criminalization), but how do all these notions operate? To explore this dimension, the following section focuses on the Argentinian context.

As mentioned above, Argentina follows the same trend as other countries of the Latin American region in terms of inequality: most resources are concentrated in a few hands, while structural poverty encompasses almost half of the population. The neoliberal government that ruled from 2015 to 2019 enhanced this dramatic situation with a political agenda that prioritized the production of commodities rather than industrialization, weakened labour regulations, reduced investment in health, education and welfare, and exponentially increased the external debt (Fidel, 2021). Today, Argentina has a population of 45 million people, 40.9% of whom live below the poverty line. While the monthly average income in a poor household is roughly 320 US$, an amount of 545 US$ is needed to purchase the minimum amount of food and services to avoid destitution. Annual inflation is running at over 40% and, from 2019 to 2020, social inequality increased from 20 to 21, which means that the richest 10% now have 21 times more than the poorest 10%. Concerning gender, men earn an average of 23% more than women (INDEC, 2020).

At the level of “primary criminalization”, a paradigmatic example of criminal selectivity arises from the topic of abortion, which is still a criminal offence under the penal code of all Latin American countries except Uruguay (BBC, 2018) and Argentina. In Argentina, until December 2020, the penal code provided penalties of between one and four years in prison for the practice of abortion. This punitive approach worked for decades as a material obstacle that prevented pregnant people from accessing abortion in safe conditions. As a result, clandestine abortion has, until today, been the leading cause of maternal death. According to the latest official data from the Argentinian Ministry of Health, 17.6% of a total of 245 deaths of pregnant people in 2016 were caused by abortion (ANCCOM, 2019). The inclusion of abortion in the penal code until December 2020 might be regarded as over-criminalization. This is because abortion is an action that does not affect anyone besides the pregnant person who decides to carry it out (i.e., there is no social harm involved in this behaviour), and, despite this, the state decided to continue to use crime control to respond to it. The punishment did not respond to social harm, but rather to religious and moral values that should not play a role in public law.

See more at https://www.argentina.gob.ar/sites/default/files/resumen_indicadores_sociales.pdf

Abortion was decriminalized and legalized in December 2020 after decades of feminist struggle. The legal situation is still precarious as new legal challenges arise, including the declaration by a judge in the Province of Chaco that the law is unconstitutional. Legal and practical obstacles to the enforcement of the law are likely to continue (DW, 2021).
In contrast, also at the level of “primary criminalization”, there are no criminal consequences in Argentinian legislation for the manipulation of the prices of medication, not even in respect of life-saving drugs. To provide an example, Laboratorio Beta S.A. is the only lab in the country producing misoprostol. This is the drug recommended by the World Health Organization for carrying out abortions under safe conditions. Beta S.A. increased the price of misoprostol by 460% over three years, without any relation to production or marketing costs (Bing Bang, 2018). This unjustified price increase harms many pregnant people who cannot afford to buy the medicine and must rely on unsafe methods to carry out an abortion, which might lead to death or cause them serious psychological or physical harm.

Criminal selectivity, then, shows that the manipulation of pharmaceutical drug prices with no justification in the form of a change in production or marketing costs by laboratories is under-criminalized, meaning that it is not addressed by the criminal law regardless of the significant social harm caused by this behaviour. The reasons for this under-criminalization are not the lack of social damage, but rather the fact that the activity benefits the economic interests of powerful corporations in the pharmaceutical industry. Moreover, under-criminalization also corresponds to the fact that those who are victimized by the manipulation of the price of misoprostol belong to the most vulnerable sectors of society in terms of gender and class. In terms of gender, the victims are women and trans men. In contrast, it should not come as a surprise that Argentine laboratories are managed by men of a good social status, and that fewer than 30% of hierarchical positions are held by women. In terms of class, the price of misoprostol particularly harms those who belong to the most vulnerable socio-economic sector, meaning that women who cannot afford to have an illegal abortion in a private clinic that meets minimum sanitary conditions will also be unable to afford the necessary pharmaceutical drug for the procedure. Thus, a simple example shows how, at the level of primary criminalization, the over-criminalization of abortion and the under-criminalization of the manipulation of the price of an essential medicine do not respond to the social harm involved in either of these behaviours. The price manipulation of misoprostol produces more social harm than an abortion for which consent is given. The reasons behind criminal selectivity are, therefore, beyond the law. Their formation is tainted by religious conflicts, gender inequality, and the economic power of corporations.

At the level of “secondary criminalization” and, specifically, when dealing with law enforcement, criminal selectivity is equally intense. Police investigations are almost always carried out against poor young men who are usually accused of coarse crimes against property or activities related to drug trafficking (for statistics in the City of Buenos Aires, see Infobae, 2020). In particular, as regards the possession of drugs solely for personal use, the Supreme Court has made it clear in the leading case of Arriola that if the act takes place within the private sphere, crime control should not intervene because there is no social harm involved (CSJN 332: 1963). However, law enforcement agencies seem to be ignoring this ruling, as 40% of drug-related criminal cases in the city of Buenos Aires are in relation to drugs possessed for personal consumption (Aldrovandi, 2019).

In turn, at the level of under-criminalization, there have been no investigations and there are no specialized units for investigating harmful acts committed by state agents or businesspeople involved in the speculative and exchange-rate manoeuvres that plagued many of our countries in every episode of capital flight and financial destabilization of the economy. In Argentina, the most recent contracts for external debt will affect the national economy for the next 200 years, and yet these behaviours have been under-criminalized at the law enforcement level. This means that the security forces are not investigating these events and there are not even any specialized units dedicated to this matter. Of course, this decision is not due to the undeniable social harm caused by these behaviours, but rather to the fact that the perpetrators are corporations and powerful individuals that are traditionally outside the reach of police power.
Is it then social harm that determines what the police investigate? The answer is negative. In the cases referred to above, class and age appear more clearly to define what lies within and what lies without the gates of punitive power. If you are a poor and young person, over-criminalization will result in the police lurking and searching for information even if this violates your privacy. If you are an adult businessman or public official, under-criminalization within the operating procedures of law enforcement will serve you well, even when your actions involve a series of currency flights that will have a negative impact on the country and its citizens for generations to come.

In another paradigmatic example of criminal selectivity at the police level, if you have a restaurant business and occupy the pavement with tables and chairs, you will have no problem with the police, but if you are a street vendor selling products to guarantee a minimum subsistence, you will be considered to be hindering a public thoroughfare and are likely to be brutally detained (see CELS, 2019a).

Criminal selectivity persists at the level of the courts. In Argentina, no court cases have been brought against the government staff or corporations that manage the metro, even though asbestos, a carcinogenic substance that can affect people’s life and health, has been found in the trains (Romero, 2019). Affecting the health of workers and users of the metro does not seem to be a sufficient criterion for opening the gates to punitive power. However, criminal cases have been initiated against union leaders for obstructing the metro lines in support of their demand for decent wages (Notitrans, 2018). In other words, crime control over-criminalizes actions that do not harm anyone’s lives or physical integrity but just disrupt the normal transport routine. Ironically, these very actions are exercised as trade union rights and, therefore, are constitutionally protected. The question arises once again: is decreasing social harm the goal behind this punitive response to the union protest and the absence of response to the asbestos contamination of the trains? This does not seem to be the case. Getting cancer from driving on public transport is more damaging than being delayed by a union strike exercised as part of the right to protest. The factor that determines which actions are criminalized and which are not is not social harm but social class: workers are over-criminalized, while corporations that run the metro and government staff benefit from under-criminalization.

Moreover, even when criminal cases are initiated, over-criminalization and under-criminalization continue at the moment of sentencing. Most convictions are applied to poor young people charged with petty offences (what a surprise…). In Argentina, more than 50% of people aged 16 or 17 years old who are accused of committing crimes are punished with a prison sentence of 30 months or more, although the majority of these cases are for robbery and theft (Subsecretaría de Política Criminal, 2017: 18-19). In contrast, under-criminalization at the level of sentencing becomes evident in the fact that more than 70% of the 13,000 criminal cases initiated between 2014 and 2017 against governmental staff for crimes committed while performing their official functions were dismissed without further investigation, fewer than 3% went to trial and, of that 3%, the majority of the cases ended up with the defendant on probation. As regards criminal cases for the use of deadly force by police officers between 2014 and 2016, only 10% resulted in convictions (CELS, 2018). In short, cases of white-collar crimes with tremendous economic consequences for the country and deaths at the hands of those who should ensure citizens’ physical integrity are abandoned halfway through the court process or the defendants receive such light sentences that they qualify for probation.

Criminal selectivity continues inside the prison system. According to the last available statistics from the Argentine Federal Penitentiary Service, 70% of those who are behind bars today were either unemployed or only had part-time jobs before being arrested. Moreover, more than 50% of them had no trade or profession, and 84% had not completed secondary education (SNEEP, 2017). The presumption of innocence does not seem to apply to this vulnerable population, which becomes clear in the fact that 57% of those imprisoned are being held in pre-trial detention, meaning that they are still...
legally innocent (SNEEP, 2017). In the prisons, conditions are so dire that the National Ministry of Justice has declared a "prison emergency" from 2019 to 2021 as overcrowding affects sanitation and increases violence (CELS, 2019b).

These poor conditions are not those enjoyed by the individuals imprisoned for crimes against humanity. These individuals are in Prison 34, which is located in Campo de Mayo, and in which there are no cameras and only a few prison officers to monitor the inmates in their “rooms”, which is the word they use rather than “cells”. The place also has volleyball and soccer fields, and a barbecue area (Política Argentina, 2016).

The tension between over-criminalization and under-criminalization does not end there. It continues to affect civil rights. It was only in 2007 that people in pre-trial detention were authorized to exercise a right to which they should have always had access because of their legally innocent condition: the right to vote whilst being held in prison (ACE, 2020). However, a person convicted for crimes against humanity, Antonio Bussi, who was found guilty of kidnapping, murder, and embezzlement, exercised his civil and political rights to participate in elections much earlier and in 1995 even became the governor of the province of Tucumán after having benefited from impunity laws (Ginzberg, 2011).

Final thoughts

The systematic unfairness that characterizes criminal justice systems worldwide, which has been referred to as criminal selectivity, is not an isolated phenomenon. It takes place within a world that is unequal in terms of class, gender, sexual orientation, age, religion, and ethnicity. This means that systematic injustice by the criminal law, law enforcement agencies, courts, and prisons comes on top of a series of previous injustices already present in our communities. The grounds of what we have described as primary and secondary over-criminalization and under-criminalization, which are present at all levels of the criminal justice system, were laid down much earlier when social inequalities were already in place. Those who are targeted by the criminal justice system have already been harmed at the level of wealth distribution. For this reason, a democratic and egalitarian criminal justice system requires a democratic and egalitarian world to precede it, as the principle of less eligibility demonstrates. Argentina, along with the whole of the region of Latin America, manifests high levels of inequality and poverty (Lissardy, 2020) that make this process more complex.

However, this does not mean that, as criminologists, we cannot make any contribution towards undoing this regime of unfairness. The exposure of the persistence of criminal selectivity as an inherent mechanism in our penal systems needs data, examples, and explanations. We need to reach out to those who still believe that the prisons are full of people who deserve to have been punished and that the courts operate with the sole intention of doing justice. This claim is particularly urgent in Latin America, where data are still not fully accessible, resources for scholarly work are scarce, and "media criminology" spreads moral panics against the most disadvantaged sectors (Cohen, 1985; Zaffaroni, 2011a). With this goal in mind, this article offers conceptual tools that can be used to operationalize injustice and to perform a better analysis of the functioning of our battered criminal justice systems, leading towards the much-needed transformation.

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Broken windows in the Rio de la Plata: Constructing the disorderly other

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Abstract
Since 2010, Uruguay has moved towards a tough-on-crime approach by adopting Broken Windows and zero-tolerance policing. Interestingly this tough-on-crime approach was developed by a social democratic government that, during its first administration, rejected the approach and committed to fighting crime through social-democratic policies. The policies and rhetoric developed by the left-wing government led to the criminalization of low-income communities and the construction of an “undeserving other,” as they adhered to a neoliberal logic of competition and security. Consequently, the left-wing set the policy and institutional bases for an increase in mano dura and recent police violence with the electoral victory of the right-wing in 2019. The article examines this process and shows how the uncritical adoption of Broken Windows and other U.S. style policing initiatives can be extremely pernicious in Latin America.
“When the police act in neighbourhoods of these characteristics [low-income neighborhoods], there are people arguing that we are stigmatizing and criminalizing these areas, but it is the other way around. We are distinguishing between the majority that works and studies, and those who do not. These are the ones who are destroying the neighborhood.” *Eduardo Bonomi, Minister of Interior.*

“Society wants a firm hand. We don’t want to apply a mano dura that allows the police to do whatever they want, but we don’t want impunity. The image of impunity generates violence.” *Gustavo Leal, Director of Coexistence and Citizen Security, Ministry of Interior.*

Broken Windows is based on the premise that signs of disorder generate greater disorder and crime. It argues that citizens are afraid of becoming victims of crime as well as being bothered by disorderly people. More importantly, when minor disorders go unpunished it shows that criminal activity is a fair game. Consequently, if we follow Broken Windows’ logic, the recipe to prevent crime, restore community order, and exercise social control is a zero-tolerance approach towards minor disorders (Kelling & Wilson, 1982). Both vignettes with which I began this article resonate with some of Broken Windows’ principles. The need to exercise a firm hand and show that disorder will not be tolerated, and the distinction between orderly and disorderly people have become central to the development of Uruguay’s security policies in the last decade.

The paradox of the Uruguayan case is that the political forces that brought Broken Windows and made it hegemonic were not right-wing conservative forces that campaigned under a banner of “tough-on-crime”, as much of the literature on mano dura in Latin America argues (Basombrio & Dammert, 2013; Bergman, 2006; Samet, 2019; Stippel & Serrano Moreno, 2018). Broken Windows was imported to Uruguay by a social democratic government committed to social justice. The opposition and major media outlets criticized the government for being soft on crime. Yet, this did not translate into an electoral challenge, as the left-wing coalition continued to enjoy widespread electoral support. Despite this, by the end of their first governmental period (2004–2010) and the inauguration of their second term (2010–2015) the Frente Amplio had shifted towards a mano dura approach.

Why did a social-democratic government, led by a broad coalition of left-wing parties, develop a security policy based on Broken Windows? In answering this question, this article argues that the Frente Amplio was incapable of breaking with the neoliberal security project, which adheres to economic growth as its main principle and requires the management and control of those who do not adapt or accept this order. This led to a punitive approach in the area of crime control. Secondly, authorities had to distinguish between the deserving and undeserving poor in order to overcome the paradox of being the party of the working-class while deploying state violence against working-class communities. In the process, Broken Windows and the tough-on-crime discourse became hegemonic in Uruguay, limiting the possibility of finding solutions to criminality that did not include harsh punishment. Worse, the left-wing coalition established the institutional and discursive bases for the strengthening of a punitive approach, which is now being led by the right-wing coalition that won the 2019 national elections, increasing police violence against low-income communities.

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1 Eduardo Bonomi in an interview with *Diario El País*, Montevideo, Uruguay, June 6, 2016. In Uruguay the Ministry of the Interior is in charge, among other things, of internal security and the police forces inside the country.

2 Gustavo Leal in a radio interview with the programme *Doble Click*, February 7, 2019.
Authors have shown how punitive policies developed in the US have made their way into Latin America and have become hegemonic. These policies have been packaged in ready-made toolkits for Latin American governments to apply in a context of high violence and crime, and as a way of managing the fragmentation produced by neoliberalism (Blaustein, 2016; Iturralde, 2019; Wacquant, 2014). Many of these policies have been adopted by right-wing neoliberal governments, as well as many regimes who challenged neoliberal hegemony, such as Chavez’s Venezuela, Correa’s Ecuador, and Brazil under the rule of the Workers Party. These post-neoliberal regimes, as Máximo Sozzo (2016) calls them, have also adopted many tough-on-crime policies due to political pressure from the opposition or from social movements, which sought a response to social problems through punitive measures. Yet, as Manuel Iturralde suggests, the adoption of tough-on-crime measures is “riddled by contradictions, ambiguities and struggles” (Iturralde, 2019, p. 487), which require a closer examination. This article is an attempt to contribute to this critical dialogue by moving beyond the analysis that sees punitive populism as a right-wing and electoral populist response, and shows how the inability to break with neoliberal principles pushes social-democratic governments to deal with social fragmentation through criminal justice measures. Moreover, the article sheds new light on the adoption of tough on crime by a social-democratic government, by showing how Uruguay’s Frente Amplio constructed the image of the “undeserving other” in order to justify the adoption of mano dura.

Before delving into Uruguay’s story, I will review the main elements of Broken Windows theory, and how it fits into the neoliberal project of security. This project attempts to secure a social order based on capital accumulation and control of those expelled by the dynamics of the system. This will provide us with the conceptual tools to understand how the Frente Amplio’s inability to break with neoliberal rationality led to the adoption of a tough-on-crime approach. Next, I will review the government’s initial response to the crime problem and the transition towards a punitive approach. I will then analyse the process used by government authorities in constructing the disorderly other and failing to construct a left-wing security policy.

**Broken Windows, Neoliberalism, and the Politics of Security**

According to Broken Windows theory, when minor disorders, such as street beggars, a lack of respect for authority, and vagrancy, remain unpunished it will lead to major disorders and criminal activity (Herbert, 2001), and only a zero-tolerance approach towards these minor disorders can prevent further decay. The theory is rooted in a series of racist and classist preconceptions. James Q. Wilson, one of the main proponents of the theory, had argued in 1968 that teenagers hanging out in the streets, “a Negro wearing a ‘conk rag’...girls in short skirts, [or] interracial couples”, display unconventional behaviour that should be addressed by the police (Wilson, 1968 cited in Thompson, 2015, p. 45). As Phillip J. Thompson (2015) shows, some of what Broken Windows perceives as disorder is related to regular low-income behaviour, which is neither perceived as disorder nor represents a threat to the neighbourhood.

This focus on minor disorder, and the identification of disorder with the behaviour of low-income communities, works as a segregation mechanism, which separates “respectable” citizens from “others” (Herbert, 2001). Low-income communities are defined as dangerous areas in which punishment is not only preferred but necessary. It delegitimizes a social welfare approach (ibid.), because social welfare will not be effective unless order is restored, but, more importantly, because crime, according to Broken Windows, is not the result of socio-economic processes. As Uruguay’s left-wing government adopted Broken Windows, it shifted from a welfare approach to crime to a punitive approach, and began to distinguish between respectable working-class citizens and “disorderly others” who needed mano dura. The fear of “others” is augmented by Broken Windows and reinforces middle-class fears
of both poverty and poor people, endorsing aggressive police tactics (ibid.), favouring a policy of segregation and exclusion. In the case of Uruguay, middle- and upper-class fears have been reflected in an increase in private security and the construction of gated communities. Crime is seen as the result of individual choices or a product of a culture of poverty (Sampson & Raudenbush, 2004).

Despite the enactment of important social programmes, Uruguay’s left did not break with neoliberalism. Income concentration and accumulation of private capital grew during the left-wing government years (Burdín, de Rosa, & Vigorito, 2015; Oyhantçabal, 2019). This tension was strongly reflected in the area of crime control, where authorities, by the beginning of the second term, had shifted towards a rhetoric of individual responsibility and choice, abandoning the notion that crime was related to socio-economic policies. As Wendy Brown (2015) shows, those who do not adapt to the discipline of the market are further marginalized and criminalized, and require repressive state intervention. This intervention of expelling the “disorderly people” is translated into incapacitation through the prison system (Garland, 2001). In Uruguay we have observed a continuous increase in the prison population since the adoption of neoliberal policies in the late 1990s. From 1999 to 2020, the prison population in Uruguay increased from 4,000 to 11,700 inmates, having one of the largest incarceration rates in the region with 328 per 100,000 inhabitants. In 2010, with the inauguration of the second Frente Amplio administration and the consolidation of the tough-on-crime approach, there were 8,775 prisoners, and by the end of their third government in 2019, the inmate population had grown to more than 11,000 (Petit, 2019).

Neoliberalism is more than a set of economic policies, it is a “distinctive mode of reason, of the production of subjects” (Brown, 2015, loc. 169; see Harvey, 2005), it is a way of transforming and disciplining individuals to the logic of the market. The displacements, segregation, and expulsions produced by neoliberalism (see Davis, 2006; Sassen, 2001, 2014) require the expansion of the security apparatus, and an increase of police intrusion in those communities most affected by these changes. As the left wing consolidated their power in Uruguay and were able to move Uruguay away from the socio-economic crisis of the early 2000s, crime policy began to play a more prominent role in public opinion and government. Despite the advances made in social policy, and its commitment to addressing the crime problem as part of its social programme, the Frente Amplio abandoned its initial commitment and moved towards a punitive approach. While poverty and inequality were reduced, neither the socio-economic structures nor the concentration of wealth were deeply transformed (de Rosa, 2020; Oyhantçabal, 2019).

Faced with rising crime, but more importantly with an increase in the fear of crime, the left-wing government responded with a neoliberal discourse and policy rooted in Broken Windows’ segregation principle of distinguishing between orderly people and disorderly others. The construction of the “undeserving other” became the governmental dispositif that allowed Uruguay’s left to navigate the tension between their commitment to social change and their adoption of mano dura.3

In 2004, for the first time in Uruguay’s history, the left wing won the national elections with 51.7 per cent of the votes.

The Frente Amplio, a coalition of left-wing, social-democratic, and social Christian parties, was formed in 1971 as a democratic response to the authoritarian repression and the urban guerrilla movement.

3 Guillermina Seri (2012), following Michel Foucault, explains governmental dispositif as a series of discursive practices and policies, which come together as a response to what is perceived as an urgent social need.
Most party leaders were imprisoned, tortured, or exiled, and many disappeared during Uruguay’s military dictatorship (1972–1985). In 1989, they achieved a major electoral victory when they won the municipal elections in Montevideo – Uruguay’s capital city, which holds close to half of Uruguay’s population – and have governed the city uninterruptedly since then.

The 2004 massive electoral victory came after a deep economic crisis generated by the neoliberal policies of the 1990s and early 2000s in Uruguay and Latin America. The economic recession, which began in the late 1990s, continued into the early 2000s leading to an economic collapse following Argentina’s 2001 economic debacle. The quick recovery in the second quarter of 2003 did not help the incumbent candidate (Panizza, 2008), and the left wing was able to win the elections. Poverty in Uruguay at the time of the 2004 election stood at 39.9 per cent, 4.7 per cent living under extreme poverty conditions, and unemployment levels were above 13 per cent. A decade later, poverty had been reduced to 10.1 per cent, with extreme poverty at less than 1 per cent. Unemployment had declined to 6.3 per cent, underemployment had fallen from 17 per cent to 7 per cent, and informal employment had decreased from 38 to 28 per cent. Real wages rose by 56.3 per cent from 2004 to 2016 (Oyhantçabal, 2019).

However, the massive improvement in economic and social conditions was not the product of a deep transformation of Uruguay’s economic matrix and a complete rejection of neoliberalism. Rather, Uruguay took advantage of the rise in demand for primary commodities, in particular from China, and focused on economic growth and private capital accumulation, updating the legislative framework inherited from the neoliberal period (ibid.). At the same time, favoured by GDP growth, it developed a series of important social policies aimed at ameliorating the conditions of low-income sectors. Despite these positive changes, “neither the type of goods produced for the world market, nor the ownership of the majority of the means of production, nor the distribution of income among social classes saw significant modifications” (ibid., p. 132). Income concentration in the top 1 per cent continued to rise, and the accumulation of private capital, both in land tenure and in the financial sector, continued to increase (Burdín et al., 2015; de Rosa, 2020; Oyhantçabal, 2019). In short, the important progressive changes did not amount to dismantling the neoliberal system developed in the previous decades.

As we observed in the previous section, neoliberalism is more than a set of economic policies. Neoliberalism implies a series of governmental practices, which include the transformation of the political subject into an economic one, who becomes the only one responsible for their fate, disconnected from larger societal processes (Brown, 2015). Capitalism produces insecurity and fear as the laws of capital accumulation and competition are constantly creating risks (Marx, [1867]1990). In the neoliberal phase, the levels of fear and insecurity increase as the processes of accumulation and expulsion become widespread and more complex (Sassen, 2014). In Uruguay, one of the expressions of insecurity was reflected in the rise of fear of crime, which rose at a much higher rate than the actual crime numbers. Faced with this dilemma, the government’s choice was to follow neoliberal recipes in the area of crime control and adopt US-inspired policies. These aggressive tactics benefited from a series of institutional changes that reinforced the power of the police and the criminal justice system.

**Crime and Crime Policy During the Frente Amplio Government**

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4 Data from Uruguay’s Instituto Nacional de Estadística (Amarante & Vigorito, 2007).
Homicides and crime against property had been on the rise in Uruguay since the mid-1980s (see graphs below). In 2005, immediately after the Frente Amplio came to power, both homicides and property crime rose. Homicides increased from 6.3 per 100,000 to 9.1, and property crime went from 366.3 per 100,000 to 454.5. This increase in criminality can be explained as a consequence of the neoliberal crisis, which shook Uruguay’s society. And this is how the Frente Amplio’s leadership initially interpreted this increase.

![Graph of Homicides per 100,000, 1985–2018](image)

On March 1, 2005, in his inauguration speech, President Tabaré Vázquez spoke about the humanitarian crisis in the prison system and declared that the government would be “severe with criminality, but we will be relentless with the causes that lead to it”.

Criminality and security were not among the main axes of the Frente Amplio’s programme, as the party focused on the economic and social policies that would ameliorate the economic crisis (Vernazza, 2015). Crime policy was included as part of the emergency plan designed to deal with the deep economic and social crisis affecting the country. The government emphasized the need to reform the police and the prison system, and reorganize the Ministry of the Interior, which was in charge of internal security, and which still functioned with many of the premises established during the military dictatorship. The government began a process of reform, which included the professionalization of the police, an improvement of the working conditions of police personnel, the restructuring and improvement of police intelligence, the formulation of an emergency plan to humanize prison conditions, and the creation of a new Penal Code, which included alternatives to incarceration.

The success enjoyed by the government in the socio-economic sphere did not provide immediate results in the area of crime control. Often, social security programmes are not enough to prevent or cure the social upheavals produced by capitalism (Neocleous, 2008), especially if basic structural conditions are not transformed. As the socio-economic conditions of the population improved, there was no immediate decrease in crime levels, and the sense of fear began to increase among the population.
According to Latinobarómetro, in 2004 only 1.4 per cent of those surveyed declared crime to be the country’s main problem. But by 2011, 40 per cent had pinpointed crime as their main concern. As the socio-economic situation improved, popular concern shifted from socio-economic variables to crime.

Fear of crime had a much steeper increase than actual crime. While both homicides and property crime did increase, the growth was not as significant as the fear of it. Faced with the left-wing success in the economic area, the right-wing opposition shifted their criticism against what they perceived as the government’s failure in crime control. The opposition argued that the left wing was incapable of addressing crime because they refused, in their view, to deploy and use the repressive power of the state. The mass media, in particular the private television networks and newspapers ideologically associated with the right, increased their coverage of criminal activity both in terms of the number of minutes dedicated to crime and the dramatism of its coverage (Silvera & Natalevich, 2012; Viscardi, Barbero, Chmiel, & Correa, 2010). Both the media and the political opposition contributed to transforming crime into the main public issue in Uruguay.5

Faced with public and political pressure, government authorities and party leaders began to change their discourse and approach. From a rhetoric and a policy that saw criminality as a social problem to be dealt with through socio-economic policies, the left wing began to shift towards a punitive approach that saw police and punishment as the main tools for addressing this issue.

Neoliberalism’s intensified inequality, the increase in human exploitation and degradation, and the economic, ecological, and health havoc they produce (Brown, 2015) require a strong and expansive

5 For an explanation of the role of mass media in the rise of penal populism, see Bonner (2019).
security apparatus to maintain order (Neocleous, 2008). And this is the approach the Frente Amplio had taken by the end of their first administration and the beginning of their second one.

With the launch of the electoral campaign towards the 2010 national election, the Frente Amplio situated security as one of their five main priorities for the second term. While the Frente Amplio’s first administration integrated its crime control policies under the axis of human rights and social integration, by the end of the first term the focus had shifted towards a punitive approach. Four crucial policies highlight this change.

First, we observe a continuous increase in the Ministry of the Interior’s budget. In 2010, the budget jumped by more than one hundred million dollars, and went from 5.3 to 5.6 per cent of the national budget. Eight per cent of the increase in the government’s public expenses went to the Ministry of the Interior, compared to 13 per cent destined for education, and a 3 per cent increase destined for the Ministry of Social Development.6

Secondly, the Guardia Nacional Republicana, a militarized unit formed by the unification of three police units (Grenadiers, Mounted Police, and Special Operations) was created in 2010. This unit was defined as a special force in charge of “re-establishing public order, collaborating and coordinating crime prevention and repression”, providing support in the protection of prisons, participating in the war on drugs, intervening in high-risk operations such as kidnappings, and participating in raids and detention of suspects (Ley 18,719 Presupuesto Nacional, 2010). The first operations of this new unit were massive police raids in low-income neighbourhoods. These Brazilian-style operations, named megaoperativos policiales (police mega-operations) by the media, were framed by the Minister of the Interior, Eduardo Bonomi, as a way of fighting the process of “feudalization” of these areas and preventing the formation of “Brazilian-style favelas” (Redacción 180, 2011).

A third element was the enactment of new legislation and a reform of the Penal Code, moving from an inquisitorial to an adversarial process, but also establishing greater sanctions and harsher punishments for drug-related crimes, crimes committed by minors, and disorderly behaviour reflecting the government’s adherence to Broken Windows and penal neoliberalism.7

Finally, we observe a significant change in the authorities’ rhetoric. During the first period, the discursive framework saw crime as the failure of previous governments’ social policy to integrate the marginalized sectors of society, and acknowledged that harsher punishment would not provide solutions. By the end of the first government and into the electoral campaign, we observe a shift towards a tough-on-crime rhetoric. The new Minister of the Interior, Eduardo Bonomi, declared in March 2010 that social policies are not enough to fight crime and a strong police response is necessary (Vernazza, 2015). Police actions focused on low-income neighbourhoods in Montevideo. More than half of the violent and property crimes are committed in Montevideo, and Montevideo’s police command sets the tone for the rest of the country.8

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7 See law 19,000 on Pasta Base and Cocaine. Also see changes to Articles 72 and 76 of the Children and Adolescent Code, which established a minimum sentence of one year for grave crimes. Law 19,120 established a series of sanctions for disorderly conduct, including the lack of respect for authority, vagrancy and panhandling, alcohol abuse, illegal gambling, and loitering.
8 In contrast to the US, Argentina and Brazil, Uruguay’s security policies are designed by the central government through the Minister of the Interior, and not by local governments. This may produce tensions when local governments are ruled by a different political party to the one ruling the central administration.
By 2010, the left wing had shifted to a tough-on-crime approach. Massive police actions, the creation of a militarized police unit, and the harshening of penalties became the standard responses to the problem of crime. The proponents of US-style policing, in particular Broken Windows and zero-tolerance policing, made their way into Uruguay, and authorities began working and signing consultant agreements with Rudolph Giuliani, William Bratton, Lawrence Sherman, and others (Bonomi, 2019; Ministerio del Interior, 2014; Montevideo Portal, 2018; Subrayado, 2012).

Despite its commitment to social democracy and the enactment of important social policies, when it came to the area of crime control, Broken Windows and penal neoliberalism became hegemonic. The challenge was how to maintain a political commitment to redistribution and justice while adhering to a tough-on-crime approach. The response, following the logic of Broken Windows, was to divide low-income communities and their residents into deserving and undeserving poor.

The Construction of the Disorderly Other by Uruguay’s Left-Wing Government

As we previously observed, one of the first signs of a tough-on-crime approach was the massive police operations in low-income communities. These mega-operativos, as the local press called them, were designed more as a show of force than a tool for fighting crime. Minister Eduardo Bonomi justified these operations as a way of stopping what he called a “process of feudalization and favelization” of Uruguay’s low-income neighbourhoods. “This is how favelas in Brazil began,” the Minister stated, adding “in Uruguay we can observe a process of feudalization through which organized delinquents, which have connections with drug traffic organizations, attempt to control areas of Montevideo” (Redacción180, 2011). The comparison with Brazil’s favelas ignores the history of the favelas and its roots in policies of racial and urban segregation. Furthermore, the comparison is not a coincidence, as this style of police operation was similar to the police occupation of favelas in cities like Rio de Janeiro and São Paulo. In São Paulo, for example, the official name given to these operations in 2009 was Operação Saturação (Operation Saturation). São Paulo police officers occupied the streets, searched houses, blocked the exits and entrances to the neighbourhood, and would ask all residents to provide identifying documentation (Alves, 2018, p. 144). These methods were exactly the same as those applied in Uruguay, and the official name given to these operations was Operaciones de Saturación (Operations of Saturation).

The use of terms such as favelas, red zones, and feudalization contributes to the criminalization of low-income communities and their residents, augmenting the existing social segregation in the city. This criminalization can be observed when we consider that the operations produced a high number of detained individuals but very few of those were formally arrested or charged with a crime. Asked about this, Bonomi argued that the procedures cannot be evaluated by the number of formally arrested individuals, but by the fact that the police would now have a permanent presence in these areas. The key element in this process is to highlight the “disorder” and threat that these low-income areas present to the rest of the city and the need to re-establish order. In other words, it appears that the main goal of these operations is to show the power of the state and its capacity for violence.

The security project, Seri (2012) contends, divides the community into antagonistic camps, the people who deserve security and the “others” from whom the community needs to be secured. The Frente Amplio began to adhere to this discourse by focusing on low-income communities and attempting to separate the “people” from the threatening “others” inside these communities. In the process, the stigmatization and criminalization of these areas increased. Those who were unable or unwilling to enter the consumption circuit, expanded by the government’s socio-economic policies, became the target of police control and surveillance.
The distinction between “orderly” and “disorderly” areas was highlighted by the next step taken by the government. Once the legality of mega-operations had been challenged, police leaders adopted what is known in the US as “Weed and Seed”. Developed during the George H.W. Bush administration, the programme involves the “weeding out” of individuals participating in criminal or disorderly activities, and preventing their return to the area. Only then does the “seeding” begin by investing in the neighbourhood (US Department of Justice, 1991), generally in a process of gentrification that produces more expulsions. Often, authorities continue to claim that the “weeding” has not been completed, justifying state use of force and further expulsions.

"Weed and Seed", as in the case of other community policing initiatives, should be understood as part of a pacification logic embedded in the neoliberal security project. The goal of these programmes is to produce a docile population, who will accept and adhere to the existing social order and prevent political mobilization against this order (Williams, 2011). Through the recruitment of local community members, who already have a pro-police disposition, community “leaders” become the eyes, ears, and mouth of authorities in the production and reproduction of the existing social order (Gascón & Roussell, 2019; Neocleous, 2000). Understood in this way, the weeding never ends, as those who challenge the established order need to be convinced, disciplined, or expelled.

The saturation operations continued as part of the “weeding” process, but now a “seeding” element was incorporated through different ministries and the local government. Still, the discourse that constructed these spaces as dangerous threats, and their residents as dangerous others, continued with this new approach. It followed the Broken Windows segregation mechanism of distinguishing the “orderly” and “disorderly” people. Those expelled and incapacitated by the carceral system were the disorderly others who had to be weeded out. There is a disconnection between structural conditions that lead to crime, favouring an individualistic vision of criminality. The provision of social services has been extremely important and improved the life of many low-income residents in Uruguay. However, the “seeding” did not change the socio-economic matrix, did not reduce the concentration of wealth, and did not stop the process of urban segregation.

Community policing in Uruguay became attached to the principles of Broken Windows. The Frente Amplio programme indicated that the police, with the collaboration of the community, will promote the quality of life of its citizens by reducing minor crime and disorder, and improving the feeling of security. While the proposal mentions the fact that the rise in criminality is rooted in previous socio-economic processes, it also points out that socio-economic measures are not enough, and that certain criminal behaviours are a result of cultural changes and the loss of coexistence values (Frente Amplio, 2009). When the public discourse, the political rhetoric, and police operations focus on low-income neighbourhoods, the reference regarding a loss of coexistence values and the critique of cultural changes become associated with these spaces and their residents.

The portrayal of low-income neighbourhoods as a threat to the city, and the discourses of favelization and feudalization, contributed to the sense of fear, and a continuous segregation and seclusion of city residents. Two important data reflect this. One is the annual increase in the demand for, and offer of, private security, including new surveillance technology developed by private companies (Mujica, 2018). The other is the increase in residential segregation, territorial conflict, and gated communities (Aguiar, Borrás, Cruz, Fernández Gabard, & Pérez Sánchez 2019; Patiño et al., 2019). The development of gated communities has increased significantly since the first Frente Amplio administration

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9 Gated communities are not allowed inside Montevideo, but they are allowed in its suburban area, which belongs to different municipal administrations.
(Aguiar et al., 2019), with 50 new gated communities, 25 per cent of them in Montevideo’s suburban area (Pérez Sánchez & Ravela, 2019). Neither the social-democratic policies nor the “seeding” produced social and urban integration. On the contrary, the stigmatizing of low-income areas, the demand for private security, and residential segregation expanded.

The portrayal of low-income neighbourhoods as dangerous threats continued throughout the second and third Frente Amplio administrations. Gustavo Leal, Director of Coexistence and Citizen Security at the Ministry of the Interior, and the Frente Amplio’s candidate to become Minister of the Interior, declared in February 2019, months before the national election, that the state needed to exercise its authority without fear and prevent the process of favelization and illegality in areas that resemble the criminal urban spaces of Brazil and Argentina (Leal, 2019). Once again, we observe an intentional ignorance regarding the historical, economic, and racist roots in the formation of favelas. These are portrayed as the product of criminal activity by wicked individuals, rather than a process of socio-economic oppression.

More importantly, in his declarations Leal highlighted the idea of the exercising of authority without fear, clearly signalling the need for a tough and repressive approach. Under accusations by the opposition that the left was afraid of using state violence, the response was the deployment of tough-on-crime and zero-tolerance policing. The distancing adopted by Eduardo Bonomi and Gustavo Leal from the approach that highlighted long-term social policies rather than policing as the main response to crime signals a deep ideological and political cleavage inside the left in Uruguay (Hernández & Paternain, 2020), and in other parts of the world when it comes to the use and deployment of state violence. The application of social policies is dependent on the weeding of the “criminal” elements, and can only be destined for the deserving poor. For the undeserving poor, the answer is incapacitation. It is not a coincidence that the prison population increased significantly during this period.

Furthermore, when we look at the demographic profile of those in prison, we observe that they represent the lower sectors of society. Ninety per cent of prisoners are male, 70 per cent are between the ages of 18 and 35, and only 7 per cent have completed basic education. Twenty-seven per cent have received cash-transfer assistance compared to 5 per cent of the general population, and 20 per cent of inmates lived in an irregular settlement compared to 4 per cent of the general population (Departamento de Sociología, 2010; García García y Santos, Casal, Díaz, & Donnangelo 2017). Similarly to other countries in the Americas, it is young, male residents of low-income communities who are most affected by punitive policies, materializing the process of criminalization they go through.

**Constructing the Undeserving Other**

The Frente Amplio continued to portray itself as the representative of the working class. The government worked hard to develop policies that improved the material conditions of low-income Uruguayans. They increased indirect cash transfers, improved healthcare coverage, and extended healthcare services to all Uruguayans. They re-established collective bargaining for all sectors of the economy, and enacted legislation in protection of rural and domestic workers, who had been historically excluded from legal protections. Furthermore, they enacted important progressive legislation, such as the guaranteed right to abortion, egalitarian marriage, and the legalization of marihuana, which mostly benefitted middle-class Uruguayans and gave Uruguay and President Mujica international recognition as a progressive country. However, while enacting this progressive programme, the government continued its commitment to tough-on-crime policies and continued to follow Giuliani and Bratton’s style of policing. Minister Bonomi repeatedly stated how crime policy was following the recipe used by the former New York Mayor, transforming both Giuliani and Broken Windows into a hegemonic approach to addressing crime. The solution to this paradox, if it can ever be solved, became
possible by constructing an “undeserving other”, who, following Broken Windows and US community policing logic, had to be subdued so that the “deserving other” could enjoy the fruits of the government’s social policies.

“I believe the cause of crime today is not only poverty... there is a cultural and subcultural issue [that generates crime],” said Eduardo Bonomi. Bonomi further complained that it is difficult for the police to solve crimes when residents of low-income communities do not report or provide crucial information to the police. More importantly, when questioned about the protests that took place in some of these communities against police repression, he argued that it is the respectable members of these communities that ask the police to intervene (Bonomi, 2019), clearly differentiating between the “good” and “bad” members of the community.

Minister Bonomi continued to differentiate between the “good people” and the “dangerous others” when justifying police actions in low-income communities. “[M]ost of the people in these areas are people who work and study but coexist with groups that are connected with the drug traffic, burglaries, extorsions... that use children for their [criminal] operations, and this coexistence affects the people who work and study... we need to keep police presence in these areas to protect the people who work and study” (Bonomi, 2012). The police seem to exercise sanitary work by protecting the healthy community from polluting elements that need to be expelled. Any attempt to criticize police action by community residents and activists was dismissed by Minister Bonomi as the product of a minority of people who are trying to subvert the established order.

In 2016, the police killed a young resident of Marconi, a low-income neighbourhood popularly considered as a dangerous zone. The young resident was suspected to have stolen a motorcycle and was killed during the police action. When members of the community violently protested against the police, Minister Bonomi declared that the violent reaction against the police was perpetrated by a small organized group that does not represent the community (Bonomi, 2016). When criticized by activists and scholars, Bonomi’s response was to dismiss these criticisms as coming from people “living on the coastline”, in reference to the wealthier areas of Montevideo, who know little about low-income communities, despite the fact that many of the critics came from within these communities or from people working there. In short, those who do not adhere to the existing social order are portrayed as a menace to society’s well-being, and those who criticize mano dura’s policies are disconnected individuals or complicit with criminal elements.

Consider, for instance, the places where the police mega- operatives were carried out. The first two massive police actions took place in the Marconi neighbourhood, and later in the nearby neighbourhood of Casavalle, both in the Municipal Area D of Montevideo. This area is characterized by high levels of poverty and irregular settlements (Intendencia Municipal de Montevideo, 2019). Authorities argued that criminal activity and in particular drug-related activities were concentrated in these spaces. However, in the two operations in Marconi, only seven people were formally arrested from the many who were detained during the police actions, and from these seven, two were arrested for drug possession. Nonetheless, these massive police actions continued to focus on these areas.

The construction of dangerous others was also deployed against juveniles. During the 2009 electoral campaign, the opposition, which ran on a tough-on-crime campaign, included a proposal for a referendum to reduce the age of penal responsibility. A coalition of social movements and civil society actors, many of them associated with the Frente Amplio, opposed the referendum and successfully campaigned against it (Berri & Pandolfi, 2018). The Frente Amplio also opposed the right-wing proposal. However, by the inauguration of the second administration following the turn towards tough on crime, government authorities, in particular Minister Bonomi, had raised concerns about the participation of minors in criminal activity, suggesting the need to act in a stronger way against them. While the official report, supported by national and international NGOs, stated that the rate of participation
of minors in crime was close to 12 per cent, Minister Bonomi declared that he believed the percentage was closer to 40 per cent (Vernazza, 2015). Beyond the controversy about the data, the deeper issue here is the criminalization of poverty and youth.

Broken Windows follows and promotes a conservative moral perspective in which all those who challenge bourgeois lifestyles, and do not accept the neoliberal order, are criminalized. Any alternative culture, in particular coming from low-income communities, which can defy traditional ways is seen as dangerous. Government authorities in Uruguay began to systematically refer to juveniles as people who do not study and work, and who therefore are dangerous to society. While I am not arguing against studying or working, in a context of inequality, high income, and low levels of social mobility, studying and working do not provide for a better future and become less attractive to many young people who look for alternatives to survive. Criminal activity sometimes becomes part of the informal economy, which develops as a way to survive in complex socio-economic contexts that produce marginalization (Alves, 2018; Feltran, 2011; Sclofsky, 2021; Telles, 2010). The statement by government authorities echoing the right-wing conservative message of an unruly youth was reflected in police actions towards low-income minors, generating more fear towards this population and segregating them even more.

Rafael Paternain (2012) argues that when it came to crime policy, a conservative hegemonic discourse and approach developed in Uruguay. This hegemonic discourse is represented by a demand for punitive policies, the criminalization of poverty, and the search for moral and pathological causes of criminal activity. The Frente Amplio’s second administration, inaugurated in 2010, consolidated this conservative hegemony with its turn towards a tough-on-crime approach. Alternative ideas were dismissed as unrealistic or the work of disconnected academics, many of whom were actually following cues from police leadership (Legrand, 2019, 2020). Broken Windows policing became hegemonic in Uruguay, not simply as a policing tactic but as a societal approach to the challenges of neoliberalism. The distinction between the undeserving and deserving “other” served as the justification for a tough-on-crime approach that contradicted some of the progressive principles and image the left wing in Uruguay stood for.

Conclusion

Former New York Mayor Rudy Giuliani became the buzzword for security and policing in Uruguay. The mention of his name was enough for reporters, politicians, and some of the public to accept that the tough-on-crime approach taken by the social-democratic government in Uruguay was tough enough and was moving in the right direction (Subrayado, 2012). Asked about Giuliani’s presence in Uruguay, Minister of the Interior Eduardo Bonomi declared in 2019 that “Giuliani went to talk to President Vázquez and told him that after what he saw, he had nothing to recommend as all that he had to say had been implemented” (Bonomi, 2019). Neither of the two reporters interviewing the Minister questioned this statement. The consequences of importing Giuliani’s recipes have been suffered by the same victims that had suffered his approach across the US and Latin America. Neither crime nor fear of crime was reduced in Uruguay. However, the criminalization of poverty and the construction of the dangerous “other” continued, generating greater marginalization and segregation. Today, with a new neoliberal administration in Uruguay and a new Ministry of the Interior, who run a tough-on-crime campaign, we are able to witness the grave consequences of the import of Broken Windows. Instances of police violence against the young, poor, and Black population in Uruguay have begun to grow (La Diaria, 2020a, 2020b).
Montevideo continues to be governed by the Frente Amplio, and the new municipal administration has attempted to expand some of the social programmes developed by previous municipal governments, particularly during this pandemic crisis. However, the national government, and therefore the police and security policies, are now under a neoliberal administration, headed by Luis Lacalle Pou, that has solidified the vision that crime is the product of pathological individuals, and has increased its mano dura approach.

In this article, I have shown the ways in which the social-democratic government in Uruguay was unable to break with the neoliberal security project and by its second administration had adopted a tough-on-crime approach based on Broken Windows. While the government made very important inroads into reducing poverty and inequality, and providing a greater safety net for those most affected by the neoliberal policies of previous decades, they were unable or unwilling to transform the socio-economic matrix, favouring economic growth and competition as the key elements of governmental success. Urban segregation and concentration of wealth remained high in Uruguay, and the steps towards a social-democratic government favouring decommodification and universalism fell short. Faced with an increase in crime rates and fear of crime, fuelled by the uncertainty and insecurities that the capitalist and neoliberal system produces, the left-wing administration moved away from social-democratic principles and chose a conservative and neoliberal path, making Broken Windows hegemonic.

In the process, as part of the segregation mechanism Broken Windows promotes, authorities, in particular the Minister of the Interior, deployed a rhetoric and a policy of distinguishing among deserving and undeserving poor. The deserving poor were portrayed as demanding massive police operations, and accepting the demands of the neoliberal economy. Those who actively challenged these notions were seen as undeserving of state social policies and had to be disciplined or expelled into the prison realm. It is not a coincidence that the prison population grew significantly with the deployment of Broken Windows in Uruguay. The initiatives of community policing were carried out, as happened in the US, under the aegis of zero-tolerance policing, and as a way of imposing a social order based on exclusion and expulsion.

In this article we have been able to observe the power and centrality that crime policies and policing initiatives have and the dangers of uncritically importing policing strategies. Uruguay’s left wing followed Brazil in its massive police operations in order to show they had no complexes in using state violence, even against those they argued were their most important constituency. Furthermore, they uncritically accepted the vision that Broken Windows was the solution to crime and social disorder, despite their commitment to social-democratic policies. Broken Windows is not simply a policing strategy, it is a conservative and segregationist view of society that categorizes those who are left behind by the capitalist system as disorderly others who need to be expelled. This approach is based on the reproduction of social hierarchies deeply entrenched in liberal discourse (Mills, 1997; Neocleous, 2008; Pateman, 1988). And it is this approach that the left-wing government in Uruguay favoured.

By contributing to this conservative hegemony (Paternain, 2012), the government insulated itself from alternatives that did not include mano dura, abandoning their initial commitment in 2005 to be relentless with the root causes of crime. By the end of their third administration, the left wing had provided the institutional and discursive bases for the new right-wing government to deploy an even tougher tough-on-crime approach, which has already produced an increase in police violence against

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10 The Frente Amplio obtained 51.5% of the votes in Uruguay’s 2020 municipal elections, making Carolina Cosse the city’s new mayor.
residents of low-income communities.

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Peripheral criminal injustice
How international support for criminal procedure reform in Ecuador worsened an already weak penal system

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Abstract
This article explores the complex outcomes of the latest reform of the criminal procedure in Ecuador. Our research shows how US-led interventions resulted in massive incarceration while the underlying criminal procedures are systematically violating due process. Today, the Ecuadorian judiciary appears to work more efficiently, while law enforcement remains highly selective and the penal system remains weak with regard to judicial independence, fair trial, and the quality of its reasoning. With a weak judiciary, it is (still) the police who determine largely what is perceived as delinquency. Law enforcement is directed selectively toward petty offences while systematically producing impunity for severe offences. Thus, the reforms have exacerbated the weaknesses of Ecuador’s criminal justice system.

Our findings shed light on the complex and unintended outcomes of the wave of adversarial reforms
in the region that have not yet been studied empirically.

**Introduction**

Ecuador has undergone major changes in its criminal procedure in the last few decades, culminating in 2014 in the passing of the Código Orgánico Integral Penal (COIP). The new code articulated what has spearheaded mostly US-led criminal procedure reforms in the region since its beginning\(^1\): the new criminal procedure should be adversarial, oral, and immediate, leaving behind the alleged shortcomings of the inherited\(^2\) Napoleonic inquisitorial system.

In short: the exact opposite of the procedures and routines that have been criticised for decades for their ponderousness and lengthiness, based on briefs and petitions instead of oral and therefore immediate litigation. The core of Ecuador’s new criminal procedure rests on a judicial response to be obtained within 24 hours after the arrest in the so-called **Unidades de Flagrancia**. Section 6.1 of the COIP reads: “In the case of flagrant [blatant, overt] offence, the person [arrestee] shall immediately be brought before a judge for the corresponding hearing, which shall be realized within 24 hours after the arrest.”\(^3\)

In the new **Unidades de Flagrancia**, public defenders, prosecutors, and judges operate 24 hours a day in order to realise the first court appearance of the arrestee. During this hearing, called an **audiencia de calificación de flagrancia**, the prosecution decides orally whether to charge the arrestee, and the magistrate makes a decision immediately and also orally about the lawfulness of the arrest and about the prosecutor’s request for remand (most likely pre-trial detention).\(^4\)

However, a reservation merits mention. The **audiencias de calificación de flagrancia** — as far as evidence is concerned — are exclusively based on a report (the so-called **parte policial**) filed by the police officer who made the arrest: whether there has been probable cause for the arrest (**legalidad de la detención**) or whether there is sufficient evidence for granting the prosecutor’s request for pre-trial detention (**elementos de convicción**), the judge decides on the basis of the written report, which is read by the prosecution during the hearing while it is practically impossible for the defence to present its own evidence. We will resume this far-reaching distortion of the principle of orality later.

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1. However, the year 2014 and the COIP should not be understood as a historical break. Since its independence, Ecuador has had five different criminal procedure codes and 14 reforms and it was the criminal procedure code of 2000 (Código Procedimiento Penal) that introduced the principle of accusation, e.g. the differentiation between accusation and trial judge (Asamblea Nacional, 2014 Registro Oficial Nº 180 Ex-amposición De Motivos). In this respect, the code followed the requirements of the 1998 Constitution and became effective in January of 2000 — thus was drafted under the presidency of Jorge Jamil Mahuad Witt (1998 to January 21, 2000) — the very year the “dollarisation” was announced in Ecuador (see Paladines, 2016, p. 153). Paladines writes of a “transplant of the accusatorial system”.

2. It should be noted that the inquisitorial system in South America, of course, has never been an exact copy of its continental European role model. “Even finding the right books to begin work on new private law could present insurmountable difficulties” (Mirow, 2005, p. 182).

3. See also Federal Rules of Criminal Procedures: Rule 5. Initial Appearance, Appearance Upon an Arrest: “A person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge […].”

4. Section 529 of the COIP reads: “Audiencia de calificación de flagrancia. - In cases of flagrant delicto [flagrant understood as obvious or caught in the act, not pejoratively], within twenty-four hours of the apprehension, an oral hearing will be held before the judge, in which the lawfulness of the arrest will be assessed. The prosecutor, if deemed necessary, will formulate charges and, if appropriate, will request precautionary measures [remand].”
This audience functions as a bifurcation for the further procedure as certain criminal charges proceed according to a simplified procedure (procedimiento directo) when departing from the audiencia de flagrancia and whereby the defendant’s right to request evidence is severely limited in order to obtain the verdict in a timely manner.

Additionally, and in the aftermath of the passing of the COIP, it is now legally possible to sentence a person within 24 hours upon his or her arrest to up to ten years in prison, e.g. in the first and only court hearing, due to the plea bargaining (procedimiento abreviado) that became effective, in the present form, in 2014.  

In order to achieve a conviction within the framework of the plea bargaining, the only and sufficient “evidence” to be introduced by the public prosecutor’s office is the defendant’s consent, reflecting the new role the judge has to assume in the adversarial system, whereas in the so-called inquisitorial system, the judge actively takes part in fact-finding inquiry by questioning, for example, witnesses and, furthermore, is not necessarily bound to the confession of the defendant.

According to Langer (2019), the spread and adoption of plea bargaining and other trial-avoiding conviction mechanisms imply a global trend that he calls the administratization of criminal convictions. Administratization means that these “mechanisms are implemented through proceedings that reach criminal convictions while circumventing the trial and the rights and requirements associated with it, such as publicity, confrontation, cross-examination, compulsory process, proof beyond a reasonable doubt and the right against self-incrimination”, while the trial-avoiding conviction mechanisms have given a larger role to non-trial, non-judicature adjudicators in deciding who gets convicted and for which crimes (Langer, 2019, p. 2).

Clearly, US federal criminal procedure was the blueprint for this new routine commencing amid an arrest, a routine we suggest calling logic of the flagrant offence: the apprehension in cases of a “flagrant” offence according to Section 6 of the Ecuadorian COIP is equal to the arrest made by a law enforcement officer arriving at the scene of the crime when he or she determines that there is probable cause for an arrest (arrest without a warrant according to Rule 5 (b) of the Federal Rules of Criminal Procedure). The audiencia de calificación de flagrancia is comparable to the initial appearance at which the accused is informed of the charges. In the logic of US federal criminal procedure, the audiencia de calificación de flagrancia contains elements of the arraignment and the initial appearance, while the parte policial is equal to the complaint. Obviously, the new Ecuadorian procedure echoes the basic principles and guarantees found in US criminal procedure: no arrest without a probable cause (Fourth Amendment to the United States Constitution), and the right to a speedy and public trial (Sixth Amendment to the United States Constitution).

The rationale for reforming the legal procedure after an arrest without a warrant has been made is clear: to avoid arbitrariness on the part of the police officer conducting the arrest through immediate judicial and public control of the lawfulness of the arrest and enabling a speedy trial through plea bargaining (procedimiento abreviado) and simplified procedures (procedimiento directo).

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5 Section 637 of the COIP reads: “If the abbreviated procedure [plea bargaining] is requested during the flagrant offence hearing (audiencia de calificación de flagrancia), [...] it is admissible to proceed according to the abbreviated procedure in the same hearing.”

6 The plea bargaining (procedimiento abreviado) was first introduced in 2000 (see Sec. 369 Código de Procedimiento Penal (2000)) and reformed in 2009; however, like the procedimiento simplificado, it was seldom applied and limited to prison sentences of up to five years.
The latter requires, logically, a new comprehension of the way in which truth, understood allegedly as mere evidence, is introduced in the hearing as this comprehension is inconsistent with an “inquisitorial” system whereby, for example, German criminal procedure prioritizes “the finding of the truth”, and it is precisely for this reason that plea bargaining and simplified procedures perhaps did not become as widespread in continental European criminal procedures as, for instance, in the US.  

The audiencia de calificación de flagrancia is not only relatively novel to Ecuadorian criminal procedure but requires organisational, cultural, and even architectural reforms (Paladines, 2013). Therefore, the specialised court houses defined by their functions and called Unidades de Flagrancia, first seen in Ecuador in late 2012, should not be limited to a merely legal phenomenon. They affected the way judges, prosecutors, and (public) defenders see themselves as part of a new way of dealing with an arrest amid the opening of a criminal procedure.

In this respect, Jorge Paladines refers to the explicit purpose of the creation of the Unidades de Flagra-

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7 The core of this logic, Section 244 (2) of the German Code of Criminal Procedure, reads: “The court shall, in order to establish the truth, ex officio extend the taking of evidence to all facts and means of proof that are relevant to the decision.” Consequently, a defendant can appeal a verdict just by arguing that the judge did not do the necessary in order to establish the truth.

8 Contrary to this inquisitorial “European” approach, according to the new Ecuadorian COIP, “truth” is established in a contradictory manner. The principle of this procedure, Section 5, 13, reads. “Contradiction: the parties to a case must present, orally, the reasons or arguments through which they believe they are assisted; replicate the arguments of the other parties; present evidence; and contradict those that are presented against them.”

9 Since 2009, the plea bargaining has been recognised in the German Code of Criminal Procedure. The new Section 257c (Negotiated agreement) reads: “In suitable cases, the court may reach an agreement with the parties on the further course and outcome of the proceedings [...]. Section 244 (2) shall remain unaffected.” The last sentence specifies that, even in the framework of a plea bargaining, the court shall, in order to establish the truth, ex officio extend the taking of evidence to all facts and means of proof that are relevant to the decision.

10 In order to cope with the overburdened German criminal justice system, the public prosecutor’s discretionary functions as a gatekeeper. According to Section 153 of the German Code of Criminal Procedure, public prosecution offices dispense with prosecution regularly when dealing with petty offences: “Where a less serious criminal offence is the subject of the proceedings, the public prosecution office may dispense with prosecution [...] if the offender’s guilt is considered to be minor and there is no public interest in the prosecution.” Consequently, the majority of criminal investigations will neither result in a court hearing nor imply an arrest. Probably more important than the alleged difference between adversarial and inquisitorial legal culture is the difference with regard to the arrest amid the opening of a criminal investigation. Section 127 (1) of the German Code of Criminal Procedure reads: “If a person is caught in the act or is being pursued, any person shall be authorised to arrest him provisionally, even without judicial order, if there is reason to suspect flight or if his identity cannot be immediately established.” Thus, at the very moment the identity of the suspect can be established, being caught in the act is no legal ground for an arrest. Accordingly, Section 163b of the German Code of Criminal Procedure reads: “If somebody is suspected of having committed an offence, the public prosecution office and police officers may take the measures necessary to establish his identity.” Whereas in the US and now Ecuadorian criminal procedure, the arrest is the consequence of having identified a person as the suspect “caught in the act”, in Germany establishing the identity replaces widely what is the arrest in US/Ecuadorian criminal procedure. As of 2019, Germany had 12,000 and Ecuador roughly 14,000 pre-trial detainees, while the German population is about five times that of Ecuador.

11 An exhaustive overview is provided by Langer (2019, p. 10). For Germany see Altenhain (2020, p. 524). For the researchers, it seemed to be impossible to identify the exact number of convictions reached by plea bargaining since a huge number (between 3.9% and 15.2% for local district courts) of convictions are still based on informal understandings.

12 The term audiencia de calificación de flagrancia was added to the Código de Procedimiento Penal in March 2009.
grancia by quoting the Council of the Judiciary’s own declaration:

“The purpose of this project [Inter-institutional Flagrancy Units] is to multiply the number of cases that come to trial, respond to the citizen’s clamour to mitigate impunity and to improve security.” (Council of the Judiciary, 2013, as quoted by Paladines, 2016, p. 170)

According to Paladines, the two main characteristics of the so-called "Inter-Institutional Units for in flagrante delictos" are: (a) the reconfiguration of the role of the institutions in charge of the management of arrests based on a preponderant communication between the police and the justice agencies; and (b) new protocols for litigation through a legal culture prone to use special procedures (Paladines, 2016, p. 170).

To sum up: the reforms of the criminal procedure in Ecuador started in the year 2000 with the incorporation of the adversarial system, and have been accompanied and supplemented by special procedures such as plea bargaining and the simplified procedure. But it was the creation of the Flagrancy Units in 2012 that eventually led to a "skyrocketing" prison population. These legal reforms and institutional changes met with a legal culture prone to use special procedures.13

According to the reform’s rationale at the time, legal professionals were no longer supposed to hide behind lengthy briefs and written motions while the mostly locked-away defendant awaits his or her trial for years, but were now to act, react, and decide orally in a public hearing taking place within 24 hours of the arrest. Often, legal professionals had to adapt to new principles like orality and new roles as that of a judge in an adversarial procedure brusquely, while abandoning what has been regarded as a matter of course for the professional’s working life.

What is more, the reform of the Ecuador’s criminal procedure has not been accompanied by a domestic political-criminal debate14 and did not originate from the needs of the receiving country, but as a result of exporting principles of Anglo-Saxon legal culture into the South.15

Today, the severe technical shortcomings of the export of rule of law and criminal justice reform are well demonstrated. As an example, those "legal transplants" have been realised according to a one-size-fits-all strategy (Pásara, 2012, p. 10), and by using this strategy, “assistance providers can arrive in a country anywhere in the world and, no matter how thin their knowledge of the society or how

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13 An anonymous reviewer, apparently more familiar with US criminal procedure than the authors are, stressed “the imperfect copying of mechanisms adopted from elsewhere, especially to countries where different conditions and cultures prevail. What is described as plea bargaining in the paper little resembles the type of negotiation involved in its application in the US; it instead looks like the traditional reliance on the confession (often coerced), as ‘the queen of proofs’. Moreover, the 24-hour courts have been introduced elsewhere in Latin America (e.g. Guatemala) with US assistance, but their purpose is to avoid excessive pre-trial detention, not to sentence anyone brought before them”.

This is an important comment, which we agree with. Legal export and support for legal reform probably never bring the results intended both by (domestic or international) code drafters and donors, and the Ecuadorian Flagrancy Units are a good example of this unpredictability: instead of providing judicial control of the arrest and instead of reducing excessive pre-trial detention, the units levelled the way for mass incarceration for petty offences.

14 As mentioned before, the accusatorial and adversarial system was introduced in 2000. However, as Jorge Paladines notes, the enactment of the new Criminal Procedure Code went widely unnoticed in the public debate (Paladines, 2016, p. 153).

15 For the Ecuadorian scholar Geovana Pincha the “incorporation of the plea bargaining was the consequence of the interest of an international organisation that was committed to promoting the modernisation of criminal justice in our country” (Pincha, 2018, p. 90). Translation by the authors.
opaque or unique the local circumstances, quickly settle on a set of recommended programme areas” (Carothers, 1999, p. 96).

Often, foreign experts made only short visits to the receiving country, spoke primarily to government officials, and failed to take into account national experts’ opinions (Salas, 2001, p. 45). Their support of standardised strategies, with a blend of legal formalism and instrumentalism, provides “a convenient methodological shortcut as it makes it possible to offer legal advice without having to go through the tedious, difficult, and often unrewarding task of understanding the societies they purport to help” (Faundez & Angell, 2005, p. 575). As a common outcome, “reform projects are imported prescriptions rather than policy proposals that reflect specific local needs and power relations” (Domingo & Sieder, 2001, pp. 145–146).

More generally, international aid agencies used (and are still using) a normative, prescriptive understanding of what the rule of law should be and work worldwide, regardless of the historical, economic, and political context of the receiving country. In short:

In Africa, Asia, Eastern Europe, and Latin America, a burgeoning group of consultants, think tanks, philanthropic foundations, and national and transnational agencies has come to the conclusion that, whatever the problem, an essential part of the solution is an independent and relatively powerful judicial branch. “Good governance” requires the rule of law and a set of institutions to preserve it. (Dezalay & Garth, 2002, p. 3)

The reforms of Ecuadorian criminal procedure have to be understood within this context – as an approach whose non-accomplishment is widely recognised: “The failures so apparent in the earlier law and development movement – and now in the new one – make it obvious that law cannot be considered merely a matter of technology to be acquired off the shelf as the best or most efficient practice” (Dezalay & Garth, 2002, p. 5) or, as Luis Pásara put it: “None of these fairly narrow changes to make Latin American legal codes, criminal procedures, training, or facilities appear more like foreign models have actually transformed these legal systems” (Pásara, 2012, p. 5).

According to the approach of the law and development movement, the emergence of the rule of law would finally be an automatism once sound institutions were established. The receiving countries just had to copy the successful models provided by the North. Hence, in the logic of this movement, unfit institutions were the reason for underdevelopment and not its effects, whereas, taking into consideration European legal history and the appearance of what later was called “rule of law”, it becomes clear that the rule of law and appropriate institutions are the result of a complex struggle lasting for centuries.

Hence, the rationale of the law and development movement is based on a fallacy, mistaking cause and effect. Exporting the effect of an underlying social struggle can’t replace the latter. It is worth mentioning that this insight has already been addressed exactly 200 years ago by Wilhelm Friedrich Hegel in his Philosophy of Right: “The proposal to give a constitution – even one more or less rational in content – to a nation a priori would be a happy thought overlooking precisely that factor in a constitution which makes it more than an ens rationis” (Hegel, 1952, p. 268).

According to our hypothesis, the aforementioned reform of the criminal procedure towards a predominant Anglo-American adversarial conception in Ecuador16 has been translated into practice in a

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16 In Ecuador, the World Bank invested 12,874,000 US dollars between 1992 and 2011 in the funding of Justice Reform Projects, while the Inter-American Development Bank spent 227,312 US dollars between 1993
highly selective way, that is, only insofar as it would not affect domestic power relations. When confronted with the “three pillars” of Justice Reform as pronounced by the World Bank – that judiciary must be independent, provide access to justice, and have an appropriate legal framework, resulting in enforceable rights for all – it is no secret that the Ecuadorian criminal justice system failed broadly in achieving these goals.

Hence, the question is not whether the reforms of the criminal procedure failed or not; rather, we want to understand the recent reforms in the way they shaped social control, mass incarceration, and the selective law enforcement in Ecuador within already existing power relations. In other words, we do not intend to compare the reality of the Ecuadorian criminal justice system with the self-declared goals of the law and development movement from the North – this would be a fruitless endeavour – but rather we want to understand how the reforms impacted upon a domestic political framework.

In this respect, we understand the creation of the Unidades de Flagrancia as a fundamental element of the new criminal procedure. Its rationale is Janus-headed: on the one side, arrests are now to be controlled immediately by a magistrate judge within a public and oral hearing; on the other side, the emphasis on promptness cuts elemental rights to a fair trial while orality is, at least in the practice of the Unidades de Flagrancia, confined to reading aloud the police report.

The first obvious sign that something changed within Ecuador’s penal system in the last three decades is the overwhelming increase in the number of prisoners. In 1989, when the national prison system began gathering information on imprisonment, Ecuador had roughly 7,000 prisoners. Figure 1 shows the increase of prisoners in Ecuador – from less than 10,000 in 1997 to almost 40,000 in 2019 and prisoners per 100,000 inhabitants, the so-called “prison population rate” (orange line). The prison population rate is based on data provided by the Servicio Nacional de Atención Integral a Personas Adultas Privadas de Libertad y a Adolescentes Infractores (SNAI) and the overall population of Ecuador according to the projections by the Instituto Nacional de Estadística y Censos (INEC), based on the census of 2010.

According to data provided by the SNAI, Ecuador’s national prison system has capacity for 29,463 prisoners, which means, as of 2019, it was overcrowded to a rate of 34.30%.

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and 2011 (Pásara, 2012, p. 3). It merits mention that the aforementioned international financial institutions lend most of the funds they provide. Thus, the alleged contributions provided by the North turned into public debt that receiving countries must repay: “[O]ver the last twenty years Latin American countries added 1.45 billion dollars to their public debt from financing justice reform (Pásara, 2012, p. 4) and thus it is not only the perspective of the donors that urges us to answer the question: ‘Has it indeed been worth it?’” (Pásara, 2012, p. 4).
Table I

<table>
<thead>
<tr>
<th>Year</th>
<th>Pre-trial detainees</th>
<th>Pre-trial detention rate</th>
<th>Pre-trial detainees per 100,000 inhabitants</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>5,451</td>
<td>70.4%</td>
<td>42</td>
</tr>
<tr>
<td>2005</td>
<td>7,713</td>
<td>63.0%</td>
<td>56</td>
</tr>
<tr>
<td>2009</td>
<td>7,107</td>
<td>46.0%</td>
<td>48</td>
</tr>
<tr>
<td>2014</td>
<td>9,518</td>
<td>39.6%</td>
<td>59</td>
</tr>
<tr>
<td>2018</td>
<td>13,073</td>
<td>34.0%</td>
<td>77</td>
</tr>
</tbody>
</table>

Table I shows that the Ecuadorian penal system apparently needs less time to sentence defendants and imprisons more. While as of 2001, 70% of prisoners were still awaiting their trial as pre-trial detainees, in 2018 the pre-trial detention rate decreased to 35%. At the same time, pre-trial detentions rose from 5,400 to 13,073 (absolute numbers). This data suggest that the reformed Ecuadorian criminal justice system is indeed convicting faster as was able to address the widespread blame for the excess of pre-trial detention. The crucial question here is, of course, how the convictions were reached.

Against this background, we conducted a study on the productivity of Ecuador’s criminal system. We wanted to know how the significantly increased convictions have been achieved. We wanted to understand to what extent these imprisonments are based on a proper adversarial trial or are the result of the application of simplified procedures such as the plea bargaining (*procedimiento abreviado*) and the severely limiting *procedimiento directo*, both to be understood as a form of the *administratization* of criminal convictions and trial-avoiding mechanisms (Langer, 2019).

It is worth of note that in Ecuador (as of 2020) there does not exist a Ministry of Justice. The Council

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17 Even though the simplified procedure, the *procedimiento directo*, results formally in a trial, there is no way the defendants could meaningfully exercise their basic trial rights.
of the Judiciary (Consejo de la Judicatura) is allegedly to be understood as a mere judicial administration, but at the same time, it exerts a strong influence on jurisprudence. Thus, the Council is likely to play a hybrid role between the executive and the judiciary.

Even though the Council of the Judiciary maintains on its eighth floor a so-called National Directorate of Legal Studies and Statistics, there are no data available on the performance of the judiciary: officially, we do not know what kind of proceedings have been applied in order to achieve a verdict; we do not know — for example — the rate of acquittals versus convictions, how many cases have been dispensed with (which means discontinued or archived) without trial, appealed, or dismissed by the courts and so on.

In other words, due to the lack of data, it was impossible to evaluate the productivity of the actual, "reformed" judiciary and contrast it with the judiciary before the incorporation of the adversarial system. Annually, the Council of the Judiciary gives a so-called rendición de cuentas, a kind of accountability speech in which the judiciary sets out its ever-increasing efficiency – efficiency understood as the number of cases solved per judge. However, nobody knows how this “efficiency” has been achieved and our findings indeed reveal that many of the allegedly solved cases are in fact discontinued cases, where the judge certifies the termination of the investigation issued by the public prosecutor’s office – which is a mere bureaucratic act and not a judicial decision reflecting judicial efficiency – and there is good reason for the Council of the Judiciary and the Ecuadorian government to keep the details on how the alleged “productivity” has been achieved unconcealed.

Methodology

The database provided by the National Directorate of Legal Studies and Statistics of the Council of the Judiciary contains all criminal cases between August 10, 201419 and July 31, 2019, registered by the judiciary.

This database initially had to be filtered according to the objectives of the study: to measure judicial productivity in the shape of substantial judicial decisions with respect to all criminal cases reported by the Council of the Judiciary. We understood a “substantial judicial decision” as a verdict on the penal responsibility [guilt] of the accused as the result of an evaluation of the evidence presented by the prosecutor’s office, that is, ratification of innocence [acquittal], conviction, or dismissal as contemplated in Section 605, (2) and (3)20 of the COIP.

Another objective of the investigation was to understand how the trial has been carried out, the “how”

18 See, for example, the press release by the then President of the Council of the Judiciary, Gustavo Jalkh: “More than 718,000 cases resolved by the Judiciary in 2017” (Jalkh, p. 2018).
19 As mentioned before, on August 10, 2014, the COIP came into effect.
20 The code reads: “Dismissal. - The judge will issue a dismissal order in the following cases: 1. When the prosecutor refrains from accusing and, if applicable, that decision is ratified by the superior. 2. When he or she concludes that the facts do not constitute a criminal offence or that the elements on which the prosecutor has supported the accusation are not sufficient to presume the existence of a crime or participation of the person prosecuted. 3. When causes for the exclusion of unlawfulness [legal justification = self-defence] have been established.” Thus, the dismissal according to # 1 of the aforementioned section is not a substantive decision, but a procedure at the request of the Prosecutor’s Office, while the decision according to # 2 and 3 of the norm is – as legal reasoning – a substantial legal decision. The purpose of the evaluation during the trial preparation stage is to assess and evaluate the elements of conviction on which the prosecution is based, Sec. 601 of the COIP.
being understood as the respective rate of abbreviated [plea bargaining], direct [simplified], or ordinary procedure, with respect to the total number of judicial decisions in which the criminal justice system has reached a verdict on the penal responsibility (understood as the different forms of guilt) of the defendant.

We accepted conciliation [mediation] as a form of termination, even though, in the strictest sense, it is not a substantial decision, since the conciliatory agreement terminates the procedure – and thus the enquiry about the alleged penal responsibility without giving the judge any discretion on the decision.

In addition, we accepted the so-called "no qualification of a flagrant offence" (no calificación de flagrancia) as a way to end a criminal procedure. In this case, the judge’s task in the framework of the initial hearing (audiencia de flagrancia) comes to an end, while the Prosecutor’s Office will or will not conduct an investigation that may or may not result in the formulation of charges [indictment]. According to the interviews conducted with prosecutors and public defenders, the prosecution requests not to qualify the offence as flagrant in order to gain time for further investigation when the police report seems insufficient.

### Table II

**Determination of the Scope of Study**

<table>
<thead>
<tr>
<th>Type</th>
<th>Cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases received in database</td>
<td>1,048,576</td>
<td>100%</td>
</tr>
<tr>
<td>Administrative offences [misdemeanours]</td>
<td>525,858</td>
<td>50.15%</td>
</tr>
<tr>
<td>Does not correspond to the first instance [appeals]</td>
<td>41,909</td>
<td>4.00%</td>
</tr>
<tr>
<td>Sex crimes</td>
<td>11,495</td>
<td>1.10%</td>
</tr>
<tr>
<td>Crimes of adolescent offenders</td>
<td>Does not apply</td>
<td>-</td>
</tr>
<tr>
<td>Crimes against minors</td>
<td>Does not apply</td>
<td>-</td>
</tr>
<tr>
<td>Procedural decisions</td>
<td>270,234</td>
<td>25.77%</td>
</tr>
<tr>
<td>Offences with regard to the Organic Law on Consumer Protection</td>
<td>2,035</td>
<td>0.19%</td>
</tr>
<tr>
<td>Scope of study</td>
<td>197,045</td>
<td>18.79%</td>
</tr>
</tbody>
</table>

It is important to note that the Council of the Judiciary indicates, according to its own database and the interviews conducted with the head of the department, that 1,048,576 criminal cases are presented as resolved, whereas applying the above-mentioned filters shows that only around 20% of the reported and allegedly solved cases are criminal cases in the strict, substantial sense.

We used the file reference numbers included in the database provided by the Judiciary Council in order to identify the cases in the public database called “eSatjes system”, to obtain the case transcripts, and eventually to extract the details of each case defined in the random sample. The study was supported by a team of trained analysts from the law school of an Ecuadorian university and two visiting researchers.

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21 We want to thank Professor Milton Rocha and the students of the Universidad Indioamérica, Carrera de Derecho, Sede Quito.

22 Johann Neukirch and Lea Wiesmüller, who received a travel grant from the German Academic Exchange Service (DAAD), provided valuable assistance.
For the calculation of the sample, the following formula was applied:

\[ n = \frac{z^2_{1-\alpha} N(1 - p)}{p(N - 1) \varepsilon_r^2 + z^2_{1-\alpha} (1 - p)} \]

where:

- \( N \) = total number of criminal cases
- \( z \) = confidence coefficient
- \( \varepsilon_r^2 \) = expected maximum relative error
- \( p \) = ratio estimator
- \( n \) = sample size

As a result, 934 cases were chosen randomly within the database.

Each analyst reported the information on a data sheet. The individual results were merged in a single results matrix. The author conducted prior training for the analysts on how to collect the data.

We further observed 80 court hearings in the *Unidades de Flagrancia* between July and October 2019 and carried out interviews with several public prosecutors, judges, public defenders, pre-trial detainees, and senior officials of the Council of the Judiciary. The results of this field study are subject to a different publication. However, we used some findings additionally for the interpretation (IV).

**Results**

**Types of Prosecuted Crimes**

Figure II shows the composition of 197,045 criminal cases differentiated by criminal type processed according to the COIP’s chapters.
It is noteworthy that the object of legal protection (or protected right) “liberty” is theft, robbery, and any form of property offence, while the object of legal protection “good living” (as derived from the Quechua term sumak kawsay) is public health and therefore drug possession and trafficking.

As a first finding, the study demonstrates an imbalance both in the distribution of the offences within the initial universe of 197,045 cases and within the COIP’s chapters. For example, of the 30,218 cases belonging to the third chapter of the COIP (offences against the legal good “good life”) – 29,458 cases consist of drug related offences (97.49%). Therefore, further offences against the “Rights to Good Living”, such as neglect of health service, production and distribution of expired medicines and supplies, contamination of substances intended for human consumption, etc., are irrelevant in Ecuador’s criminal practice despite the fact that they have a clearly determinable legal good.

As mentioned above, the representative sample includes 934 cases of which 464 have been reported

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23 We are aware that for many Anglo-American readers, the notion of “legal good” may sound odd. The *bien jurídico* stems from the German legal term *Rechtsgut*, which is hard to translate properly. In the Anglo American tradition, the term corresponds roughly to the harm principle.
as resolved according to our criteria on judicial productivity, e.g. with convictions, acquittals, conciliation, or dismissal\textsuperscript{24}, as shown in Table III.

<table>
<thead>
<tr>
<th>Type</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sample</td>
<td>934</td>
</tr>
<tr>
<td>Administrative offences (misclassified in database provided by the Council)</td>
<td>23</td>
</tr>
<tr>
<td>Discontinued through judicial decision (154), or discontinued due to loss (mishandling) of files (39)</td>
<td>193</td>
</tr>
<tr>
<td>Inaccessible cases (most likely misclassified sexual offences inaccessible in the eSatje system)</td>
<td>145</td>
</tr>
<tr>
<td>Procedural decisions (misclassified)</td>
<td>13</td>
</tr>
<tr>
<td>Family cases (misclassified)</td>
<td>3</td>
</tr>
<tr>
<td>Cases not reported by the analysts</td>
<td>93</td>
</tr>
<tr>
<td>Resolved cases</td>
<td>464</td>
</tr>
<tr>
<td>Cases suitable for further analysis</td>
<td>657</td>
</tr>
</tbody>
</table>

Six hundred and fifty-seven cases (464 plus 193) were finally deemed suitable for further analysis, e.g. excluding misclassified or inaccessible cases (possible sexual offences or offences against minors, procedural decisions, family cases) or cases not reported. Of the 657 cases, 70.62\% involve a decision on the merits according to the study’s criteria (464 cases). Consequently, 29.38\% of the cases analysed (193) have not been resolved by a sentence [ruling], conciliation, or dismissal, despite the fact that they appear in the database of the Judicial Council as resolved cases.

Most of these prosecutions have been discontinued through judicial "decision" based on Section 587 of the COIP.\textsuperscript{25}

In turn, in 363 of the 464 cases properly resolved, the defendant was “caught in the act”, that is, committing an offence as qualified by Section 527 of the COIP. So, an initial hearing (audiencia de flagrancia) 24 hours after the arrest was realised in 78.23\% of all criminal cases reported by the database. In these cases, the simplified procedure [procedimiento directo] is mandatory if the further legal requirements are met.

In conclusion, only 21.77\% of the criminal cases resolved by a decision on the merits did access the judicial system within the “ordinary” sequence of events: after criminal charges have been pressed

\textsuperscript{24} According to our criteria described above, the dismissal requested by the prosecutor’s office does not necessarily reflect judicial productivity. Thus, it is likely that the data on dismissals might, cover cases that are a mere “filing away” of the case without a judge being involved substantially.

\textsuperscript{25} A case is dismissed [dispensed with, archived, or discontinued] when the fact under investigation does not constitute a crime (Sec. 586.2 of the COIP), e.g. dismissed or dropped for lack of merit. Curiously, discontinuing the case requires the intervention of the judge. "The decision to archive will be substantiated and requested from the judge", Sec. 587.1 of the COIP. This rule is a gateway for a demonstration of false productivity by justice operators.
(denuncia), police start an investigation, which may eventually result in an arrest with a warrant, an indictment, and the involvement of a judge.

This data reveal the emphasis of the Ecuadorian criminal system on what is called “flagrant offence”, with all the logic implied with regard to speed and a lack of sufficient time to carry out a thorough, impartial, and extensive investigation as in most cases it involves sentences up to five years, in the so-called “simplified procedure” (procedimiento directo).26

This emphasis is demonstrated by considering the following: the database reports 154 discontinued cases (see Table III), however only 40 of them (25.97%)27 have entered the criminal justice system according to the logic of the “flagrant offence hearings”.

In contrast, 114 (74%) of the discontinued cases accessed the criminal justice system as a non-flagrant offence and thus through the “ordinary” procedure, based on a criminal investigation (investigación previa). Consequently, the probability that a case will be archived and discontinued is significantly higher if it accesses the penal system through the supposed normality of a criminal investigation.

With regard to the resolved cases, that is, the 464 cases that actually include a judicial decision (acquittal, conviction, dismissal, or conciliation), 329 cases embraced one defendant, while the rest embraced multiple defendants.

As we were analysing judicial productivity, we had to consider decisions, and not cases – and therefore one case can consist of two or more judicial decisions on penal responsibility, depending on the number of defendants involved.

**Abbreviated Procedure [Plea Bargaining]**

In order to elaborate the proportion of convictions obtained through the application of the abbreviated procedure among the 464 resolved cases, we had to exclude all cases in which the maximum sentence exceeds 10 years, since in this constellation, the abbreviated procedure is inadmissible. After analysing the universe of 464 cases according to this criterion, it showed that the abbreviated procedure would be admissible in 433 cases.

In a second step, we determined that the 433 cases suitable for the application of the abbreviated procedure correspond to 506 decisions (in a case with multiple defendants, multiple decisions on the application of the abbreviated procedure can be made).

According to our case analysis, the abbreviated procedure was applied 190 times, that is, in 37.55% of the decisions on its application. This means that already within the very limited scope of substantial decisions on the defendant’s guilt within the overall sample (464 out of 657 cases, see Table III), the

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26 See for the reformed (2020) procedimiento directo Sec. 640 of the COIP, which now extends the statutory period for the investigation to 20 days.

27 Within the framework of the initial hearing of the flagrant offence, the prosecutor’s office may formulate charges, while generally the hearing of the formulation of charges (so-called audiencia de formulación de cargos) commences the so-called “investigation stage” (see Sec. 591 of the COIP). Thus, in the logic of the flagrant offence, the filing away can be carried out according to the general rules, Sec. 599 (3) and Sec. 600 of the COIP.
proportion of this trial-avoiding conviction mechanism is significant.

**Pre-trial Detention [Remand]**

In order to improve the accuracy of the result regarding the proportion of pre-trial detentions, the cases with four defendants have been included in the analysis, which implies an increase in the number of the decisions on the application of pre-trial detention. In 59.50% of all pertinent decisions, the request for pre-trial detention was granted during the first court hearing: 307 affirmative resolutions out of 516 decisions.

Ruling out offences that are not flagrant according to Sec. 529 of the COIP, the percentage increases to 61.67%. In other words, 61.67% of flagrant offence hearings [initial hearing 24 hours after the arrest] result in pre-trial detention, despite the fact that this measure should – according to the Ecuadorian constitution – be an exceptional measure and despite that Ecuador’s judiciary not only has a long record of abuse of pre-trial detention, but almost never succeeds in meeting the formal requirements for pre-trial detention (Krauth, 2018).

**Pre-trial Detention and Abbreviated Procedure**

The correlation between the decision on pre-trial detention [remand] and the subsequent acceptance of the abbreviated procedure [plea bargaining] by the defendant points to the pre-trial detention as a means of coercion: in 87.89% of the applications of the abbreviated procedure (190 acceptances of the abbreviated procedure at 167 orders imposing pre-trial detention), pre-trial detention has been imposed before.

In other words, the decision of the defendant to confess and accept the abbreviated procedure has been made while being imprisoned in 87.89% of cases.

**Simplified Procedure [Procedimiento Directo]**

Of the 464 cases with decisions on the merits, the simplified procedure according to Sec. 460 of the COIP was applied in 265 cases (57.11%), implying the limitations on the rights of the defendant outlined above and in the glossary.

**Results of Criminal Trials**

As mentioned above, 37.5% of the cases in which its application was admissible resulted in the abbreviated procedure, which in turn inevitably implies a conviction; in these cases, the trial judge is “exonerated” from making a substantial decision.

Therefore, only in cases not being resolved through the abbreviated procedure is the judge obliged to make his or her own decision on the criminal responsibility of the defendant within the (adversarial and oral) trial.

Table IV sets out the results of these substantial decisions in criminal proceedings without an abbreviated procedure applied in cases of between one and four defendants.
In order to obtain a broader perspective, the judicial decisions on penal responsibility resolved without recourse to the abbreviated procedure had to be compared to the number of cases resolved through that mechanism.

<table>
<thead>
<tr>
<th>Outcome of proceedings</th>
<th>Decisions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conviction</td>
<td>110</td>
<td>32.54%</td>
</tr>
<tr>
<td>Dismissal</td>
<td>68</td>
<td>20.12%</td>
</tr>
<tr>
<td>Acquittal</td>
<td>86</td>
<td>25.44%</td>
</tr>
<tr>
<td>Conciliation</td>
<td>74</td>
<td>21.89%</td>
</tr>
</tbody>
</table>

Table V

<table>
<thead>
<tr>
<th>Decisions</th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Decisions without abbreviated procedure (up to 4 defendants): 338 (62.59%)</td>
<td>Total, abbreviated procedure (up to 4 defendants): 202 (37.41%)</td>
</tr>
<tr>
<td>Conviction</td>
<td>110</td>
<td>202</td>
</tr>
<tr>
<td>Dismissal</td>
<td>68</td>
<td>-</td>
</tr>
<tr>
<td>Conciliation</td>
<td>74</td>
<td>-</td>
</tr>
<tr>
<td>Acquittal</td>
<td>86</td>
<td>-</td>
</tr>
<tr>
<td>Total A + B</td>
<td>540</td>
<td>-</td>
</tr>
</tbody>
</table>

Within the universe of 540 decisions on criminal responsibility, 312 procedures resulted in a conviction, including the abbreviated procedure, which corresponds to 57.78%.

The criminal proceedings (again understood as decisions, not cases) that resulted in an acquittal represent 15.92% of the universe, while 12.59% have been dismissed and 13.70% reached a conciliation agreement.

Discounting the abbreviated procedure, the dismissal, and the conciliation, only 196 verdicts (conviction and acquittal) out of 540 decisions were properly tried, e.g. in an adversarial manner, which is 36.30%. Considering the significant share of simplified procedures within this percentage leads to the conclusion that trial-avoiding mechanisms are prevailing.

**Interpretation**

This data, supported by the findings of our field study, reveal in several ways the severe shortcomings of the reformed Ecuadorian penal system. What is often considered as a sudden Judiciary productivity turned out to be mostly *tramitología* – a term almost impossible to translate and that refers to the void formality and bureaucratization of a legal issue.

The newly gained “efficiency” is due to simplified procedures, plea bargaining, and conciliations but not *litigation*. A meaningful exercise of trial rights de facto does not exist; the observed court hearings often looked like show trials, and only lip service is paid to due process.

However, at this point we will limit our interpretation to the functioning of the logic of *flagrancia*. In this respect, it is remarkable that delinquency exists almost exclusively within what we understand as the *logic of flagrancia*: the vast majority of criminal investigations that do not access the criminal ju-
stice system through this bottleneck are dispensed with (discontinued) and the related cases are terminated by the prosecutor's office. In order to understand the scale of this finding, we have to realize that mostly so-called urban, visibly delinquent, and offences committed in the public are tried (or more precisely administrated) in the Unidades de Flagrancia.

Typically, police officers arrive at a crime scene when called amid the committing of an alleged offence or conduct an arrest after having searched a suspect and having found drugs or weapons carried by the suspect. Those cases are brought to, and eventually tried at, the Unidades de Flagrancia and one might justify the simplified, accelerated, and limited procedures parting from the audiencia de flagrancia with the assumption that in these kinds of offences, evidence is “evident”, immediately to be obtained at the moment of the arrest and lengthy police investigation, and court procedures are therefore not necessary in order to obtain a verdict.

In contrast, criminal offences that are typically not carried out publicly, such as so-called “white-collar crime”, corruption, upscale drug trafficking, and sexual offences, do often require lengthy and cumbersome criminal investigations, and are therefore not suitable for the logic of the flagrancia.

But, according to the data presented above, the offences tried in flagrancia amount to the vast majority of what is understood and perceived as crime in Ecuador. We can see that a procedural logic or rationale aimed at speeding up the criminal procedure in certain, suitable cases of “everyday crime” with evident occurrences eventually replaced the ordinary criminal procedure based on prior criminal investigation.

This, again, has severe outcomes for the way delinquency is produced and perceived in Ecuador: against the background of the notorious feeble Ecuadorian Judiciary it is eventually the police that control and determine delinquency: There is neither a meaningful challenge of police conduct nor a control of how evidence is collected and presented within the logic of flagrancia.

Therefore, we suggest understanding the logic of the flagrancia as the gateway for the police taking control of the criminal conviction, or, in the same vein, as the gateway for the loss of control over the criminal conviction on the part of lawyers and judges since the logic of the flagrancia, which includes the plea bargaining, the simplified procedure, and the impotence of defence attorneys when pre-trial detention is requested, is the trial-avoiding conviction mechanism par excellence.

First, our findings suggest that there is no effective legal control on the lawfulness of the arrest. After the creation of the Unidades de Flagrancia, scholars expressed the hope that through the immediate realization of the audiencia, arbitrary detention would eventually be reduced (Binder, 2012, p. 11), whereas the Unidades turned into factories producing imprisonment at previously unknown rates (Paladines, 2013, p. 137). According to our observations of 80 court hearings, police officers manage – by applying the signature phrase of a suspicious conduct (conducta sospechosa), which is never substantiated in the complaints – to justify literally every arrest subsequently. Public defenders and defence attorneys rarely succeed in questioning the lawfulness of the arrest, and magistrate judges

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28 This seems to be a general outcome of what Langer (2019) calls „administratization of criminal convictions”: “Convictions based on the defendant’s consent and on evidence collected in these administrative proceedings give more power to the police [...] to the extent that they are not challenged or made accountable through a trial and since their decisions to arrest and charge an individual for a certain offense may be, de facto, the final or close to final verdict. Also, their decisions in this regard may not be accessible or transparent to third parties, citizens and the media” (Langer, 2019, p. 25).
hardly ever oppose the police. 29

Second, the police report (the parte policial) figures as an anticipated verdict precisely because, within the framework and logic of the Unidades de Flagrancia, there is almost no legal or actual opportunity for the defence to take part in the criminal investigation and request exonerative evidence. Public defenders see their defendants and are permitted to review the charges mostly just minutes before the initial hearing, even if the defendant has been waiting for hours in the arrest cell in the same building. Hence, and according to the interviews conducted with public defenders, the request for exonerative evidence would regularly be rejected because of the lack of time and the public defenders remain passive, echoing abstract constitutional principles unrelated to the tried case they cannot prepare.

Later, when the procedimiento directo takes place, and due to the shortcomings of the organization of the Defensoría Pública, public defenders hardly have any opportunity to prepare the legal defence. Their defendants are mostly locked away in a prison a roughly two-hour drive away from Quito and the institution’s guidelines do not permit public defenders working in the Unidades de Flagrancia to travel to the facility in order to interrogate their defendants, conduct their own investigations, and eventually present exonerative evidence within the time frame permitted by the simplified procedure. For this reason, the initial police report anticipates and usurps the verdict.30 This report is read by the prosecutor – due to the orality as a new maxim – but de facto cannot be called into question by the defence attorneys and is often the only “evidence”. Hence, our findings suggest that Ecuadorian criminal procedure is not an adversarial system, regardless of how the COIP reads. Police officers de facto are investigators, prosecutors, and trial adjudicators31 at the same time.

It is precisely because of this lack of an unbiased and effective criminal investigation that most of the public defenders interviewed by us preferred to accept the plea bargaining (procedimiento abreviado) instead of risking a trial, even though the defendant would not have been proven guilty in a sound criminal procedure.

Therefore, the police manage to control the Ecuadorian penal system by using the void shapes of the adversarial system, or more accurately, by exploiting the weak spots within the logic of flagrancia and with this neutralizing the guarantees and principles of a fair trial. The alleged “new” orality is, in fact, the continuation of the written form in which criminal procedures took place for centuries where legal professionals referred to police reports and written expert opinions instead of oral, immediate intervention and testimonials (Binder, 2016, p. 60).

The plea bargaining, spread all over the continent as part of the Americanization of the Law, is not only the sequel of the Inquisition (Schünemann, 1998) but has, at least in the case of the Ecuadorian

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29 We have been told in one of our interviews with a public prosecutor that police officers observing a flagrant court hearing file a complaint against the prosecutor to the Ministry of the Interior when he or she does not request pre-trial detention, and indeed, the mere physical presence of police officers openly carrying weapons in court hearings seems to be perceived as a threat against judges, witnesses, and prosecutors.

30 Trial-avoiding conviction mechanisms “empower police and prosecutors since defendants have incentives not to challenge the police’s investigations or prosecutors’ decisions and to shorten the pre-trial judicial process as much as possible” (Langer, 2019, p. 19). Moreover, “plea bargaining empowers not only prosecutors but also the police and other administrative agencies in deciding who gets convicted and for which crimes” (Langer, 2019, p. 19).

31 See Langer (2019, p. 15) for the legal literature on criminal justice in the United States exploring how prosecutors have become de facto adjudicators of criminal cases in administrative-like proceedings.
procedimiento abreviado, nothing or little to do with negotiation. The mere fact of pre-trial detention in the face of the reality of the Ecuadorian prison system excludes voluntariness as a precondition for every kind of negation (Pincha, 2018, p. 49). Geovana Pincha’s conclusion is supported by our findings set out above and according to which the consent to the plea bargaining only in roughly 10% of the cases is given when the defendant is not imprisoned.

As mentioned above, we suggest understanding the logic of flagrancia and therefore the plea bargaining, the simplified procedure, and the initial, flagrant hearing which mostly results in pre-trial detention, as trial-avoiding conviction mechanisms par excellence. These mechanisms further weakened an already weak penal system since there is no meaningful exercise of trial rights within the logic of flagrancia and police are empowered as adjudicators of criminal cases. A proper (public, oral, adversarial, equal) trial has never prevailed as the common way to achieve a verdict.

Thus, the police, in the framework of the distribution of domestic power relations, control “crime” through selective law enforcement and selective impunity. The bifurcation of the criminal procedure in so-called “flagrant” [caught in the act] offences, activating the logic of the flagrancia, and the “ordinary” criminal investigation, discharging in formal indictment and an “ordinary” criminal procedure facilitates the weakness of the criminal justice system. The “ordinary” criminal investigation is hardly realised at all, and even if so, neither effectively nor independently. Due to its overbureaucratization and both a lack of a well-trained and specialised investigative group and, decisively, political independence, investigation results in the vast majority of the cases in the public prosecutor’s office dispensing with the prosecution.

The conclusions to be drawn are firstly that, in spite of extensive legal reforms, Ecuador’s criminal system still suffers from a lack of functional differentiation. Public safety and penal efficiency, as understood and applied by the police and its punitive logic, predominate in Ecuador’s criminal system. Ironically, it is because of this predominance of the public safety discourse that “security” is an issue more than ever in Ecuador: the extraordinarily weak penal system fails to establish the validity of a normative order and hence a normative structure for society.

Consequently, what is understood as the legal system’s function in the framework of the rule of law has even been weakened by the reforms, since the criminal justice system is controlled by the police and their limited understanding of social control precisely by promoting the logic of the flagrancia and its underlying scarcity of judicial control. The collateral damage due to this dismemberment of the criminal justice system is, as mentioned above, anomie and thus insecurity, which in turn results in the call for more security and less fair trial.

The fact that this very scarcity of judicial control within the logic of flagrancia has little to do with the text of the COIP leads to the second conclusion: the debate on how to improve Latin American penal systems – promoting the adversarial versus the inquisitorial system – is missing the actual target. This assumption follows the fallacy mentioned above and superficially ascribes the weakness of Latin American criminal justice systems to the weakness of its legislature and institutions instead of addressing the underlying and highly complex power relations that shaped law both in colonial and post-colonial South America for centuries (Ots Capdequi, 1949; Valarezo, 2013): In this respect, law is to be understood not so much as a means of rationalising and limiting state power but as an ornamental accessory to power, like the gold in the churches in the New World.32

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32 As an anonymous reviewer pointed out, the absence of any significant police reform and the failure to establish a prosecution agency with its own investigative capacity are critical to the success of any criminal
However, neither the significant increase in the number of prisoners (Sozzo, 2016, p. 17) nor the excessive focus on *in flagrante delicto* is an isolated issue in Ecuador, which is in line with most countries in the region. The spread and adoption of plea bargaining and other trial-avoiding conviction mechanisms even imply a global trend (Langer, 2019).

Nevertheless, it seems safe to assume that Ecuador lost a chance to improve its criminal justice system by carelessly combining the incorporation of the adversarial system with alternative dispute resolution mechanisms such as the plea bargaining, the conciliation, and, as far as promptness is concerned, the simplified procedure. For example, in Venezuela the incorporation of the adversarial system initially reduced the prison population rate per 100,000 inhabitants between the years 1999 and 2000 from 104 to 69 (Grajales & Hernandez, 2016, p. 133).

So it seems that the adversarial system alone did not necessarily cause the dramatic increase in prisoners and it was probably not initially the wave of adversarial reforms that “brought with it an administration of criminal convictions in the region” (Langer, 2019, p. 22) but rather the damour for a more efficient criminal justice system to which the meaningful exercise of trial rights seems like an obstacle, again, regardless of the legal tradition from which they originate.33

It was therefore the blending of legal reforms with the promise of more efficient solutions, the blending of the incorporation of the adversarial system with the introduction of the plea bargaining, and the simplified procedure already within the *Código de Procedimiento Penal* in 2000 that exacerbated the pre-existing condition “administratization of criminal convictions” in Ecuador.

**Glossary**

**Consejo de la Judicatura** (Council of the Judiciary) is more a governance body than an administrative one as perhaps originally intended. It nominates, sanctions, and removes judges and is involved actively in Ecuador’s jurisprudence through guidelines whose application is mandatory for judges, for example on how to evaluate evidence and on how to apply the law in cases of sexual violence. This influence on judges often results in the reversal of the burden of proof through a merely technical “guideline” provided by the Council.

The body is highly politicised and controlled by the so-called Consejo de Participación Ciudadana y Control Social (CppCs) and removes judges through the legal figure of the “inexcusable error”. According to an interview conducted in July of 2019 in Quito with a former member of the body’s executive board, applicants are regularly are expected to bribe senior officials of the Council of the Judiciary in order to be accepted as judges. As a result, most judges are susceptible to blackmail for the rest of their professional lives and thus subject to political pressure when deemed necessary.

Undue influence on judges was common not only under the Presidency of Rafael Correa, but also under the Presidency of Lenín Moreno. After dismissing the request for pre-trial detention against one of the members of the Correa government correctly for formal reasons, the judge, Beatriz Benítez, was

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33 The “administratization” of criminal convictions and the adversarial system are not necessarily related. For the situation in Germany, see Altenhain (2020).
threatened by the former Interior Minister María Paula Romo, who said publicly: “The name of Beatriz Benítez should be remembered.”

**Código Orgánico Integral Penal.** This law was passed in 2014 and includes all former codes related to criminal law, such as procedural and substantive law and the execution of the sentence (prison regulation). The harsh increase of minimum sentences indicated by the new code is widely understood as causal for the increase in the prison population. For example, the punishment range for fraud in the former Código Penal was a prison sentence ranging from one to five years, while the new COIP provides for a punishment range of five to seven years for the same offence.

**Procedimiento Directo** (Simplified Procedure). This procedure limits the rights to a fair trial severely and is compulsory for most offences with a range of punishment up to five years. The purpose is to obtain the verdict within 20 days after the initial court hearing (and apprehension). The defence can present exonerative evidence only in a very narrow time frame (up to three days before the hearing; see Sec. 640 of the COIP). In practice, the proceedings can take months if not years because expert witnesses are overworked, while the defence lawyers are condemned to inactivity.

Due to the severe shortcomings within the organisation of the Public Defender’s Office, public defenders can hardly ever discuss the charges beforehand with the defendants.

Thus, according to the aforementioned, the most probable course of criminal proceedings is as follows:

**References:**


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O exame criminológico no Brasil à luz da criminologia clínica de inclusão social proposta por Alvino Augusto de Sá

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Resumo
O exame criminológico é uma prática avaliativa controversa e polêmica. No Brasil, há escassa produção teórica a respeito do assunto e, dentre as publicações existentes, o que se encontra, muitas vezes, são críticas que enfatizam aspectos puramente ideológicos. Alvino Augusto de Sá destoa das críticas comuns e se destaca por sua sólida contribuição teórica na área. O presente trabalho resgata a trajetória profissional deste autor, buscando analisar as avaliações técnicas dos encarcerados sob a pers-
pectiva da Criminologia Clínica de Inclusão Social, a fim de cotejar sua evolução histórica, apontando aspectos críticos do ponto de vista técnico-teórico e apresentando a proposta do modelo de terceira geração trazido por Sá.

Abstract

Criminological examination is a controversial and polemic evaluation practice. In Brazil, there is little theoretical production on the subject and, among the existing publications, what is often found are criticisms that emphasize purely ideological aspects. Alvino Augusto de Sá diverges from common criticisms and stands out for his solid theoretical contribution in the area. The present work brings back the professional trajectory of this author by analyzing the technical evaluations of prisoners from the perspective of the Clinical Criminology of Social Inclusion, in order to review its historical evolution, highlighting critical aspects from the technical-theoretical point of view and presenting the third generation model proposed by Sá.

Introdução

Alvino Augusto de Sá é autor de referência e ator protagonista nas avaliações técnicas de pessoas encarceradas, tendo vivenciado o desenvolvimento da Criminologia Clínica enquanto conhecimento científico e prática profissional. Sua grande contribuição teórica à área foi a proposição de um modelo de terceira geração de Criminologia Clínica, denominado modelo de Inclusão Social. Para construí-lo, revisou modelos anteriores, denominados médico-psicológico (primeira geração) e psicossocial (segunda geração).

A Criminologia Clínica de Inclusão Social, proposta por Alvino Augusto de Sá, é fruto não só de sua tese de livre-docência (2011), mas também – e principalmente – de sua trajetória acadêmica e profissional como psicólogo, criminólogo clínico, estudioso e docente da área.¹

De maneira geral, a Criminologia Clínica carrega o rótulo de estigmatizar o sujeito devido ao fato de ter consolidado grande parte da produção de conhecimento no modelo médico-psicológico (primeira geração), determinista e causalista, no qual o crime era visto como expressão de uma doença ou desajuste/desequilibrio e, assim, a intervenção se daria única e exclusivamente sobre o indivíduo.

Aspectos dessa herança estão ainda hoje impregnados e, em função dessa dívida histórica, criou-se uma certa aversão à Clínica, vez que a busca pelo pretensão criminoso “nato” reforçou uma visão preconceituosa, de cunho estritamente etiológico.

No entanto, a Clínica se desenvolveu pari-passu à Criminologia Geral, acompanhando sua evolução. Sá (2015: 218), que vivenciou períodos de transição atuando como psicólogo no sistema prisional, traz um importante dado de realidade ao relatar que, durante seu exercício profissional nos cárceres, teve “a oportunidade de observar uma grande resistência que os criminólogos clínicos, de orientação mais

¹ Atuou como psicólogo do sistema penitenciário paulista (atualmente Secretaria da Administração Penitenciária) por mais de 30 anos. Trabalhou inicialmente no Instituto de Biotipologia Criminal, realizando exames psicológicos nos presos, bem como elaborou pareceres do mesmo Instituto para fins de instrução de pedidos de benefícios legais. Extinto o Instituto, passou a integrar a Equipe de Perícias Criminológicas (EPC) da Casa de Detenção, sempre procedendo a perícias criminológicas. Extinta a EPC, passou a integrar, a partir de 1984, as equipes técnicas do Centro de Observação Criminológica (COC), onde eram centralizados naquela época os exames criminológicos de todo o Estado de São Paulo (SÁ, 2011: 148).
estritamente médico-psicológica, têm de aceitar e estudar os fatores extrínsecos aos indivíduos enquanto fatores independentes”.

Se o Exame Criminológico tem em sua gênese o fato de ser uma avaliação do sujeito encarcerado, não se pode negar que em seu desenvolvimento propôs-se a ir muito além, não devendo ser confundido, por exemplo, com uma avaliação de personalidade.

Partindo da realidade da existência dessa prática, a discussão que se pretende realizar ao longo desse artigo se pauta na crítica teórico-técnica acerca de sua realização. Entende-se que o aspecto fundamental para construir uma crítica sólida ao Exame Criminológico seja analisar as possibilidades e desafios que concernem a essa prática. Além disso, não se deve desconsiderar as alterações legislativas, muitas vezes reflexo de discussões políticas nas quais se sustentam argumentos para a manutenção ou extinção desta pericia na execução penal.

Pautando-se em alguns referenciais teóricos acerca do assunto, procurou-se resgatar as alterações legislativas, mais especificamente as mudanças promovidas pela reforma da Lei de Execuções Penais e as diretrizes ditadas pelo Supremo Tribunal Federal e Superior Tribunal de Justiça, bem como discorrer sobre as práticas penitenciárias, a fim de apresentar a proposta avaliativa condizente com o modelo de Inclusão Social trazido por Sá, visando à construção de uma atividade mais humanizada.

Nesse sentido, foram analisadas tanto as avaliações técnicas mantidas quanto as extintas pela Lei 10.792/03, a fim de que se possa propor melhores condições para se promover a adequada individualização da pena.

**Origem das Avaliações Técnicas dos Encarcerados**

Em suas práticas penitenciárias tradicionais, o exame criminológico vinculava-se a uma doutrina organicista, cuja ênfase recaía exatamente sobre as investigações de caráter médico-psicológico, de forma a perquirir anormalidades ou patologias através da realização de múltiplos exames, como o morfológico, o funcional, o psíquico e o moral. Esta doutrina corresponde ao primeiro modelo de Criminologia Clínica exposto por Alvino Augusto de Sá em sua obra “Criminologia Clínica e Execução Penal”, cujos referenciais teóricos se centravam na dinâmica do ato criminoso, conforme o paradigma passagem ao ato ou do fato social bruto.

No paradigma do fato social, o crime era interpretado como resultado de uma escolha livre e resum-se, portanto, a um dado ontológico (BAZO, 2020: 55). Dessa forma, no modelo médico-psicológico, a avaliação consistia em uma análise das causas individuais (orgânicas e psiquiátricas, principalmente) que teriam determinado o comportamento criminoso.

Insta salientar que a Criminologia Clínica pode ser considerada como um recorte específico da Criminologia Geral; recorte este que tem como foco de estudo e intervenção o sujeito. Para Sá, “a Criminologia Clínica, qualquer que seja seu modelo, jamais poderá abandonar a abordagem do indivíduo, na medida do possível em sua totalidade” (SÁ, 2015: 74). Segundo o autor:

> De fato, clínico, termo que remete originalmente à medicina, tem a ver com o indivíduo. Daí todo o rancio histórico de poder comumente atribuído à Criminologia Clínica no sentido dela buscar uma compreensão do crime centrada nas “causas” biopsicológicas do indivíduo e desvinculada do contexto sociológico, ou seja, um saber-poder (de decisão técnica) que depende somente de seus profissionais e que é dificilmente contraditado.
O exame criminológico nasce, portanto, com o modelo médico-psicológico da Criminologia Clínica. Nessa perspectiva, esta corrente analisava o crime à luz de fatores predominantemente individuais, postulando que a conduta criminosa se insere em uma realidade concreta e apresentava causas próprias que provocavam uma cisão entre delinquentes e não delinquentes. Uma linha mais rígida desse modelo concebe o comportamento criminoso como anomalia e o agente como objeto dotado de periculosidade a ser tratada.


Lombroso deu início às investigações biológicas sobre o criminoso em um período marcado pelo cientificismo do século XIX, isto é, um período que se destacava pelos avanços das ciências naturais. Diante deste cenário, somente poderia ser considerado como científico o conhecimento que pudesse ser submetido a uma constatação empírica, ou seja, que pudesse ser “experimentado”, testado e, posteriormente, comprovado ou não.

A ciência psicológica, por sua vez, avançava com ênfase nos aspectos-diagnósticos dos fenômenos mentais, por meio do desenvolvimento de testes psicológicos. Serafim e Saffi (2012: 61) apontam que o uso dos testes configura um importante procedimento para a realização da perícia, mas afirmam que a estratégia mais ampla e adequada continua sendo a entrevista e destacam, com base no pensamento de Groth-Marnat que, “o desenvolvimento dos testes psicológicos provocou um viés na referência do profissional psicólogo que, por muito tempo, foi associado a um mero aplicador de testes, um ‘testólogo’ por leigos e profissionais de outras áreas”

No entanto, apesar do viés biologizante, o primeiro modelo da criminologia clínica não ignorava a relação do sujeito com o meio. Para Shecaira, a escola positiva “não nega os fatores exógenos, apenas afirma que estes só servem como desencadeadores dos fatores clínicos (endógenos)” (2018: 95).

Na segunda metade do século XIX, surge a perspectiva sociológica, principalmente nos Estados Unidos, com a ascensão da burguesia industrial, econômica e comercial, num contexto de desenvolvimento urbano marcado por crescimento populacional desordenado, a chegada de imigrantes em busca de trabalho, desigualdade e outros problemas sociais.

Em decorrência daquele contexto, já no século XX, a Escola de Chicago despontou como marco inaugural do estudo sociológico do crime e da criminalidade. Daí em diante, inúmeras outras escolas sociológicas elaboraram teorias da criminalidade na visão macrosociológica.

Concomitantemente, a Criminologia Clínica passou a incorporar em suas análises a compreensão mais profunda dos aspectos sociais, adotando um modelo posteriormente conhecido como psicossocial (também chamado de modelo de segunda geração). O modelo psicossocial passa a incorporar à sua análise fatores externos e ambientais. Afastando-se da concepção explicativa da conduta criminosa, a segunda geração do pensamento clínico criminológico considera os fatores ambientais como autônomos. (BAZO, 2020: 63). No entanto, trata-se de um modelo que ainda está orientado pelo paradigma do fato social ao não considerar a atuação seletiva das agências de controle social.

Sá (2015: 184) esclarece que:

O critério de diferenciação do modelo psicossocial em relação ao médico-psicológico
não reside simplesmente no grau de valorização dos fatores ambientais, sociais ou sociológicos. Reside, primeiramente, no reconhecimento de sua independência, de sua autonomia, tomando tais fatores como fonte importante na motivação do crime. Sua importância se deve ao fato de eles serem independentes e autônomos (isto é, não transformados em conteúdos psíquicos) na influência que exercem sobre o direcionamento da conduta criminosa.

Superada a abordagem antropométrica e biotipológica de caráter predeterminista, o exame criminológico adquiriu um enfoque multidisciplinar e, posteriormente, evoluiu para uma compreensão interdisciplinar.2

Enquanto uma abordagem multidisciplinar pressupõe a prevalência de um enfoque em específico, na abordagem interdisciplinar vários enfoques convergem para uma síntese sem preponderância de determinado viés. Como exemplo, pode-se mencionar que, embora a sede cognitiva de um psicólogo que atua no cárcere seja a psicologia, ele migra para os conhecimentos de outras ciências, os integra em sua pesquisa e retorna para seu domicílio disciplinar, com seus conhecimentos enriquecidos interdisciplinarmente.

Todavia, em sua tese de livre-docência, Almino Augusto de Sá destaca que a interdisciplinaridade não é suficiente para a criminologia clínica de terceira geração, pois, para haver a interação entre o corpo técnico e os profissionais não técnicos, é necessário alcançar um patamar além da interdisciplinaridade, ou seja, além do próprio conhecimento estritamente científico. Neste sentido, enquanto a interdisciplinaridade significa uma interligação das disciplinas, a transdisciplinaridade ultrapassa a barreira das ciências exatas, para um pensamento capaz de circular, afetando ou sendo afetado por outros saberes. Trata-se de uma transposição das fronteiras impostas pelas disciplinas (ou próprias ciências), misturando-se com outras formas de conhecimento, não necessariamente técnicos ou científicos.

Aspectos Dogmáticos e Legislativos do Exame Criminológico

No Brasil, a Lei 7.210/1984 (Lei de Execução Penal) e a Lei 7.209/1984 (Parte Geral do Código Penal brasileiro) previam três instrumentos de avaliação técnica dos encarcerados: o exame criminológico, o exame de personalidade e o parecer das Comissões Técnicas de Classificação (CTC).

O Exame Criminológico estava previsto em dois artigos, no 8º3 (para a individualização da pena) e no 112º4 (para progressão de regime) na Lei 7.210/1984 (Lei de Execução Penal), e o que se depreende

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2 “A medida que a criminologia, por força das diversas correntes do pensamento, avançou para uma compreensão menos determinista, mais polivalente e mais interdisciplinar (agora já não tanto acerca do comportamento criminoso isolado, e sim, do crime como um complexo fenômeno social), o exame criminológico também começou a sofrer novas orientações, passando por uma abordagem multidisciplinar (na qual vários enfoques convergem para uma síntese sob a primazia de um determinado enfoque), e evoluindo para uma compreensão interdisciplinar (na qual busca-se uma síntese sob uma ótica realmente interdisciplinar)” (SÁ, 2016: 216).
3 : Art. 8º O condenado ao cumprimento de pena privativa de liberdade, em regime fechado, será submetido a exame criminológico para a obtenção dos elementos necessários a uma adequada classificação e com vistas à individualização da execução.
4 Art. 112º A pena privativa de liberdade será executada em forma progressiva, com a transferência para regime menos rigoroso, a ser determinada pelo Juiz, quando o preso tiver cumprido ao menos 1/6 (um sexto) da pena no regime anterior e seu mérito indicar a progressão. Parágrafo único. A decisão será motivada e precidida de parecer da Comissão Técnica de Classificação e do exame criminológico, quando necessário.
é que esta avaliação deveria ser feita em dois momentos: quando o sentenciado ingressa no cárcere e na véspera de sua saída, ou seja, no início e término do regime fechado no cumprimento da pena privativa de liberdade.

Com a reforma introduzida pela Lei 10.792/2003, a Lei de Execução Penal “retirou da CTC a função de acompanhamento da execução penal, deixando a cargo da Comissão, tão somente, realizar o exame criminológico inicial, no momento de ingresso da pessoa no sistema penitenciário para fins de orientação do plano individualizador da pena” (CFP, 2012: 48), ou seja, continuou a prever o exame criminológico tido como exame de entrada, feito para fins de classificação e individualização, e o exame de personalidade, extinguindo tanto o exame criminológico feito para instruir pedidos de benefícios, como também o parecer das Comissões Técnicas de Classificação. Dessa forma, as únicas exigências para a concessão dos benefícios legais previstas na redação trazida pela reforma do artigo 112 eram: o cumprimento do lapso temporal exigido por lei e a boa conduta.

Apesar da Lei nº 10.792/2003, na prática, a exigência do exame criminológico ainda permanecia em muitos estados. Essa falta de uniformidade de conduta entre os magistrados da execução penal gerou conflitos entre eles, e coube ao Supremo Tribunal Federal (STF) e ao Superior Tribunal de Justiça (STJ) definirem a conduta jurídica por meio das Súmulas Vinculantes STF N.º 2627, aprovada em dezembro de 2009, e STJ N.º 43928, aprovada em 2010, ambas dando poderes ao juiz para requerer o exame criminológico, desde que em decisão motivada/fundamentada. (CFP, 2012: 52)

Em dezembro de 2009, o Poder Judiciário manifestou entendimento admitindo o exame criminológico para concessão de benefícios legais, através da Súmula Vinculante 26 do Supremo Tribunal Federal.5

Por sua vez, em maio de 2010, o Superior Tribunal de Justiça, que inicialmente refutava a realização do exame por ausência de previsão legal, acompanhou o STF e editou a Súmula 439: “Admite-se o exame criminológico pelas peculiaridades do caso, desde que em decisão motivada”. Nessa trilha, aqueles que defendem a realização do exame criminológico para fins de concessão de benefício alegam que este deixou de ser obrigatório, mas mantém-se como facultativo e que não foram revogados os arts. 8º da LEP e 33 do CP; vez que o juiz possui poder geral de cautela para pedir qualquer prova ou exame. Tem-se que, por força da Súmula Vinculante n. 26 do STF a realização do exame criminológico já era novamente possível, excepcionalmente, nos crimes hediondos. Agora, em virtude da Súmula 439 do STJ, ele pode ser determinado em casos “peculiares”, desde que em decisão fundamentada.

Do ponto de vista prático, o Exame Criminológico para fins de progressão de regime (art. 112) havia sido extinto, vez que não mais existia no ordenamento jurídico; num segundo momento, o mesmo logo volta à cena, apresentado como sendo facultativo. Isso porque o requisito objetivo (que, juntamente com o atestado de conduta carcerária, deveria ser suficiente) impede manutenção da prisão por períodos maiores que o lapso temporal. A avaliação criminológica, computada como requisito subjetivo, muitas vezes acaba por estender o período da prisão, mantendo encarcerada por mais tempo a pessoa que já cumpriu o lapso temporal para progressão de regime e apresenta boa conduta carcerária. Tais decisões que permitiram a volta do Exame Criminológico refletem a expectativa de que a pessoa em cumprimento de pena deve ser avaliada em seu psiquismo e sua subjetividade, ou seja, refletem a he-

5 Súmula 26: "Para efeito de progressão de regime no cumprimento de pena por crime hediondo, ou equiparado, o juízo da execução observará a inconstitucionalidade do art. 2º da Lei nº 8.072, de 25 de julho de 1990, sem prejuízo de avaliar se o condenado preenche, ou não, os requisitos objetivos e subjetivos do benefício, podendo determinar, para tal fim, de modo fundamentado, a realização de exame criminológico".
rança da mentalidade do modelo de primeira geração (médico-psicológico), no qual há a ideia de que a pessoa presa pode oferecer risco à sociedade e, desta feita, sua soltura deve ser avaliada (ou postergada).

Uma análise crítica não deve ignorar o cenário e contexto no qual tais questões se inserem e interagem dialeticamente; segundo Sá (2016: 217-218):

A pressão e exigência pela continuidade das avaliações técnicas, por parte do Ministério Público e Poder Judiciário, continuaram (...) no Estado de São Paulo, após as rebeliões ocorridas no sistema penitenciário, par a par com as violências praticadas nas ruas, atribuídas às facções criminosas, as avaliações técnicas estão voltando como exigência para a concessão dos benefícios legais.

Tem-se, portanto, uma circunstância contígua que pode ou não ser contingente, ou seja, duas situações que ocorrem ao mesmo tempo e podem estar relacionadas: o retorno do Exame Criminológico se dá juntamente a um recrudescimento penal.

Tal relação leva a discussões cujo fundamento é político ideológico e pouco técnico. Pouco se fala acerca de questões realmente técnicas e científicas. Uma análise mais cuidadosa mostra, no entanto, que o exame não era obrigatório nem mesmo na redação original da lei, vez que no art. 112 da LEP continha a expressão “quando necessário”. Muito mais construtiva seria uma crítica que apontasse para a invisibilidade do exame de ingresso, que deveria ser feito com fins de individualizar a pena (e, portanto, em benefício do próprio sujeito encarcerado) e, sob um ponto de vista técnico, poderia inclusive servir de comparativo à uma avaliação posterior para concessão de beneficio. Neste sentido, Alexis Couto de Brito (2012: 52), ao discorrer sobre a falácia de tais argumentos, atesta:

Não basta alegar que a reforma promovida pela n. Lei 10.792 não revogou os arts. 8º da LEP e 33 do CP, porquanto estes artigos referem-se ao exame realizado na entrada do condenado no regime fechado, ou seja, no início do cumprimento da pena. O que a reforma fez foi extirpá-lo do art. 112, que previa como requisito para a concessão da progressão, ou seja, um exame tardio, tido simplesmente como um obstáculo para a liberdade e não como subsídio para o tratamento individualizado do condenado.

Ademais, acerca da ideia de que “o juiz possui poder geral de cautela para pedir qualquer prova ou exame” verifica-se que embora o art. 196, § 2º da LEP corrobore tal entendimento ao permitir que o juiz requisite qualquer perícia durante um procedimento da execução, é absolutamente questionável que se possa ter poder geral de cautela no processo penal, mormente que atente contra a liberdade do indivíduo, de forma que o pedido de realização do exame criminológico por parte do juiz implica em flagrante desrespeito ao princípio da legalidade.

Em 2019, o artigo 112º sofreu nova modificação com a alteração legislativa promovida pela Lei 13.964/2019, de 24 de dezembro de 2019, que ficou conhecida como “pacote anticrime”. A legislação promoveu significativas modificações não apenas na legislação de execução penal, como na legislação penal e processual penal.

No âmbito da execução penal, a nova legislação apresenta uma série de alterações e introduz indubitáveis retrocessos, tendo em vista que viola o sistema progressivo de cumprimento de pena e eleva o tempo de pena como propostas falaciosas de combate à criminalidade. Uma estratégia populista comumente utilizada por quem se vale do simbolismo da Lei como promessas vazias de diminuição da violência. Ao contrário, como já foi dito, o recrudescimento da lei apenas resulta em maiores gastos públicos com o sistema de execução penal e todo o aparato de segurança pública, sem refletir, neces-
sariamente, na evidente redução da criminalidade.

Cumpre destacar o impacto da alteração legislativa no sistema progressivo de cumprimento de pena, tendo em vista que a partir da vigência da lei, em 23/01/2020, passou-se a exigir um período maior de cumprimento da pena, conforme alteração do então artigo 112º da LEP.

Assim, a inovação legislativa traz nova redação ao art. 112 da LEP ao estabelecer novos critérios para a progressão de regime, tais como: a primariedade, a reincidência, se o crime foi cometido com ou sem violência à pessoa, o resultado morte, o caráter hediondo etc., cujos os percentuais de cumprimento de pena variam de 16% a 70%.

No entanto, como prevista na redação anterior, o apenado só terá direito à progressão de regime se ostentar boa conduta carcerária, comprovada pelo diretor do estabelecimento, respeitadas as normas que vedam a progressão. O exame criminológico, que já havia sido retirado, não foi mencionado.

**Contribuições da Criminologia Clínica de Inclusão Social**

O exame criminológico para fins de concessão de benefícios consiste na realização de um diagnóstico e, como herança do modelo médico psicológico, uma expectativa de prognóstico, sob uma ótica interdisciplinar, isto é, cuja abordagem pressupõe uma interlocução entre os âmbitos jurídico, psiquiátrico, psicológico e social. Trata-se, basicamente, de uma perícia. Esta avaliação técnica, sob a ótica da Crim...
minologia Clínica atual, busca compreender (não explicar) a dinâmica do ato criminoso, avaliando a complexa malha contextual em que o preso se insere, ou seja, suas condições orgânicas, psicológicas, sociais, familiares, ambientais, as quais estariam associadas à sua conduta tida como criminosa.

Importa destacar que, segundo essa perspectiva, tal investigação não pressupõe uma concepção ontológica, causalista, pré-determinista e mecanicista de crime, vez que não concebe qualquer relação intrínseca entre condições pessoais e comportamentos considerados como crime. Aquelas condições apenas fornecem subsídios para a compreensão da conduta e, em nenhum momento, permitem estabelecer uma relação causal entre este contexto averiguado (condições pessoais do preso) e o crime praticado.

De outra parte, se reconhece a existência de relações de associação, influência, facilitação ou mesmo de instrumentalização entre o contexto e o comportamento problemático. Portanto, identifica-se com uma abordagem etiológica segundo a qual um conjunto de fatores interligados são corresponsáveis pela conduta socialmente problemática que o Direito Penal define como crime.

Nesse sentido, adota-se a proposta mais atual de Criminologia Clínica, a qual lida com o paradoxo entre o paradigma do fato social bruto e o paradigma da reação social. Isso se justifica porque, nas palavras de Ana Gabriela Mendes Braga (2020: 44):

A escolha de um ou outro paradigma nos obriga a uma visão reducionista do fato criminal, uma vez que o paradigma do fato social bruto (ação social) negligencia o fato de que a realidade criminal passa por uma construção social e está comprometida com as relações de poder existentes na sociedade, enquanto o paradigma da definição social deixa de lado a realidade factual das transgressões e a existência de consequências negativas de certos comportamentos, abstraindo, por exemplo, a existência de vítimas, dos danos, da violência e das relações conflituosas do indivíduo enquanto concreto.

A terceira geração do pensamento clínico criminológico passa a estudar o comportamento criminoso não apenas como um dado ontológico, apropriando-se das contribuições do Labelling Approach e enfrentando o desafio de pensar o crime como um comportamento problemático definido pelas instâncias estatais. O modelo de Criminologia Clínica de Inclusão Social alinha-se, assim, com o paradigma das interrelações sociais, desenvolvido por Christian Debuyst e Alvaro Pires (BAZO, 2020: 58).

Segundo essa corrente, o autor de um comportamento definido como delito figura como um *ator situado* na malha paradigmática das interrelações sociais, a qual aborda a seletividade do sistema sem descartar o sujeito como protagonista de seus próprios atos. Alvino Augusto de Sá (2015: 223), autor dessa teoria, explica que “o modelo de Criminologia Clínica de inclusão social busca um diagnóstico psicossocial tanto do preso, de sua conduta *criminosa* [...], como de todo o complexo contexto no qual ele se encontra inserido, seja no momento do fato, seja ao longo de sua vida”.

Tendo em vista que, para a Criminologia Clínica moderna, o crime consiste numa conduta socialmente desadaptada, necessário se faz uma investigação de fatores multivariados que abrangem o indivíduo, toda sua história e seu ambiente. Portanto, uma avaliação da conduta tida como criminosa deve levar em conta a resposta do apenado às estratégias de intervenção propostas, valendo-se não só de avaliações técnicas, mas também das observações dos outros profissionais, incluídos aí os agentes de segurança penitenciários, observações essas que podem ser sistematicamente colhidas e interpretadas pelo corpo técnico.

No que se refere ao exame criminológico, importa ressaltar que o diagnóstico compõe seu núcleo central, não devendo ser realizada a produção de um prognóstico. Entretanto, deduzido um prognóstico,
isto, por si só, já indica um problema, vez que não é possível oferecer uma previsão certa, incorrendo no risco de servir de fundamento a uma decisão absolutamente equivocada. Alvino Augusto de Sá (2016: 222) ensina que:

No exame feito para fins de instrução de pedidos de benefícios, o prognóstico diz respeito especificamente à probabilidade de reincidente. No exame de entrada, porém, que tem como objetivo principal oferecer subsídios para a individualização da pena, não há que se falar necessariamente em prognóstico, o qual, se fosse feito, referir-se-ia à probabilidade de se adaptar a este ou àquele regime.

O exame criminológico de entrada previsto nos artigos 8º da LEP e 34 do Código Penal consiste numa avaliação realizada única e exclusivamente em benefício do preso. Realizado em local próprio, denominado Centro de Observação Criminológica, conforme estabelece os artigos 96 e 97 da Lei de Execução Penal, tal exame, diferentemente do que outrora era realizado para fins de obtenção de benefício da progressão, teria tão-somente o intuito de orientar a individualização da pena.

Dessa forma, deveria ser realizado antes que o condenado iniciasse o cumprimento de sua pena, ou seja, logo no início da execução, tendo em vista que este exame se aproxima temporalmente do ato delitioso, buscando preservar as condições emocionais vigentes no momento do crime e garantindo maior verossimilhança dos fatos narrados e servindo de referência e parâmetro para futuras avaliações.

Nesse sentido, a demora na realização desse exame pode inviabilizá-lo, permitindo apenas uma observação criminológica que investigue as características pessoais do apenado.

Nessa esteira, Alvino Augusto de Sá defende que o condenado passe pelo Centro de Observação, onde seria realizado o exame criminológico de entrada, a fim de que se defina qual estabelecimento penal e regime se ajustam ao perfil do apenado. Em seguida, caberia à Comissão Técnica da instituição ao qual o indivíduo foi destinado realizar o exame de personalidade e planejar, elaborar e acompanhar o programa individualizador da execução.

Insta ressaltar que, enquanto o exame criminológico se centra na dinâmica do ato criminoso, o exame de personalidade é um exame clínico interdisciplinar que não se confunde com perícia, pois se volta para o indivíduo enquanto pessoa e observa sua realidade integral e suas idiossincrasias. O exame de personalidade previsto nos artigos 5º, 6º e 9º da LEP e Item 34 da Exposição de Motivos da Lei de Execução Penal deve ser realizado logo no início da execução.7 Seu objetivo é conhecer a personalidade do apenado, sua identidade enquanto pessoa, seu histórico de vida e sua realidade profundamente humana.

Em síntese, a partir do relatório do exame criminológico de entrada advindo do COC (Centro de Observação Criminológica), a CTC realizaria um exame de personalidade buscando conhecer o preso profundamente como pessoa e não como criminoso. Munida destas informações, a CTC traçaria o perfil deste preso e definiria as metas e programas de individualização, atentando-se para o objetivo elementar da LEP (art. 1º): proporcionar condições para a harmônica integração social do condenado e do internado. Insta destacar que, historicamente, “para essa 'harmônica integração social' se pressu-

7 No estado de São Paulo, após a reforma de 2003, foram criadas as chamadas “Entrevistas de Inclusão”, que é a prática que mais parece se aproximar da proposta de avaliação de personalidade, pois seu foco está entrado na pessoa, seu contexto e histórico de vida, não somente no ato cometido (crime).
pôs um tratamento penal que tivesse como efeito tornar as pessoas “ressocializadas”, “reeducadas” e “ajustadas” ao modelo hegemônico de sociedade.” (CFP, 2012: 44). Posteriormente, com a evolução dos modelos criminológicos, passou-se à uma compreensão crítica acerca do que se considera “tratamento”, trazendo protagonismo ao sujeito.

Nesse sentido, disserta Salo de Carvalho (2007: 170):

O trabalho a ser realizado seria o de *propr* (não *impor*) ao condenado programa de gradual ‘tratamento penal’, objetivando a redução dos danos causados pelo cárcere (prisionalização). Atividade pautada em programas humanistas de redução de danos possibilitaria construir com o apenado técnicas que possibilitassem a minimização do efeito deletério do cárcere (clínica da vulnerabilidade). Constatados problemas de ordem pessoal ou familiar, cabe ao técnico, *junto* ao apenado, e tendo como imprescindível sua anuência, colocar em prática instrumentos de manejo do problema, ou seja, fornecer elementos para superação da crise e não estigmatizá-lo, potencializando-a. Elementar, no entanto, que qualquer tipo de ‘tratamento’ pressupõe a voluntariedade do sujeito, sob pena de violação do princípio da dignidade humana.

Desta forma, abandona-se a concepção de pena com função ressocializadora, que ignora completamente a autonomia do indivíduo e o insere na lógica da disciplina dos corpos dóceis denunciadas por Foucault (2011) ou, ainda, no processo de despersonalização e da mortificação do Eu promovidos pelo sistema prisional e muito bem expostas por Goffman (2001). Combatendo esses ideais, Alvino Augusto de Sá retoma o conceito de reintegração social encampado por Alessandro Baratta (1990) e propõe o diálogo com o cárcere sob a primazia do respeito aos princípios éticos do sujeito.

Ao abandonar a função ressocializadora da pena, Baratta cuidou para que não houvesse um reforço imediato das funções de retribuição e neutralização da pena, razão pela qual, conforme observa Luís Carlos Valois:

Sua construção teórica seria no sentido de não se abandonar o projeto humanizador das prisões, a fim igualmente de contrapor alguma resistência ao abandono dos cárceres e à política de segurança máxima. Ao mesmo tempo, sempre esteve presente em Baratta a consciência do mal que é a prisão” (2013: 231).

Do mesmo modo, o autor italiano enfatiza sua preocupação com a nova nomenclatura “Reintegração social” para que não fosse utilizada como uma estratégia de legitimação do cárcere, ocasião em que esclarece que esta deve ser perseguida *apesar do cárcere*. Em suas palavras:

Não se pode conseguir a reintegração social do condenado por intermédio da pena de prisão, mas se deve persegui-la apesar da prisão, ou seja, buscando fazer menos negativas as condições de vida no cárcere. Do ponto de vista de uma integração social do autor de um delito, o melhor cárcere é, sem dúvida, aquele que não existe (2006: 379).

Assim como Baratta, Alvino também destaca que as estratégias de reintegração social devem ocorrer “apesar do cárcere”, compreensão que, segundo Valois, deixa claro que os autores citados não defendem a instituição prisão e sim “um tratamento mais humano para com os presos, um diálogo entre os presos e a sociedade para a solução dos conflitos ou para a superação das situações de vulnerabilidade que levaram à prática delituosa” (2013: 231). Sob tal aspecto, Baratta destaca que as práticas de reintegração social devem

“provir de uma vontade de mudança radical e humanista e não de um reformismo tecno-
Para Valois, embora compreenda como válido o designio de Baratta, questiona a necessidade de uma nova nomenclatura tendo em vista o receio de que a característica volúvel do termo ressocialização continuará acompanhando a ideia de reintegração social. Para o autor:

o melhor caminho é assumir a pena como algo negativo, mas sempre levando em conta que nenhuma atividade judicial pode se afastar de uma interpretação que tenha em consideração a dignidade da pessoa humana e a realidade que é o cumprimento da pena privativa de liberdade (2013: 232).

No tocante à concessão de benefícios, verifica-se que a atual redação do artigo 112 da LEP, alterada pela Lei 13.964/2019, que prevê como exigência o cumprimento da pena (a depender do percentual estabelecido em cada inciso do artigo 112º) e ostentar boa conduta carcerária, esbarra em um problema: a despeito de o segundo requisito ser aparentemente objetivo, identificando-se com a ausência de registro de sanção por faltas disciplinares, sejam elas leves, médias ou graves no prontuário do preso, em presídios comandados por organizações criminosas, é comum que um desafeto da facção respondida pela falta de um de seus membros. Assim, objetivando-se tomar decisões mais seguras sobre a concessão de benefícios, não deveria optar-se apenas por uma avaliação isolada da conduta, mas sim por toda uma avaliação técnica interdisciplinar da resposta do preso à terapêutica penal.

Nessa esteira, a CTC deveria avaliar a eficácia dos programas e a resposta do preso, propondo à autoridade competente as conversões dos regimes sob a forma de pareceres. Vale ressaltar que "sua construção vai se fazendo ao longo do tempo, num intercâmbio com as estratégias de acompanhamento diário e deveria emanar de todo um processo de interação" (Sá, 2016: 238). Todavia, a CTC teria um papel proativo na execução que inviabiliza técnica e éticamente informes periciais sobre a conduta criminosa em si. Tendo em vista que a Comissão Técnica de Classificação promove e dirige a individualização da execução, ela atua no próprio local da mesma, ao passo que o Centro de Observação Criminoso, estabelecido em local autônomo da unidade carcerária. Assim, não faz sentido que um integrante da CTC, o qual acompanha a trajetória do sentenciado, realce a perícia.

Dessa forma, o parecer das Comissões Técnicas de Classificação - extinto por força da Lei 10.792/2003, que alterou a antiga redação do artigo 6º da LEP - se mostra mais adequado para avaliar a conduta do preso no cárcere e suas perspectivas futuras, uma vez que este instrumento não foca sua atenção no ato tido como criminoso, distanciando-se do prognóstico de reincidência. Seu objetivo principal consiste na avaliação dos níveis da qualidade adaptativa consciente do comportamento da pessoa encarcerada, bem como da sua capacidade de crítica e de gerenciamento de sua conduta. Diante deste cenário, Alvino Augusto de Sá defende a vantagem teórica e técnica do parecer das Comissões Técnicas de Classificação para instruir os pedidos dos benefícios legais, passando a denominá-lo “Avaliação Técnica Interdisciplinar da Conduta Carcerária”.

Conclusões

O exame criminológico, embora atrelado a uma origem positivista de cunho médico-psicológico que considerava que o delito era uma patologia causada por fatores genéticos, é abordado pelo presente trabalho segundo a ótica mais moderna da Criminologia Clínica, a qual abandona o caráter pré-deter-
ministra dos fatores individuais e concebe, em seu lugar, uma relação de associação entre o complexo contexto do preso – condições pessoais, orgânicas, psicológicas, familiares, sociais e ambientais em geral - e o comportamento tido como socialmente problemático. Não se trata de estabelecer uma relação causal entre este contexto averiguado (condições pessoais do preso) e o ato delituoso praticado, mas de compreender a malha paradigmática em que o avenado se encontra inserido.

Nessa esteira, foram analisadas as previsões legais das avaliações técnicas dos encarcerados e sugeridas alterações nas abordagens consideradas problemáticas. Primeiramente, verificou-se que o exame criminológico consiste em uma perícia composta por um diagnóstico e, ocasionalmente, por um prognóstico de reincidência, o qual é muito criticado por servir de falso instrumento legitimador de uma sentença, de tal forma que o exame criminológico se mostra inadequado para fins de concessão de benefícios legais.

Portanto, a reforma do art. 112 da Lei de Execução Penal pela Lei 10.792/03 acertou ao extinguir a necessidade de realização dessa perícia como exigência para progressão de regime, embora tenha inserido o requisito da “boa conduta” - o qual foi mantido pela recente alteração da Lei 13.964/2019 – que também gera problemas ao permitir conclusões equivocadas. Além disso, não é possível saber se as características psicológicas apontadas no exame realizado durante o cumprimento da pena estavam realmente presentes na época da conduta tida como criminosa ou se foram adquiridas ou fomentadas no processo de prisionização e de aculturação no cárcere.

Como alternativa, é apontado o exame criminológico de entrada (previsto no art. 8º da LEP), o qual deveria ser realizado logo no início da execução da pena com a finalidade de oferecer subsídios para sua individualização. Realizado pelo Centro de Observação Criminológica única e exclusivamente em benefício do sentenciado, este exame seria encaminhado para a Comissão Técnica de Classificação, a quem caberia efetuar o exame de personalidade (art. 9º, LEP), o qual avaliaria de imediato a pessoa do condenado, seu histórico de vida e sua identidade enquanto ser humano.

Em seguida, caberia à CTC acompanhar o dia a dia do preso, programando, direcionando e avaliando suas respostas ao programa individualizador da pena. Esta função era expressa no parecer da Comissão Técnica de Classificação, o qual foi extinto por força da Lei 10.792/03, que alterou a antiga redação do artigo 6º da LEP. Todavia, objetivando-se tomar decisões mais seguras sobre a concessão de benefícios, não se deveria optar apenas por uma avaliação isolada da conduta, mas sim por uma avaliação técnica interdisciplinar da resposta do preso à terapêutica penal, que considera não só a pessoa, mas também o contexto e a dinâmica relacional entre pessoa e o meio, bem como implica a comunidade na qual essa pessoa está inserida e, num sentido ainda mais amplo, traz à tona a relação sociedade-cárcere, num viés clínico-critico, avaliação esta a qual poderia ser denominada, conforme Alvino Augusto de Sá, de “Avaliação Técnica Interdisciplinar de Conduta Carcerária”.

Referências


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Novas perspectivas sobre os estudos das tendências de homicídios
Uma análise das trajetórias latentes das taxas de homicídios no estado de Santa Catarina - Brasil

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Resumo
No período de 1992 a 2017, o estado de Santa Catarina - Brasil registrou um crescimento de 112,5% em suas taxas de homicídios. Muitos estudos no contexto latino-americano, focaram suas análises no movimento das tendências gerais, prejudicando o reconhecimento da existência de heterogeneidades latentes nas tendências de homicídios. Com base em uma técnica de análise estatística (Group-Based Trajectory Modeling), investigamos a trajetória das taxas de homicídios em Santa Catarina - Brasil buscando responder três questões principais: haveria uma heterogeneidade oculta nas taxas gerais de homicídios de Santa Catarina? Seria possível identificar uma tipologia de tendências de homicídios ao longo do tempo? E quais seriam as bases dessa distinção, isto é, o que faria com que um conjunto de municípios se estabelecesse em um determinado grupo de trajetória? Os resultados revelaram a existência de uma estrutura subjacente à tendência principal das taxas de homicídios. Foram identificadas quatro trajetórias latentes com tendências heterogêneas no período de 1992 a 2017. Com relação ao mapeamento das bases dessa distinção tipológica, verificamos uma relação complexa que combina os efeitos de aspectos estruturais, das ações de controle do crime e de questões situacionais.
Introdução

Há muitas informações disponíveis sobre a caracterização dos níveis de homicídios no Brasil. Por exemplo, temos o maior registro de mortes por homicídios, e o Brasil junto com a Nigéria sustentam 25% dos homicídios que ocorreram em todo o mundo (Unodc, 2019). Embora a violência apareça como um problema histórico no Brasil, é inegável que o século XXI inaugura um cenário de profundas incertezas, com homicídios ultrapassando a barreira das 60 mil mortes anuais (Cerqueira & Coelho, 2017).

Porém, não se trata de um problema novo, pois tanto as informações disponíveis quanto os estudos realizados nas últimas décadas demonstram como os anos 1980 no Brasil foram marcados pelo crescimento das taxas de homicídios (Jorge, Gawryszewski, & Latorre, 1997; Lima & Ximenes, 1998; Minayo, 1994). Por sua vez, na década de 1990, as taxas de homicídios consolidaram-se no primeiro lugar entre as mortes por causas externas (Jorge et al., 1997). Foi nesta mesma década que a taxa brasileira ultrapassou a dos Estados Unidos e, da mesma forma que no período anterior, os trabalhos registraram a superioridade das mortes de pessoas jovens do sexo masculino e da letalidade das armas de fogo (Jorge et al., 1997; S. M. Santos, Barcellos, Carvalho, & Flóres, 2001; Ednúlisa Ramos de Souza, Assis, & Silva, 1997). No período entre 1980 e 2000, o incremento nas taxas de homicídios foi de 125%, consolidando assim, o caráter desigual da violência fatal, que atinge, em sua maioria, jovens negros do sexo masculino (Monteiro, 2019).

Os estudos mais recentes apontam duas diferenças marcantes na trajetória do fenômeno: a interrupção, em 2003, do crescimento das taxas de homicídios e o novo arranjo territorial da distribuição das mortes por homicídios no país. Em relação à interrupção, o período coincide com o debate referente à aprovação do Estatuto do Desarmamento que conforme a maior parte da literatura especializada considera que as campanhas e políticas que tiveram como foco limitar e/ou coibir o acesso às armas de fogo contribuíram para conter a explosão da magnitude da violência letal (Cerqueira, 2014; Cerqueira & Soares, 2016; Waiselfsz, 2016).

Além disso, se as décadas de 1980 e 1990 foram marcadas pelo avanço dos homicídios nas regiões metropolitanas, as décadas de 2000 e 2010 assinalaram um novo arranjo territorial da distribuição de mortes. Waiselfisz (2012) denominou este processo de desconcentração de homicídios, representado, de um lado, pela interiorização dos homicídios, que alcançaram cidades fora do espectro dos grandes centros urbanos, e, de outro, por uma espécie de disseminação sustentada pela participação cada vez maior de estados que até então não experimentavam altas tendências de homicídios.¹

De qualquer modo, em razão dos altos níveis de mortalidade por homicídios, podemos considerar que a violência se constitui como uma das marcas principais da sociedade brasileira. Cano & Ribeiro (2007), por exemplo, destacaram o caráter endêmico da violência letal e Cerqueira & Soares (2016) como esta mesma violência amplia os custos e os gastos com saúde pública. Ainda assim, a violência alcança dimensões muito mais amplas que dizem respeito às relações sociais, à confiança e à coesão social. Altos níveis de sentimento de inseguurança e medo do crime podem gerar elevados custos subjetivos, impondo barreiras para o convívio social. Há pesquisas que demonstram que a percepção em relação à violência altera significativamente a forma com que as pessoas vivenciam o espaço público (Dammert, 2012; Hale, 1996).

¹ Cabes salientar que, após uma análise das duas hipóteses, Andrade & Diniz (2013) preferiram chamar este processo de "reorganização da violência", pois não encontraram evidências claras da efetivação não aleatória das teses da interiorização e da disseminação dos homicídios.
Portanto, mesmo em lugares com baixa incidência de atividades criminosas, a percepção subjetiva sobre a violência pode ser bastante elevada (Hale, 1996). Desse modo, como se não fosse suficiente a própria gravidade intrínseca ao ‘homicídio’, os seus efeitos ultrapassam a dinâmica específica da violência, dado que sua prevalência pode ser entendida como indicativos da própria saúde das sociedades (Kawachi, Kennedy, & Wilkinson, 1999).

Nesse sentido, convém indagar como Santa Catarina aparece nesse contexto. De fato, se ficarmos apenas na análise dos dados de violência letal intencional, o estado não chama atenção pela magnitude das taxas de homicídios quando comparado com outros estados brasileiros. Muito pelo contrário, considerando as duas últimas décadas, Santa Catarina figurou entre o grupo de estados com as menores taxas de homicídios do país, e em 2010, por exemplo, apresentou a menor taxa de homicídios (Monteiro, 2019). Em relação aos seus estados vizinhos, enquanto o Rio Grande do Sul experimentava um incremento considerável em suas taxas e o Paraná sustentava níveis elevados, Santa Catarina mantinha-se com taxas de homicídios relativamente inferiores (Monteiro, 2019). Entre os municípios com população superior a cem mil habitantes, dois deles, Brusque e Jaraguá do Sul, apresentavam, respectivamente, a menor e a terceira menor taxa de homicídios do Brasil (Cerqueira et al., 2018).

Diante desse contexto, uma questão legítima a ser destacada refere-se à escolha de Santa Catarina como objeto de análise. Ou seja, por que estudar Santa Catarina, dado que suas taxas de homicídios estão entre as mais baixas do país? Embora nos seja claro que a simples magnitude de certo fenômeno não se constitui como condição determinante para uma investigação sociopolítica, consideramos importante problematizar algumas questões e colocar em outra perspectiva os dados referentes à baixa incidência de homicídios no estado de Santa Catarina.

Gráfico I

**Taxa bruta de homicídios em Santa Catarina e média das taxas por décadas (1980 a 2017)**


Conforme apresentado no **Gráfico 1**, os níveis de violência letal nas últimas décadas no estado vêm
apresentando tendências claras de crescimento, revelando um período de maior incremento a partir do início do novo século,ironicamente, momento em que o estado assumiu a primeira posição no ranking nacional com a menor taxa de homicídios. Outro novo salto ocorreu em 2008, seguido por 2017, quando Santa Catarina atingiu 17 homicídios para cada cem mil habitantes, a maior taxa desde 1980. A título de exemplo, enquanto a taxa do Rio Grande do Sul e do Paraná cresciam 59,9% e 40,6%, respectivamente, Santa Catarina ampliava suas taxas de homicídios em 73,6% (Monteiro, 2019). Além do mais, também era possível encontrar no estado uma série de desigualdades: se, de um lado, municípios como Brusque e Jaraguá do Sul apresentavam taxas semelhantes aos de países desenvolvidos, por outro, alguns municípios retratavam taxas superiores à nacional.2

Nesse sentido, a tendência geral de crescimento do estado ocorre de maneira não uniforme, tanto do ponto de vista regional quanto social. Assim, elementos societais que apontam para o grau elevado de vitimização entre pessoas jovens, negras e mais pobres, nos quais foram extensamente apontados na literatura especializada, também estão presentes (Adorno, 2002; Ribeiro & Cano, 2016; Soares, 2008). Por exemplo, no ano de 2016, enquanto a taxa de homicídios entre os brancos, de 12,6 para cada 100 mil habitantes, era menor que a estadual, a taxa entre os negros alcançava 22,3 mortes para cada 100 mil habitantes (Monteiro, 2019).

O crescimento exponencial das taxas de homicídios, em conjunto com outros fenômenos relacionados à criminalidade e à violência, produziu efeitos sobre a opinião pública, desconstruindo a concepção de estado pacífico. Pesquisas de opinião a respeito da vitimização e do sentimento de insegurança apontaram que 62,4% dos catarinenses alteraram sua rotina diante da percepção de insegurança, 57,1% disseram se sentir inseguros na cidade em que residem e 54,40% afirmaram sentir medo de serem assassinados (Silva, 2016).

Portanto, entendemos que, a despeito de não figurar no grupo de estados com maior incidência de homicídios, nos últimos anos, Santa Catarina vem compartilhando problemas similares aos enfrentados por outras regiões do país. Diante disso, a distribuição do fenômeno e as outras transformações socioeconômicas apontam para a importância de analisar um local caracterizado por baixas taxas de homicídios, mas que compartilha uma trajetória de crescimento e profundas desigualdades regionais.

Por fim, os argumentos trabalhados neste artigo estão organizados da seguinte forma: na próxima seção, apresentamos as principais categorias teóricas desenvolvidas ao longo dos estudos estruturais de homicídios e que dão sustentabilidade ao grupo de indicadores apontados nas análises dos dados. Realizamos, assim, uma revisão de um conjunto de trabalhos empíricos que tematizaram o debate sobre homicídios, chamando atenção para suas potencialidades, mas também para suas lacunas, tanto em relação às próprias análises, quanto em relação à baixa atenção direcionada ao contexto latino-americano. Na seção referente à metodologia, evidenciamos o desenho de pesquisa, as fontes de dados e as técnicas estatísticas utilizadas para analisar as informações (Group-Based Trajectory Modeling). Nas duas últimas seções, apresentamos ao/a leitor/a os achados da pesquisa. É neste momento que demonstramos a existência de uma heterogeneidade oculta nas taxas gerais de homicídios de Santa Catarina e a tipologia dessas tendências ao longo do tempo. Também definimos as bases dessa distinção, ou melhor, o que determina em termos de questões estruturais, políticas e

situações a participação de um município em uma determinada tendência de homicídio. Na última seção do artigo, discutimos porque tal abordagem nos permitirá avançar no campo de estudos sobre homicídios.

**Teoria**

Com relação à literatura especializada, três conjuntos de teorias foram mobilizadas para trazer expli-
cações sobre as diferenças regionais e o movimento das taxas de homicídios. A primeira delas, tratou do impacto das mudanças estruturais sobre as tendências de homicídios. Estes trabalhos buscaram analisar, se e como, as alterações socioeconômicas produziram efeitos sobre as taxas de homicídios (Land, McCall, & Cohen, 1990; McCall, Land, & Parker, 2010; Pratt & Cullen, 2005). Os/As autores/as avaliavam se variáveis estruturais, tais como pobreza e desigualdade, ou ainda, aspectos vinculados à estrutura etária ou populacional ajudavam a compreender a elevação das taxas de homicídios em diferentes regiões.

No Brasil, especialmente nos anos 1980 e 1990 este debate foi marcado por explicações que associa-
vam diretamente pobreza e crime, mas, diferentemente das teorias estruturais, que buscavam analisar os efeitos produzidos pelas mudanças econômicas sobre a organização social, o debate a respeito da violência assumiu dois caminhos estritamente próximos. O primeiro possuía um caráter de denún-
cia, dado a compreensão então vigente de que o Estado se caracterizava como um agente de violência, especialmente contra os mais pobres; já o segundo caminho tinha como marca o caráter político, que enxergava na violência praticada por determinados grupos um sintoma de uma ação incipiente ou pré-política contra o regime.

Alguns (mas) pesquisadores(as) passaram a contestar essas teses, porque, entre outros problemas te-
óricos e empíricos, as análises colocavam a segurança pública em segundo plano. Deixava-se de analisar aspectos institucionais importantes, como a ação da justiça, das polícias, enfim, do conjunto dos organismos responsáveis pelas políticas de segurança pública (Nóbrega Júnior, Zaerucha, & Rocha, 2009).

Assim, pesquisa- dos(as) buscaram evidenciar a importância da violência e das variáveis institucio-
nais (Coelho, 2005), de questões fora do campo econômico (Soares, 2008), do ambiente de oportunidades (Beato & Reis, 2000), dos aspectos relacionados aos mercados ilegais (Misse, 2007); e do avanço do crime organizado (Barcellos & Zaluar, 2014; Zaluar, 1999). De qualquer modo, outros autores que direcionaram o seu olhar para as informações disponíveis a respeito das vítimas de homicídios identificaram tendências de associação entre a vitimização por homicídios e a desestruturação das condições socioeconômicas (Adorno, 2002; Cardia, Adorno, & Poleto, 2003; Lima & Ximenes, 1998; Macedo, Paim, Silva, & Costa, 2001; Minayo, 1994; Ribeiro & Cano, 2016; Edinilsa RSouza, 1994).

O debate no Brasil ficou marcado por alguns preconceitos em relação à associação entre condições socioeconômicas e homicídios. As questões ideológicas que caminhavam no sentido de relacionar a atividade criminal a ações pré-políticas ou que colocavam o problema da segurança pública em segun-

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3 Conforme os apontamentos da literatura, o fenômeno dos homicídios é multicausal, ou seja, um conjun-
to de fatores poderia exercer influência sobre as tendências da violência fatal, muitos dos quais impossíveis de mensurar. Por conta disso, restringimos o campo analítico à literatura sociopolítica de homicídios baseada nos estudos macrossociais.

4 De acordo com Adorno (2002, p. 108), “[...] tratava-se, em verdade, de um debate suscitado pela esquerda e pelos primeiros defensores de direitos humanos”.
do plano contribuíram para que ocorresse um forte movimento de rejeição destas teses. Somada a isso, houve confusão entre várias modalidades de crime e de distintos fenômenos, pois, de um lado, há uma enorme diferença entre afirmar que o pobre é criminoso, por exemplo, e, de outro, reconhecer a importância dos fatores estruturais na explicação do movimento das taxas de homicídios. Podemos acrescentar a isso as sutilezas em relação aos indicadores, como a diferença entre pobreza absoluta e relativa, a operationalização metodológica e a inter-relação com outros aspectos sociais.

É possível observar que, atualmente, caminhamos em outra direção, buscando verificar, sobretudo, em que níveis e condições se estabelecem as possíveis associações. O trabalho de Peres & Nivette (2017) demonstra que uma série de aspectos que vinculam variáveis econômicas, de desigualdade, questões demográficas, entre outras, ajudam a explicar tendências de homicídios para diferentes municípios do Brasil de acordo com a sua trajetória no tempo.

Posteriormente, na década de 1990, com a experiência de queda dos homicídios em países que tradicionalmente sustentavam altas taxas, passou-se a avaliar o resultado das ações políticas destinadas a enfrentar a violência e se estas políticas tiveram influência sobre a redução das taxas de homicídios (Baumer & Wolff, 2014a; Gary LaFree, Blumstein, & Wallman, 2000). Buscava-se avaliar se os aspectos ligados às políticas de controle do crime, como ampliação das taxas de encarceramento, prisões por drogas, aumento do contingente policial, entre outros, haviam sido responsáveis pela queda dos homicídios.5

O terceiro conjunto de proposições teóricas enfocou nos aspectos situacionais que, em um sentido mais restrito, geravam efeitos sobre as taxas a curto prazo; trata-se, por exemplo, do efeito de questões sazonais ou mesmo dos conflitos ligados ao crime organizado, sobretudo pelas disputas relacionadas ao domínio dos mercados ilegais (Bird & Grattet, 2016; DeFina & Arvanites, 2002; Kovandzic & Vieraitis, 2006; Raphael & Winter-Ebmer, 2001; W. Spelman, 2006; William Spelman, 2009). Também entrava no campo a atribuição de outras variáveis regionais e situacionais, como o tamanho das cidades e o acesso às armas de fogo.

Em síntese, estes estudos sustentaram a tese de que a variação das taxas de homicídios seria representada pelas características da organização social e pelo papel desempenhado por instituições formais e informais. Além disso, os trabalhos também desempenharam um papel importante fora do âmbito acadêmico, à medida que influenciaram políticas de enfrentamento à violência e à criminalidade, pois as políticas públicas poderiam contribuir para reduzir o impacto das tensões estruturais sobre os homicídios.

De qualquer modo, uma lacuna importante permaneceu em aberto, pois, de um lado, as análises das tendências gerais evidenciaram o papel das forças estruturais e apontaram diferenças consistentes entre regiões, por outro, não foram capazes de identificar trajetórias heterogêneas de homicídios ao longo do tempo. Um breve exemplo prático pode elucidar essa questão. Após a queda repentina dos homicídios em países que até então sustentavam altas taxas de homicídios, pesquisadores/as começaram a perguntar se este fenômeno estava mais associado às dinâmicas locais ou a processos globais (Baumer & Wolff, 2014b; Eisner, 2001; LaFree & Tseloni, 2006; GLaFree, Curtis, & McDowall, 2015; Nivette & Eisner, 2013; Toney, 2014; Tuttle, Mccall, & Land, 2018; Weiss, Santos, Testa, & Kumar, 2016). Por exemplo, experiências bem-sucedidas de algumas cidades em termos de redução de homi-

5 Basicamente, os estudos demonstram que a relação entre política de encarceramento e redução de homicídios são inexistentes. Isso significa que prender mais não reduz os níveis de homicídios. Os poucos estudos que encontraram essa relação, apresentavam problemas metodológicos graves ou trabalhavam com um número pequeno de observações.
cídios, como o caso de Nova Iorque, refletiriam apenas processos singulares, específicos do contexto local, ou a redução se constituiria como um fenômeno amplo, ligado a uma dinâmica muito mais geral. Segundo Peres e Nivette (2017), grande parte dos estudos macrossociais deixou de levar em conta dimensões globais ao focar sua atenção nos contextos locais e, embora tenha gerado ganhos analíticos importantes ao evidenciar com detalhes aspectos singulares, deixou de captar movimentos gerais compartilhados.

Assim, um conjunto de pesquisas passaram a avaliar de forma comparada diferentes países do mundo, acrescentado aos estudos regiões distintas daquelas focadas na maioria parte dos estudos, ou seja, os Estados Unidos e Europa. Buscou-se, portanto, verificar a existência de trajetórias compartilhadas de homicídios ao longo do tempo. A constatação de trajetórias compartilhadas evidenciaria que a queda dos homicídios estaria associada a processos amplos, e não apenas locais. Teoricamente, este caminho analítico já havia encontrado legitimidade em perspectivas clássicas do pensamento sociológico e político, uma vez que a centralização da violência legítima nas mãos do Estado, em conjunto com a criação de uma série de instituições disciplinadoras, geraria uma espécie de pacificação global (Durkheim, 2013; Elías, 1994; Weber, 2011). Em outras palavras, a redução da violência expressava o resultado de um processo histórico cujas raízes fixam-se na própria constituição do Estado Moderno.

Estudos empíricos sobre homicídios testaram estas hipóteses e, diante da verificação da queda das taxas de homicídios em diversos países do mundo concluíram que uma série de aspectos ligados ao aperfeiçamento das instituições e do regime político, bem como do avanço em pautas sociais importantes, contribuíram para a redução da violência (Nivette & Eiser, 2013). Em contrapartida, a despeito da redução das taxas de homicídios, outras regiões demonstraram um crescimento amplo e constante dos níveis de violência. Desse modo, alguns/mas pesquisadores/as questionaram essas afirmações, buscando demonstrar que a queda dos homicídios se restringia a um conjunto de países do mundo ocidental, e não se constituía como um fenômeno global; a modernização explicaria apenas um subconjunto de democracias ricas e de estilo ocidental (G LaFree et al., 2015), o que resultaria em grandes impedimentos para compreender o contexto de países como o Brasil.

Diante das evidências, as pesquisas empíricas baseadas em trajetórias colocaram em questão a importância dos aspectos locais e globais, chamando a atenção para um processo dinâmico e desigual. Se em alguns países, diversas modalidades de crime apresentavam tendências claras de queda, em outros, como é o caso do Brasil, caminhava-se em sentido oposto. Não demorou muito para que essa mesma reflexão passasse a ser utilizada em outros níveis de análise, tais como: municípios, bairros e ruas (Curman, Andresen, & Brantingham, 2014; Parker, Stansfield, & McCall, 2016; Peres & Nivette, 2017; Stults, 2010; Weisburd, Bushway, Lum, & Yang, 2004; Wheeler, Worden, & McLean, 2016). Assim, poderíamos nos perguntar, por exemplo, se a queda ou crescimento das taxas de determinada cidade seriam representativas de todas as regiões do município ou não. E, caso não o fossem, como estas diferentes tendências se comportariam ao longo do tempo.

Os estudos de trajetórias trouxeram avanços para o campo ao tentar chamar a atenção para um novo modo de problematizar o fenômeno dos homicídios, que pode ser traduzido por meio das seguintes questões: a) uma vez selecionado um conjunto de unidades espaciais e um período histórico determinado, as taxas globais de homicídios poderiam esconder uma heterogeneidade com distintas tendências de homicídios, sejam elas de incremento, queda ou estabilidade? b) E com a constatação desta heterogeneidade, as teorias explicativas dos homicídios conseguiriam se sustentar diante de diferentes trajetórias? c) Ou seja, elas explicariam tanto tendências de queda quanto de incremento? Por exemplo, a teoria estrutural seria capaz de explicar distintas tendências ou só funcionaria para trajetórias de aumento dos homicídios? d) Ao se analisar comparativamente tendências de queda e de elevação, poderíamos encontrar em determinado conjunto de unidades espaciais efeitos distintos dos aspectos políticos e sociais? Os estudos de trajetórias demonstraram a necessidade de ampliar o horizonte no que diz respeito às ten-
dências gerais e às diferenças regionais, considerando sobretudo a heterogeneidade latente das trajectórias de homicídios.

Uma vez realizado este breve apontamento teórico, podemos retornar a Santa Catarina e expor com mais objetividade a proposta do trabalho considerando os seguintes questionamentos: *em um estado com diferenças regionais importantes e que apresenta incremento nos níveis de homicídios, poderia existir uma heterogeneidade oculta nas taxas de homicídios?* Ou seja, a tendência de crescimento do estado poderia esconder diferentes trajetórias com especificidades e características distintas? *Seria possível identificar uma tipologia de tendências de homicídios ao longo do tempo, sejam elas de crescimento, estabilidade ou queda?* Essa tipologia assinalaria elementos regionais? *E mais: registrada essa tipologia, haveria a possibilidade de traçar as bases dessa distinção, isto é, o que faria com que um determinado conjunto de municípios se estabelecesse em um grupo de alta tendência, e não de baixa?* De forma específica, propomos ampliar a análise dos homicídios considerando não apenas a tendência geral, mas, principalmente, em que medida as trajetórias de homicídios nos municípios catarinenses correspondem ou não à tendência global, e se essa não correspondência implicaria reconhecer a existência de uma heterogeneidade oculta ao longo do tempo.

**Metodologia**

Para compor a variável que mensura a taxa de homicídios nos municípios de Santa Catarina no período de 1992 a 2017, utilizamos informações de duas fontes distintas: para os anos de 1992 a 2016, os dados do Sistema de Informações sobre Mortalidade (Datasus, 2019); e para o ano de 2017, as informações disponibilizadas pela Secretaria de Segurança Pública de Santa Catarina (Diretoria de Informação e Inteligência, 2018).

Os municípios faltantes, ou seja, aqueles municípios criados após o ano de 1992 que não estavam contemplados em toda a série histórica foram excluídos da análise, pois o pacote estatístico, *crimCV* (Nielsen, 2018) do R (RStudio Team, 2015), utilizado para modelar as trajetórias em grupo, não permitia incluir no modelo dados faltantes. Com isso, a amostra contemplou um número de 260 municípios de um total de 295. No total, os municípios excluídos refletem menos de 2% do número de habitantes e de homicídios do estado.

No intuito de garantir a comparação das informações de homicídios entre municípios com características populacionais distintas, optamos por construir taxas bayesianas empíricas locais de homicídios em contraposição ao uso habitual das taxas brutas, já que permitem suavizar as tendências e os efeitos da superestimação das taxas de homicídios em municípios com baixa população (Carvalho, Silva, Almeida Júnior, & Albuquerque, 2012; Marshall, 1991; A. E. Dos Santos, Rodrigues, & Lopes, 2005).


Por fim, para identificar quais forças socioeconômicas e políticas determinam a participação dos municípios nas diferentes trajetórias, sejam elas de crescimento, estabilidade ou queda, utilizamos uma série de indicadores apontados na literatura especializada e que dizem respeito às questões estruturais, às mudanças nas políticas de controle do crime e aos aspetos situacionais.
Portanto, com o objetivo de reduzir o volume de informações e garantir a comparabilidade nos estudos de regressão, transformamos um conjunto de variáveis em um Índice de Desorganização Social (IDS) considerando uma escala de 0 a 10, em que 0 significa o menor valor e 10 o maior valor.\(^6\)

Com relação aos indicadores que remetem às estratégias de controle do crime, existem limites de toda a ordem, que vão desde aspectos técnicos, passando pela disponibilização das informações, chegando até mesmo a questões mais sérias, como a própria capacidade do indicador em evidenciar efetivamente determinado aspecto da realidade. Portanto, podemos encontrar problemas referentes aos períodos disponíveis, pois, diferentemente dos indicadores estruturais, apenas recentemente as instituições responsáveis por disponibilizar essas informações vêm realizando o trabalho de fornecer as informações de segurança pública de forma mais sistemática.

Com isso, a proxy de crime organizado utilizada neste trabalho remete a uma variável denominada número de aprisionamento por tráfico de drogas. Esta variável também foi transformada em um Índice de Aprisionamento por Tráfico de Drogas (InTrafico) mensurado em uma escala de 0 a 10, em que 0 significa o menor valor e 10 o maior valor.\(^7\)

Com relação aos aspectos situacionais utilizamos indicadores que remetem ao número de homicídios resultantes do uso de armas de fogo.\(^8\) Esses indicadores foram transformados em um índice de

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\(^7\) Do mesmo modo que os preditores anteriores, trabalhamos com uma variável resultante da agregação de um amplo conjunto de informações. Primeiramente, selecionamos dados de aprisionamento fornecidos pela Secretaria de Segurança Pública de Santa Catarina para os municípios do estado no período de 2010 a 2017. Em segundo lugar, transformamos cada indicador em taxas brutas e posteriormente construímos uma média das taxas de aprisionamento por tráfico de drogas considerando o período em análise. A última operação consistiu em desenvolver um Índice de Aprisionamento por Tráfico de Drogas (InTrafico) que se acomoda em uma escala de 0 a 10. Nesse sentido, a intensidade do Índice de Aprisionamento por Tráfico de Drogas (InTrafico), ao mesmo tempo em que sugere uma racionalidade que privilegia uma política de combate ao tráfico de drogas como premissa principal, também pode servir como uma proxy que mensura a ação do crime organizado. De um lado, uma racionalidade que expressa a prática de mais prisões como políticas de segurança pública, do outro, uma proxy da atividade criminal, especialmente aquela ligada aos mercados de drogas ilícitas. Em testes anteriores desenvolvemos cenários de análise considerando taxas de aprisionamento geral e apreensões por posse ou tráfico de drogas para uso pessoal. Optamos por considerar-as nos modelos de análises justamente por se enquadrarem nos problemas da multicolinearidade. As três variáveis mediam a mesma estrutura subjacente e anulam os efeitos uma da outra. Por se tratar de uma variável com maior impacto e relacionar-se diretamente com a expressão de um tipo de racionalidade política, decidimos manter as prisões por tráfico de drogas no modelo. Do ponto de vista substantivo, a alta relação entre os três indicadores demonstra que a maior parte das prisões está diretamente associada ao tráfico de drogas. O crescimento abrupto das taxas de aprisionamento no estado e os problemas originados deste processo pode derivar de uma mentalidade que privilegiou uma política de combate às drogas como principal ação da segurança pública.

\(^8\) Na primeira etapa da formulação da medida, selecionamos variáveis que retratavam o número de hom-
Homicídios Resultantes de Armas de Fogo (InArma) considerando uma escala de 0 a 10, em que 0 significa o menor valor e 10 o maior valor.

Por fim, acrescentamos ao modelo algumas medidas de controle: o tamanho da população total, que corresponde ao Índice de População Total (PopTotal) e a população urbana, que corresponde ao Índice de População Urbana (PopUrb). Todos posicionados em uma escala de 0 a 10.

**Análises**

**Trajetórias para as taxas bayesianas empíricas locais de homicídios**

Nesta seção tentamos responder a três questões principais do trabalho: se existe uma heterogeneidade oculta nas taxas de homicídios de Santa Catarina no período de 1992 a 2017? Como se modela o comportamento das trajetórias nos diferentes grupos identificados? E quais são os fatores que explicam essas diferenças?

**Gráfico II**

*Trajetórias das taxas bayesianas empíricas locais de homicídios para os municípios de Santa Catarina (1992 a 2017)*

Fonte: elaborado pelo autor com taxas bayesianas empíricas locais de homicídios.

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Homicídios cometidos por armas de fogo para os municípios de Santa Catarina nos anos de 1996, 2000, 2010 e 2016 (Datasus, 2019). Calculamos uma proporção entre o número de homicídios por armas de fogo e o total geral de homicídios e, posteriormente, calculamos taxas brutas considerando o tamanho da população. Por último, também posicionamos a variável em uma escala de 0 a 10. Há um consenso na literatura de que a proporção entre o número de suicídios por armas de fogo e da população geral serve como um indicador de disseminação das armas de fogo. Portanto, como forma de testar a validade externa do indicador, realizamos uma correlação entre o número de suicídios por arma de fogo e o total geral de homicídios para os anos de 2000 a 2017, o resultado de Pearson foi de 0,8, o que demonstra uma associação alta entre as duas variáveis e confere uma validade para a medida utilizada em nossos testes.

Com isso, temos o Gráfico 2, aquele que revela a trajetória das taxas de homicídios para os municípios de Santa Catarina (1992 a 2017). Com base nestas informações, podemos responder à primeira questão e evidenciar a existência de uma estrutura subjacente à tendência principal das taxas de homicídios em Santa Catarina. Se compararmos o desenho das trajetórias à tendência geral do estado (Gráfico 1), os quatro grupos identificados apresentam trajetórias distintas em relação ao desenho e à intensidade dos homicídios ao longo do tempo. Por exemplo, o grupo 1 retrata uma trajetória de alto incremento dos homicídios; o grupo 2, uma trajetória mista com tendência geral de redução; o grupo 3, uma trajetória de elevação, mas menos intensa que o primeiro grupo; e o grupo 4, uma trajetória mista com níveis baixos de homicídios.

A constatação dessa pluralidade de movimentos exemplifica a heterogeneidade oculta existente na distribuição dos homicídios no estado, abrindo um amplo campo de possíveis explicações. Além disso, essas informações nos permitem traçar uma tipologia do movimento das taxas de homicídios para os municípios do estado de Santa Catarina.

O primeiro grupo, 10 representado pela cor vermelha, agregou o menor número de cidades, 35 municípios, o que equivale a 13,5% do conjunto total da amostra. A simples visualização do desenho da trajetória já nos fornece informações substantivas. Embora não inicie sua trajetória com as taxas mais baixas de homicídios, seus valores estão bastante próximos do setor conjunto de municípios com baixos níveis de homicídios (grupos 3 e 4). Esta realidade altera-se significativamente, revelando um crescimento exponencial que inicia com maior intensidade a partir dos anos 2000. O mais emblemático é que o grupo estava próximo daqueles com as menores taxas de homicídios, e no final da série histórica passou a representar o conjunto de cidades com maior nível de homicídios do estado, inclusive ultrapassando o grupo 2, que iniciou sua trajetória com altas taxas de homicídios.

O segundo grupo, 11 representado pela cor verde, associou 68 municípios com tendências similares de homicídios, o que equivale a 26,2% do total da amostra. Diferentemente do grupo anterior, a dinâmica de sua trajetória foi caracterizada por movimentos diversos. Além de iniciar a série com os maiores valores, durante a década de 1990 apresentou uma tendência de incremento dos homicídios. No entanto, a partir dos anos 2000, enquanto o grupo 1 aumentou exponencialmente suas taxas de homicídios, o grupo 2 experimentou uma importante queda, que só encerrou próximo ao ano de 2017. Considerando a dinâmica geral, podemos considerar que este grupo apresentou uma leve tendência de queda.

O terceiro grupo, 12 que tem sua trajetória representada pela cor azul, também foi formado por 68 municípios (26,2%). Mas, apesar de uma leve queda registrada no início da série, no decorrer do tempo registrou uma tendência de incremento em suas taxas. Há uma questão importante a ser destacada. Este grupo não apresenta movimentos diversos como o anterior e, portanto, ao desenhar um crescimento constante de seus valores acaba aproximando-se do movimento apresentado pelo

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10 Se o grupo 1, por um lado, representa a menor quantidade de cidades, por outro, com 2.284.189 habitantes (33,2%), apresenta a maior quantidade de habitantes. Convém ressaltar que o grupo também registra o maior número total de homicídios, 7.303 (42,2%), e a maior média da taxa de homicídios, 14,5 mortes para cada 100 mil habitantes considerando toda a série.

11 O grupo 2 possui o menor número de habitantes, 1.021.602 (14,9%). Em termos de frequência absoluta, o número de homicídios, 3.413 (19,7%), deixa-o atrás do grupo 3, mas sua taxa aparece na segunda posição com a maior média geral, 13,4/100 mil habitantes.

12 Embora o grupo 3 registre um número de municípios similar ao anterior, sua população é consideravelmente superior, 1.941.843 (28,2%). Em termos de taxa (9/100 mil hab.) fica na terceira posição, mas o número de homicídios é maior que o do grupo 2, 4.356 (25,2%).
grupo 1. No entanto, o crescimento não acontece com a mesma intensidade, pois o grupo inicia e termina a trajetória com a segunda menor taxa de homicídios. De qualquer forma, também há outra informação que aparece de modo um pouco mais sútil. Se olharmos com atenção para o desenho da trajetória, é possível perceber que o incremento mais intenso acontece a partir da segunda metade dos anos 2000. É o ano em que municípios do Norte do estado passam a inflar suas taxas de homicídios. Além dos níveis de homicídios, o que separa o grupo 3 do grupo 1 é o momento no tempo em que o incremento passa a ocorrer de modo mais intenso: no grupo 1, a partir dos anos 2000; e no grupo 3, por volta da segunda metade do mesmo período.

Por fim, temos o grupo 4,\(^{13}\) representado pela cor roxa. Além de exibir uma menor taxa de homicídios, o grupo é formado pelo maior número de municípios, ao todo 89, o que representa 34,2% de toda a amostra. Aliás, os dois grupos com as menores taxas de homicídios, grupos 4 e 3, representam mais da metade do total de municípios, cerca de 60% (154). O desenho da trajetória do grupo é caracterizado por uma certa variedade, com momentos de queda e de elevação. O início da trajetória demonstra um movimento de queda, depois, nos anos 2000, ocorre um incremento em suas taxas e, no final, uma nova queda. Embora com níveis baixos de homicídios, chama atenção que, analógicamente aos grupos 1 e 3, o grupo 4 também apresenta uma elevação no decorrer da década de 2000, mas diferenciando-se desses mesmos grupos a partir da metade da década de 2010, com suas taxas voltando a reduzir.

**Mapa I**

*Mapa dos municípios de SC identificados no modelo principal (Gráfico 2)*

Fonte: elaborado pelo autor com taxas bayesianas empíricas locais de homicídios.

\(^{13}\) O último grupo agrega 1.621.266 habitantes (23,6%) e, concomitantemente, apresenta o menor número de homicídios, 2.224 (12,9%) e a menor taxa de homicídios (5,6/100 mil hab.).
De forma exploratória, as tendências revelam dois fenômenos distintos: municípios com histórico de altas taxas de homicídios (região Oeste e Serrana) e municípios com novas dinâmicas de intensificação dos homicídios (Grande Florianópolis, litoral do Vale do Itajaí e Norte). Por um lado, se a heterogeneidade revela uma realidade complexa e, a princípio, de difícil assimilação, por outro, a análise comporta destacado potencial analítico, pois permite examinar e avaliar o conjunto de preditores capazes de influenciar as diferentes tendências encontradas. Desse modo, torna-se viável identificar as variáveis latentes que podem vir a explicar a dinâmica das taxas de homicídios. Portanto, na próxima etapa, buscamos avançar em direção aos elementos que explicam estas tendências, ou melhor, aos aspectos que dão as bases da distinção tipológica evidenciadas em cada trajetória.

**Fatores estruturais e políticos – taxas bayesianas**

Considerando uma análise comparativa buscamos verificar se os aspectos vinculados à estrutura social e aos outros índices são capazes de apontar elementos significativos que diferenciam a probabilidade de um município pertencer a um determinado grupo de trajetória. Como método de análise estatística, realizamos este trabalho por meio de um estudo de regressão logística binária.

No primeiro modelo (Modelo A) avaliamos a probabilidade de um município participar do grupo 2 (taxas altas) em relação ao grupo 4 (taxas baixas). No segundo modelo (Modelo B), analisamos a probabilidade de um município participar do grupo 3 (taxas baixas com tendência de elevação) em relação ao grupo 4. No terceiro modelo (Modelo C), a intenção altera-se, e evidenciamos as diferenças que levam um município a participar do grupo 1 (início baixo, mas elevação constante das taxas de homicídios – nível alto) em relação ao grupo 4.

### Tabela I

**Regressão logística binária: grupos de trajetórias e preditores selecionados (Modelos A, B e C)**

<table>
<thead>
<tr>
<th>Índices</th>
<th>Modelo A</th>
<th></th>
<th>Modelo B</th>
<th></th>
<th>Modelo C</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Grupo 2 vs. Grupo 4</td>
<td></td>
<td>Grupo 3 vs. Grupo 4</td>
<td></td>
<td>Grupo 1 vs. Grupo 4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>Exp(B)</td>
<td>Prob. (%)</td>
<td>B</td>
<td>Exp(B)</td>
<td>Prob. (%)</td>
</tr>
<tr>
<td>IDS</td>
<td>0.679(3)</td>
<td>1.971</td>
<td>97.10</td>
<td>0.358</td>
<td>1.430(2)</td>
<td>43.00</td>
</tr>
<tr>
<td>lnTrafico</td>
<td>-0.125</td>
<td>0.882</td>
<td>–</td>
<td>0.248</td>
<td>1.282(1)</td>
<td>28.20</td>
</tr>
<tr>
<td>lnArma</td>
<td>0.540(1)</td>
<td>1.715</td>
<td>71.50</td>
<td>0.037</td>
<td>1.038</td>
<td>–</td>
</tr>
<tr>
<td>PopUrb</td>
<td>0.056</td>
<td>1.057</td>
<td>–</td>
<td>0.225</td>
<td>1.253</td>
<td>–</td>
</tr>
<tr>
<td>Constant</td>
<td>4.039(3)</td>
<td>0.018</td>
<td>2.297</td>
<td>0.101(3)</td>
<td>0.006</td>
<td>–</td>
</tr>
</tbody>
</table>

Fonte: elaborada pelo autor.

Notas: os modelos, o grupo inicial foi categorizado com o valor 1 e o grupo 4 com o valor 0.

1. p < .10.; 2. p < .05.; 3. p < .01.

Sinal convencional utilizado: – Dado numérico igual a zero não resultante de arredondamento.
No primeiro modelo (Modelo A), podemos verificar que três preditores foram capazes de explicar a probabilidade de um município pertencer ao grupo 2 em relação ao grupo 4: o IDS, o InArma e o PopUrb. O teste apresenta um cenário em que elevados níveis de desorganização social e uma intensidade de homicídios ocasionados pelo uso de armas de fogo ajudam a compreender a distinção entre um grupo com alta intensidade de homicídios (Grupo 2) e um grupo com baixa intensidade de homicídios (Grupo 4). Outro ponto importante refere-se à constatação de que a variável 'tráfico' não apresentou diferenças significativas. Os resultados começam a demonstrar um cenário em que a relação entre homicídios e tráfico precisa ser mais bem esclarecida.

No segundo modelo (Modelo B), três preditores produziram diferenças significativas sobre a participação de um município no grupo 3 em relação ao grupo 4. Embora com níveis inferiores aos apresentados na tabela anterior, tanto a intensificação da desorganização social quanto as armas de fogo colocam-se como um elemento importante para entender as diferenças entre um grupo que apresentou crescimento constante de suas taxas de homicídios (Grupo 3) e outro que manteve baixos níveis de homicídios (Grupo 4). Outra diferença importante consiste na participação significativa da variável que mensura o aprisionamento por tráfico de drogas. Começamos assim a evidenciar a complexidade subjacente à relação entre homicídios e tráfico. Em um cenário com uma elevação tardia das taxas de homicídios, os aspectos relacionados aos conflitos decorrentes das disputas nos mercados ilegais de drogas apresentam uma relevância importante para entendermos a elevação dos homicídios.

No último modelo (Modelo C), quatro preditores apresentaram diferenças significativas: o IDS, o InTraáfico, o InArma e o PopUrb. Neste caso, as bases explicativas dos preditores ampliam-se consideravelmente. A desorganização social continua sendo um elemento importante, e o preditor relacionado ao tráfico de drogas aparece com maior relevância. Tomado como uma proxy de maior intensificação do crime organizado, o InTraáfico demonstra que a participação de um município neste grupo de altíssima elevação dos homicídios (Grupo 1), comparado ao de baixo nível (Grupo 4), colocase como um elemento substantivo. Os municípios pertencentes ao Grupo 1 estão situados em uma região com características bastante singulares: alto fluxo de pessoas, economia voltada ao turismo, elevada densidade demográfica, entre outras. São características que privilegiam a expansão do mercado de drogas e, por consequência, possíveis conflitos relacionados às disputas entre grupos rivais. Infelizmente, temos poucas pesquisas no estado que analisam de forma detalhada essas dimensões por diferentes matrizes metodológicas, inclusive de forma qualitativa que melhor permitam avaliar essa descoberta em nossa pesquisa. Mas, se tomarmos como parâmetro o debate promovido pela mídia local no ano em que Florianópolis evidenciou o recorde em suas taxas de homicídios, diversos veículos de informação apontavam as disputas existentes entre dois grupos rivais, o Primeiro Grupo da Capital (PGC) e o Primeiro Comando da Capital (PCC). Estes elementos colocam em evidência a necessidade de ampliarmos o debate e principalmente de qualificarmos os dados utilizados para a análise. Embora os dados tenham melhorado nos últimos anos, ainda não respondem às perguntas postas pela investigação científica.

De forma geral, a estrutura social mensurada nesta seção pelo IDS manteve-se capaz de explicar todas as tendências de homicídios, sejam de trajetórias mistas, sejam de crescimento. Além disso, do mesmo
modo que as questões estruturais, verificamos que o tráfico de drogas, tomado muitas vezes como a única explicação possível para a elevação dos níveis de violência, também depende das características particulares de cada grupo de municípios. O que estes primeiros modelos revelam é que nenhum crescimento ou queda se explica automaticamente por um único fator, mas sim, por uma complexidade de relações cujo contexto singular pode estabelecer diferenças significativas.

No entanto, cabe ainda analisarmos quais os elementos que diferenciariam grupos com elevadas taxas de homicídios (Grupo 1 e Grupo 2) e os que apresentaram tendências de crescimento com intensidade distintas nas curvas de elevação (Grupo 1 e Grupo 3). Na Tabela 2, estão demonstrados os resultados da análise:

**Tabela II**

Regressão logística binária: grupos de trajetórias e previsores selecionados (Modelos D e E)

<table>
<thead>
<tr>
<th>Índices</th>
<th>Modelo D</th>
<th></th>
<th>Modelo E</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Grupo 1 vs. Grupo 2</td>
<td></td>
<td>Grupo 1 vs. Grupo 3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>Exp(B)</td>
<td>Prob. (%)</td>
<td>B</td>
</tr>
<tr>
<td>IDS</td>
<td>-0,563(2)</td>
<td>0,570</td>
<td>-43,00</td>
<td>0,062</td>
</tr>
<tr>
<td>InTrafico</td>
<td>0,675(1)</td>
<td>1,964</td>
<td>96,40</td>
<td>0,297(1)</td>
</tr>
<tr>
<td>InArma</td>
<td>0,009</td>
<td>1,009</td>
<td>–</td>
<td>0,301(1)</td>
</tr>
<tr>
<td>PopUrb</td>
<td>0,039</td>
<td>1,040</td>
<td>–</td>
<td>0,873(2)</td>
</tr>
<tr>
<td>PopTotal</td>
<td>-0,679</td>
<td>0,507</td>
<td>–</td>
<td>-0,713(2)</td>
</tr>
<tr>
<td>Constant</td>
<td>0,679</td>
<td>1,973</td>
<td>–</td>
<td>-2,555(2)</td>
</tr>
<tr>
<td>N</td>
<td>101</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pseudo R²</td>
<td>0,529</td>
<td>0,440</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Fonte: elaborada pelo autor.

Notas: (1) p < .10. (2) p < .05. (3) p < .01.

Sinal convencional utilizado: – Dado numérico igual a zero não resultante de arredondamento.

No modelo D, podemos verificar que a principal distinção entre os dois grupos com alta taxas de homicídios refere-se à variável relacionada à intensidade do tráfico de drogas. Nas análises anteriores, ficou clara a importância das questões estruturais para entender diferenças entre trajetórias com alto e baixo nível de homicídios. No entanto, quando o foco se direciona para a distinção entre grupos com intensidade elevada, o tráfico de drogas exerce um papel importante. E esta distinção continua significativa para os dois grupos que apresentaram trajetórias de crescimento. O que diferencia os Grupos 1 e 3 são: o tráfico de drogas, a intensidade de homicídios ligados às armas de fogo e o tamanho da população urbana. Estes resultados apresentam outra problemática que amplia o horizonte no que diz respeito às questões estruturais e aos problemas ligados à questão dos mercados de drogas, ou seja, a questão urbana.

**Considerações finais**

Os resultados apresentados nas análises multivariadas nos credenciam a responder à última questão
proposta no trabalho, a saber: quais são as bases da distinção tipológica dos grupos de trajetórias de homicídios no estado? Verificamos que a tendência geral, além de esconder distintas trajetórias, também oculta os efeitos explicativos dos preditores de acordo com as tendências e particularidades de cada grupo. As questões relacionadas aos aspectos da desorganização social permaneceram importantes, especialmente para explicar grupos com níveis distintos de homicídios. Elementos vinculados ao controle social formal e informal, à ruptura familiar e à tensão social mostraram-se aspectos importantes para diferenciar grupos de trajetórias distintas. Porém, quando buscamos verificar trajetórias similares de crescimento, a variável aprisionamento por tráfico de drogas se colocou como fator essencial. Embora reconheçamos os sérios limites metodológicos dessa variável, seja em relação à sua disponibilidade no tempo, seja em relação ao fato de se efetivamente ela seria capaz de se colocar como uma proxy segura de intensidade de ação do crime organizado, fica evidente que, diante dos testes apresentados, o aprisionamento de pessoas por tráfico de drogas pode explicar determinados agrupamentos em relação às suas taxas de homicídios.

Trabalhamos com InTraço considerado duas visões particulares: de que sua intensidade expressa uma racionalidade política que privilegia o combate ao tráfico de drogas e outra que retrata um indicador de atuação do crime organizado. Se tomarmos como ponto de partida a primeira visão, nossos resultados não oferecem sustentação para tal racionalidade como um elemento inibidor da violência por homicídios; pelo contrário, demonstra que justamente os grupos de municípios com as maiores taxas de homicídios foram aqueles que apresentaram os maiores níveis de aprisionamento por tráfico de drogas. No que diz respeito à segunda interpretação do indicador, temos base para confirmar que níveis altos de conflitos ou de atuação do crime organizado podem efetivamente se constituir como um elemento definidor da participação de um município em um grupo de alta trajetória de homicídios. Mas, diferentemente do que é incansavelmente veiculado, a relação entre ‘drogas’ e homicídios não acontece de forma automática, tampouco é totalizante. Dependerá das características dos municípios, da trajetória dos grupos e dos efeitos de outras variáveis, ou seja, o tráfico não é capaz de explicar toda a complexidade existente no fenômeno mortes por homicídios.

Além disso, vimos que outros elementos vinculados à dinâmica do próprio crime de homicídios, como é o caso do ‘instrumento utilizado’, podem ter efeitos importantes para explicar a agregação de municípios em grupos com níveis de homicídios, como é o caso das armas de fogo. A facilidade, o acesso e a cultura da arma são elementos inseridos no interior desse indicador e que o colocam como uma das principais causas para elevação das taxas de homicídios. E, nesse caso, a variável acaba por refletir não apenas a dinâmica do evento, mas sobretudo, o efeito de uma própria racionalidade política que articula desde aspectos micro, ligados ao campo da cultura da arma, passando pelos debates políticos diante do sucesso eleitoral, até a pressão do mercado por mais vendas de armas de fogo.

Também temos o papel da urbanização, que em Santa Catarina se coloca em um duplo processo. As taxas altas de homicídios no início da década de 1990 situavam-se em regiões dispersas, inclusive no interior do estado, porém, a partir dos anos 2000, pudemos constatar que as taxas de homicídios em Santa Catarina se transformaram em um problema urbano. Se no Brasil, tomado em seu conjunto, temos um movimento inicial de que os homicídios se constituíam como um problema das maiores cidades para depois se disseminarem pelo interior do país, em Santa Catarina, vemos um movimento contrário: primeiro, as regiões do interior apresentam taxas mais altas, para depois as regiões mais urbanizadas ampliarem suas taxas de homicídios.

Com isso, nossos resultados revelaram a existência de uma estrutura subjacente à tendência principal das taxas de homicídios em Santa Catarina e no que diz respeito ao mapeamento das bases dessa distinção tipológica, verificamos uma relação complexa que combina os efeitos dos aspectos estruturais, das ações de controle do crime e das questões situacionais de acordo com as
características de cada trajetória. Assim, buscamos trazer com este trabalho, um novo olhar sobre as tendências de homicídios e problematizar o que a taxa geral pode ocultar.

Referências


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### Anexo I

Para a construção do índice, selecionamos ao todo 27 indicadores que dizem respeito à estrutura social. Após uma série de controles estatísticos, chegamos a um modelo final com 18 variáveis. O teste de *Kaiser-Meyer-Olkin Measure of Sampling Adequacy* (KMO), que mede o padrão de correlação entre as variáveis, apresentou um índice de 0,857, consideravelmente acima do limite aceitável para prosseguir com a análise, que é de 0,5 (Hair, Black, Babin, Anderson, & Tatham, 2009). Outra ferramenta estatística importante, o *Bartlett’s Test of Sphericity* (BTS), utilizado para analisar a adequabilidade dos dados em relação à análise fatorial, também apresentou elevada significância (*p* < 0,000) (Figueiredo Filho & Silva Júnior, 2010). Em relação ao teste de comunalidades, não identificamos nenhuma variável com valores abaixo de 0,5, o que nos permitiu seguir com o procedimento e passar para a identificação dos fatores.

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Com base nos eigenvalues, um dos critérios utilizados para a extração de fatores, selecionamos ao todo três fatores (Tabela 6). O primeiro fator carregou 44,6% da variância total, o segundo carregou 26,0%; e o terceiro, 11,6%. Assim, os três fatores selecionados foram capazes de explicar 82,31% da variância total, superior ao valor de 60% sugerido por Hair et al. (2009).

### Tabela IV

**Componentes de matriz rotacionada da análise fatorial**

<table>
<thead>
<tr>
<th>Variáveis</th>
<th>Componentes</th>
<th>Comunalidades</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Média da taxa de desocupação - 15 a 17 anos (2000 e 2010)</td>
<td>-.283</td>
<td>.874</td>
</tr>
<tr>
<td>Média da taxa de desocupação - 18 a 24 anos (2000 e 2010)</td>
<td>-.681</td>
<td>.925</td>
</tr>
<tr>
<td>Média da taxa de desocupação - 25 a 29 anos (2000 e 2010)</td>
<td>.089</td>
<td>.867</td>
</tr>
<tr>
<td>Média da taxa de desocupação - 10 anos ou mais (2000 e 2010)</td>
<td>-.060</td>
<td>.988</td>
</tr>
<tr>
<td>Média da taxa de desocupação - 18 anos ou mais (2000 e 2010)</td>
<td>-.048</td>
<td>.984</td>
</tr>
<tr>
<td>Média do percentual de mães chefes de família sem fundamental e com filho menor, no total de mães chefes e com filho menor (2000 e 2010)</td>
<td>.765</td>
<td>-.217</td>
</tr>
<tr>
<td>Média do percentual de crianças em domicílios em que ninguém tem fundamental completa (2000 e 2010)</td>
<td>.915</td>
<td>-.201</td>
</tr>
</tbody>
</table>

---

16 Como colocado anteriormente, o eigenvalues é um dos critérios utilizados para a extração de fatores. Conforme a literatura, recomenda-se que valores acima de 1 sejam considerados.
**Nota:** Método de extração: Análise de componentes principais. Método de rotação: Varimax com normalização de Kaiser. *Kaiser-Meyer-Olkin Measure of Sampling Adequacy (KMO)*: 0,857. *Bartlett’s Test of Sphericity (BTS)*: \(p < 0,000\).


Portanto, o modelo nos ajudou a identificar as variáveis que poderiam compor o IDS. Para que o índice levasse em conta o peso adequado de cada variável, multiplicamos os preditores pelo resultado da proporção obtida entre a variância total carregada pelo fator e a carga fatorial de cada variável. Após essa operação, as variáveis foram somadas e padronizadas em um índice com escala que varia de 0 a 10, em que 0 significa o menor valor e 10 o maior valor. Assim, um município com índice igual a 5 revela maior desorganização social que um município com índice igual a 3. Seguem abaixo as medidas descritivas para o IDS, bem como o histograma representativo da distribuição entre os municípios de Santa Catarina.
A média das taxas bayesianas de homicídios foi obtida por meio de um cálculo de média aritmética entre as taxas bayesianas para todos os municípios considerados na análise, no período referente aos anos de 1992 a 2016.

Tabela V

<table>
<thead>
<tr>
<th>Índice de Desorganização Social (IDS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Média</td>
</tr>
<tr>
<td>Desvio Padrão</td>
</tr>
<tr>
<td>Mínimo</td>
</tr>
<tr>
<td>Máximo</td>
</tr>
<tr>
<td>Nº de Casos</td>
</tr>
</tbody>
</table>

Fonte: elaborada pelo autor.

Gráfico III

Histogramas do IDS gerado a partir da análise fatorial

O histograma apresenta uma disposição consistente para a medida de desorganização social, dado que a distribuição se aproxima de uma curva normal. Além disso, como aponta o valor do desvio padrão, mantém uma variabilidade interessante, com pouca dispersão.

Ainda com o objetivo de verificar a estabilidade das informações, também é possível visualizar no Gráfico III a relação linear positiva do Índice de Desorganização Social com a média das taxas bayesianas de homicídios (1992 a 2017). Embora o coeficiente de correlação de Pearson de 0,233 aponte para uma baixa associação, podemos visualizar uma tendência da média das taxas bayesianas...
de homicídios (1992 a 2017) caminhar lado a lado com a elevação do nível de desorganização social. Essa observação confirma-se caso tomemos como parâmetro os efeitos significativos do índice sobre a taxas de homicídios representados na Tabela 9. 19

Gráfico IV

Diagramas de dispersão: média das taxas bayesianas e IDS

![Diagramas de dispersão](image)

Fonte: elaborado pelo autor.

19 Essas informações não transmitem resultados robustos sobre a relação do IDS e a média das taxas bayesianas. Apenas colocamos estes apontamentos com o objetivo de demonstrar que há uma tendência deste índice caminhar na mesma direção que as taxas de homicídios. Apesar do baixo R² ajustado, de 0,052, que retrata uma possibilidade de 5,2% da variabilidade da média das taxas de homicídios serem explicadas pelo IDS, constatamos um efeito significativo da variável independente sobre a dependente. Ou seja, cada elevação no nível do IDS, implicaria em um aumento de 0,236 na média das taxas de homicídios. Uma diferença de 4 pontos no IDS representaria o aumento de um homicídio para cada 100 mil habitantes.
Felipe Mattos Monteiro, Professor de Sociologia na Universidade Federal da Fronteira Sul, Pesquisador do Núcleo Interdisciplinar em Políticas Públicas, Brasil.


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O contraprograma dos drones: Usos das tecnologias de vigilância nos presídios brasileiros

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Palavras-chave: Brasil, sistema penitenciário, vigilância, fações criminosas, violência

Key words: Brazil, penitentiary system, vigilance, prison gangs, violence

Resumo
O trabalho versa sobre dinâmicas das tecnologias de vigilância utilizadas pelos detentos e agentes prisionais no Brasil e seus impactos no sistema prisional. O trabalho de campo realizado foi qualitativo, em presídios nas cidades de Manaus, Fortaleza, Rio de Janeiro e Rio Grande, e contou com entrevistas semiestruturadas com atores do sistema penitenciário. Destaca-se a organização e crescimento das fações criminosas – com atuação intra e extraprisional – a partir da Lei de Drogas nº 11.343 e seus efeitos na organização e governança criminal. Discute-se como o controle social, uma prerrogativa estatal, é compartilhado pelas facções a partir do aumento do seu poder, via recrutamento dentro das instituições. A proibição do uso de celulares nos presídios é acompanhada de soluções criativas para seu rebolo (arremesso de fora) como a utilização de drones que enfrentam as armas de fogo dos agentes. Há um emprego de novas tecnologias com um impacto na dinâmica dos presídios.

Abstract
The work deals with the dynamics of surveillance technologies used by detainees and prison officers in Brazil and their impacts on the prison system. The fieldwork carried out was qualitative, in prisons in the cities of Manaus, Fortaleza, Rio de Janeiro and Rio Grande, and included semi-structured interviews actors in the penitentiary system. Noteworthy is the organization and growth of criminal factions - with intra and extra prison action - from Drug Law No. 11,343 and its effects on criminal gov-
ernance. It is discussed how social control, a state prerogative, is shared by factions from the increase of their power, via recruitment within institutions. The ban on the use of cell phones in prisons is accompanied by creative and technological solutions for their grinding (outside shooting) such as the use of drones that face the agents’ firearms. There is a use of new technologies with an impact on the dynamics of prisons.

**Introdução**

Na minha entrada em um presídio, no Rio Grande do Sul, em 2019, meu interlocutor exibe um scanner corporal¹, mais preciso e caro que os anteriores da unidade, ainda que não tenha funcionado nenhuma das cinco vezes em que tentamos. O aparelho para verificação dos visitantes da penitenciária busca aferir com segurança a existência de substâncias ilícitas em seus corpos. A tecnologia visa solucionar a proibição recente da revista íntima corporal, prevista na Lei 13.271/16², de forma a prevenir situações constrangedoras e a apreensão de entorpecentes. A ferramenta que identifica a eventual presença de drogas levadas para dentro dos presídios é também um arranjo exemplar do uso das tecnologias nas unidades prisionais na América Latina.

Estes arranjos – dos anacrônicos aos mais tecnológicos - podem ser compreendidos como sistemas sociotécnicos (Latour, 1992), realizados por negociações entre pessoas, instituições e organizações. A tecnologia consiste em um arranjo entre humanos e não humanos, que determina o curso dos acontecimentos e interações em determinada situação, decisões técnicas estão, portanto, imbricadas com as políticas. Para Latour (1996), há um programa e um contraprograma, que funcionariam a partir da inserção de um objeto em um local em que anteriormente existia outro arranjo, mas cujo elemento o modifica, determinando quantos atores estão alistados neste, e que realizam o que o dispositivo prevê. O sistema de videovigilância exemplificaria um agenciamento sociotécnico. Cardoso (2013) afirma que tanto a mão de obra quanto a estrutura técnica são tratados como elementos puros, embora a videovigilância seja constituída por um agenciamento sociotécnico. O que implica em uma série de promessas, planejamentos e dispensions políticas públicas, que nem sempre funcionam como originalmente planejados em contextos periféricos.

O texto discute o uso das tecnologias de vigilância em presídios brasileiros, em quatro regiões do país: Norte, Nordeste, Sudeste e Sul, a partir de um trabalho com inspiração etnográfica em unidades prisionais. O artigo envereda pela relação entre teoria e empiria, de maneira que o trabalho de campo provoca e contesta algumas perspectivas consideradas no debate sobre assimetrias teóricas e empíricas. Ademais, demonstra a circulação de teorias do norte global à luz de questões sobre os estudos do sistema prisional na América Latina. Sua discussão também tangencia como, diferentemente dos países centrais no capitalismo, em que os Estados e as grandes corporações de internet são o núcleo de uma “cultura de vigilância” (Lyon, 2018), os atores e situações são distintos nos países periféricos, e devem levar em conta o estágio avançado da governança criminal na região.

A reflexão sobre o estado da governança criminal nos presídios no Brasil é seguida de uma abordagem da novidade da vigilância aplicada em contextos de encarceramento no Sul Global. Posteriormente, a discussão se centra nas facções prisionais no país e sua utilização de tecnologias, e, por fim, discute

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algumas assimetrias teóricas e empíricas entre os países do Norte e do Sul globais.

**Nota metodológica**

O trabalho de campo foi qualitativo e contou com entrevistas semiestruturadas em unidades prisionais e secretarias de segurança pública nas cidades de Manaus, Fortaleza, Rio de Janeiro e Rio Grande, entre os anos de 2017 e 2019. Foram entrevistados dez homens e duas mulheres, atores do sistema prisional, que ocupavam diferentes posições, a saber: agentes de disciplina, agentes penitenciários, juízes federais, diretores das unidades prisionais e um detento. Ademais de visitas nas unidades, a observação sobre as dinâmicas das facções se deu também em visitas de campo a alguns bairros periféricos considerados importantes para a compreensão da governança criminal. A entrada nos estabelecimentos se estabeleceu com o contato com pesquisadores da temática nas cidades abordadas, assim como o pedido feito diretamente às Secretarias Estaduais de Administração Penitenciária.

As unidades penitenciárias visitadas foram: Complexo Penitenciário Anísio Jobim (COMPAJ) feminino e masculino, em Manaus – AM, Unidade Prisional Agente Luciano Andrade Lima (CPPL 1), Casa de Privação Provisória de Liberdade Professor Clodoaldo Pinto (CPPL 2), Casa de Privação Provisória de Liberdade Professor Jucá Neto (CPPL 3) e Casa de Privação Provisória de Liberdade Agente Elias Alves da Silva (CPPL 4), em Fortaleza- CE, Secretaria de Estado de Administração Penitenciária – SEAP e a Penitenciária Laércio da Costa Pellegrino (Bangu 1), Penitenciária Dr. Serrano Neves (Bangu 3A), no Complexo Penitenciário de Gericinó, no Rio de Janeiro – RJ; e a Penitenciária Estadual de Rio Grande, no RS.


**Justiça e governança criminal nas prisões da América Latina**

São mais de dez milhões de pessoas presas no mundo, com 1,4 milhões somente na América Latina, similares da forma de organização interna do crime à superlotação nas unidades e alto número de prisões provisórias. No Brasil, especificamente, o país que encarrega em maior velocidade no subcon-

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3 O trabalho de campo foi realizado no âmbito da pesquisa “Prison Gang Governance", da Universidade de Chicago, coordenada por Benjamin Lessing e contou com financiamento da Guggenheim Foundation. Apartir de 2018, as entradas no presídio se deram no, no Rio Grande do Sul, no escopo do projeto “Tensionamentos e dinâmicas da violência”, cadastrado no UFPe, com o auxílio de um agente penitenciário, funcionário da FURG e aluno do PPGS-UFPe.


5 http://www.seap.am.gov.br/unidades-prisionais/


7 http://www.susepe.rs.gov.br/capa.php
tinent (Roth, 2006), em que pese a Constituição Federal de 1988, que instituiu o Superior Tribunal de Justiça, Tribunais Regionais Federais, e constitucionalizou a Defensoria Pública, essencial no contexto prisional, a situação é preocupante. Para Lima e Vasconcelos (2019) o sistema de justiça criado é sobreutilizado, em uma combinação de incerteza, lentidão e afastamento de causas legítimas.

Nos primeiros dezesseis anos deste século, o crescimento da população penitenciária no Brasil foi de 157%, passando entre os anos 2000 e 2016 de 137,1 para 352,6 o número de pessoas recolhidas para cada 100 mil habitantes. São, segundo o Banco Nacional de Monitoramento de Prisões do CNJ, em 2018, mais de 810 mil pessoas presas no país, cerca de 40% sem condenação.

Esse grande continente de pessoas presas, uma constante na América Latina, pode ser entendido a partir da ausência ou limitação de governança estatal, que resultou parcialmente em formas de gestão compartilhadas com os detentos (Skarbek, 2020). O autor lista quatro formas principais de governança nesse ambiente: oficial, co-governança, auto governança e governança mínima. O Brasil seria um regime de co-governança, no qual as pessoas presas trabalharia conjuntamente com os funcionários (Skarbek, 2020).

Tais formas de governança criminal podem se dar de distintas maneiras no que diz respeito às comunidades, mercados ilícitos e às organizações criminosas (Barnes e Albarracín, 2020). Estes grupos organizados se relacionam com as populações dentro dos territórios em que eles operam.

Nas penitenciárias brasileiras, da mesma forma que no restante da América Latina, há avanço da ideologia conhecida como populismo penal. Para Sozzo (2018), essa estratégia de controle do crime propõe o endurecimento contínuo das políticas penitenciárias como forma de superar o fracasso do ideal de ressocialização. A congruência com a governança criminal estabelecida nos presídios se dá pela negação da atuação e organização das facções prisionais no sistema (Skarbek, 2020). No Brasil, como explica Carlos, da administração penitenciária, em Manaus: “o Estado acaba criando e consolando as facções, mas temos como prática não reconhecer nenhuma liderança dentro do sistema, para que essas não ganhem força, mesmo em momentos de crise”.

Já a forma de governar do crime acarreta na imposição de regras e restrições em comportamentos por uma organização criminosa (Lessing, 2017; Arias, 2006, Trejo e Ley, 2018; 2020). Esta governança impacta no entendimento de como as organizações criminosas se integram na política local e suas implicações para o sistema político. Na década de 1980, esta forma equivalia a uma estrutura alternativa de governar as favelas e periferias, por exemplo, com uma provisão de comida, solução de problemas de infraestrutura urbana, e se dava pelo tráfico e suas figuras carismáticas (Glenny, 2016). No Brasil, esta realidade já não se verifica com tanta frequência, mas persiste a confiança na rede de criminosos coetânea à essa forma de dominação, com normas e legitimidade para esses grupos.

A governança criminal dos cartéis no México exemplifica como há uma maior probabilidade de uso de violência letal contra oficiais do governo e seus candidatos políticos (Trejo e Ley, 2020). Ademais de subjugar governos locais e a população, ganha-se um controle territorial nos municípios em que desenvolvem regimes de governança subnacionais, que resulta em recursos valiosos aos cartéis, como o controle da violência e taxação, comandando importantes atividades econômicas locais.

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Na América Latina, há uma escassez estatal observada, em que pese a presença de instituições prisionais e agências estatais, em que são observadas formas de co-governança. Em comum, está sua origem, e moldadas em oposição – ainda que em uma complementação sutil – à governança estatal. Seu enraizamento é parte de seu diferencial e a autoridade estatal pode oportunamente contestar a autoridade assumida no campo pelos atores do crime, mas frequentemente colabora, silencia ou nega sua presença (Lessing, 2017).

Concomitantemente, nos contextos de “tolerância zero” latino-americanos, algumas inovações recentes no capitalismo promoveram na recepção da vigilância eletrônica, por exemplo, e nas mudanças nas formas de governo e compartilhamento involuntário de dados junto à governança criminal (Botello, 2012).

A desigualdade epistêmica entre a América Latina e os países do centro do capitalismo é evidenciada em uma parte substantiva das conceituação sobre as prisões, com teorias e material empírico de outros contextos. Neste artigo, abordaremos os usos das tecnologias pensadas originalmente para uso militar e estatal, pelas facções prisionais no caso brasileiro. A organização nos presídios, no Brasil, não se encerra no propósito da vigilância e controle estatais, com atualizações de sistemas originalmente pensados para vigiar os sujeitos, mas cujos usos excedem os atores governamentais.

Anterior a essa lacuna, sublinhamos como o modelo de vigilância no sistema prisional foi amplamente baseado no Panóptico de Bentham, cunhado em 1787, e popularizado por Foucault (2014). Esse consiste em uma arquitetura prisional que prevê um prédio circular com uma torre de observação no meio, em uma formulação totalitária de comando e controle centralizados, análogo às operações do controle na sociedade moderna. Dessa forma, um único ponto de observação é privilegiado, impacando na vigilância constante dos comportamentos de quem estivesse dentro, uma metáfora bastante utilizada nos trabalhos do sistema prisional (Foucault, 2014, Adams, 2016, Parnell, 2013 & Britton, 2003).

Para Foucault, as coisas são tornadas visíveis segundo um determinado discurso histórico, do que pode ser visto, e a serra do visível é construída de forma a ressaltar um regime particular de visibilidade. Há, idealmente, um número grande de vigilantes para sujeitos visíveis – no caso, agentes da segurança para detentos – conectado ao surgimento das sociedades disciplinares do século XVI em diante. A regulação do poder, nesse esquema, é inerente à composição arquitetônica, cujo objetivo é “em cada cela trancar um louco, um doente, um condenado, um operário ou um aluno” (Foucault, 2014: 223) permanentemente visível. Seria necessário apenas um supervisor em uma torre central, importante para criar a ilusão de que alguém pode estar vendo, nunca tendo a certeza se estão sendo ou não vigiados. O Panóptico induziria, então, no detento, um estado de consciência e permanente visibilidade, que assume como automático o funcionamento do poder.

Sociedades de controle (Deleuze, 2006) são subsequentes à sociedade disciplinar (Foucault, 2014), à sociedade de vigilância (Murakami Wood et al, 2006), e à cultura de vigilância (Lyon, 2018). Desta forma, no Sul Global é frequente o uso do arcaísmo teórico do Norte para a reflexão sobre seu sistema prisional. Nesse sentido, as abordagens pós-Foucault – imprescindível para a teorização do campo - não problematizam mudanças posteriores àquelas em que este se debruçou (Cardoso, 2014). Ressaltamos algumas perspectivas que pensam para além do modelo panopcista, realizadas no Norte Global (Norris and Armstrong, 2020; Lianos (003; Koskela, 2003, 2004), além de Mathiesen (1997), e seu modelo sinóptico, justaposto ao Panóptico. Neste, muitos observariam poucos, uma lógica que opera

10 Para mais informações sobre esse conceito utilizado pelo filósofo francês, ver Elmer (2012).

Por sua vez, na periferia do capitalismo, Bruno (2010) propõe uma vigilância distribuída, incorporada em dispositivos e serviços cotidianos, de forma descentralizada, não hierárquica e com diferentes propósitos. Nestes contextos, aferramos-nos às instituições totais para o disciplinamento da coletividade. Nesta, as tecnologias de controle utilizadas convergem, nas prisões da América Latina com a presença ostensiva de facções criminosas.

A vigilância, no século XX, pode ser conceituada como a “recuperação e processamento de dados pessoais, identificável ou não, para os propósitos de influenciar ou gerenciar aqueles cujos dados foram recuperados” (Lyon 2001, p. 02). A novidade residiria em seu uso como tecnologia política de controle da população (Ceyhan, 2012). Esta não se estabelece de forma homogênea em todos os contextos, com importantes modificações nos sistemas de identificação que utilizam (Murakami Wood e Firmino, 2010). Browne (2015), por exemplo, menciona a vigilância estabelecida sobre populações negras, intelectuais e ativistas, como Frantz Fanon, mas também trabalhadores, de forma a controlá-los.

David Lyon (2003, 2010; 2011, 2018), referências nos estudos sobre vigilância, menciona as bases para o seu “funcionamento” em situações cotidianas, bem como o papel do setor privado na justificativa e implementação de meios de identificação. O processamento de dados pessoais implica na disciplina produzida pelo Panóptico, mas também em uma categorização sutil de determinados grupos sociais oprimidos, por exemplo.

As perspectivas produzidas no norte fazem menção constante à vigilância baseada na perspectiva foucaultiana (Marx, 2016, Zuboff, 2019 & Bucher, 2018) – complementares, porém distintas às formas observadas na América Latina. O Panóptico acenra o monopólio da informação e comunicação por um pequeno número de elites interconectadas e com baixa visibilidade (Marx, 2016). Contudo, atualmente observamos câmeras de vigilância outrora restritas às prisões e áreas de alta vigilância de segurança em escritórios, shoppings, no interior das casas, praias, bares e igrejas. Apesar de Foucault ter identificado que estas extrapolariam as prisões e hospitais para outros espaços, como a fábrica e a escola, para categorizar e organizar os sujeitos, o autor não poderia prever o aumento da quantidade de informações sobre os sujeitos por empresas e grupos criminosos.

Há uma extensa produção na Sociologia e Criminologia latino-americana a respeito das práticas de encarceramento, mas algumas seguem baseando-se em pesquisas feitas no norte global. Nessas sociedades, a pobreza extrema, os altos níveis de violência, a falta de autonomia estatal e as altas taxas de encarceramento devem ser considerados. Os impactos da colonização, organização do crime e conflito armado, além da violência contra a mulher e crianças e violência estatal são parâmetros incontornáveis às análises (Carrington, Scott, Sozzo, 2018; Cavalcanti, 2020).

Na América Latina o monopólio da informação, comunicação e coerção pressuposto pelo modelo do Panóptico seria contestado por uma organização criminal que igualmente possui meios coercitivos, informacionais e de vigilância como veremos a seguir. Neste contexto, há uma reordenação dos regimes de visibilidade, reorientando os espaços e a utilização das tecnologias.

**O encarceramento e a vigilância contemporâneas no Brasil**

A instituição prisional surgida no século XVIII (Fassin, 2017; Ignatieff 1978, Melossi & Pavarini, 1981;

No país em questão, Koerner (2001), sublinha a centralidade da sociedade escravista na gênese da economia dos castigos e em sua distribuição da violência entre a autoridade pública e os particulares. Assim, a Casa de Correção da Corte, no Rio de Janeiro, por exemplo, fundada no século XIX, única no país inspirada no modelo Panóptico, já em 1874 funcionava como às demais prisões do Império. Ademais, era pouco segura, com instalações e condições de higiene e saúde precárias. Koerner identifica, portanto, nessa precariedade “relações existentes entre as práticas punitivas estatais e a estrutura da sociedade escravista brasileira do século XIX” (2011, p.2)

As mudanças arquitetônicas desta instituição já eram, à época, emblemáticas. Não se podia ver tudo da torre central e a vigilância era exercida direta e difusamente por uma parte da população sobre a outra. Ademais, não havia um espaço homogeneizado do Panóptico, com divisões entre vigilantes e vigiados e o controle estaria «pessoalizado» nas relações dos agentes. A violência era aplicada nos apenados, tanto pelo poder privado senhorial, quanto pelo poder estatal, de forma a reafirmar a ordem social hierarquizada e não o adestramento disciplinar dos corpos (Koerner, 2001).


Em uma perspectiva distinta, que assume que as pessoas presas organizadas possuem poder de bar-

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12 Entrevistado em Manaus, em agosto de 2017, no presídio COMPAJ.
ganha, mesmo que não nomeados pela mídia e governos, Carlos,13 diretor de uma unidade prisional no Ceará, afirma que os detentos têm que “escolher proteção, pra ter proteção que o Estado não dá”. E a filiação nos presídios seguiria uma regra entre os detentos que, uma vez filiados, não podem mais sair. Felipe,14 diretor de outra unidade, assevera que: “eles são muito organizados, funciona perfeitamente, a gente até brinca que se a rua tá muito bagunçada, o sistema não está funcionando”. O entrevistado prossegue “O Estado é muito moroso para tomar decisão, o crime não”.

Esse fenômeno, segundo Roberto,15 em Manaus, advém da expansão e complexificação do mercado ilícito de drogas, que levou à subsequente organização dos grupos como facções, impactando nas grandes cidades brasileiras. Em Manaus, a chegada do PCC, por exemplo, rompeu o monopólio de venda a varejo de drogas da facção Família do Norte (FDN). Desde 2012, a capital do Amazonas conta com uma organização incipiente do PCC e os presídios federais teriam potencializado, a competência dos presos, a partir da mistura entre presos comuns e faccionários. No Rio de Janeiro, a situação relatada é similar, com o agravante de uma lei estadual que proíbe a divisão dos presídios por facções, ainda que ela não funcione na prática.16

Conquanto exista uma interdição da nomeação relativa às facções, Oscar, detento entrevistado em Bangu 4, no Complexo Penitenciário de Gericinó, traz uma perspectiva distinta à narrativa oficial. O jovem, que passou por sete unidades federais, afirma que o problema atual do crime residiria justamente na organização proporcionada pelos presídios federais. Para ele:

Penitenciária federal é lucro pra facção, 99% dos presos não sabem nem falar quando chegam lá, nem da favela saíam, primeira vez que andam de avião é quando são transferidos. Na penitenciária federal, você enriquece as facções criminosas, é um câncer.

No Brasil, atraso e precariedades coexistem listados por Igor,17 agente prisional no Rio Grande do Sul, exemplificado por iniciativas de modernização da gestão das unidades prisionais, notadamente suas câmeras de monitoramento. Essas diminuem o número – e a periculosidade - das rondas, mas também permitem a fácil visualização de movimentações suspeitas. Tais inovações, junto a um sistema de vídeo monitoramento, câmeras de alta resolução e sensores noturnos com rotação 360 graus são comuns na última década. Ainda assim não são consensualmente recebidas pelos trabalhadores, dado que muitos guardas antigos não se adaptam às tecnologias.

Outras inovações nos presídios estariam aliadas à liberdade condicionada à provisão da impressão digital, além do uso intenso de scanners nas entradas do presídio.18 Igor comenta que a automação de portas e janelas, principalmente nos presídios do estado de São Paulo, torna facultativa a presença

15 Segundo entrevista realizada com o presidente do COPEN-AM, em agosto de 2017.
16 Entrevistado no Rio de Janeiro, em setembro de 2017, na SEAP.
de agentes de segurança em determinados espaços. Outro arranjo das gestões nas unidades prisionais é um robô que realiza uma varredura dos espaços, também a partir de uma câmera, além de drones, que funcionariam de forma a visualizar o pátio, outrora uma tarefa exclusiva das forças policiais.

As videoconferências de detentos,\footnote{Defendido pelo Ministro da Justiça, Sergio Moro, https://twitter.com/SF_Moro/status/1114109909266726918?ref_src=twsrc%5Etfw Acesso em 5 de abril de 2020.} o uso da Inteligência Artificial (IA) para gerir as ligações realizadas de dentro do presídio\footnote{Tecnologia que começou recentemente a ser implementada nos presídios nos EUA. Para maiores informações, ver: https://abcnews.go.com/Technology/us-prisons-jails-ai-mass-monitor-millions-inmate/story?id=66370244 Acesso em 4 de abril de 2020.} e os bloqueadores de sinal surgem mais na forma de \emph{promessas tecnológicas} para o sistema penitenciário do que realidades concretas nas unidades. Os telefones celulares são objeto de controvérsia, tendo em vista que têm sua entrada principalmente \emph{por rebolo}, arremessos do lado de fora que, não raro, incluem armas.\footnote{Entrevistado em Manaus, em agosto de 2017, no presídio COMPAJ que adicona que as entradas de celulares nas unidades decorrem também de uma má fiscalização das visitas e funcionários.} Em uma visita à unidade COMPAJ, em Manaus, o juiz Augusto indica os locais em que os presos receberam a polícia no dia 1 de janeiro de 2017,\footnote{http://g1.globo.com/am/amazonas/noticia/2017/01/maior-massacre-do-sistema-prisional-do-amazonas-secretario-sobre-rebeliao.html Acesso em 4 de abril de 2020.} no início de uma rebelião instaurada à noite, com tiros, em que também lançaram pessoas da parte mais alta do presídio. Quando questionado como os presos teriam acesso às armas, meu interlocutor me responde «as armas nessa rebelião entraram pelo rebolo ou pela má fiscalização das visitas e funcionários do COMPAJ». Este grau de organização ilustra o estágio da governança criminal no Brasil.

No Rio Grande do Sul, Igor menciona “presos que a gente chama mais caídos é que vão entrar com o celular ou até uma pequena quantidade de drogas, eles usam os familiares, um amigo, um irmão, no máximo um arremesso”. O ato de arremessar, segundo Nascimento (2018) subsume a negligência da vigilância estatal sobre o que entra nos presídios, em que pese que pendrives, celulares e bebidas alcoólicas sejam arremessados correntemente nas unidades no país.

A utilização que os detentos fazem das tecnologias aqui apresentadas vale ser ressaltada. Há uma busca constante por estratégias alternativas de entrada de substâncias ilícitas, como menciona Igor, sobre o aumento da apreensão de drogas por meio de arremessos quando os scanners corporais foram instalados na unidade em que ele trabalha.

Há incongruências no uso das tecnologias nos sistemas prisionais no centro e na periferia. A tornozeleira eletrônica,\footnote{Seu uso está regulamentado pela Lei de Execução Penal (LEP), de 1984, somente no regime semiaberto e aberto. Para maiores informações, ver: https://www.jusbrasil.com.br/topicos/28001040/artigo-146b-da-lei-7210-de-11-de-julho-de-1984. Acesso em 10 de abril de 2020.} por exemplo, recomendada em decisões judiciais para presos do regime semiaberto (RSA),\footnote{Essa variação é distinta também no que tange ao seu alcance, entre 150m a 300m, no Rio Grande do Sul, por exemplo.} é uma delas, com instruções em inglês e, como afirma Igor, que não raro resulta em redamações dos detentos sobre a incompreensão do seu funcionamento. Há também a dificuldade de não conseguirem emprego com as tornozeleiras, pois ficam presos a um raio determinado, sem poder deslocarem-se para o trabalho ou mesmo o não possuírem moradia fixa. Um agente da condicional, carreira inexistente no Brasil, poderia minimizar solucionaria esse imbróglio. Campello (2017) aponta dificuldades do uso das tornozeleiras notadamente em presos faccionados fora das unidades, tendo em vista a identificação e rixas proporcionada pelas mesmas.
Tais tecnologias coexistem com táticas consideradas anacrônicas, utilizadas pelo Estado no Brasil. O uso de animais nos arredores das unidades, como os cachorros e gansos em uma unidade em Rio Grande, com a função de fazer barulho em movimentações suspeitas é um exemplo deste. Adicionalmente, figuram entre essas práticas rondas noturnas para verificar fugas e detentos informantes, que trocam informações por regalias. Em presídios antigos, em todo o país, há um bate grade quando os detentos são colocados no pátio, para verificação das celas de forma a verificar se nestas não constam substâncias ilícitas.

No COMPAJ, por exemplo, são muitas as limitações estatais para a aplicação de tecnologias. Neste, o trabalho é realizado por agentes de disciplina, contratados por uma empresa, e não agentes penitenciários concursados. As funções de observações e apoio são limitadas ao trabalho de agentes terceirizados, uma demonstração do atraso e precarização do funcionamento dessas unidades em todo o país.

No Brasil, as facções usam as tecnologias de formas distintas, inclusive internamente. Marcelo, por exemplo, afirma que o Comando Vermelho (CV) não usa tanto as redes sociais quanto o PCC, e não usa a mídia social whatsapp. Tais grupos funcionam basicamente com um sistema de anotações, com um número de inscrição e matrícula, que, no caso do livro do PCC conta também com os campos exclusão, punição e matrícula. Jorge, agente prisional no Rio de Janeiro, afirma que neste constariam “anotações que não são da facção, mas da unidade, e da boca dele”.

**Drones no contraprograma das facções prisionais**

Aqui listamos uma interferência cada vez mais presente no sistema prisional na América Latina: o artefato aéreo não tripulado, popularmente conhecido como drone, mas cuja terminologia militar é veículo aéreo não tripulado ou veículo aéreo de combate não tripulado, munido ou não de armas. Conquanto se observe sua existência desde o século XIX, não foi até recentemente que estes entraram definitivamente no imaginário da modernidade. O controle dos agentes à distância, ora por humanos ou dispositivos robóticos, comumente há uma combinação das duas formas de controle.

Originalmente empregados em tarefas de informação, vigilância e reconhecimento, estes já são documentados em suas novas tarefas, como a de caçador-matador (Chamayou, 2015). Com câmeras de vídeo voadoras e de alta resolução, têm sua força no limite em que projetam poder – aumentam a distância a partir da qual a violência pode ser empregada, tanto em seu uso original, quanto contemporâneo.

Essa tecnologia foi desenvolvida em um programa de assassinatos por alvo justificados pela “Guerra ao Terror”, cujo uso foi intensificado nas guerras no Afeganistão (2001) e Iraque (2003), com a in-
corporação de câmeras, sensores para vigilância e armas (Perón, 2015). A vantagem de não serem tripulados auxilia sua utilização mais corrente, idealmente desenhados para ações consideradas perigosas. O “objeto violento não identificado” traz à luz algumas contradições dessa tecnologia humanitária pretensamente mais ética como uma alegada precisão no fazer da guerra. O discurso da necroética é fundamental para sua aceitabilidade social e política, em uma justificativa do direito ao “assassinato seletivo”. Essa política daria conta de uma autoridade fora do solo em cada casa e cada indivíduo, para que possa ser monitorado, policiado ou destruído a partir do céu (Weizman, 2012; Chamayou, 2015).

No Brasil, drones de menor porte se tornaram recentemente acessíveis ao grande público, comprados em lojas de eletrodomésticos e regulamentados em 2014.33 A ANAC cadastra aviações experimentais no país, categoria que não se limita às aeronaves remotamente pilotadas. O Syma X5C pode ser comprado por cerca de 50 reais, com uma câmera e controlado remotamente por até 100 metros, já o Phantom 3, custa em torno de mil reais, com um sistema de localização wireless, e filmagem automática de alvos com uma câmera de alta definição. O modelo S1000 do DJI, pode carregar até 11kg.

É, portanto, como parte de contraprogramas que os drones figuram na utilização feita pelos detentos, com um uso alternativo à forma como são previstos pelos agentes da segurança pública. Em uma teia societária em que convivem humanos e não humanos, é importante pensar técnicas no bojo de responsabilidades de relações não exclusivamente humanas, em que a tecnologia assume centralidade em seus diferentes usos (Latour, 1992).

Para além da organização no sistema de anotações, ressaltamos o uso dos drones pilotados remotamente de fora das unidades que chegam com entorpecentes e celulares para dentro dos pátios. As circunstâncias que permitem que tecnologias militares de sobrevoo sejam utilizadas por facções prisionais são emblemáticas do seu poder e efetiva influência dentro do sistema penitenciário, com controle sobre quase tudo que entra nos presídios, segundo Igor, em Rio Grande. No pátio entre as alas de um presídio, o agente comenta que é frequente que tais objetos sejam derrubados pelos guardas nas áreas comuns, com celulares amarrados ao aparelho. Somente em 2019, no Rio Grande do Sul, foram apreendidos 43 drones34 e junto com eles quatro quilos de entorpecentes e 68 telefones.35 Igor menciona como fora do presídio as facções utilizam também rádios e aparelhos para captação e tecnologias para “entrada de armamento, captam nossa frequência de comunicação e técnicas pra bloqueio e abertura de tornozelaira, sem gerar sinal no sistema”. Ele prossegue:

os caras são profissionais nas técnicas, constroem muitas coisas, materiais que bloqueiam o scanner corporal, colocam materiais na volta das drogas, e outras

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32 Chamayou (2015) chama atenção para o aumento de 1.200% no número de patrulhas de drones norte-americanos, entre 2005 e 2011, e para o fato de que nos EUA, atualmente, formam-se mais operadores de drones do que pilotos de avião de combate e bombardeiro juntos.
34 Para ele, tais dados são subnotificados, dado que as forças de segurança não controlavam os dados nos anos anteriores, por não se apresentar como uma realidade tão frequente.
técnicas de entrada de material, sola de chinelo, técnicas como a jiboia, cordas que usam pra fuga, lanças que pegam coisas para ser arremessadas, que eles fazem com o corpo humano, muito rápido. Técnicas para entrada de materiais gigantescas, de tecnologia é o celular e tudo quanto é tipo de tecnologia para aprender o sistema do presídio. Tornozeleira e controle de radiofreqüência para pegar as frequências da polícia. Na rua eles usam muito mais coisas. Sola do chinelo completamente forrada, não dá pra ver corte nenhum.

No programa estatal, há uma tela nos pátios e bloqueadores de celular, que impedem o sinal de comunicação dos drones. No contraprograma das facções se observa um sobrevoo noturno dos drones com o material em uma corda, arrancada pelos detentos quando perto das celas. Igor afirma: “o material é solto dentro do pátio e nós acabamos apreendendo drogas e drones, e pelos locais que caem sabemos que vieram de drones, na nossa revista de manhã”. Muitas vezes o aparelho, ele prossegue, fica preso aos fios das unidades, em pacotes que chegam a pesar mais de dez quilos. O exemplo recente da Penitenciária Estadual do Jacuí (PEJ), no Rio Grande do Sul, da derrubada de um drone Matrice, com 6 baterias, 28 aparelhos celulares, e quilos de entorpecentes e acessórios, como fones de celular e remédios,40 sinaliza para uma ocorrência cada vez mais frequente no país.

Foi em 2012 que começou-se a observar essas práticas na passagem de entorpecentes na fronteira entre EUA e México, por exemplo, em uma média de 150 viagens por ano realizadas por VANTS.37 Choi-Fitzpatrick (2020) relata que, desde 2017, o ISIS já utilizava os artefatos com bombas coladas com fita silvertape,38 tal como já se documentava o sobrevoo de drogas para dentro dos presídios. O uso de aeronaves não tripuladas para a entrega de entorpecentes em uma penitenciária foi observado em 2014, com a apreensão de um mini-helicóptero controlado, que teria levado 250 gramas de cocaína para o Centro de Detenção Provisória 1, em São José dos Campos-SP. Sobre a prática, Carlos,39 no Ceará, comenta: “já vimos drones sobrevoando a unidade, nós não temos dinheiro nem pra comprar um cadeado e o crime tem drones”.

Esse uso diversificado dos drones é reportado desde o início do século XXI. Assim, de instrumentos de trabalho em departamentos de polícia, incluindo o monitoramento de presos em condicional à identificação de crimes e o rastreamento de criminosos, estes são para Choi-Fitzpatrick uma “extensão aérea do problema do crime no big data” (2020, p. 167). O Centro de Estudo dos Drones da Universidade de Bard, nos EUA, em um relatório de 2018, identificou 910 agências públicas que faziam uso da tecnologia área, um aumento de 82% em relação ao ano anterior.40

Considerações Finais: Assimetrias Norte Sul na teoria e empiria prisional

39 Entrevistado em Fortaleza – CE, em 2017

Seguimos, portanto, a pista de Bruno et al (2019), em que junto às transformações das práticas de vigilância seguem-se modificações nos temas dessa agenda de pesquisa. Os novos arranjos sociotécnicos (Latour, 1992) e geopolíticos do capitalismo de vigilância referenciam a invenção de um grupo de seres humanos em um tempo e local específicos, que não resultam necessariamente em avanços das tecnologias digitais. As ações e estruturas devem ser refletidas em seus aportes local – redução, foco, partição – e global – instrumentalização, complicação, amplificação (Latour, 1996). Em termos de pesquisa, a teorização sobre os efeitos do Big Data já alerta para a presença dos países periféricos nas análises. Há iniciativas, como a conferência realizada em 2017, na Colômbia, Big Data from the South (Silva, 2019, Milan & Treré, 2019), com a agenda de discussão destes contextos.

Há uma ancoragem das principais capacidades instrumentistas nas grandes empresas de vigilância, e o Estado se movimenta junto a estas para acessar parte do poder que essas prometem. Haggerty (2012) já alertara sobre a existência de uma “vigilância gradual e dissimulada”, em que os processos high e low-tech, introduzidos para um propósito definido podem ser transformadas, com a expansão para outros locais e populações. No caso latino-americano, em geral, e no Brasil, em particular, os usos alternativos das tecnologias de vigilância incluem scanners, tornezeleiras eletrônicas e drones funcionando como coletores de dados para controle dos sujeitos e mobilizados por atores da governança criminal.

A tecnologia do drone encarada em uma chave neocolonial, em seus usos diferenciados nas relações Norte-Sul globais envolve uma dimensão subestimada na literatura. Esta versão sobre como o acesso individual às ferramentas de vigilância e sua democratização nos permitem visualizar como o crime organizado as utiliza, com membros de facções especializados em driblar os equipamentos de segurança para burlar a vigilância estatal e servir a seus interesses. É assim que a perspectiva da sousveillance (Mann, 2003) deve ser considerada, implicando em uma inversão da vigilância tradicional, com um regime de visibilidade que produz deslocamentos efetivos para o controle.


A agenda tecnopolítica deve seguir de perto o desenvolvimento de novas formas de vigilância, suas resistências e subversões. Esta é outra assimetria evidenciada pelos países latino-americanos, em desvantagem em termos de recursos, idiomas e circulação de sua produção acadêmica (Koerner, 2017).

41 Conferência originada de um grupo de trabalho que busca “descolonizar a pesquisa de dados”. Para mais informações, ver: https://data-activism.net/publications/big-data-from-the-south/
42 Tradução da autora, “surveillance creep”, em inglês, no original.

O artigo discutiu o uso de tecnologias de vigilância em múltiplas vias duas no sistema prisional brasileiro, com aportes para os demais países da América Latina, focando em sua governança criminal. Seu percurso se estabeleceu na relação entre a teoria dos estudos prisionais, muitas vezes em perspectivas exógenas aos seus contextos, e na empiria, de forma a mostrar o uso alternativo que as fações prisionais realizam das ferramentas tecnológicas.

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Criminology in Latin America: A dialogue with Eugenio Raúl Zaffaroni.

Eugenio Raúl Zaffaroni Interviewed by Matías Bailone
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(c) Supreme Court of Justice of Argentina
Introduction

To discuss criminology in Latin America we cannot avoid many important names of our recent history. Those who, from these godforsaken lands, had the courage to be exponents of critical thinking when it was really dangerous for their own lives. Many critical criminologists of this region were direct victims of the various genocides that afflicted the entire continent and their books were burned and censored.

From among many of those who are responsible for having turned the page of the history of positivist criminology in this region, we have chosen one of the most important jurists and criminologists in Latin America for the last four decades.

Eugenio Raúl Zaffaroni (Buenos Aires, 1940) is one of the most famous jurists and criminologists in the Spanish-speaking world. His trajectory in criminal law with German dogmatic influence can be traced back to the 1970s, when he published a substantial five-volume Treatise on Criminal Law. With that book, which served as a manual for law students, all jurists throughout Latin America were trained in law schools. There is no jurist in the Spanish or Portuguese-speaking world who has not studied from his books. He also taught criminology for the faculties of psychology and sociology in Buenos Aires and Mexico. He currently has countless books widely distributed in many languages such as Spanish, Portuguese, German and Italian. Academically, he has received more than forty honorary PhDs from the most prestigious universities in the region and in Europe. His teaching extended to many universities in Mexico, Guatemala, Ecuador, Brazil, Peru, Bolivia and Costa Rica, but he always primarily taught at the University of Buenos Aires, where for several decades he chaired its Department of Criminal Law and Criminology. His formative years were spent in Mexico, Germany and Italy. And specifically in criminology, his most direct influences were Alessandro Baratta, Massimo Pavarini (of the Bologna school), Rosa del Olmo (Venezuela) and Louk Hulsman (Rotterdam).

The influence of Zaffaroni’s work and critical thinking in Latin America spans four decades, especially in the legal world of criminal law, but also in the institutional reforms of most of the countries in the region, whose penal codes, penitentiary laws and even constitutions were developed by the tireless work of Prof. Zaffaroni. His most important work for critical criminological thought was “In search of the lost penalties” (Zaffaroni, 1989), where he discussed the abolitionist approaches of northern Europe that were in vogue at the time, especially with his Master Louk Hulsman. In this work he postulates an integrative critical theory for Latin American criminal law and criminology, taking into account the structural reality and economic dependence of the countries of the region, the degradation of the official institutions of punishment and the absence of critical views in a region that was emerging from genocides produced by the State’s own punitive forces. The rest of his works on criminology are “Criminology, an approach from the margin”, “The speech of the dead” and “The New Critical Criminology”.

In 2009 Zaffaroni was distinguished with the Stockholm Criminology Prize for his widespread research on state crimes in contemporary criminology. This led to the publication of some of his texts in English-speaking journals. A volume devoted entirely to his work and thought is currently being prepared for English readers.

Zaffaroni was engaged with real reforms to the criminal justice system, that is why he also occupied political positions in Argentina and in the 90’s he was the Director of the United Nations Institute for the Prevention of Crime in Latin America (ILANUD, Costa Rica). He also served for forty years in various judicial positions in Argentina, becoming a Supreme Court Judge and currently a Judge of the Inter-American Court of Human Rights.

For twenty years I have had the great privilege of considering myself a disciple of Prof. Zaffaroni, with whom I have worked both academically and judicially. He directed my PhD thesis and together with...
his tireless itinerant journey throughout the region, we have traveled to teach and lecture at numerous universities. We have edited several journals together and written books jointly, and I can testify of his intellectual quality but first and foremost of his unparalleled human quality.

For this special issue of Criminological Encounters I decided to ask Prof. Zaffaroni some of the basic guidelines for understanding criminology in Latin America.

Matías Bailone: Dear Raúl, according to your historical perspective, how did critical criminology originate in Latin America?

In other words, how did critical criminological thinking from the Anglo-Saxon world reach our region? There are many critical public statements that are made by great criminological thinkers of our region at the beginning of the 80s, although more linked to the concrete politics of Latin America.

There are also concrete needs that many critical jurists had, regarding the real functioning of the punitive system in the region at that time.

Which of these circumstances gave rise to critical criminology in Latin America?

Raúl Zaffaroni: Jurists in general did not have much to do with the beginnings of critical criminology in our region. It fundamentally permeated through a series of dissident criminologists of positivism, who began to read and study critical Anglo-Saxon texts, such as those of Rosa del Olmo, Aniyar de Castro, Roberto Bergalli, Juarez Cirino dos Santos, Emiro Sanoval Huertas, Mauricio Martínez, Emilio García Méndez, and Juan Guillermo Sepúlveda, perhaps forgetting other names; but in general, the world of criminal law jurists was a little disconcerted by the statements of criticism.

Perhaps one of the first encounters between critical criminologists and criminal law jurists took place when we were conducting research on 'The Criminal System and Human Rights' at the Inter-American Institute of Human Rights in San José, Costa Rica, in the early 1980s.

Criminal law in the region was still plagued by the debate between 'causalism' and 'finalism' (a discussion on German criminal dogmatism transplanted to our region) and its practitioners were rather perplexed by criminological criticism. What took place in San José was interesting because problems of human rights were discussed. It was too much to try and bring these concepts (selectivity, stereotypes, labelling, etc.) into a dogmatic discussion that moved between Edmund Mezger and Hans Welzel. Of course, there were progressive criminal law experts, such as the Chileans Eduardo Novoa Monreal and Juan Bustos Ramírez. The Colombian Alfonso Reyes was himself open to these new ideas, but harmonising dogmatics with critical criminology and with sociology itself, also the more traditional sociological approaches, was very difficult.

M.B.: Raúl, tell me a little bit about the spirit that prevailed in those meetings or congresses in the 1970s and 1980s in all the countries of the region. Was it the revolutionary spirit of the 'new man' or was it a very academic view of the subject?

R.Z.: These were the years of the dictatorship and the transition to constitutional governments throughout the region. I did not participate in the first meetings of critical criminology groups in Venezuela. It was not only out of fear of reprisals from the Argentinean dictatorship, but it had something to do with my personal academic history. My original training in criminology, especially in Mex-
ico, with Alfonso Quiróz Cuarón, was predominantly aetiological, although he was neither a racist nor a pure biologist. But it was a criminology focussed mainly on the ‘causes of crime’.

Back in Argentina, specifically as a criminal judge at Villa Mercedes and as a professor at the Catholic University of La Plata, aetiological criminology made ‘a lot of noise’ from my perspective, since it had nothing to do with what I saw every day. I realised, in actuality, that it didn’t explain anything to me, and that there was a huge contradiction between what I thought in ideological terms and all of that. This was a contradiction that I also saw in Quiróz Cuarón, and in most of those who cultivated that criminology, who, by the way, were not fascists or colonialists or anything like that. It would be a mistake to see them all as such, because only a few were.

That’s why I closed the books on criminology and focussed entirely on criminal law, went to the Max Planck Institute in Freiburg, West Germany, published the *Theory of Crime*, and then dedicated myself in the following years – the ’70s – to writing the five volumes of my *Criminal Law Theory*, in juridical terms according to the German theory.

At the end of the ’70s, I reconnected with criminology, and read the critical works of that time. I think that by reading Massimo Pavarini and Dario Melossi for the first time, I formed a complete picture of the era. I resumed my sociological readings. In 1968 I had taught the sociology of law in Veracruz. At the UN Congress in Caracas in 1980, I began to became friendly with Rosa del Olmo. We went to that congress with David Baigún on behalf of the AIDP (International Association of Criminal Law). That was at the time of the dictatorship and Argentina had official representation, which we carefully avoided. Baigún was more experienced than I was in this respect, which gave rise to a very comical original distrust at the time of the first contact with Elías Carranza.

I continued to work on the five volumes of my *Theory of Criminal Law* that I had begun in 1980, although they were published over the next three years. I had also published the *Theory of Crime* textbook in 1977, but it slowly dawned on me that something wasn’t working in criminal law either; there was criticism that was beginning to ‘make noise’ about what I had written, at least with regard to a good part of it. My textbook was circulating as a left-wing work but I did not feel that this was enough. I began to travel to Brazil as well; the world was opening up to me in Portuguese, and I saw even more contradictions as I got to know Brazilian society better, where, in addition to my previous experience in Mexico, criminal law seemed to me only superficially rational, and with a huge background of irrationality.

The tone of the ’70s was confusing. There was a true fusion between academics from countries that were not dictatorships and those exiled from countries under ‘national security’ dictatorships. In the ’80s there was a sort of Latin American ‘unveiling’, of course. In those years, contacts with critical thinkers became more frequent, such as at the Medellín Congress, where there was the presence of Alessandro Baratta, Louk Hulsman, and Massimo Pavarini. All these thinkers were easily accessible people, who were modest, and open to conversation and simple dialogue with a confused Latin-American like me.

Obviously, I was quite lost. My training in criminal law was in the original neo-Kantianism (Mezger), but I became an unorthodox finalist realist, but influenced by objective logical structures (Welzel), in interesting dialogue with a liberal Spanish Republican Kantian like Manuel de Rivacoba, my avid readings of the first Heidegger, the original criminological training with Quiróz Cuarón, the experience of formal logic with the ‘mathematical logic model’ in Mexico, Antonio Beristain’s victimological question and now back to sociology and contact with the European forefathers of criticism, all of this was a beautiful stew, ‘puchero’ or ‘feijoada’ that I did not know how to cook very well. But something told me that I had to deepen critical thinking in criminal law.
M.B.: Did the original aetiological training leave you with anything constructive?

R.Z.: That is a good question. Yes, indeed, something was left with me, which has lasted until the present, especially the year I spent in the clinical psychiatry classes of the old asylum of ‘La Castañeda’ with the teacher José Luis Patiño Rojas. Of course I know the limitations of psychiatry and the anti-psychiatric criticisms and so on, but there is something that I learnt and that serves me to this day. To put it bluntly, I learnt that ‘crazy people’ are like us, only without limitations: that is, we all have moments when we get away from reality, but we come back, maybe several times a day, and we are not schizophrenic. There are days when we are more ‘down’, and others when we feel that everything is fine, and that we can take the world by storm, but we are not manic-depressive. On other days we get ‘stuck’ in some idea or fear, we do not digest it well and it dominates us for a while, until we dissolve it, and it goes down the tube, but we are not paranoid. Sometimes we see things that do not exist, animals in the shadows, pyramids on the straight road where we drive. But we realise that they do not exist, or that we deform what we see, or we hear the bell that did not ring, and we are not hallucinating or delusional.

In short, I learnt not to know if it is the ‘crazy’ who lack limitations or if it is us who are the ‘limited crazy’. I confess that I tend to think the latter, although I know very well that it is not convenient to lose too many inhibitions because otherwise you get locked up and ‘stuffed with pills’.

M.B.: Tell me a little about Rosà del Olmo. She was the first to bring the texts of the criminology of social reaction, labelling, and stigmatisation theory to the region and to the Spanish language. Was she the first amphibian academic between the Hispanic and North American worlds? Is it thanks to her that these texts were translated in the early ‘70s?

R.Z.: The fact is that dear Rosita had been trained in Wisconsin and also in England. Each one was marked by its own life history. Rosita was born in Spain, she was the daughter of a feminist woman, a fighter, who took her into exile, and I think she died in France when Rosa was about 12 years old. It is true that thanks to her, the first texts translated in the English language arrived, she discovered the interest in critical criminology in that language, especially in North America.

But Rosa was much more than a criminologist, she was a feminist sociologist, she was interested and wrote above all about women in all the revolutionary movements of those years. With regard to the question of drugs - which she was passionate about - she approached it very specifically from the perspective of women’s involvement. She was undoubtedly the pioneer of feminist critical criminology in our region and, I would say, in Spanish. She did not have the ‘juricentrism’ of the penalist formation, and for that reason she sometimes criticised the Europeans.

Rosa did not go to the United States, but came from there and had to revalidate her degree, as I remember. She was fundamentally a fighter as well as an extraordinary academic.

M.B.: When you wrote In Search of Lost Penalties thirty years ago, you had already published another earlier book on criminology, which were transcriptions of lectures in Venezuela, that you titled An Approach from the Margin. To what extent did you think you were going to dedicate yourself to criminology in the future?
R.Z.: In fact, we penalists are criminology snipers, we get into the social disciplines, in the ‘psi’; in the economy, in political science, we snoop everywhere, but if we are conscious, we do this to understand what we have in our hands and what we do. I don't know if we are criminologists or if that is being a criminologist. The truth is that I never set out to 'be' a criminologist, but to do criminology. It’s something like poetry or history, you can have a degree in literature or history, but you can also write poetry or history without that degree. You may lack some methodology if you want to do criminal sociology, or economic analysis of crime, but there is no one who has all that knowledge. To be a serious criminologist you would need to be a sort of Leonardo Da Vinci, and that doesn't exist. What I became clearly aware of is that I could not be a criminologist without knowing what happens with punitive power in the real world of social reality to the people, as an elementary responsibility. Much less can I be a judge, or pretend with my writings to dictate a line on jurisprudence to other judges. Normative logic is not enough, every sentence is an act of government or a 'polis'; it is a political act. How can you exercise political power without knowing what you are doing in reality? You can become an Eichmann.

The Aproximación desde el margen are class notes; they are the result of Zulia’s classes, but also of notes I gave to the students when, following the Argentine dictatorship, I took over the chair of criminology at the Faculty of Psychology at the University of Buenos Aires, where I remained until I left because of my age. I liked that chair very much. As you can see in those pages, I focussed on a critique of positivism and its function in our region. There was no more complete idea, by the way, although I was beginning to understand something about the need to wake up from normativism, and to start from a more realistic basis. I did not want that book to be distributed in Argentina, but in the end, the Colombian publisher did.

M.B.: In your academic and personal bibliographic history did you think that criminology was going ‘to eat’ criminal law, or were you already thinking of the Barattian paradigm of integration (of Alessandro Baratta)?

R.Z.: No, the idea that criminology ‘eats’ criminal law is a very dangerous positivist dream. Today it is back with neurosciences, or rather, with what some try to make neurosciences say, and it seems that they are reviving an unusual dialogue between St. Augustine and Lombroso, to end up in Lacassagne. From the time we are little, they are going to place something in our frontal or parietal area so that we are not aggressive and become ‘meek’ in the face of power.

I'd like to clarify that this does not cast aspersions on neuroscience in itself, of course. Maybe they will find out if there really are psychopaths. What happens is that biological reductionist aetiological criminology always fell in love with the latest fashion of biology, as it did with endocrinology, for example, but that was a thing of aetiological criminologists. Endocrinology exists and so do our glands, but that has nothing to do with Kretschmer’s simplicities. Then, with less intensity, came the atypical chromosome. They also fell in love with psychoanalysis and produced a criminological literature of lousy psychoanalytic quality, with some exceptions, which does not mean that the unconscious does not exist, of course.

The sciences advance and the hasty aetiological criminologists claim that they are going to ‘cure’ criminals, and criminal law will be superfluous. I do not know how they are going to ‘cure’ the managers of transnationals who practice the great financial organised crimes of our time, nor the local agents we have in our countries. Rather, I believe that some of them may be thinking about how to ‘cure’ those of us who denounce their economic macro-crimes or how to use these methods to thwart the resistance of our peoples. Remember that Lombroso pathologised the anarchists and the Paris Com-
mune.

Regarding the integration paradigm, Alessandro Baratta was very pessimistic at the time. I was very sorry not to be able to dialogue with him after digging into the *Malleus Maleficarum* and *the Cautio Criminalis* from the Middle Ages. I could not show him that the first integrated model was clearly that of the *Malleus* and the first critical criminology that of the *Cautio*.

In short, when I was thinking about my book from 30 years ago and I was able to more or less arrange some pieces in my head, I did it impelled by Baratta’s influence. I was not resigned to a criminal law that was not compatible with criminology, understood as the set of data of the ‘being’ of the punitive power; that is, a schizophrenic criminal law enclosed in the normative logic and excluding the real world. The only way I found was to legitimise the legal power of containment, and not the punitive power. And every day I am more convinced, especially in Latin America, where we are the descendants of five centuries of genocidal colonialism. The model of international humanitarian law was useful to me, and I found Tobias Barreto’s concise but accurate lucidity brilliant.

In Europe, criminology – even critical criminology – does not seem to have taken charge of genocide, or of the colonialists who created these states, legitimised by racist criminology, or of what happened in the last world war, considered an unrepeatable *Sonderweg*. What more noble function can criminal law have than to contain the punitive power that otherwise gets out of control and ends up in genocide?

**M.B.:** In your opinion, are the great criminologists in Latin America always Europeans? I mean, Alessandro Baratta, Louk Hulsman, Massimo Pavarini—to which of these figures do we owe more regarding the processes of knowledge they were researching and developing outside the region? Who became more ‘Latin Americanised’?

**R.Z.:** I believe that none of them became too ‘Latin Americanised’, but they taught us the characteristics that punitive power has in any place and time, that is, the structural ones: selectivity, stereotypes, violence, incapacity to resolve conflicts, and so on. This is the way it is all over the world, in the North and in the South, except that these are exacerbated or attenuated, according to the power framework. We were taught to delegitimise the false premises on which normativist criminal law was based, the dangerous traps of neo-Kantianism, of ethicisation, of normatisation, of elevating logic to ontology. We have learnt a lot from them.

As for the characteristics of punitive power in Latin America, that is the task of our criminology, and it is to a large extent pending. In Europe punitive power is rather ‘formal’, here in our region, the informal punitive power is always more important: torture, extortions, executions without trial, forced disappearances, the autonomous collection of our executive agencies. Ours is a criminal punitive power, tolerated by its ‘formal’ exercise that covers it up. The parallel and unofficial punitive power is not only typical of national security dictatorships, it is common in our societies, it is delinquent but unpunished by the ‘formal’ punitive power that complements it. Europeans do not understand this well, because they do not have that experience.

**M.B.:** What was it like, Raúl, to teach criminal law and criminology at the University of Buenos Aires, or at the Social Museum or wherever, including your Mexican experience in the ’60s, under the positivist paradigm? I mean, it was dominant everywhere, wasn’t it? The shadow of Francisco Laplaza at the University of Buenos Aires was still imposing, or was it only because he had been paid by the dic-
tatorships and the power that really existed in the academic and judicial world?

R.Z.: No, I did not live in the times of the dangerous criminal law, do not suppose that I am that old. When I was a student, I studied for the general part of the criminal law exam with a positivist academic, an old professor named Silva Riestra. I was 18 years old, and I was astonished the question of the open ears, the unbridled forehead, the prominent chin, the “Vilella skull”, the atavism, the whole theory of Lombrosian criminological positivism. Jorge Eduardo Coll was still in another chair, but Eusebio Gómez had died when I was in high school, I did not know him, nor Juan P. Ramos, who I think died when I was in my first year of college.

But no, I soon got into the criminal dogmatics of German reception. There were other professors; I did the seminar at the Institute of Criminal Law with Luis Jiménez de Asúa, and when years later I started teaching in Veracruz, I began by teaching the dogmatics of continental European criminal law.

In German criminal law, Hans Welzel sounded more realistic, although I was always suspicious of his ethicisation, so I never shared his concept of culpability, but the attraction came from his realism. I was never at all convinced by the neo-Kantianism of Mezger, and I was not wrong. In short, what I did much later was to apply the thesis of the logical-real structures to punishment and punitive power, which Welzel, of course, did not do, because his whole ethicising scheme would have collapsed. But this realist imprint, although quite Aristotelian, cannot be denied.

A quite intelligent penalist of ours – as did the reactionary ones, by the way – used to say that finalism was dangerous because it opened the way to ’Marxism’. But he was too shrewd, and that is why he never wrote it. Bayardo Bengoa wrote it in Uruguay. He was right in the sense that it opened the way to criminological criticism in criminal law, which would implode its idealistic dogmatics or force it to retreat into a hallucinated world, where criminal law is elaborated without the slightest qualm, imagining that punitive power responds to models of states that do not exist, such as the Kantian ethical or the Hegelian rational. That is why Bayardo could make criminal law on that basis, and at the same time be Minister of Justice for the Uruguayan dictatorship. He was awarded an honorary doctorate ‘de facto’ from the University of Buenos Aires during the dictatorship.

In any case, the realist imprint was quite overlooked in the Argentinian discussions, where it seemed that everything was reduced to knowing whether the ’dolus’ was in the criminal type or in the culpability.

As for the figure of Francisco Laplaza, he was Dean of the Faculty of the University of Buenos Aires when I was a student. It was obviously the most reactionary faculty of that university and in general tremendously conservative. It was also the one that adopted the most retrograde positions in the face of what we could call ’conservative progressivism’. It did not set any theoretical trends, because except for some essays, the best it had was an impeccable bilingual edition of Beccaria’s book. His pre-eminence was during the dictatorship, when he was the director of the Institute of Criminal Law and we were all kicked out of the faculty, including Ricardo Levene, Isidoro de Benedetti, Horacio S. Maldonado and, of course, me, who was teaching on the undergraduate programme. Laplaza was also a prosecutor and he asked me to nullify all my sentences as a first instance judge, with the clear purpose of having a ‘jury’ to dismiss me. I had to stop him with a documented defence. I can’t tell you anything about what happened during those years in the faculty, because I didn’t set foot in it. Anyway, I know that some professors used my ’Manual’. When I returned to the University of Buenos Aires after the dictatorship, of course it was gone.
M.B.: If Argentina was the model of uncritical acceptance of the Italian positivist paradigm of criminology, or in the words of Gina Lombroso, the country where her father and his theories were most honoured, why was its influence on concrete criminal legislation so scarce? Only the laws of residence and social defence recognise this influence, but outside the criminal code. Properly speaking, they are not punitive laws. You once said that the figure of Rodolfo Moreno may be the explanation for why the spirit of Lombroso, so dominant in the whole Argentine society at the time, did not enter the criminal code. How can this phenomenon be explained and how can it be extended to the whole region?

R.Z.: Indeed, I believe that the one who saved us from that was Rodolfo Moreno, who was not a great criminal lawyer, but he was a great politician. The curse that no governor of the Province of Buenos Aires reaches the presidency of Argentina was also fulfilled with him. If Tejedor in his time, or Moreno in his, had reached the presidency of the Republic, perhaps our history would have been different. But it is not written to include hypotheticals.

I believe that Moreno and Rivarola, who had turned from Spencer to Kant, were the ones who prevented us from having a ‘peligrosista’ code (legislation under the threat of dangerousness), which unleashed the fury of the positivists. In the Senate, Ramos managed to put the word ‘dangerousness’ in article 41, and Coll and Gómez took advantage of their contacts with Justo to initiate a project that fortunately did not prosper, after the failed electric chair scheme, that Moreno himself derailed and that the conservative Chamber of Deputies never tried, thanks to him, despite the Senate’s half sanction. It seems to me that Rivarola was the ideologist and Moreno the politician, but they must have been an interesting duo.

M.B.: In your latest texts you speak of a new critical criminology situated here and now for Latin America. What would be the fundamental postulates on which future research should be based?

R.Z.: Returning a little to what I said before about what critical criminologists taught us, I believe that their criminology did not take care of genocides and for us that is crucial. Our colonial history is one of genocides, from the original colonialism to the ongoing drip genocide in the region (genocide that takes place slowly but systematically on the poorest classes of our countries), which is like a new Hiroshima and Nagasaki every time. Let us add up the deaths caused by violence, with some countries being world champions in homicide rates, with suicides, lethality due to selective health care, deficient sanitary campaigns, job insecurity, traffic insecurity, not to mention food shortages, and you will see that our underdevelopment – a product of the late colonialism to which we are subjected by organised financial macro-crime – is a drip genocide in progress.

The punitive power in our region has always been predominantly informal and genocidal and yet we are here, so we survive and resist. The history of our colonialism is not a history of the vanquished, but of the victors, because in spite of everything, our cultural mosaic, formed by all those victimised and persecuted by the colonialist globalisation of the last five centuries, shows that we are alive and that we resist the punitive power of all the successive stages of colonialism.

Therefore, we need a criminology of our ‘being-here’, and what does this ‘Being-here’ show us? It confirms our survival and resistance, with all its different tactics, from the Maroon Indians and the ‘quilombos’ and ‘palenques’ to the Mothers of Plaza de Mayo, from Túpac Amaru to the protests of these last months throughout the South American Pacific.

I believe that the pending task of our criminology of ‘Being-here’ is to investigate the genocidal puni-
tive power of our original colonialism, of oligarchic neo-colonialism, of national security, and from all
that to extract the tactics of survival and resistance of our peoples. In other words our criminology
should show us how we managed to continue our 'being-here', to gather that experience – which is a
true cultural treasure – and apply it to the selection of the tactics that we must follow in resistance to
the current late-colonialism.

It is not about a history, but about the recovery of an enormous experience that is necessary for us to
stop the ongoing drip genocide. I believe that this is the pending task, which must be performed by us
from the south, because genocide is not incorporated into the criminology of the 'north'. In any case,
our vision of the 'south' may well complete a vision of punitive power with the 'north' and, in this way,
make one day a criminology of 'Being-in-the-world', because there are not two 'worlds', but a single
reality seen from two perspectives.
Eugenio Raúl Zaffaroni (1940) is Professor emeritus of the University of Buenos Aires, former director of the Institute of Criminal Law and Criminology of that university. He has more than forty honorary doctorates from the most prestigious universities in Latin America and Europe. He was awarded the Stockholm Prize for Criminology in 2009. He is currently a Judge of the Inter-American Court of Human Rights. Vice-President of the International Association of Penal Law and of the Societe de Defense Sociale. He has numerous books that have become icons in the field, especially in Spanish, but also translated into Portuguese, Italian and German.

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Hope in the trenches of resistance:
Interview with Talíria Petrone

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1 Cropped version. Original image available through this link: https://www.camara.leg.br/internet/bancoimagem/banco/2019/05/img20190507202534273.jpg
Abstract

Talíria Petrone is a federal deputy in Brazil (2019–2022) who has undertaken remarkable work on the defence of human rights, on gender and LGBTQIA+ agendas and on support for Brazil’s poor Black population. She has also become closely involved with topics related to security and police brutality in Brazil. In this interview, among other topics, she talks about her earlier career, the impact of death threats in her political work and her proximity to the politician Marielle Franco, who was murdered in 2018. The interview was conducted by criminologist Ana Míria Carinhanka, based in Brazil, and urban criminologist Lucas Melgaço, based in Belgium.

Ana Míria Carinhanka: Who is this woman, Talíria Petrone? What makes you you?

Lucas Melgaço: And did your academic background have any influence on your work as a politician?

Talíria Petrone: I am a history teacher, a graduate of the State University of Rio de Janeiro (UERJ). I studied on the UERJ campus in São Gonçalo, one of the largest cities in in the Metropolitan Region of Rio de Janeiro. It is a city where the state comes with a lot of violence by its armed arm, a city where rights are very precarious, with many favelas. It is close to Niterói, where I was born and grew up. The students at that university, in general, are Black, peripheral and working students. Most of the people who studied there worked during the day and studied at night. The experience I had at that university was crucial to strengthening the role of political militancy and to giving the face of the mandate that we started to build years later.

I’m the daughter of a school teacher and a musician. I grew up in Fonte Seca, a poor neighbourhood in Niterói. I think of the following two aspects: my academic background at this university, even before my master’s degree, which I combined with the ongoing political struggle; and my family history, especially my relationships with my mother, my grandmother and my great-grandmother. These are two of the memories that make up the parliamentarian I am today. I have a memory of my mother going up the slope of the street where I lived, there in the Fonte Seca neighbourhood. Today, it’s an area that seems to have become controlled by a militia. And I have a memory of my childhood, of us taking the bus, my mother climbing up a slope pregnant with my sister, with my brother in one arm and me on the other. This is an image that stuck with me: the scene of this woman, a teacher, who went to university already as an adult, who was the head of the family, and my example as a woman, who did not see herself as a feminist, but was the epitome of the Brazilian working woman.

And the university came after other experiences. I worked in telemarketing, which was necessary to be able to pay for the public transport to go to class. This work experience shaped me as a university student. It influenced me to not get involved in student movements, because I did not see myself represented, despite recognizing the importance of these movements. But this experience as a worker – and then the experiences of colleagues at the university in São Gonçalo – constituted me as a militant. More than the academic life itself, which I consider quite important, my experience as a school teacher, my jobs in São Gonçalo, in the Maré favela, dealing with students who arrived having not eaten, with students who saw their neighbour die the day before, murdered by the state, influenced me greatly. To experience the world within the (micro) classroom space was important for me to decide to become politically involved.

I thought at that moment – and still do – that the school is a very powerful space to experience such an unequal Brazil. I arrived at a school where Brazil’s historical inequalities were very sharply and
evidently present, which gave me a great need to go further and organize myself politically. I joined PSOL (Partido Socialismo e Liberdade) and became involved with agendas on education and human rights. Through my candidacy, we wanted to bring the racial and gender agendas into the centre of Brazilian politics within the context of Niterói city. We created a campaign with the slogan ‘For a Black, popular and feminist Niterói.’ With little money and few people, but by circulating through the squares, and making sure we were closely connected with the neighbourhoods and territories, our mandate obtained the most votes in the city. It was a surprise, but also a sign that there was a need among the majority of the people to feel represented.

Our campaign was mainly a response to the murder of Marielle Franco, who was very close to us. We were both Black women in politics. When she got killed, we felt provoked to nationalize the struggles that were occurring in the state of Rio de Janeiro. That is what pushed us to take on this task of the federal mandate.

L. M.: Still, about your mandate as a councilwoman in Rio de Janeiro, could you please talk about your participation in agendas such as sexual violence and security policies?

T. P.: I was president of the Commission on Human Rights, Children and Adolescents during the two years I was a councilwoman. We had a space for welcoming victims of human rights violations in the city of Niterói, in a broad conception of human rights, including for example the right to daycare as a human right. There were three themes that were directly linked to what we will continue talking about today. The first were issues involving women’s rights and gender, which were themes that have become very present in our work. So much so that we, from the perspective of criminal abolitionism, believe that prisons maintain a form of historical repression that always falls on the same bodies. We understand that, before a woman is assaulted, we want her alive and without marks of aggression. So, preventing violence against women was a fundamental point in addressing the gender inequalities that are so glaring in Brazil.

One of the first measures that we had as a mandate was a representation to the Public Prosecutor’s Office to bar an amendment to the Municipal Education Plan which prohibited gender, sexual diversity and sexual orientation from being debated in schools in Niterói. We managed to overturn the amendment. This generated a series of violence against us by fundamentalist sectors in the city.

Also, the housing debate, which often seems to be detached from debates involving police violence. But on the contrary, the struggle for housing always involved some other violation to that territory. Niterói is a city where more than twenty-five per cent of people live in areas of housing deficit, _favelized_ areas, without drainage, without sanitation. And these are areas where police lethality comes in very hard. Niterói experienced a socioenvironmental disaster that killed more than a hundred people, called the ‘Bumba disaster’. A massive landslide occurred after heavy rainfall. The government’s response was to either reallocate the affected residents far from the central area, or do nothing. Then, police violence in the city came to this same body, which was the body of homeless people, mostly women, heads of families and Black women.

This was intimately connected with the struggle for another model of public security. At that time the ‘Niterói Presente’ programme was being established in the city, as a complement of public security through municipal resources. Niterói, although a beautiful city that appears to be peaceful and that has a very high human development index (HDI), sees more people killed by police intervention on average than the city of Rio de Janeiro. However, these deaths are concentrated in slums and peripheries. Icaraí, an affluent area of the city, does not experience the same violence as that on the periph-
ery, in the *favelas* of Niterói. We received many demands from mothers of incarcerated children, children murdered by the state. And often, these women were homeless and did not have access to a daycare centre. It’s astonishing how these violations came to fruition in the same body.

Still on these agendas: we intensively fought to bar the armament of the Municipal Guard. There was a proposal from the City Council to arm the Guards, seeing it as a complement to the Military Police, much in this logic of war as a model of public security. Seventy per cent of the population voted through a popular consultation for not arming the Municipal Guard. It was a very great victory of this mobilization, to which our mandate was added.

Just one other thing, which I think may be worth saying: we had a way of working during my mandate as a councilwoman that I miss a lot, which was the travelling cabinet. These violations were received when we circulated through the neighbourhoods of the city; with our stool there, we sat, listened to people and went back to the mandate and to the Human Rights Commission, taking these complaints into account and thinking about parliamentary initiatives to face them.

**L. M.:** About the non-armament of the Municipal Guard, I imagine you must have faced strong opposition. Was this the case? And when did this take place? What year?

**T. P.:** I was elected as councillor in 2016.

**L. M.:** And I imagine that if this had been today, in the current political context, maybe the outcome would have been different.

**T. P.:** Yes, I think so. And I think the right, the far right, was not sufficiently mobilized at that point. There was already polarization in the House, especially with a councilman who was a Bolsonaro supporter and the main spokesman for this far-right policy of extermination. But I don’t think they were able to get organized enough.

Niterói, although it is a conservative city, also has an interesting progressive left history. We were able to mobilize these sectors and also mobilize sectors of the Municipal Guard, which understood that, armed, they were also targets. So the Guard was very divided on this issue.

The mayor was from a progressive field, so that’s why he made a public consultation. He called it a plebiscite, but it wasn’t exactly a plebiscite: he already had a position on weaponry. So it turned out that he didn’t take the Guard’s weapons process forward after that consultation.

**A. M. C.:** I wanted to ask a question about the travelling cabinet. How did this experience come about? Did you get inspiration from somewhere or someone else?

**T. P.:** In fact, this came up from a collective discussion in the mandate. I think there must have been other experiences like this, but I don’t remember borrowing from some other objective experience. But we had a very territorial campaign. We gathered ten people in a square, in a neighbourhood, then ten in another. We wanted a mandate that was closely tied to the territories. This is the role of a coun-
cillor’s mandate: to be very connected with the city, in a direct relationship with the people living in the city. Every fifteen days we were in a different neighbourhood holding small meetings to listen to the demands of the population.

L. M.: In what way does the political polarization of parties, with different ideals, also become a form of polarization that is, in some way, itself violent, too? And how has this discussion about guns been going at the federal level? Have you suffered any form of political violence for opposing the current government on these matters?

T. P.: Political violence occurred from my first day in office. There was violence within the parliament itself. Niterói had some councillors coming from the Military Police and I was the only woman in office. Imagine, a Black woman and 22 men, some of them cops. One of these men was very connected with the bolsonarista ideals.

Violence was a common reaction, in particular, to two themes: themes involving women and gender; and issues involving public security. Whenever I positioned myself in a speech, or with some legislative initiative, on these two topics, violence came with great force. There were tensions inside the parliament, things like a councilman who was a cop hitting the holster in a threatening tone and saying, ‘I’m here armed, are you going to talk badly about the police here?’ Sometimes we almost ended up in a physical confrontation, especially in a small plenary: the melee there was very strong. And usually, tensions within the parliament developed into many attacks, beginning with attacks on social networks and then developing into other forms of threats.

There was a moment when there was a police operation. Some police officers organized an ambush in São Gonçalo – which is the city where I taught and studied, neighbouring Niterói – and the operation resulted in at least eight people getting killed. We called it the ‘Salgueiro slaughter’, as it took place in a favela in the Salgueiro complex. We received several reports of torture and deaths that did not appear in this statistic. No one took responsibility for this operation. This was a theme that we continued to see at the federal level, because of the Federal Army’s involvement in the operation. We then had some meetings with the Military Prosecutor’s Office. The case was dismissed with no effective response as to what had happened to these young people who were tortured.

And I asked in the plenary of Niterói for one minute of silence in memory of the families of these young people. This turned into a string of death threats on different social networks and unfortunately did not stop there. A man called to PSOL’s office insistently, asking for my phone number, saying he was going to kill me. This man was even identified by the police and, upon being identified, he said he felt incited by the webpage of another councillor, who was a supporter of Bolsonaro. He got angry and decided to react. Then, we never heard about this man again. But anyway, there was an institutional climate of political violence that encouraged violence from the outside as well.

Niterói is a city where there are organized white supremacist and neo-Nazi groups. There are ongoing inquiries into this. And for me, this reflects the unresolved history of a slave Brazil, of a colonial Brazil. I think Brazilian capitalism and the Brazilian bourgeoisie – the Brazilian elite – have never abandoned a slave logic, which has to do with choosing which body is to be dehumanized, which body can be exterminated. The public security policy in Brazil as well as that of the city of Niterói understand that the body to be eliminated is a poor, Black body, either through incarceration, homelessness, or poverty, but also through death, summary execution. But the body of those who fight this scenario, depending on what body this is, is also likely to be eliminated, as was the body of Marielle and as is mine and so many other women.

I don’t see my case today, which I understand to be a serious case – I’m exiled, practically, within the
country— or the case of Marielle as isolated cases. This is the expression of a Brazil in which democracy is fragile and increasingly fractured in the Bolsonaro government. A country that did not break with the colonial slave logic that structured the Brazilian state and institutions.

A. M. C.: You feel exiled within your own country and talk about the difficulties in exercising a public mandate, in a country that claims to be a democratic state of law and that at the same time does not offer conditions for you to work safely. When you feel faced with these threats, how is your personal and public life affected?

T. P.: It is important to make these serious issues visible. Since the beginning of my parliamentary life, there have been many forms of violence. These have include explicit racism (‘Disgusting nigger, go back to the senzala’; ‘If I find you on the street, I'll beat you to death’), allusions to rape (‘You deserve a penis this big’) and death threats (‘I'm going to shoot you dead’). Social networks, since my first week in office, have been marked by these kinds of threats. We look at this situation with worry and sadness. It's always been very hard to exercise a mandate like this. For those who are Black women and who choose to make a mandate to face this elite that, since forever, has been the majority in the occupation of Brazilian power, it is very hard. This has always been a non-place for us. Racism and patriarchal logic have structured our capitalism and are very evident in Brazilian institutions. Therefore, whoever is there and occupies a space of power in the fight against it is a victim of violence.

When Marielle was executed, all these threats were taken to another level. This was exactly the type of violence that occupied my conversations with Mari. We had always been concerned, but we didn’t think political violence could lead to an execution. Even in a polarized country, even in a country that we understood was moving towards the possibility of a totalitarian regime. But when Marielle was executed, those fears became very real. Especially because Marielle was never directly threatened. The plenary, in Rio de Janeiro, where she worked, was less tense and polarized than that of Niterói. From then on, the threats and risks became more concrete. I do not know if we started to see more of the risks because a fellow was executed, or if, in fact, the divided situation in Brazil was also intensifying.

After Marielle’s murder, I started receiving protection from the parliamentary police escort. The former secretariat of security of the state of Rio de Janeiro offered me an escort from the Military Police for a few months, because they understood that I had a similar profile to Marielle and was already a parliamentarian who had received threats. And not knowing who killed Marielle increased the likelihood of me becoming a target. But on the first day of the federal deputy campaign, the escort was revoked. Right after, there was a conflict with a military policeman on the Rio-Niterói ferry. This cop asked me to stop distributing leaflets. But I wasn't sharing any leaflets on the boat. This cop told me to hide my campaign materials and I told him I wasn't going to do that. Then he throws my phone on the floor, picks up the materials and starts getting very aggressive, very violent. At some point, he pulls out a gun, in the middle of a boat full of people going to work. He was very nervous with the gun in his hand. When he pulls out the gun, I try to stay calm, saying, ‘People, calm down: gun kills’. And he responds systematically, ‘Ideology kills more’.

This, for me, was the inauguration of what would become my campaign for congresswoman in 2018.

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2 Translator’s note: Brazilian slave quarter.
On another occasion, during an activity with young Black people in the city of Bangu, a policeman in civilian clothes whispered in my ear saying that I had to leave, that he was going to ‘Come back shooting everyone’. This was the degree of intimidation to which I was exposed.

Life, which was hard, got even harder. I used to bike or take the bus to the City Hall of Niterói to work and after all that I was not even able to go to a bakery without an armoured car. That’s my situation to this day. But we understood that the threats that hit our mandate, that hit me, came from a field of hatred that could involve white supremacists, organized racist and sexist groups. New threats, including a plan to kill me that was being organized on the deep web, allowed me to have an escort from the Legislative Police of the Congress.

And then there was a twist, in the last year, when I, in the full exercise of my maternity leave, with my daughter on my lap and with my escort from the Legislative Police discontinued as we were in a pandemic and I was not leaving home, the director of the Legislative Police calls me and says, ‘Look, madam, do not leave your house. We found out about a militia group planning to kill you. Next morning, we are resuming with your escort’. I almost dropped my daughter on the floor. I got scared. I knew the militia didn’t like us. But objectively, even with Marielle’s execution, we had done nothing concretely to take economic power away from the militias. There are at least seven other detailed reports that include names of police officers, both in duty and retired, planning my death. One of them mentions a prison director conniving with militia prisoners ordering my death. The reports are very detailed and include messages where they question why I have not been killed yet.

And then a saga began, because it was either a planted tip, or a concrete tip. But it was from someone in the militia. It was very detailed, very concrete. Some progressive police officers told me to leave Rio de Janeiro. They understood that it is not safe for me to stay there until they can run a risk analysis. This is also because the Legislative Police, which protects me, has formally said that there is no way they can make my security effective in Rio de Janeiro, that they have neither weapons nor enough staff to guarantee the protection of someone threatened by a militia. My case is the most serious in the Federal Chamber. I haven’t been in Rio for eight months.

I was then forced to hide here with my family. And forced to be away from my own territory. This situation is forcing me to raise my daughter away from my family, with no support network, away from the territory in which I was born and raised and where I want to live. I am also living with an escort, having to use an armoured car to go to a bakery. This is a very frontal attack on democracy. So much so because I’m not the only one. The answer to the question of who ordered the murder of Marielle remains unknown. On top of that the militias dominate a third of the territory of Rio de Janeiro. For these reasons, I can’t go back to the territory that elected me. Brazilian democracy is fractured, incomplete. It has never fully reached the favelas and peripheries and is experiencing a very serious setback in the Brazilian political moment. The Democratic State of Law in Brazil, which, for me, has never been completely reached, has been increasingly attacked by a government that not only does not give answers about all this, but also authorizes extermination groups to function at full steam in Brazil and, in particular, in the state of Rio de Janeiro.

L. M.: There is indeed a huge contrast between your work as a councilwoman in Niterói, meeting people at their places and this exile within the country. What impact has this situation of being under permanent threat had on you, in the motivation for your parliamentary work? Have you ever considered giving up, or does it give you even more strength to fight? What impact did Marielle’s death have on your motivation as a parliamentarian?
T. P.: I think it’s actually a mixture of all of it. Every day, I feel like interrupting this task. I have no doubt that, for my personal life, I could even say that I would be happier if I weren’t parliamentary. But every day, I too am convinced of the need not to stop. Because I couldn’t live with the victory of those who want to disrupt bodies like mine. Because this is a victory for the far right, a victory for the Brazilian elite that makes up the far right. I’m a very cheerful person. I like samba, beer, local bars. There is a subjective dimension of an attempt to steal some of our joy and create restlessness for us. It’s somehow also a way to dehumanize our bodies.

So many times – and even more so after I gave birth to Moiana Maialú – I have thought, ‘What am I doing with my life and my family?’ There is a constant fear of death. At the same time, Brazil is going through an unprecedented political moment which, together with the health crisis, has sharpened an economic crisis of an already deeply unequal Brazil. On top of that, there is the risk of a coup d’état, of an authoritarian closing of the regime. There will also be no future for my daughter if we do not interrupt this cycle of authoritarianism in Brazil. While motherhood invites me to another lifestyle, it also makes me sure that I should keep fighting – and the way to do it at this moment is to continue occupying the mandate.

And there is also Marielle. The task of nationalizing these struggles was triggered by the political execution of Marielle. The Brazilian state has not answered the question of who ordered the murder of Marielle. This is also a dimension of the impossibility of stopping fighting.

And one last point: every twenty-three minutes, a young Black man is murdered in Brazil. The militias dominate a third of Rio de Janeiro’s territory. There’s no other way. It’s not a fight choice, you know? So every day, I think about stopping, but every day I have the conviction to move on.

A. M. C.: When you talk about how Marielle’s execution provoked this response of the party to mobilize a national struggle, I see how you two had an effective partnership in Rio and Niterói. How would you describe Marielle and her work to our readers? And what was behind Marielle’s execution?

T. P.: I think Marielle combined what her body represented with what the struggles encompassed by her mandate represented. Marielle was a woman in a country with the fifth-highest femicide rate in the world. A Black woman in a country where femicide is Black and where every twenty-three minutes a young Black man, the son of a woman like Marielle, is murdered. And most of these murders are by the police force. Marielle was a favela Black woman. The state sees those who live in the favela in a dehumanized way: instead of providing rights, the state arrives with an armed arm. Marielle, a Black mother in a country where obstetric violence is Black, where the Brazilian obstetric scenario is frightening, where maternal mortality is Black and where these mothers, mothers like Marielle, are mourning the deaths of their children, who are victims of this police, judicialized and criminal state, a combo that has been extended in the current period.

She was a lesbian woman, married to another woman, who turned the mandate to this agenda, in a country where lesbian women still suffer corrective rape. She was a socialist woman, in a country that has the second-highest inequality between rich and poor and the second-highest concentration of income in the world. And Marielle was a human rights defender in a country famous for being one of the most murderous in the world when it comes to human rights defenders. So her body carried a series of stigmas, stigmas of violence in Brazil. And that mandate was a mandate to denounce all these stigmas. This was a mandate to make the resistance to this set of agendas visible. This was expressed when Marielle advocated the legalization of abortion, when she was shouting in the plenary to respect lesbians and wanted to institute Lesbian Visibility Day; when Marielle denounced every police opera-
tion in the city of Rio de Janeiro, on the microphone, loud and clear, and used the reach of her social networks to denounce the truculent actions of the state.

Her body is the typical body historically dehumanized by the Brazilian elite in a slave Brazil and a body that has needed to be silenced, from the point of view of the elite, because it is a body that bothers the historically constituted power. That was Marielle, besides being a very strong woman, an incredible and irreplaceable popular leader. Marielle had a capacity for dialogue with different sectors and led an act in the favela of Maré like no one else. Imagine the tension. Surrounded by guns, whether from the illegal drug trade, or the police. So I have a memory of Marielle there, even before I was a councilwoman. The scene began to get tense: the young boys were very angry at the murder of another young man, throwing stones at the police. Marielle started screaming, ‘Stop it now, go there’ and became a lioness. And because of the Brazilian colonial elite, which continues to occupy power in Brazil, this lioness needed to be tamed. And you couldn’t tame Marielle. So she had to be silenced.

We may not know the exact reason for the killing of Marielle. But all that I said is reason enough to try to shut up this body.

L. M.: Both your work – your demeanour – and Marielle’s have always been very critical of the police, especially the police in Rio de Janeiro. As we are speaking to an audience of criminologists (and also specialists in police studies), it may be interesting to give them a bit of an idea of the Brazilian context. As a teacher myself I find it difficult to portray the Brazilian police to a Belgian audience, being something so far from the reality in Belgium. Even with numbers, the Belgian public can have some difficulty in understanding the reach of such violence. In Brazil, your approach and Marielle’s are often placed as a counterpoint to the police. Some opponents of your work classify you as not only averse to the police, but also a defender of bandits. How do you see this polarization? Do you see any way out for the Brazilian police?

T. P.: Violence found the Brazilian state. The police in Brazil were created to contain popular uprisings, to guard the power of the court and then the power of the Brazilian bourgeois elite. This was the role of the military police in Brazil: to stifle popular uprisings, be it Canudos or the Bahian Conjuration. We are talking about the kidnapping of people from Africa here; the attempt to exterminate the indigenous population; the different dictatorships that constituted Brazil. We haven’t broken with that past yet. Brazilian institutions have these scars and the police institution was established to operate this violence. We need to deconstruct this myth of a polarization between mandates like ours and the police. We are not against the police officers, not least because many officers in the field have a working-class origin. Most of the military police officers who die on duty are Black. So the problem is this police state. We live in a moment when the rule of law is being dismantled and the criminal legal state is being strengthened through legislative initiatives, through a discourse of criminal populism. It is this criminal populism that convinces people on the one hand that ‘more police’ will make them safer and on the other hand that violent police, in an oppressive logic, will promote a sense of security – which is just a feeling. In the end, the role of the police is to maintain the property of the Brazilian elite. Private property, but also their power, which is a kind of property, too. Thus, the criminal populism that is often popularized within the people, who are even victims of this armed arm, serves to maintain the power and property of the Brazilian elite, which is still the colonial elite.

That said: it is unacceptable that the Brazilian state, through its armed arm, continues to operate a genocide in Brazil. It is, in fact, difficult to explain what the police in Brazil are for those who do not live this reality. In Rio de Janeiro, this situation is already something that people from other Brazilian states can’t understand. The police in Rio de Janeiro flash rifles from their vehicles in the middle of an
urban centre. A rifle is a weapon of war, which today is circulating through the state of Rio de Janeiro. Today, unfortunately, the Brazilian police are one of the deadliest institutions in the world. If you take data from 2020, at least 3,181 people were killed in police interventions. Almost eighty per cent of these people were Black and young. It’s shocking how much the police kill, they are made to kill. But, this police officer who brings about death, is also the victim of death. The model of public security in Brazil is organized by a logic of war, supposedly a war on drugs, but which is in fact a war against those who are poor, Black and from the favelas. It’s a bloodbath. This way the public security model works is linked to what the Brazilian prison system is. We have the third-biggest prison population in the world, in absolute numbers. When we think of women, we have the fifth-biggest prison population in the world. The vast majority of those arrested are Black and in large part for the illegal drug trade. It’s a war on drugs, but a war on the same body, which is the same body as Marielle and her children. So, what to do in this scenario?

There are two paths. One: consolidating the idea of bringing the police officer closer to the worker. Currently, the officer is denied the very condition of being a worker. This is very serious. For example, a recent amendment to the legislation was approved that will dismantle labour rights, which affects the police, but this is an amendment operated by the government, and the police officers are the basis of this government. A policeman is a worker, but he will never be understood as such if the public security model is not modified. And for me, that's the second key. This logic of militarized warfare, which refers to dictatorships, is the logic that constitutes the Brazilian police, especially the military police. So, demilitarize the police or, better, democratize the Brazilian police. There are several models: we could reform the police in Brazil and merge the civil and military police in one integrated force. I know there’s no consensus on that. But these are debates that go through the logic of democratizing the police institution in Brazil. There’s no way a cop still operates on a dictatorial logic, which is the logic of war, right?

A. M. C.: Beyond the historical difference with regard to coloniality, Belgium greatly values this place of centre, of neutrality, of garantismo, even if formal. It is certain that there are also conflict zones, in which abuses exist, but we know that there is a completely different perception, for example, of the logic of prevention and the logic of war that, in Brazil, is established and normalized. There’s this sense of fear when the police are around. It’s a stark difference that we can see with the naked eye.

T. P.: The basis of the military police is formed by the poor Brazilian class. However, the police create fear among the poor because they serve to maintain the property and power of the rich in Brazil. It’s very shocking what is done to the body of these officers. And it’s a body that’s trained to do that, it’s trained to know who the internal enemy is. The public security model in Brazil is based on the constitution of the internal enemy, unfortunately. And what’s the face of this inner enemy? The internal enemy is the same young, Black body of the favela. That’s it, reinforcing this given: every twenty-three minutes, at least one young Black man is murdered in Brazil. That’s not reasonable. More are killed in this model of public security in Brazil than in countries at war.

A. M. C.: Just to add an issue that it may be important for us to observe as well, is the difference in the appreciation of police officers between the two places.

T. P.: – Yes, I think that’s it: valorization, whether career, but also training in human rights, which is
absent. The training of the police is a training in a logic of war. There is also a dimension of the legal framework that makes it even more difficult to investigate these murders. The homicide investigation rate in Brazil is ridiculous.

**A. M. C.:** This question directs me to the assassination of George Floyd, which has put the theme of racism at the centre of many discussions in the United States and around the world. You have mentioned a lot of data that force us to consider the existence of unquestionable structural and institutional racism. How do you see this difference between the way racism is approached in the United States – for example, with the case of George Floyd, which culminated in the conviction of the police officer who murdered him – and here in Brazil, where institutional responses are failing?

**T. P.:** If we take the history of the Brazilian state, we’ve spent more time under legal slavery than since slavery was abolished. We lived for centuries with legislation that enslaved Black bodies. I think that’s the first thing, because it’s part of a characteristic of what the Brazilian state is.

Second, there is a difference between Brazil and the United States. Brazil lives with the myth of racial democracy. The miscegenation that exists in Brazil has somehow tried to make racism invisible. We often hear, ‘There is no racism in Brazil,’ ‘Everyone is mixed in Brazil,’ when in fact this is not what the numbers and data show. The myth of racial democracy is nefarious for the construction of a real Brazilian democracy. And you can’t think of anything in Brazil without thinking about the racial issue. Racism structures all other Brazilian social relations. And, unfortunately, this has been hidden by the myth of a Brazilian racial democracy.

So, if we look at the most contrasting areas: the unemployment rate in Brazil among Black workers reaches almost eighteen per cent, but among whites it is ten per cent; the average wage of Black women is seventy per cent lower than that of white women; comparing Black women to white men is even more shocking. In addition to police violence, it is necessary to think about unemployment. You can’t think of Brazil without thinking about how much racism structures all the social relationships that are here.

I think the case of George Floyd resembles, a little, the execution of Marielle. We were already seeing a growing organization of Black movements and the anti-racist struggle. Marielle’s execution was a milestone: it brought light to a racism that was already clear to many of us, but not to the whole population and to the actions of the state. I think that today the anti-racist fight is one of the camps that is most mobilized to fight Bolsonaro’s government. It is today the most dynamic phenomenon of struggle in Brazil – perhaps even more dynamic than the feminist struggle that has also arisen. The struggle of Black women, the organization of Black women, is gaining momentum.

But, unfortunately, I don’t think it’s had any consequences. The urgency of the anti-racist fight is not the urgency that is within every Brazilian. Let me give you an example: in the Federal Chamber there is a women’s delegation. There is a secretariat of women members, which is an institutional space of the House dedicated to organizing women’s agenda. Women with different agendas. But when it comes to racism, there is no secretariat for ethnic-racial equality. We even filed a project on this, because it is still very invisible. Racism is still very hidden. Racism in Brazil is seen as an authorization to kill the Black people. But I think this situation is becoming to change thanks to the dynamism of the anti-racist fight. But as long as there are no institutional mechanisms that recognize racism and fight it, we will continue with a very incomplete democracy.
A. M. C.: Would you like to leave a final message to our readers?

L. M.: Complementing that, I imagine that this interview will be read by other Black Brazilian women who want to get involved in politics and seek change. But they may be scared, too. What kind of message should we give to them?

T. P.: I would like to conclude with two points. One: because this is an international interview, I think it is important to insert this Brazil into a historical and conjunctural international dynamic. Brazil is part of a Global South whose inequalities are also operated by a colonial logic. The violence that founded the Brazilian state came from invaders of this territory, who were European invaders. The Brazilian elite is still connected with the international elite of the Global North, which unfortunately often enriches itself at the expense of developing countries, countries of the Global South. I think that international solidarity, especially in these times of pandemic, is a fundamental thing to face inequalities and racism in Brazil. It is essential that the countries of the world be aware of what is happening in Brazil, but also understand their responsibilities towards what is happening here. There is a developmental logic, production oriented, which is also operated from the outside in by financial capital.

And it is logical that it is hard for us, as Black women, in a country with these issues and this government. A country with a history of racial inequality and poverty. But what is the exit available to us? I understand that politics means the cost of a bus fare, it’s the price of bread, it’s whether this woman’s son is going to come home alive, if he’s going to have a job, if he’s going to have to find a way to make some money every day. The policy is very concrete. And in concrete politics, we Black women have long been protagonists, who come from quilombos, who are the face of Brazilian resistance, of Brazilian real politics. I have no doubt that, for some bodies, fighting is not a choice. These women battle day to day. For them to work as domestic workers in other people’s houses, they will have to leave their sons with other women, with their neighbours. There is a network of solidarity that is political. What we need is to bring the institutional policy closer to real, concrete politics, already led by Black women. The way out of this is to have more Black women, with this profile, combative, with pen in hand. To visualize resistance in the territories – which already exists – and to help purge the Brazilian colonial elite from power. So, it has to be more of us. It’s not a silly hope, you know? And, pardon my French, it is not a white and colonial hope: it is a hope that is already expressed in the secular, ancestral resistance of women in their territories.
Talíria Petrone Soares is a black woman, feminist, socialist, school teacher, graduated in History from the State University of Rio de Janeiro and has a Master in Social Work and Social Development from the Fluminense Federal University. She taught in the favelas of Maré, in São Gonçalo and in Niterói, and the reality of schools was always a reason to keep fighting. In 2010, she met the Partido Socialismo e Liberdade (PSOL) and began her party militancy, deciding, six years later, to run for councilor in Niterói. In the campaign for a black, feminist, LGBT and popular Niterói in 2016, she was elected the most voted councilor in the city and, for more than a year, was the only woman in the City Council. She was president of the Commission on the Human Rights of Children and Adolescents. In 2018, Talíria was elected federal deputy by the Rio de Janeiro PSOL, with 107,317 votes — the ninth most voted in the state of Rio de Janeiro.

Ana Míria Carinhanha is an artist and laywer. She holds a PhD in Sociology and Law from the Federal Fluminense University, Brazil (2021) and is currently a PhD researcher in Law at the Federal University of Rio de Janeiro. She holds a master in Criminology (2014) from the Université Catholique de Louvain, a bachelor in Law from the Universidade do Estado da Bahia (2011) and an interdisciplinary bachelor in Arts from the Universidade Federal da Bahia (2011). She is an interdisciplinary mediator to local, school and penal mediation from Interdisciplinary certificate of the Université Catholique de Louvain, Université Saint-Louis and Université de Namur. She is a researcher in the Group of criminology research (GPCRIM) in “Social control, violence and human rights: discourses, practices and institutions” and the coordinator of the research area of “Black Initiative for a new drug policy.”

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A esperança nas trincheiras da resistência: Entrevista com Talíria Petrone

Talíria Petrone Soares (1) entrevistada por Ana Míria Carinhanha (2) and Lucas Melgaço (3)

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¹ Imagem editada. A imagem original pode ser acessada no endereço: https://www.camara.leg.br/internet/bancoimagem/banco/2019/05/img20190507202534273.jpg
Resumo
Talíria Petrone é deputada federal (2019–2022) e tem realizado um trabalho notável na defesa dos direitos humanos, nas agendas de gênero e LGBTQIA+ e no apoio à população negra pobre do Brasil. Ela tem também se envolvido com tópicos relacionados à segurança e à brutalidade policial no Brasil. Nesta entrevista, entre outros assuntos, ela fala sobre sua trajetória anterior, o impacto das ameaças de morte em seu trabalho político e sua proximidade com Marielle Franco, assassinada em 2018. A entrevista foi realizada pela criminóloga Ana Míria Carinhanka, sediada no Brasil, e o geógrafo e professor de criminologia urbana Lucas Melgaço, residente na Bélgica.

Ana Míria Carinhanka: Quem é Talíria Petrone? Como se constitui essa mulher?

Lucas Melgaço: E sua formação acadêmica teve alguma influência no seu trabalho como parlamentar?

Talíria Petrone: Eu sou professora de História, formada pela Universidade do Estado do Rio de Janeiro, a UERJ. Me formei na UERJ de São Gonçalo, uma das maiores cidades do estado e que fica na Região Metropolitana do Rio de Janeiro. Mas uma cidade aonde o Estado chega com muita violência pelo seu braço armado, uma cidade muito precária em termos de direitos, bastante favelizada. É uma cidade vizinha de Niterói, cidade onde eu nasci, cresci. Os estudantes dessa universidade, em geral, são estudantes negros, periféricos, trabalhadores. A maior parte das pessoas que lá estudavam trabalhava durante o dia e estudava à noite. A experiência que eu tive nessa universidade foi fundamental para fortalecer o papel da militância política e também um pouco da cara do mandato que a gente passou a construir depois.

E eu sou filha de uma professora e de um músico e artista plástico. Cresci na Fonte Seca, um bairro pobre de Niterói. Eu penso nesses dois aspectos: tanto a minha formação acadêmica nesta universidade, em especial, antes mesmo do mestrado, que veio já com a luta em curso, e a minha história, em especial na relação com a minha mãe, com a minha vó, com a minha bisa. Essas são duas das memórias que constituem a parlamentar que estou hoje. Eu tenho uma lembrança da minha mãe subindo a ladeira da rua em que eu morava lá na Fonte Seca. Hoje, é uma área que dizem que está se constituindo uma milícia. E eu tenho memória da minha infância, a gente pegando o ônibus, minha mãe subindo a ladeira grávida da minha irmã, com meu irmão num braço e eu no outro. Essa é um pouco a cena que me constitui: a cena desta mulher, professora, que fez faculdade já depois de adulta, que era a chefa de família, e meu exemplo de mulher – que não se entendia como feminista, mas era o exemplo da mulher trabalhadora brasileira.

E a universidade veio depois de outras experiências. Eu trabalhei com telemarketing, inclusive para pagar a passagem da faculdade. Essa experiência enquanto trabalhadora no mundo me constituiu enquanto universitária – eu era este perfil de universitária, tanto que eu não fiz movimento estudantil, porque eu não me via muito representada, embora ache bastante importante o movimento estudantil. Mas essa experiência enquanto trabalhadora e, depois, a experiência com outros trabalhadores na universidade lá em São Gonçalo, me constituiu enquanto militante. Mais do que a vida acadêmica, que eu considero bastante importante (aos tranços e barrancos, com gravidez, com mandato), a sala de aula, trabalhar em São Gonçalo, trabalhar na Maré, lidar com aluno que chega sem comer, com aluno que viu o vizinho morrer no dia anterior assassinado pelo Estado. Vivenciar o que é o mundo dentro do micro espaço da sala de aula foi muito importante para eu decidir me organizar politicamente.
Eu achava e sigo achando que a escola, em especial, era um espaço muito potente para incidir sobre um Brasil tão desigual. Mas, quando me dei conta, eu cheguei na sala de aula onde as desigualdades históricas do Brasil estavam ali muito agudizadas e evidenciadas. Eu senti uma necessidade muito grande de ir além e me organizar politicamente. Eu me tirei ao PSOL. Eu fiquei alguns anos filiada ao PSOL com pautas que envolvem educação e direitos humanos e, em algum momento, por convencimento de algumas mulheres – em especial, do partido –, a gente resolveu construir uma candidatura. Queríamos levar a pauta racial e de gênero com centralidade para dentro da política brasileira, dentro da minha cidade. Foi assim que se construiu uma campanha, com o slogan “por uma Niterói negra, popular e feminista”. Com pouquinho dinheiro, com pouquinho gente, circulando pelas praças, muito vinculada com os bairros e territórios, elegemos o mandato mais votado da cidade. Foi uma surpresa, mas uma sinalização de que havia uma necessidade da maioria do povo se sentir representada também nesse espaço.

Agora estou deputada sem necessariamente termos planejado a campanha com muita antecedência, porque quando a gente topou fazer a campanha, foi muito uma resposta à execução de Marielle, que era muito parceira, assim, nessa troca de mandatos, e de vida, enquanto mulher preta na política. Quando ela foi executada, a gente se sentiu provocado a nacionalizar as lutas que a gente tocava no estado do Rio de Janeiro. Foi assim que topamos essa tarefa do mandato federal e cá estamos.

**L. M.:** Ainda, sobre o mandato de vereadora, a quais pautas mais ligadas à questões criminológicas como violência sexual e segurança pública você mais se dedicou?

**T. P.:** Eu fui presidenta na Comissão de Direitos Humanos, da Criança e do Adolescente durante os dois anos em que estive vereadora. A gente tinha um espaço de acolhimento das vítimas de violações aos direitos humanos na cidade de Niterói, muito de uma concepção de direitos humanos mais ampla, entendendo o direito à creche da criança e da mãe como um direito humano. Mas havia três temas que, para mim, estavam bastante vinculados ao que a gente vai seguir conversando hoje. O primeiro deles são as questões que envolvem direito das mulheres e gênero, que foram temas que se tornaram muito fortes na nossa atuação. Tanto que a gente, numa perspectiva, inclusive, do abolicionismo penal, do entendimento das prisões como um lugar que mantém uma repressão histórica que recai sobre um mesmo corpo, a gente entende que, antes da mulher ser agredida, antes da mulher ser violentada, a gente quer essa mulher viva e essa mulher sem as marcas dessa agressão. Então, a prevenção à violência contra a mulher, para nós, é um ponto muito fundamental no enfrentamento às desigualdades de gênero que são tão gritantes no Brasil.

Uma das primeiras medidas que a gente teve enquanto mandato foi uma representação ao Ministério Público para barrar uma emenda ao Plano Municipal de Educação, votado no finalzinho da legislatura anterior à minha, que proibia o debate de gênero, de diversidade sexual e orientação sexual nas escolas de Niterói. Nós acionamos o Ministério Público e depois conseguimos derrubar a emenda. Isso gerou uma série de violências de setores fundamentalistas da cidade. Essa era uma pauta que sempre vinha com muita força.

Também o debate de moradia, que, muitas vezes, parece estar descolado dos debates que envolvem violência policial. Mas, ao contrário: a luta por moradia sempre vinha junto com alguma outra violação àquele território. Niterói é uma cidade que tem mais de 25% das pessoas morando em áreas de déficit habitacional, áreas favelizadas, sem drenagem, sem saneamento. E essas são áreas onde a letalidade policial chega com muita força, também. Niterói viveu um desastre socioambiental que matou mais de cem pessoas, chamado “desastre do Bumba”. Foram mais de vinte e três pontos que deslizaram com a chuva que houve na cidade. E a resposta do poder público para essas pessoas foram...
prédios muito distantes da área central ou nada. Então, a violência policial na cidade chegava neste corpo, que era o corpo desses desabrigados – a maioria mulheres, chefes de família, mulheres negras.

Isso estava intimamente casado com a luta por um outro modelo de segurança pública que, embora a gente sempre soubesse, não era do âmbito stricto sensu municipal, já que há uma dinâmica mais estadual e nacional quando pensamos em segurança pública. Mas a gente viveu no momento em que se instaurou na cidade o “Niterói Presente”, que era uma complementação da segurança pública por meio de recurso municipal. O policial trabalhava no contraturno. E Niterói, por mais que seja uma cidade com um IDH altíssimo, uma cidade bonita, que aparenta ser tranquila, ela tem uma média de mortes por intervenção policial maior do que a cidade do Rio de janeiro. Mas as mortes são localizadas em favelas e periferias. É como se Icarai, que é uma área nobre da cidade, não vivenciasse o que é a violência na periferia, a violência nas favelas de Niterói, a gente recebia muitas demandas de mães de filhos encarcerados, de filhos assassinados pelo Estado. E, muitas vezes, essa mulher era desabrigada e/outinha um filho que não tinha acesso a uma creche. É impressionante como essas violações se concretizavam no mesmo corpo.

Ainda sobre essas pautas: a gente fez uma luta muito grande para barrar o armamento da Guarda Municipal. Houve uma proposta da Prefeitura de armamento da Guarda, para também complementar a Polícia Militar, muito nessa lógica de guerra como modelo de segurança pública. 70% da população votou por meio de uma consulta popular por não armar a Guarda Municipal. Foi uma vitória muito grande essa mobilização, à qual o nosso mandato se somou.

Ah, só uma coisa, que eu acho que talvez valha dizer: a gente tinha uma forma de atuação do mandato que eu tenho até muita saudade, enquanto mandato de vereadora, que era o gabinete itinerante. Todas essas violações eram recebidas a partir de uma circulação pelos bairros da cidade, com o nosso banquinho lá, a gente sentava, escutava as pessoas e voltava para o mandato e para a Comissão de Direitos Humanos ouvindo essas denúncias e pensando iniciativas parlamentares para enfrentá-las.

L. M.: Sobre o não-armamento da Guarda Municipal, imagino que você deva ter sofrido uma forte oposição. De que forma ela se deu? E foi quando isso, foi em que ano, mais ou menos?

T. P.: Eu me elegi vereadora em 2016 (dois mil e dezesseis).

L. M.: Eu estou imaginando, se isso tivesse sido hoje, no atual contexto político, talvez o resultado teria sido diferente.

T. P.: É, eu acho que sim. Eu acho que a direita, a extrema-direita, não se mobilizou a contento. A gente tinha uma polarização na Câmara, em especial com um vereador bolsonarista que era o principal porta-voz dessa política de exterminio da extrema-direita. Mas eu acho que eles não conseguiram se organizar o suficiente.

Niterói, embora seja uma cidade conservadora, tem também uma história de esquerda progressista interessante. Conseguimos mobilizar esses setores e mobilizar também setores da Guarda Municipal, que compreenderam que, armados, passavam a ser, também, alvos. Então a Guarda ficou bem dividida sobre essa questão.
A prefeitura é de um campo progressista, então, por isso, fez uma consulta pública. Chamou de plebiscito, mas não foi exatamente um plebiscito, já tinha uma posição pelo armamento. Então, acabou que não levou à frente o processo de armamento da Guarda depois dessa consulta.

A. M. C.: Eu queria fazer uma pergunta sobre o gabinete itinerante. Como surgiu essa experiência? Você já a conhecia de outro lugar?

T. P.: Na verdade, foi a partir de uma discussão coletiva no mandato. Eu acho que devem existir outras experiências como essa, mas eu não me lembro de ter bebido de alguma outra experiência objetiva. Mas a gente fez uma campanha muito territorial. A gente reunia dez pessoas numa praça, num bairro; depois, dez numa outra. Queríamos um mandato que fosse muito vinculado aos territórios. Isso é o papel de um mandato de vereadora, muito conectado com a cidade, numa relação direta com as pessoas que viviam na cidade. De quinze em quinze dias a gente estava num bairro diferente fazendo pequenas reuniões para escutar as demandas da população.

L. M.: De que forma a polarização política de partidos, com ideais diferentes, também se torna uma polarização, de alguma forma, violenta em sua experiência política?

E como é que essa discussão sobre armamento tem se dado no âmbito federal? Vocês sofrem alguma forma de violência política por defender algo diferente do governo?


A violência se dava como resposta, em especial, a dois temas: os temas que envolvem mulheres e gênero; e os temas que envolviam segurança pública. Sempre que eu me posicionava num discurso, ou com alguma iniciativa legislativa, sobre esses dois temas, a violência vinha com muita força. Seja com tensões dentro do parlamento – coisas do tipo, um vereador que era policial bater no coldre, em tom de ameaça, e dizer: “tô aqui armado, você vai ficar falando mal da polícia aí?” De chegar a ter quase embates físico, ainda mais num plenário pequeno, o corpo a corpo ali era muito forte. E, normalmente, uma tensão dentro do parlamento se desdobrava em muitos ataques, que começaram com ataques nas redes sociais e se desenvolveram, depois, para outros ataques.

Tem um momento, que eu me recordo, quando houve uma operação policial. Uns policiais que fizeram uma emboscada em São Gonçalo, que é a cidade onde eu dei aula e estudei, vizinha de Niterói, e, nessa operação, foram, ao menos, oito mortos. A gente chamou de “chacina do Salgueiro”, que foi numa favela, no complexo do Salgueiro. Teve muita denúncia de tortura e mortes que não apareceram nessa estatística. Ninguém se responsabilizou por essa operação. Foi um tema que seguiu sendo tocado por nós a nível federal, pelo envolvimento do exército na operação. A gente, depois, teve algumas reuniões com o Ministério Público Militar. O caso foi arquivado, mas sem nenhuma resposta efetiva sobre o que aconteceu com esses jovens que foram torturados.

E eu pedi um minuto de silêncio em memória das famílias desses jovens, no plenário de Niterói. Isso virou uma sequência de ameaças de morte nas diferentes redes sociais e, infelizmente, não parou por
Um homem ligou para a sede do PSOL insistentemente, pedindo meu telefone, dizendo que ia me matar... esse homem, inclusive, foi identificado pela polícia, e, ao ser identificado, ele disse que se sentiu provocado pela página de um vereador bolsonarista. Ele ficou com raiva e resolveu reagir. Depois, nunca mais soubemos desse homem, nunca mais foi às audiências. Havia então um clima institucional de violência política que estimulava uma violência de fora para dentro também.

Niterói é uma cidade em que há grupos supremacistas brancos e neonazistas organizados, há inquéritos em curso sobre isso. E, para mim, isso reflete uma história não resolvida de um Brasil escravocrata, de um Brasil colonial. Acho que o capitalismo brasileiro e a burguesia brasileira – a elite brasileira - nunca abandonou uma lógica escravocrata, que tem a ver com escolher qual corpo é desumanizável, qual é o corpo que pode ser exterminado. Tanto a política de segurança pública em curso no Brasil como a da cidade de Niterói entendem que o corpo a ser eliminado é um corpo pobre, negro, seja por meio do encarceramento, por meio da falta de moradia, por meio da pobreza; mas, também, por meio da morte, da execução sumária. Mas o corpo, também, de quem luta para enfrentar esse cenário, dependendo de que corpo for esse, é um corpo que também é passível de ser eliminado, como foi o corpo de Marielle, como é o meu e de tantas mulheres.

Infelizmente, eu não vejo o meu caso, hoje, que eu entendo ser um caso grave – eu tô exilada, praticamente, dentro do próprio país –, nem o caso da Marielle como casos isolados. Isso é a expressão de um Brasil em que a democracia é frágil, está cada vez mais fragilizada no governo Bolsonaro, mas que não rompeu com uma lógica escravocrata colonial, que estruturou o Estado brasileiro e as instituições brasileiras.

A. M. C.: Talíria, você se sente exilada dentro do próprio país e fala das dificuldades em exercer um mandato público, em um país que se diz um Estado Democrático de Direito, e que, ao mesmo tempo, não oferece condições para que você trabalhe em segurança e de maneira plena. Como você se sente diante dessas ameaças, como isso acabou impactando a sua vida pessoal e também a sua vida pública, o exercício da sua profissão?

T. P.: É importante visibilizar essa questão, que é muito grave. Desde o início da vida parlamentar, foram muitas formas de violência. Desde um racismo muito explícito – “negra nojenta, volta pra senzala”; “se eu encontrar na rua, mato à paulada”; alusões a estupro: “merece um pênis do tamanho tal”; e ameaças de morte: “vou te matar com uma pistola x”. As redes sociais, desde a primeira semana de mandato, foram marcadas por esse tipo de constrangimento, ameaça de morte, para além dos ataques de “vagabunda” e por aí vai. A gente encarava isso com preocupação, com tristeza. Sempre foi muito duro exercer um mandato, assim. Para quem é mulher negra e escolhe fazer um mandato de enfrentamento a essa elite que, desde sempre, é maioria na ocupação do poder brasileiro, é muito duro, porque é sempre um não-lugar para nós. O racismo e a lógica patriarcal estruturaram muito bem o nosso capitalismo e estão muito evidentes nas instituições brasileiras. E, portanto, quem está ali e ocupa um espaço de poder na contramão disso é vítima de violência.

Quando Marielle é executada, tudo muda um pouco de figura. Aquilo era uma violência que era motivo das minhas conversas com a própria Mari, que era motivo de lamento, e de um pouco de preocupação, mas a gente não achava que uma violência política podia levar a uma execução. Mesmo num país polarizado, mesmo num país que a gente entendia que estava caminhando para uma possibilidade de fechamento do regime. Mas, quando a Marielle foi executada, esses medos se tornaram muito objetivos. Porque a Marielle nunca foi ameaçada. O próprio plenário, no Rio, era menos tenso, menos polarizado – e a gente conversava muito sobre isso aqui em Niterói. E isso gerou muito medo. E, infelizmente, as ameaças e os riscos foram se tornando mais concretos. Não sei se nós passamos a ver mais
os riscos porque uma companheira foi executada ou se, de fato, a conjuntura brasileira também foi se acirrando.


Isso, para mim, foi a inauguração do que foi a campanha em 2018 para deputada federal. Porque eu fui ameaçada em Bangu, quando um policial, que não se identificou, numa atividade com jovens sobre funk, em especial, jovens negros, vem no meu ouvido e fala que eu tenho que ir embora, que ele ia “voltar mandando bala”. Foram algumas atividades de campanha com esse grau de intimidação.

A vida já tinha ficado muito dura. Eu ia de bicicleta e de ônibus para a Câmara Municipal de Niterói trabalhar e passei a não poder ir numa padaria sem um carro blindado. Essa é minha situação até hoje.

Mas a gente entendia que as ameaças que atingiam nosso mandato, que me atingiam, elas vinham de um campo do ódio que podia envolver supremacistas brancos, grupos organizados racistas e sexismas. Tive algumas ameaças que me fizeram passar a ter escolta da Polícia Legislativa da Câmara, que foram planos de execução no plano da deepweb. Então, a Polícia Federal acionou a Polícia Legislativa, e, a partir de então, eu passei a ter escolta.

E, aí, tem uma girada, no último ano, quando eu, no pleno exercício da minha licença-maternidade, com a minha filha no colo, estava com a escolta da Polícia Legislativa suspensa, porque estávamos em pandemia e eu não estava saindo de casa, e o diretor da Polícia Legislativa me ligou e diz: “olha, deputada, não saia de casa. Foi identificada uma reunião de milicianos com a perspectiva de executar você. Amanhã a gente está retomando com a sua escolta”. Eu quase deixei a minha filha cair no chão, levei um susto. Eu imaginava que a milícia não gostava da gente. Mas, objetivamente, mesmo com a execução de Marielle, a gente não havia feito nada concretamente para tirar o poder econômico das milícias. Foram duas denúncias que chegaram no disque-denúncia, de forma muito contundente. Hoje já são sete denúncias que falam de nomes de policiais na ativa e na reserva, falam de nome de diretor de presídio que tem sido conivente com ordens dadas de milicianos para me executar. São denúncias muito detalhadas que indicam uma encomenda da minha morte. Cobrando esses grupos por que não executaram ainda.

E aí começa uma saga, porque ou era uma denúncia plantada, ou uma denúncia concreta. Mas era de alguém da milícia. Porque era muito detalhada, muito concreta. Eu fui então orientada a sair do Rio de Janeiro por policiais do nosso campo, que entenderam que não é seguro eu ficar no Rio de Janeiro enquanto não houver uma análise de risco. Isso também porque a Polícia Legislativa, que me protege, disse, formalmente que não tem como fazer minha segurança efetiva no Rio de Janeiro, que eles não têm armamento, nem efetivo condizente com a proteção de alguém ameaçada por milícia. O meu caso é o mais grave da Câmara Federal. Fiquei oito meses sem ir ao Rio.

Então, eu vim obrigada com a minha família para cá. E estou obrigada a estar longe do meu território. Eu estou criando minha filha longe da minha família, sem rede de apoio, longe do território em que eu
nasci e cresci, e onde eu queria morar. E saindo com escolta, saindo com carro blindado para ir a uma padaria. Mas isso é um ataque muito frontal à democracia. Tanto porque eu não sou a única, a resposta de quem mandou matar Marielle ainda não foi dada, tanto porque as milícias dominam um terço do território do Rio de Janeiro. E eu não posso voltar ao território que me elegeu. Eu não posso fazer a política conectada com o território que é a origem da política que nós fizemos enquanto mandando desde vereadora. A democracia brasileira é fraturada, incompleta, nunca chegou plenamente às favelas e periferias, ela está vivendo um retrocesso gravíssimo no momento político brasileiro. O Estado Democrático de Direito no Brasil que, para mim, nunca se completou plenamente, tem sido, cada vez mais, atacado por um governo que não só não dá respostas sobre isso tudo, mas como autoriza grupos de exército funcionarem a pleno vapor no Brasil e, em especial, no estado do Rio de Janeiro.

L. M.: É de fato um contraste enorme entre seu trabalho de vereadora em Niterói, encontrando as pessoas e esse exílio dentro do país. Que tipo de impacto essa situação de uma ameaça constante tem em você, na motivação para o seu trabalho parlamentar? Você pensa em desistir ou isso te dá ainda mais força para batalhar? Qual o impacto que a morte de Marielle tem na sua motivação como parlamentar?

T. P.: Eu achou que é de fato um misto disso tudo. Todos os dias, eu tenho vontade de interromper essa tarefa. Eu não tenho dúvida de que, para minha vida pessoal, eu poderia dizer até que eu seria mais feliz se eu não estivesse parlamentar. Mas, todos os dias, eu também tenho convicção da necessidade de não parar. Porque eu também não conseguiria conviver com a vitória daqueles que querem interromper corpos como o meu. Porque isso é uma vitória da extrema-direita, uma vitória da elite brasileira que compõe a extrema-direita. Eu sou uma pessoa muito alegre. Gosto do samba, da cerveja, do boteco. Há uma dimensão subjetiva de uma tentativa de roubar um pouco da nossa alegria e criar um desassossego para nós. Isso é um pouco, também, uma forma de desumanizar os nossos corpos.

Então, por muitas vezes, ainda mais depois que eu paro Moiana Maialú, eu penso: “o que que eu estou fazendo da minha vida e da minha família”? Há um medo constante da morte. Mas, ao mesmo tempo, o Brasil está vivendo um momento político inacreditável que, casado com a crise sanitária, agudizou uma crise econômica de um Brasil de proporções continentais e profundamente desigual. E se soma a isso projetos que tramitam na Câmara e também uma proposta golpista, de fechamento de regime, autoritário. Não haverá também futuro para minha filha, se a gente não interromper esse ciclo de autoritarismo no Brasil. Então, é também contraditório, porque, ao mesmo tempo que a maternidade me convida para uma outra vida, ela também me obriga a ter certeza de que o caminho é seguir na luta – neste momento, seguir ocupando o mandato.

E também Marielle. A tarefa de nacionalizar essas lutas foi uma tarefa que se deu a partir da execução política de Marielle. O Estado brasileiro também não devolveu para o povo brasileiro e para o mundo a resposta de quem mandou matar Marielle. Isso também é uma dimensão da impossibilidade de parar de lutar.

E um último ponto, a cada vinte e três minutos, um jovem negro é assassinado no Brasil. As milícias dominam um terço do território do Rio de Janeiro. Não há outro caminho. Não é uma escolha a luta, sabe? Ela é uma urgência num Brasil com essas marcas. Então, todo dia, eu penso em parar, mas todo dia eu tenho a convicção de seguir em frente.

A. M. C.: Quando você fala de como a execução de Marielle provocou essa resposta do partido de mo-
bilizar uma luta nacional, eu vejo como vocês tinham uma parceria efetiva no Rio e em Niterói. Como você descreveria a Marielle e sua atuação para os nossos leitores? E como você explicaria o fato de Marielle ter sido executada aqui no Brasil?

T. P.: Acho que Marielle conjuga o que o corpo dela representava com o que as lutas encampadas pelo mandato dela também representavam. Marielle é mulher num país que é o quinto com o maior índice de feminicídio do mundo. Mulher negra num país em que o feminicídio é negro e em que também, a cada vinte e três minutos, um jovem negro, filho de uma mulher como Marielle, é assassinado. E a maior parte dos assassinatos são por força policial. Marielle era uma mulher negra favelada. O Estado vê quem mora na favela de forma desumanizada, e não chega com direitos, mas chega com o braço armado. Marielle, mulher negra, favelada, mãe, num país em que a violência obstétrica é negra, que o cenário obstétrico brasileiro é assustador, que a mortalidade materna é negra, e que essas mães, mães como Marielle, estão chorando a morte de seus filhos vítimas desse Estado penal, policial, jurídico, esse combo, que tem sido alargado, no último período.

Mulher lésbica, casada com outra mulher, que girou o mandato para essa pauta, num país em que mulheres lésbicas ainda sofrem estupro corretivo. Mulher socialista, num país que é o segundo país com maior desigualdade entre ricos e pobres, segundo com maior concentração de renda no mundo. E Marielle é mulher defensora de direitos humanos num país que é um dos que mais assassina defensores de direitos humanos no mundo. Então, o seu corpo carregava uma série de estigmas, que são estigmas da violência no Brasil. E esse mandato é um mandato de denúncia de todos esses estigmas. Era um mandato para visibilizar as resistências em relação a esse conjunto de pautas expressas quando a Marielle defendia a legalização do aborto, quando gritava no plenário para respeitar as mulheres sapatão e queria instituir o Dia da Visibilidade Lésbica; quando Marielle denunciava cada operação policial na cidade do Rio de Janeiro, no microfone, em alto e bom som, usava o tamanho das redes sociais dela para visibilizar a ação truculenta do Estado.


A gente pode não saber o motivo exato de quem mandou matar Marielle, o motivo concreto. Mas tudo isso que eu falei já é motivo suficiente para tentarem calar esse corpo.

bandidos. Como você enxerga essa polarização? Você vê alguma saída para a polícia brasileira?

**T. P.:** A violência funda o Estado brasileiro. A polícia no Brasil é criada para conter revoltas populares, para guardar o poder da Corte e depois o poder da elite burguesa brasileira. Esse é o papel da polícia militar no Brasil: sufocar revoltas populares, seja Canudos, seja a Conjuração Baiana. Estamos falando do sequestro de povos da África para cá; estamos falando da tentativa de exterminio da população indígena; das diferentes ditaduras que constituíram o Brasil. Nós ainda não rompemos com esse passado. As instituições brasileiras têm essas marcas e a instituição polícia foi constituída para operar essas violências. É preciso desconstruir um mito que constrói essa polarização do nosso mandato, mandatos como o nosso, e a polícia. Nós não somos contra o policial, até porque muitos policiais militares, que estão na ponta, têm origem popular. A maior parte dos policiais militares que morrem em serviço são negros. Então, o problema é esse Estado policial. A gente vive num momento de desmonte do Estado de Direito e de alargamento, cada vez maior, desse Estado jurídico penal policial, por meio de iniciativas legislativas, por meio de um discurso do populismo penal. É esse populismo penal que, por um lado, convence as pessoas de que “mais polícia” vai deixá-las mais seguras, de que polícia violenta, numa lógica opressora, vai promover uma sensação de segurança – que é apenas uma sensação. No final das contas, o papel da polícia interessa à elite brasileira para manter a sua propriedade. Seja os seus bens, seja a sua propriedade privada, seja seu poder, que é sua propriedade também. Então, o populismo penal que, muitas vezes, se populariza no conjunto do povo, que é vítima, inclusive, desse braço armado, serve para manter o poder e a propriedade das elites brasileiras, que é, ainda, a elite colonial.

Dito isto: é inaceitável que o Estado brasileiro, por meio do seu braço armado, siga operando um genocídio no Brasil. É, de fato, difícil de explicar o que é a polícia no Brasil para quem não vive essa realidade. No Rio de Janeiro, já é algo que pessoas de outros estados não conseguem compreender. A polícia, no Rio de Janeiro, anda com fuzil para fora da viatura no meio de um centro urbano. Fuzil é uma arma de guerra, que, hoje, está circulando pelo Estado do Rio de Janeiro. Hoje, infelizmente, a instituição policial, é a que mais mata, no mundo. Se pegar os dados de 2020 foram, ao menos, 3.181 pessoas vítimas de operações, de intervenções policiais. Quase 80% dessas pessoas, negras, jovens. É chocante o quanto a polícia mata, ela é feita para matar. Mas também esse policial que opera a morte, também é vítima da morte. O modelo de segurança pública no Brasil se organiza por lógica de guerra, uma suposta guerra às drogas – que é, na verdade, a guerra contra quem é pobre, negro e favelado. É um banho de sangue...

Essa é uma forma do modelo de segurança pública funcionar que, ao meu ver, se soma ao que é o sistema prisional brasileiro. Temos a terceira população carcerária do mundo, em números absolutos. Quando pensamos nas mulheres, temos a quinta população carcerária do mundo. A ampla maioria das pessoas presas são negras, uma grande parte por comércio ilegal de drogas. É a guerra às drogas, mas que é a guerra a esse mesmo corpo. Que é um corpo igual da Marielle e dos seus filhos. Então, o que fazer diante desse cenário?

Há dois caminhos. Um: consolidar a ideia de aproximar o policial ao trabalhador. Se nega, para esse policial, a própria condição de trabalhador. Isso é muito grave. Por exemplo: a PEC 186 foi aprovada, desmonte de direitos trabalhistas, que atinge o policial, mas é a PEC operada pelo governo, cujos policiais são a base desse governo. O policial é um trabalhador, mas ele nunca vai ser entendido enquanto tal se não se modificar o modelo de segurança pública. E, para mim, aí é a segunda chave. Essa lógica de guerra militarizada, que remete a ditaduras, é a lógica que constitui as polícias brasileiras, em especial, a polícia militar. Então, desmilitarizar as polícias – eu prefiro falar em democratizar as polícias brasileiras. Há vários modelos: vamos construir a polícia do ciclo único, que não se separa a investigação da polícia mais ostensiva... eu sei que não há consenso sobre isso. Mas são debates que
passam pela lógica de democratizar a instituição polícia no Brasil. Não tem como uma polícia que ainda opera numa lógica ditatorial, que é a lógica da guerra, né?

**A. M. C.**: Acho que tem além da diferença histórica com relação à colonialidade, a Bélgica valoriza muito esse lugar de centro, de neutralidade, do garantismo, ainda que formal. É certo que também tem as zonas de conflito, em que os abusos existem, mas a gente sabe que é uma percepção completamente diferente, por exemplo, da lógica de prevenção e da lógica de guerra que, no Brasil, está instaurada e normalizada. Há essa sensação de medo quando a polícia está perto. É uma diferença gritante, que a gente consegue perceber a olho nu.

**T. P.**: A base da polícia militar é formada por uma classe pobre brasileira –mas ela causa medo nos pobres porque ela serve para manter a propriedade e o poder dos ricos no Brasil. É muito chocante, inclusive, o que se faz com esse corpo. E é um corpo que é treinado para fazer isso, é treinado para saber quem é o inimigo interno. O modelo de segurança pública, no Brasil, é baseado na constituição do inimigo interno, infelizmente. E qual é a cara desse inimigo interno? O inimigo interno é o mesmo corpo jovem, negro, favelado. É isso, reforçar esse dado: a cada vinte e três minutos, pelo menos um jovem negro é assassinado no Brasil. Isso não é razoável. Mata-se mais por este modelo de segurança pública no Brasil do que em países em guerra.

**A. M. C.**: E só pra acrescentar uma questão que talvez seja importante a gente observar também, é a diferença na valorização do policial, considerando os dois lugares,

**T. P.**: É, eu acho que é isso: valorização, seja de carreira, mas também formação em direitos humanos, que inexiste. A formação da polícia é uma formação numa lógica de guerra. Há também uma dimensão do aparato jurídico que dificulta, inclusive, a investigação desses homicídios. O índice de investigação de homicídios, no Brasil, é ridículo. E, em especial, quando se trata do que a gente chamava antes de auto de resistência – que, hoje, agora, o termo é morte por intervenção policial.

**A. M. C.**: Essa questão me remeteu ao assassinato do George Floyd, que colocou a temática do racismo na centralidade de muitas discussões nos Estados Unidos e no mundo. Você traz na sua fala muitos dados que colocam a gente diante de um racismo estrutural e institucional inquestionável.

Sobre a temática do antirracismo, como você vê essa diferença entre o modo de abordagem do racismo, nos Estados Unidos – por exemplo, com o caso de George Floyd, que, semana passada, culminou com a condenação do policial que o assassinou – e aqui no Brasil em que as respostas institucionais não são contundentes?

**T. P.**: Se pegarmos o tempo de constituição do Estado brasileiro, foi mais tempo de escravidão na lei do que tempo depois da abolição. A gente conviveu por séculos com uma legislação que escravizava corpos de negros e negras. Acho que essa é uma primeira coisa, porque isso faz parte de uma característica do que é o Estado brasileiro.

Segundo: eu acho que, aí, entra uma diferença entre o Brasil e os Estados Unidos. O Brasil convive com o mito da democracia racial. A miscigenação que existe no Brasil, de alguma maneira, tentou invisibilizar o que é o racismo no país. A gente costuma, até hoje, ouvir: “não tem racismo no Brasil”, “todo
mundo é misturado no Brasil”, quando, na verdade, não é o que os números e os dados explicitam. O mito da democracia racial é nefasto para a construção de uma democracia real brasileira. E não dá para pensar em nada no Brasil sem pensar a questão racial. O racismo estrutura todas as outras relações sociais brasileiras. E, infelizmente, isso foi invisibilizado pelo mito da democracia racial.

Então, se observarmos as mais diferentes áreas, a taxa de desemprego no Brasil, entre trabalhadores pretos chega a quase 18% e, entre brancos, 10%; a média salarial da mulher negra é 70% menor do que a da mulher branca; se comparar mulher negra com homens brancos é ainda mais chocante. Além da violência policial, é preciso pensar também o direito ao trabalho. Não dá para pensar em Brasil, sem pensar o quanto o racismo estrutura todas as relações sociais que aqui estão.

E aí, eu acho que o caso de George Floyd se assemelha, um pouco, ao que foi a execução de Marielle. A gente já vinha num crescente de organização dos movimentos negros e da luta antirracista. A execução de Marielle foi um marco: visibilizou um racismo que já estava nítido para muitas de nós, mas não para o conjunto da população e para as ações do Estado. Eu acho que, hoje, a gente tem a luta antirracista como um dos campos mais mobilizados de enfrentamento a Bolsonaro. É, hoje, o fenômeno mais dinâmico da luta no Brasil – talvez até mais dinâmico do que a luta feminista que vinha numa ascensão também no último período. A luta das mulheres negras, a organização das mulheres negras ganha fôlego.

Mas, infelizmente eu acho que isso não tem tido consequências. A urgência da luta antirracista não é a urgência que está dentro de cada brasileiro. Vou dar um exemplo: na Câmara Federal existe uma bancada feminina. Há uma Secretaria de mulheres deputadas, que está lá, é um espaço institucional da Câmara para organizar a pauta feminina. Mulheres de diferentes espectros femininos. Mas, quando se fala de racismo, não existe uma secretaria de igualdade étnico-racial. A gente até protocolou um projeto sobre isso, porque isso ainda é muito invisibilizado. O racismo ainda é muito escondido. O chamado “racismo à brasileira” é uma autorização para matar preto. Mas eu acho que isso está num caminho de mudança pela dinamicidade da luta antirracista. Mas, enquanto não houver mecanismos institucionais que reconheçam o racismo e incidam sobre ele, a gente vai seguir com uma democracia muito incompleta.

A. M. C.: Para finalizar, você quer deixar alguma mensagem?

L. M.: Complementando, eu imagino que essa entrevista vá ser lida por outras mulheres negras brasileiras, querendo se envolver na política e procurar mudança. Mas elas podem se assustar também. Que tipo de mensagem a gente poderia deixar para elas?

T. P.: Há duas questões, para finalizar: Uma: já que é uma entrevista internacional, eu acho que é importante inserir esse Brasil numa dinâmica internacional histórica e conjuntural. O Brasil faz parte de um Sul global cujas desigualdades gritantes também são operadas por uma lógica colonial. A violência que funda o Estado brasileiro vem a partir de invasores desse território, que são invasores europeus. A elite brasileira está conectada com uma elite internacional do Norte do mundo, que, infelizmente, muitas vezes, enriquece às custas dos países em desenvolvimento, dos países do Sul global. Acho que a solidariedade internacional, ainda mais nesses tempos de pandemia, é algo fundamental para enfrentar as desigualdades no Brasil, inclusive enfrentar, também, o racismo. É fundamental que os países do mundo fiquem atentos ao que acontece aqui; mas também entendam a parte que lhes cabe no que é a dinâmica aqui do Brasil. Há uma lógica desenvolvimentista, produtivista, que é operada
também de fora para dentro pelo capital financeiro. 

E é lógico que é duro para nós, mulheres negras, num país com essas marcas e com esse governo, que aprofunda, agudiza o que é a história da desigualdade racial no Brasil, da pobreza... mas qual que é a saída que a gente tem? Eu entendo que política é o preço do ônibus, é o preço do pão, é se o filho dessa mulher vai voltar vivo para casa, se ele vai ter emprego, ou se ele vai ter que se virar para ganhar um dinheiro a cada dia. A política é muito concreta. E, na política concreta, nós, mulheres negras, há muito tempo somos protagonistas e somos as resistências que vêm dos quilombos, que são a cara da resistência brasileira, da política real brasileira. Eu não tenho dúvida que, para alguns corpos, a luta não é uma escolha. Sabe? Essas mulheres batalham o dia-a-dia. Para ela trabalhar como trabalhadora doméstica na casa de alguém, ela vai ter que deixar o filho com outra mulher, com a vizinha. Há uma rede de solidariedade que é política. O que a gente precisa é aproximar a política institucional da política real, concreta, já tocada e protagonizada por mulheres negras. A saída para isso, para enfrentar esse quadro, é ter mais mulheres negras, com esse perfil, combativas, com a caneta também na mão. Para visibilizar as resistências nos territórios, que já existem, e para ajudar a expurgar a elite colonial brasileira do poder. Então... tem que ser mais de nós. Não é uma esperança boba, sabe? E, com o perdão da palavra, não é uma esperança branca e colonial – é uma esperança que já está expressa no que é resistência secular, ancestral, das mulheres nos seus territórios. Então, é um pouco isso.


In recent decades, western countries have witnessed an unprecedented empowerment of the courts as key political actors (Ginsburg, 2003; Hirschl, 2007; Tate & Vallinder, 1995). The widespread use of judicial review, and a constitutional rhetoric that locates legitimacy in expert knowledge rather than in democratic decision making, have allowed elites to use the judiciary as a stronghold to retain power at a time when the legislative and executive branches are more and more under popular control (Hirschl, 2007). These phenomena have been studied worldwide in relation to the expanding role of constitutional and supreme courts in the political arena, which has led to what Hirschl has defined as "the judicialization of mega-politics" (Hirschl, 2008). However, at least in Latin America, the growth of the judiciary has not stopped there. As if the courts’ interventions in striking down legislation that has passed through parliament were not enough to preserve the interests of local and transnational plutocracies, the realm of the political in recent years has increasingly come under the watch of the criminal courts. More precisely, denouncing politicians, mainly those belonging to progressive and popular governments, has become daily practice in this part of the world. With the invaluable help of a malleable judiciary, this has allowed neoliberal economic groups to use their political swords to take their opponents out of the political arena, and to label as crimes purely political decisions that are contrary to their interests. In contrast to the consolidation of judicial review, the criminalization of politics has received scarce attention from academia. Therefore, ¡Bienvenidos al lawfare! Manual de pasos básicos para demoler el derecho penal is a contribution of the utmost importance for the comprehension of what is probably currently the most important juridical and criminological phenomenon of Latin America. This book provides a clear and deep insight into the use of criminal law as a tool to attack political leaders of the left and centre-left and to consolidate neoliberal politics. The authors
call this practice "lawfare", a term that originated in US military law to characterize the use of law as a weapon to fulfil the objectives of warfare and that is used here to show how power groups have shifted from physical violence to judicial manipulation in order to reach their goals (Dunlap, 2009). ¡Bienvenidos al Lawfare! is directed at the general public, so it uses plain language and an attractive narrative to present its case. The work focuses on Argentina, but it has many references to the situation in other Latin American countries.

The book is divided into three chapters, each of which is written by one of the authors; three effects of the use of lawfare are studied. In the first section, Raul Zaffaroni, a renowned criminal law scholar, former Justice of the Argentinian Supreme Court and current Justice of the Inter-American Court of Human Rights, explains how lawfare erodes substantive criminal law. In the second chapter, Cristina Caamaño, who has long experience as a prosecutor in the criminal justice system and is the current head of the Federal Bureau of Intelligence of Argentina (Agencia Federal de Inteligencia), studies the damage inflicted by lawfare on procedural law. In the last chapter, Valeria Vegh Weis, a criminologist who focuses much of her work on Latin America, portrays lawfare from a criminological perspective and delves into how it takes hold of the most perverse tools to fulfil its purposes. Finally, the authors present five cases in which the practices described are manifested.

To begin with, Zaffaroni locates his perspective on lawfare within his broader theory, developed in his previous work, of the constant tension between the rule of law and the police state. In the criminal law domain, the former is represented by the classical liberal view of criminal law, originating in the writings of Cesare Beccaria and polished during the nineteenth and twentieth centuries. From the liberal perspective, the role of the criminal law is to constrain punitive power so as to allow the imposition of punishment only when all the substantive and procedural safeguards of a constitutional polity are respected. By contrast, the police state is embodied in what Zaffaroni identifies as "the shameful Criminal Law", in which judges forget their role as protectors of the people against the arbitrary use of force by the state and start to become a tool to legitimize and facilitate the prosecution of certain people. According to Zaffaroni, the shameful criminal law is always accompanied by a broader political discourse that considers some groups as dangerous to society, or points to them as morally unworthy. That was what happened to the Jews in Nazi Germany or to anyone who opposed the proletariat revolution in the USSR of Stalin. In the 1970s in Latin America, the enemy was anyone who opposed those values deemed to be western and Christian. For Zaffaroni, the market is nowadays looked up to as a contemporary god, whereas distributive politics is the demon that we need to expel. In this context, the shameful criminal law is manifested in two ways that complement each other, in order to support the interests of powerful financial elites.

On the one hand, the criminal law is enforced against those who have not achieved the local version of the American Dream. Given that the neoliberal rhetoric holds that private gains trickle through to society as a whole, and that making a living depends on one's own will and effort, all those who live below the poverty line or who do not comply with capitalist standards are signalled to be social pariahs and are excluded through criminalization. This stigmatization provides a justification for marginalization, placing the burden on the individual and not on social inequality. From Zaffaroni's point of view, the crusade against the poor has the collaboration of a passive judiciary, which operates as a mechanical bureaucracy that sees people and their lives as scraps of paper. (Argentina has an inquisitorial procedural system, which mainly takes place on paper, especially in the investigation stage.) Thus, the situations that lead the marginalized to commit minor crimes or offences are never considered, and the jails are full of burglars, while white-collar crimes are never targeted by the criminal justice system.

On the other hand, neoliberal aims are achieved through lawfare. Here, the persecuted are politicians
from the left or centre-left who are identified with welfare politics. The juridical war against popular leaders is masked by a narrative that treats corruption as the greatest evil, an enemy against which anything that will achieve the triumph of transparency is permitted. The next step is to equate redistributive politics with corruption. After that, all is set for the use of the criminal law as a tool to put down those who criticize the reign of the market. Zaffaroni specifies that, in the case of lawfare, what is needed is an active judiciary, sensible to the pressures of the mass media, the secret services and the main financial agents. Logically, this paves the way for the shameful criminal law to prevail over its liberal counterpart. Zaffaroni argues that, throughout history, politicians and jurists have tried to justify the use of the shameful criminal law with reference to different legal theories. However, for him, those in charge of the current onslaught on progressive politicians have not even made this effort. The result is that lawfare is put into practice with no regard for any constitutional or legal principle. Legal figures are deformed as necessary to subsume political measures within the definitions of crimes, so the *actus reus* and *mens rea* elements of crimes are forgotten and are painted as mere formalities that obstruct the supreme goal of fighting corruption. Liberal criminal law is thus destroyed. Interestingly, Zaffaroni ends this section with a warning. Underlining the fact that many of the judges and prosecutors who implemented lawfare were appointed by popular governments, he calls for progressive governments to be more careful and serious in the administration of justice.

The second chapter, written by Cristina Caamaño, explores how lawfare perverts procedural law. Caamaño begins by stating that cases against popular politicians always start in the same way: there is a denunciation that allows the mass media to use headlines that have an impact on public opinion. This brings about the instant labelling of certain people as “corrupt”. From there on, it does not matter whether or not the accusation is true, and even less important is respect for the defendants’ rights. All kinds of methods are used to bring cases against those who oppose neoliberal governance. The best case scenario for lawfare agents is to achieve a guilty sentence for their opponents. However, if this is not possible, damage would already have been done to the accused’s reputation, which is also enough. Between these two results, there are many possibilities, such as using the case to leak private conversations to the mass media or putting people in preventive detention on no grounds whatsoever.

¡Bienvenidos al lawfare! is a book that is not directed to academic clusters but to the general public, and Caamaño’s work, before it dives into the way in which lawfare erodes procedural rights, has the merit of explaining the constitutional grounds for procedural rights and how a criminal process should lawfully proceed. It is in this way that she teaches us why every defendant should be tried by an impartial judge, and how the constitution and the national criminal procedural code establish the way in which the competence of a judge to intervene in a certain case is to be determined. She then goes on to explain how lawfare has broken all these rules, and she describes the mechanisms that have been designed to permit the same judges to hear all the cases against progressive politicians. Taking a step forward, we can mention that this subject is also discussed by Vegh Weis. With a touch of humour and a reference to a mathematical calculation, she states that there was a 0.000000001777% chance that nine out of ten cases were all assigned to one of twelve judges. However, that was actually what happened.

After this, Caamaño delves into the political use of the law against those who repent. This law rewards those who confess their crimes and provide relevant data for the investigation of a case with a reduction in their future penalties, if the data are revealed to be useful. This practice has practical and normative problems. Among the practical problems, the main issue is that defendants’ confessions are usually extracted in a coercive way, with no concern for the truthfulness of what is said. The only goal is to produce a new headline for the newspapers, or to find any kind of excuse to move against those who are considered by neoliberalism as the “big fishes”. The method usually consists of putting a person in preventive detention and telling them that they will only be released if they confess. At the nor-
mative level, this generates violations of the right not to incriminate oneself, of the legal principle of equality (because those who are given the chance to confess receive a lesser penalty than those who do not have that chance), and of the principle that a person should be punished according to their guilt and not according to other circumstances, such as having confessed.

Caamaño’s last two points concern the illegal leaking of judicial hearings and the abuse of preventive detention. Regarding the former, she explains the shifts in the legal regulations on judicial intervention in private communications, and the way in which Mauricio Macri’s government put the Office of Judicial Hearings under the control of the Supreme Court. This proved to be a disaster, since private conversations between defendants — which, in many cases, had nothing to do with the criminal investigation — were leaked to the mass media. In this way, lawfare achieved one of its goals: to humiliate its political opponents. Finally, there is the unconstitutional use of preventive detention. Because many of the denunciations of popular leaders did not have enough substance to achieve a conviction, a judicial strategy under the shameful criminal law was to put defendants into preventive detention. The argument used was that, because they once were public officers, it was likely that they would have contacts who could pervert the course of the investigation. Shockingly, these alleged ties were not specified, so the reasoning was merely abstract. Logically, this line of thought leads to absurdity. Every officer, because of the nature of their tasks, has contact with other officers. However, that does not mean that those contacts are criminal or would obstruct a criminal procedure. If it did, every public officer should be in prison for the mere reason of holding their post.

The final section, by Valeria Vegh Weis, explores lawfare from a criminological point of view. From my perspective, Vegh Weis’s work has the merit of introducing an important caveat that does not appear earlier in the book. She explicitly recognizes that corruption is a real and deep problem in Latin America that has to be resolved. Nevertheless, after stating this, she lucidly describes how this phenomenon is used to lump all popular politicians together, with all of them being labelled as corrupt. Also, this paves the way for the hiding of another kind of corruption that is often on a much bigger scale: the corruption of transnational financial agents. Vegh Weis begins her exploration of lawfare by resorting to Simon’s *Governing through crime* (2007). In the US in the 1970s, the rise in crime and in the number of victims were used to mask the dismantling of the welfare state, with a shift to securitization. In current Latin America, the destruction of public health, education and redistributive politics as a whole is being obscured by a move that shines all the lights on the war against corruption. Deeming politics to be intrinsically corrupt, neoliberalism can advance its goals without inconvenient interference.

Vegh Weis then moves to a brief explanation of criminological theories. This allows her to explain that the description of conduct as a crime is related not necessarily to its intrinsic wrongness but mainly to the social goals that can be achieved by criminalizing this conduct. In other words, behind the criminal law there is an intricate game of interests and power struggles. At this stage, the author depicts how work on political propaganda has given insights into how to build a case and convince the public of its importance, even when there is not much substance to it. The key is to create an enemy and convince society that the survival of society depends on defeating this enemy. This tactic, famously used by Goebbels in Nazi Germany, is currently very accessible. With the collaboration of the mass media, the task is easier than ever. In current Latin America, the enemies are the corrupt popular politicians. Vegh Weis explains that the mass media act, in Cohen’s words, as moral entrepreneurs who create moral panic within society (Cohen, 2011). When the panic against corruption is widespread, the liberal criminal law, which is based on the action, is replaced by the shameful criminal law, which is based on the author. It does not matter what a politician has done: what matters is that he or she is corrupt and must be punished. Proofs are superfluous, given the politician’s corrupt essence.
Vegh Weis then develops an ingenious and elaborate argument that ties together the works of Freud, Bourdieu and Sartori to portray the mechanics of lawfare. She relies on psychoanalysis to explain the ways in which our personalities are built through identifications with other people and situations. This process, often unconsciously developed and crossed through by idealization, guilt and self-flagellation, allows us to understand why people sometimes support other people or decisions that are in clear contrast to their own interests. This is helped by selective television broadcasters who, as Bourdieu taught, hide by showing. That is, the mass media, by presenting one version of reality, obscure other situations and interpretations of the world. The picture is complete if, as Sartori wrote, we are now not *Homo sapiens* but *Homo videns*: beings that are constituted not but what they think, but by what they see in their constant exposure to television (Sartori, 1998). Currently, what television shows is a Dantesque picture of popular politicians being detained as if they were the most dangerous terrorists, or being humiliated by their aspect or choices. The reach of social media and the presence of mechanisms such as trolls of bots hired for constant attacks on progressive politicians help this process. On the one hand, this whole set-up permits people to identify themselves with role models who defend interests that are in sharp contrast with their own. On the other hand, it serves to obscure a high level of white-collar corruption that never reaches the screens. Vegh Weis concludes with an interesting remark, asking whether lawfare is not what we have always wanted: a criminal law that targets the powerful and not only the poor. The answer is that this reasoning is misleading because, more often than not, the bringing of charges against popular politicians works in tandem with the criminalization of the marginalized. In both cases, what is at stake is an attack against those who oppose neoliberal governance.

The book ends with the presentation of five cases in which the practices described are manifested. Additionally, it includes a preface by the former president of Brazil, Lula Da Silva, and two postfaces. The first of these is by the Minister of Gender of Argentina and human rights activist Elizabeth Gómez Alcorta, and the second is by the renowned sociologist and political scientist Atilio Borón.

All in all, ¡Bienvenidos al Lawfare! is a must-read that has two main merits. First, it provides an in-depth analysis of the criminalization of politics, a phenomenon that has not, so far, received consistent attention from academia. Secondly, it is a book that addresses the general public and allows non-specialist readers to gain an initial insight into a situation that, because of its impact on politics, affects every citizen’s life. This is a book that could be many books. The main challenge for the years to come will be to take forward the exploration of how Latin America’s judiciaries have become the new battleground for politics, displacing the executive and the legislative as the bodies in which the future of our countries is defined. ¡Bienvenidos al Lawfare! takes a first step in this direction, and marks a path that, if we want to comprehend the realities of our region, we are obliged to follow.

References


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Policing or perpetuating violence? State-sanctioned *milícias* and police in Rio de Janeiro, Brazil


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As protests swept nations in mid-2020 after the murder of George Floyd, the public dialogue about police use of force accelerated with renewed vigour. Protests erupted in support of Black Lives Matter in the United States, Europe, and South Africa, accompanied by ‘*Vidas Negras Importam*’ in Brazil, the country with the highest rate of police killings in the world. Police in Brazil assassinate an average of five people per day, are known to be associated with the *milícia* extortion-based criminal rackets, and are linked to the 2018 assassination of human rights advocate and politician Marielle Franco. Amidst global calls for police reform, some scholars are urging policymakers and the public to consider how the history of crime and violence has shaped the way violence is used by the state today.

One such scholar is Bruno Paes Manso, a journalist and researcher at the University of São Paulo’s Centre for the Study of Violence (USP-NEV). Paes Manso is also the author of the book *A República das Milícias: Dos Esquadrões da Morte à Era Bolsonaro* (in English, *The Milícia’s Republic: From the Death Squads to the Bolsonaro Era*). There is possibly no more complicated case than that of Rio de Janeiro, Brazil, to study how violence has permeated politics and public security. Here is a city where multiple criminal organisations jockey for control of territory and the drug trade, where criminals and police
alike are heavily armed, and where politicians – including the country’s president, Jair Bolsonaro – advocate for the use of violence with such extreme statements as, ‘A good criminal is a dead criminal’. Paes Manso doesn’t shy away from the complexities; in this narrative spanning seven decades of history, he sets out to examine how the landscape of crime in Rio de Janeiro and the growth of the city’s milícias can help to explain Jair Bolsonaro’s election in 2018.

Paes Manso argues that Bolsonaro came to power because many Brazilians were seduced by the idea of redemptive violence – violence as a means to resolve lingering disputes (as Rio de Janeiro’s death squads and milícias have done for decades) – when democratic justice institutions no longer seemed to be working. He draws on in-depth interviews with members of these vigilante milícia groups and archival work to explain how milícias and death squads have been resolving disputes with violence in the shadow of the law dating back to Brazil’s military dictatorship. One important set of actors in Paes Manso’s theory is treated rather generally in the book, yet plays an important role in his explanation of the milícias’ rise to power: regular citizens. Paes Manso argues that in the 2018 election, voters ‘chose an executioner to govern them. As if the country decided to abandon their democratic institutions’, yet his evidence is too general to shed much light on the mental model of the voters as they were making this decision at the ballot box (p. 294). This is made up for by the in-depth insights explaining how today’s milícias arose and gained political and coercive power. As Paes Manso shows, identifying and rooting out violence is nearly an intractable problem when the perpetrators of violence are embedded in the state.

Paes Manso begins with the important observation that the milícias we see in Rio de Janeiro today are the product of decades of choices that prioritise solving policy problems informally with violence rather than with difficult structural reforms. He explains how today’s milícias, which have many of the defining features of vigilante groups (Bateson, 2021), and who finance their operations through mafia-like extortion and protection rackets (Cano & Duarte 2012; Hidalgo & Lessing 2015), have roots that can be traced back to the 1950s. On one hand, we see the violent origins of today’s milícias in the death squads that originated in the 1960s during Brazil’s military dictatorship; these were comprised of off-duty police, firefighters, and members of the military. Like other vigilante groups (Bateson, 2021), these death squads were originally formed to take justice into their own hands. They targeted ‘marginals’ (usually poor, Black young men) that they suspected of being thieves or criminals and brutally murdered them, often leaving the body in public with their squad’s insignia to stoke fear among other ‘marginals’. Paes Manso details these grotesque acts and, importantly, the lack of state action to discipline the death squads. There were often few consequences, because those disciplining the death squads were likely to be members, or know a member personally.

We then see the economic origins of today’s milícias in the earliest neighbourhood association in the Rio das Pedras district, which was created in 1964. Paes Manso explains how the waves of urban migration – primarily of poor, agricultural laborers from Brazil’s northeast – created population bulges in semi-rural communities on the outskirts of the city that, when organised, were politically powerful just by virtue of the sheer size of the community. A value that neighbourhood leaders held in high esteem was the absence of ‘marginals’ in their communities, which stood in stark contrast to the violent, inner city favelas (informal settlements). Eventually, groups like the death squads and neighbourhood association leaders realised there was money to be made by charging residents for this security and peace of mind, and the assurance that ‘marginals’ (and eventually, drug traffickers) would not enter their community. And so the informal private provision of security began.

In colourful anecdotes that implicate several former and present-day politicians in Rio de Janeiro, samba schools, and the illegal gambling racketeers (jogo do bicho), Paes Manso walks the reader through the joint evolution of the provision of private security and sanctioned violence. The constant
presence of a ‘common enemy’ – whether it was the ‘marginals’ or the contemporary drug trafficking gangs – helped to legitimise the extra-legal violence committed by the death squads, their allied gambling racketeers, and, finally, today’s milícias, he argues.

Paes Manso’s indictment of the state’s role in extrajudicial violence leads him to a second critical observation: the policies favoured by Jair Bolsonaro and his allies show the same attitudes towards violence and justice. There is a common thread running from the hard-line leaders of the military dictatorship (who, as Paes Manso documents, Jair Bolsonaro identifies as role models) to Bolsonaro himself and even his sons, who view police violence and vigilante violence as justifiable when used against any citizen likely to be ‘marginal’ or a criminal. Paes Manso shocks with anecdotes that have occurred over the last few decades about police sniper attacks on supposed criminals from helicopters (those fired at were actually churchgoers), the state government awarding bonuses to police officers that were contingent on how many civilians they shot, and Bolsonaro’s son awarding prestigious honours for public service (the ‘Tiradentes Medal’) to police officers following brutal massacres of civilians. He concludes by arguing that Bolsonaro’s rise to the presidency is the culmination of these choices by the state, over and over again, to choose to reward – or at least look the other way in the face of – state-sanctioned violence.

One strength of the book is the explanation of how complex the state’s relationship with violence can be, and how this complicates violence reduction policies. Paes Manso explains how reducing violence isn’t simply a matter of more funding, labour, or equipment, when the state’s security forces are incentivised to prioritise fighting some types of criminals over others. Paes Manso shows how the state’s laser focus on cracking down on ‘marginals’ and drug trafficking enabled a different form of criminal activity to come closer, and even enter into the state itself, in the death squads, gambling rackets, and milícias. Reducing violence and investigating acts of violence becomes intractable when the state is complicit, and Paes Manso shows this masterfully through the juxtaposition of the hard-on-crime tactics in favelas with the state’s failure to prevent and investigate the assassination of Marielle Franco (the city councilwoman who was assassinated in 2018).

His careful tracing of the Marielle Franco case documents how the milícias and some of their allies have permeated several law enforcement and justice institutions at the city, state, and federal level. Paes Manso persuasively shows how difficult it could be for a ‘clean’ politician, prosecutor, or investigator to uncover the truth, and operate in an environment where so many potential colleagues are part of the scheme. He cites wiretap data, court testimonies, and plea bargains related to the Marielle Franco case, all of which show different powerful actors avoiding blame and feigning ignorance in order to protect themselves. Today, more than two years after the assassination, various justice institutions still do not know (or have not announced publicly) who ordered the hit on Marielle.

Paes Manso’s explanation of the interconnectedness between milícias and the state paints a dire picture of corrupt elites and their vigilante milícias permeating government bodies. He speculates that those in power put hits on their political enemies while vigilantes use violence with impunity, and the poor and marginalised are harassed for merely living in the proximity of violence. The Bolsonaros unequivocally seem to be on the winning end of this arrangement. This final observation, although undoubtedly true, is the least clear in the book. Paes Manso offers an explanation for how Bolsonaro and his sons were electorally successful in Rio de Janeiro, especially among police officers and the communities in which milícias dominate. He shows how Bolsonaro’s son won a state-level election by campaigning with a former police officer that mobilised milícia dominated communities.

Yet there are still some lingering questions about how Bolsonaro managed to scale this electoral influence up to the national level. What provokes citizens to ‘abandon their democratic institutions’ in favour of a ruler like Bolsonaro? At times, it seems that Paes Manso argues that the economic anxieties
and political polarisation in the mid-2010s in Brazil created the conditions for mass appeal of an anti-establishment candidate like Bolsonaro. But Bolsonaro is not only anti-establishment. Paes Manso could be clearer in explaining exactly why the hard-on-crime, militant candidate was the anti-establishment candidate that won over the citizenry, especially those that live far from Rio de Janeiro’s crime (either geographically or materially) and who aren’t as concerned with the fear of crime in their day-to-day lives.

This book does not claim to link the Bolsonaro family with the milícias or with Marielle Franco’s death. What it does offer is a careful, nuanced journey through the history of the Rio de Janeiro state’s relationship with violent actors. Paes Manso is successful in his attempt to explain why today’s milícias have become so powerful and still remain strong. This narrative raises as many questions as it answers about the future of policing and the state’s role in violence in Rio de Janeiro. The lessons are relevant for the Brazilian reader who cares to ‘not repeat these mistakes again’ (p. 36) and for the global reader who may be trying to chart a different path for their country.

References


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What does community-policing mean for Brazil? Can the police in this country overcome strong social inequalities – poverty, income distribution, unemployment, among others – through the adoption of community-policing programs? Since 2005 an institutional response by the São Paulo state Military Police (or PMESP – Polícia Militar do Estado de São Paulo) has been the adoption of community policing practices from the Japanese koban system (neighborhood police-based system), as an approach to respond to urgent social demands. But to what extent has the adoption of the koban model – a small piece along the institutionalization process of community policing – influenced the PMESP as a whole? If well inserted and articulated, can small pieces influence the big ones? Such development is explored in this photo essay, capturing scenes, portrays and images of daily community police work made during 2009-10. Moreover, this photo project focuses on how community policing (and the koban) affected the ways in which police officers perceive their roles in Brazil. This is important because one underlying problem, since the first practices started, has been the definition and scope of policing activities, especially at the operational levels, as expressed by a sergeant in São Paulo: “Sometimes I feel that the police assume [way] too many responsibilities. At the police post it is common for our team to start a policing task and end up performing a social service, such as driving a pregnant woman to a hospital” (J. Silva, personal communication, January 10, 2009). His words indicate an abiding problem: for many police forces, not only in Brazil but also in other Latin American countries, community policing means tackling deeper social inequality issues, often stemming from entrenched poverty.
A journey to the other side of the world
“Brazilian Koban” at the suburbs of São Paulo. In 2010 São Paulo counted 54 Kobans (urban police posts) and 29 chuzaishos (rural police posts), as an attempt to bring closer the relationship between police and community. One of the first locations to receive Japanese assistance, this police post is said to have diminished the crime rates around its area.

サンパウロ市郊外にあるブラジル版“交番”。初めて日本の支援を受け設置された駐在所の一つ。設置により周辺地域の犯罪率が下がったと言われている。

Corporal Lóra comments that one of the biggest problems in the community he works is the lack of spaces for leisure or practice of sports. He already won three awards given by Sou da Paz Institute for his outstanding projects on rebuilding public squares.

管轄するコミュニティが抱える問題について話すローラ巡査長。公共空間の再構築のための優れたプロジェクトを提案し、ソウ・ダ・パズ・インスティテュートから三度表彰されている
“Prevention rather than Medication.” Foot patrols and visits to residences and commerce are an innovation that the police forces in São Paulo have been adopting from the Japanese Koban system, since 2004. Police officers usually work for 3 years in the same area. However, institutional inertia and resistance to change represent some of the strongest obstacles to the consolidation process of community policing in São Paulo. Middle-rank officials usually feel disconnected from its principals, considering it a minor activity.

A hole in the wall. Drug trafficking gangs, and interpersonal conflicts combined with high levels of small guns, projected Jardim Ângela as one of the most dangerous neighborhoods in the world. In late 1990s murder rates in this area reached 123 per 100,000 inhabitants, attributing to it the title of “the most dangerous neighborhood” in the world, by the United Nations.
Community police work in São Paulo

The Japanese model proposes changes in the routine of police work. The traditional police work in Brazil is based on responses to crime. Under the Koban system, officers work directly with citizens to understand their demands and prevent the action of criminals.

Sergeant Lacerda, responsible for a police post at Jardim Ângela. Police officers are encouraged to perform "social work" activities and develop policing strategies that respond to local peculiarities.
Community police work in São Paulo

In Japan, 35% of police officers work in community policing (地域課). In São Paulo, in late 2010s only 3% were performing such activities, while a third of the police staff were still focused on responding to crime occurrences.

Police officers in front of Padre Agnaldo Sebastião Vieira Public School, where they started showing videos about crack-cocaine addiction to students.

パドレ・アギナルド・セバスチャン・ヴィエイラ公立学校前。彼らがクラック・コカイン中毒に関するビデオを初めて見せたのは、この学校の生徒たちだ。
Community police work in São Paulo

Police officers and students watch together a documentary about crack-cocaine addiction. Teachers are usually scared at this public school, where some students have been spelled for holding small guns, using drugs and behaving aggressively.

High School students from low-income families are an easy target to the drug trafficking business and are particularly vulnerable to crack-cocaine addiction.
Community police work in São Paulo

Padre Agnaldo Sebastião Vieira Public School, in the periphery of São Paulo, receives students living in a nearly large slum. The levels of absence and school withdrawal are high among teenagers in this school.

サンパウロ市の周縁部に位置するパドレ・アギナルド・セバスチャン・ヴィエイラ公立学校。近隣の大規模なスラムから生徒を受け入れている。同校に通う10代の生徒の欠席率、退学率は高い。

Corporal Raúl, teaching music to mentally disabled children. He created a band that performs annually, combining children from four public schools located in areas of social vulnerability. Besides being a police officer, he also holds a degree in music.

知的障害の子どもたちに音楽を教えるラウル巡査長。音楽の学位も持つ彼は、社会的に脆弱な地域の4つの公立学校から生徒を集め、楽団を編成。年に一度公演を行なっている。
Community police work in São Paulo

Police hat and drums. Not guns, but music instruments are part of the daily routine of police work.

Car patrol around the Tamarutaka slum. Police officers are required to wear bulletproof vests, due to possible attacks against patrolling cars by drug traffickers.
Corporal Andrea Marchezelli is a mother of 2 children, and has to drive 1 hour daily to arrive at her work. In this photo she holds the camera with which she shot and interviewed drug addicts.

Sergeant Carvalho and Corporal Marchezelli in front of Tamarutaka slum, in the periphery of São Paulo. Instead of using force, they decided to make a mini-documentary to tackle the problem of crack-cocaine addiction in this area.
Community police work in São Paulo

Details of the Tamarutaka slum, in the periphery of São Paulo. This area is dominated by the drug trafficking industry, and police officers hardly have the means (and resources) to penetrate it.

サンパウロ市周縁部のマルタカスラムの一部。麻薬密売の温床となっている地域だが、取り締まるための方法（や情報源）はほとんどない。

Colors at the Favela. The murder rates in Brazil are considered high for international standards – in late 2010s it was 22 per 100,000. In 2018, the rate was even higher, counting 28 per 100,000, if compared with Japan (0.1) and in USA (5 per 100,000), according to UNODC.
But in the case of young, poor, male, afro-descendent in Brazilian big cities, the rate reaches up to 230 per 100,000, which accounts for genocide (Ramos et al., 2004).

In São Paulo the implications associated with crack use constitute an important public security and public health problem. Intervention programs and public policies associated with police work need to be developed to control it.

写真18, 19, 20:色付けしたファヴェーラ（ポルトガル語でスラムの意）。ブラジルの大都市における、貧困層のアフリカ系若年男性の殺害率は10万人中230人で、この割合は大量虐殺のそれに相当する（Ramos et al., 2004）
Cláudia, mother of three kids, crack-cocaine user, 37 years old. The sensation of urgent need for crack stimulates users to undertake illegal activities, intensifying the process of social marginalization and the risks to the individual’s liberty and physical, psychological and moral integrity. After falling into drug addiction, she lost her family and job, and currently works as a prostitute in downtown São Paulo.

Crack-cocaine users, living under a bridge in São Paulo. Single young men of low socioeconomic class and low schooling level, without formal employment ties compose the predominating profile of users. The pattern of use most frequently observed is compulsive, characterized by multiple drug use and carrying out illegal activities in exchange for crack cocaine or money (Oliveira & Nappo, 2008).
The term “Community Policing” is still undefined in Brazil, where any kind of “local policing” has been classified as “community policing”. There is confusion between “social work” activities and the responsibilities officers should undergo. One of the biggest challenges to the success of community policing in São Paulo is considered to be institutional resistance to change and the poor training of police agents.

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Forum

Digital technologies in community policing

Guest-edited by Lior Volinz and Lucas Melgaço
Critical criminological research on environmental and social harm: Some lessons learnt and suggestions for future research

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Keywords: environmental harms, social movements, social media, innovative methods, computational methods, critical criminology

In this research note, I want to offer innovative examples of ways in which criminological research can develop new approaches to social movement research focusing on uncovering environmental and social harms, including the harms caused by police repression and criminalisation. These examples aim to inspire future critical criminological studies analysing environmental harms as well as ‘social harms’ (Hillyard & Tombs 2004, 2007, 2017; see also Boukli & Kotzé, 2018, and Canning & Tombs, 2021) – which are all harms that tend not to be included in legal definitions of ‘crime’ and therefore not to be protected by the criminal law. Such scholarship (which in green-critical criminology focuses on the study of both human and non-human suffering) also focuses on the physical, emotional and psychological harms to people caused by state or corporate actions and inactions as well as by criminalisation practices and police repression (Canning & Tombs, 2021). This research note specifically focuses on the latter.

This short piece benefits from the recent research I conducted with my colleagues at the University of Essex – and, in particular, from the lessons we learnt from that research. The research projects in question addressed the uses of Twitter by the criminalised environmental movement NOTAP in Italy (Di Ronco, Allen-Robertson & South, 2019), and the intersections between the online and offline rep-
representations of the activists’ protests (Di Ronco & Allen-Robertson, 2020). As I will explain in more detail in the main sections of this piece, when studying activists’ technosocial (Castells, 2012) practice, innovative computational tools – such as the ones we used in our studies – can facilitate the collection and sorting of important social media material related to activists’ online practice, which can go a long way towards uncovering unrecognised sources of harm and suffering that are often obscured by mainstream media. As our research demonstrates, however, to be able to capture activists’ lived experiences of policing and criminalisation in a comprehensive way, social media research should not be conducted on its own: it should always be combined with on-the-ground qualitative ethnographic research. To assist with this aim, critical criminologists can also rely on a recent and quite innovative repertoire of sensory and participative (itinerant) methodologies, which I address in the final part of this note.

Let me turn now to our research on the uses of Twitter by the criminalised environmental movement NOTAP. Our interest in the topic dates back to 2017, the year when I first joined Twitter: it was generated by me stumbling – quite by chance – into #NOTAP tweets. These tweets sparked my criminological imagination: their embedded visual material depicted militarised construction sites in rural settings (see Figure 1), heavy police presence with officers in riot gear making these sites inaccessible to protesters, and police violence and brutality against the protesters.

![Figure 1 and 2: Images of militarised construction sites in San Foca (Melendugno).](image1)
*Credits: The Author.*

But who are the #NOTAP protesters, and what are they fighting against? They are activists opposing the building of the TAP pipeline, a mega-project funded by the European Investment Bank (EIB) that aims to bring natural gas from Azerbaijan to Europe through Georgia, Turkey, Greece and Italy – with the hope being in this way to reduce the EU’s gas dependence on Russia.

Our interest in the activists’ protests against this pipeline on Twitter led to our first study, which computationally collected #NOTAP tweets via our ‘Listener’ tool. This ‘Listener’ tool monitored Twitter’s streaming API for relevant tweets and ran for 24 hours a day on a remote server for three consecutive months, collecting all #NOTAP tweets published or shared by Twitter users during that time. Through a virtual and visual ethnography of the textual and visual material embedded in the collected tweets,¹

1 This means that we collected and analysed not only the (quite limited) text of the Twitter posts but
we were able to identify the harms that the activists associated with the TAP pipeline, as well as the representations of their protesting as peaceful and of police repression as violent and excessive. This research therefore revealed the great potential of qualitative data analysis combined with computational methods for the collection of social media material for the critical criminological study of social media activism: this can go a long way towards uncovering unrecognised sources of harm and suffering that are often obscured by mainstream media.

We attempted to explore this further in our recent second study, which focused on the realities and representations of on-the-ground environmental resistance and the intersections of these with visual representations of protest on Twitter. In short, in addition to studying visual material from Twitter, which we computationally collected and categorised, we also interviewed activists and conducted on-the-ground ethnographic research around the pipeline’s landing point. For the online part of the research, this time we decided to run our ‘Listener’ tool for a much longer time – nine consecutive months.

In this second study, we also qualitatively analysed the (online and offline) data we had collected, through content analysis. We found that, although online and offline representations of protest may at times coincide, there are also substantial differences in the ways that activists represent environmental protest offline and on Twitter. Our findings suggest that, for example, the online Twitter space is mostly used by activists to criticise the government’s decision to allow the pipeline – in addition to conveying information on the protest and their organised events, of course. Much of the activists’ work and experiences do not, however, end up on Twitter: the on-the-ground research, in particular, helped us to shed light on some of the strategies of resistance used by the activists, as well as on their lived experiences of repression and intimidation by the police, which did not emerge from our online studies.

From our on-the-ground research we gathered, for example, that the activists’ experiences of repression and intimidation included not only police violence, arrests and humiliation during arrests, but also onerous fines (up to EUR 4,000), cautions, expulsion orders and place bans, as well as various charges of, for example, blocking traffic, the use of force against public officials, and trespass. In addition, many activists who we formally or informally interviewed spoke about the perceived close police surveillance they had to endure: they reported being wiretapped and closely monitored by the police in their social media accounts. They also felt constrained in their freedom of movement, as some of them had been banned from entering certain towns, cities or territories, or had systematically been stopped by the police in any part of Italy they went to. The activists also reported seeing undercover police around their homes at night, and feeling insecure and afraid for themselves and their families during the night.

Our on-the-ground research also illuminated some specific activist practices that did not emerge from our online studies. A good example is the so-called ‘information collection and dissemination strategy’ of the NOTAP movement, which relied on the activists’ use of mobile cameras and social media for the crowdsourced countersurveillance of law enforcement and the TAP company. In essence, pictures and videos of activists that captured police malpractice and corporate irregularities were shared with other activists on dedicated WhatsApp groups and then spread widely through (among others) Facebook, Instagram, Twitter and the movement’s website. As we illustrated in our article, such a use of

also the visual and textual material that was included in those posts (e.g. pictures, videos, newspaper articles, Facebook posts, etc.).
mobile cameras and social media by activists is coherent with the notion of ‘hybrid heterotopia’, as elaborated by Wood and Thompson (2018): according to these authors, ‘hybrid heterotopias’ are mediated spaces in which given dominant (on-the-ground) orders are challenged through people’s constant connection to the internet, social media and apps.

I want to conclude this short article by mentioning the limitations of social media and, by extension, of social media research within and beyond criminology. It is no secret to the social sciences that social media are not accessible to all and that people’s digital media literacy also varies (see e.g. Park, 2012). In practice, this means that data collected on social media are far from comprehensive – they only reflect the perceptions of some people, obscuring those of others who do not have access to, or do not actively participate in, social media. In addition, as our second study demonstrated, social media are not a space in which all activist practices are shared (see, for example, the ‘information collection and dissemination strategy’ described above); it is also not the space in which activists share their lived experiences of criminalisation, police repression and intimidation – which we were only able to grasp through our on-the-ground research.

This leads to the last point I want to make here, which is the importance of combining online and offline research when studying criminalised social movements and activists’ experiences of harm – including the harms of criminalisation. This also makes sense in the light of the recognised technosocial nature of social movements, which use different combinations of offline and online opportunities for activism, protest and resistance, to achieve the protest’s aims (Castells, 2012; Powell, Stratton & Cameron, 2018). As illustrated in this short article, social media can be an extremely important platform on which social movements can set out their experienced harm and suffering as a result of state, corporate and police decisions and actions – particularly when the voices of these activists, and the abuses against them, are rather under- or mis-represented in mainstream media. As our research has shown, moreover, to capture the (otherwise relatively unheard) voices of activists on social media, qualitative criminological researchers can rely in their research projects on the assistance of innovative computational tools, which can greatly facilitate the processes of data collection and sorting. However, to be able to grasp more comprehensively activists’ practice and activists’ lived experiences of social control, policing, surveillance and criminalisation, on-the-ground research is essential and should be combined with the online study of social media activism.

As a final note, I would like to mention here the rather recent repertoire of sensory and participative (itinerant) methodologies that have been developed within critical criminological scholarship (see e.g. Natali, 2019; Natali, Acito, Mutti & Anzoise, 2020; Natali & de Nardin Budó, 2019; Neville & Sanders-McDonagh, 2019; O’Neill & Roberts, 2019). These studies have shown how walking with participants, or participants’ itinerant soliloquies, can improve the capturing and unpacking of people’s experiential perspectives and narratives of harm and suffering in specific spaces. Future on-the-ground critical criminological research into criminalised social movements would immensely benefit from the use of some of these methods, too. For example, walking with criminalised activists in ‘spaces of resistance’ – such as the natural environment (e.g. the TAP pipeline construction sites) or rural or urban settings (where people protest or live (and feel in danger)) – can go a long way towards unpacking activists’ lived experiences of social control, policing, surveillance, criminalisation and victimisation, as well as exposing broader social harms.

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Policing by another name and entity: BIAs, delegation, and public and private technologies

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Keywords: private security, policing, Business Improvement Areas, Business Improvement Districts, platform urbanism, digital technology

...the intent is not to replace police. [Business Improvement Area (BIA) Ambassadors] are not enforcement, they know their bounds. They are eyes and ears. They are recording data. They are tracking hotspots. They are cleaning. They are referral agencies. They are calling police when they see something that needs police support. They are doing a range of things that deal with safety and security issues without being police, and that’s an issue.

Following a Human Rights Tribunal case\(^1\) concerning the policing and banishment of indigenous people by Downtown Vancouver BIA Ambassadors,\(^2\) the above City of Vancouver official attempted to clarify the role and nature of BIA\(^3\) work by saying that it was not policing if it was not carried out by

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\(^1\) For more information on this case, see Burgmann (2015) and Mackinnon (2019, 2022).

\(^2\) Ambassadors are patrol officers hired by a BIA. These staff are generally responsible for providing people in their areas with information and directions, as well as conducting a range of other services including garbage and needle collection, private security, and the reporting of damage to street assets (e.g., garbage bins, benches, mailboxes, lamp posts, utility covers). As argued by Lippert (2012), ambassadors promote “clean and safe rationalities” in these areas, allowing the passage of consumers and the removal of undesired populations.

\(^3\) BIAs, also known as Business Improvement Districts (BIDs) and Urban Place Management Organiza-
Policing practices, such as data collection concerning violent and property crime, hotspot tracking, and referrals to health, community and social services, were described by the City as "supplementary" things BIA staff could do, but they were not considered to be policing (see Mackinnon, 2022).

To "influence conduct or maintain order in urban spaces" (Lippert & Walby, 2013: 1) or, in short, to police, BIAs across North America and Europe are increasingly adopting smart(er) technologies in order to surveil, account for, and report objects, places and people in their areas (Mackinnon, 2019a). Focused on value creation and "improvement", these public and private mobile applications and digital platforms are used by BIAs to: count and file maintenance requests concerning the built environment and street assets, report minor offences to the city, and, in some cases, tag unhoused people and record antisocial behaviour.

At one end of this spectrum are private, proprietary, and internal Customer Relationship Management (CRM) applications, such as Block by Block, GeoPal, and Cube84. Distinguished from “all-in platforms” or backend systems, these mid-range "smart" technologies offer partial and targeted solutions, allowing BIAs with large budgets to improve workflow and to address safety, beautification, hospitality, and planning needs (see Mackinnon 2019; Murakami Wood & Mackinnon, 2019). At the other end of the spectrum are public, city-based smart or digital solutions for citizen to government (C2G) communication. These apps – such as See-Click-Fix, FixMyStreet, City Sourced, and mobile versions of 311 – enable the production of public information and open data, public reporting, and (un)solicited comments. Invoking the logics of the "citizen-user", the "citizen as sensor", and the "citizen scientist", these apps require an engaged and device public to volunteer data (Baykurt, 2011). Because they are unable to afford private technology, or there is insufficient interoperability between city and private systems, or this work is deemed to be the responsibility of the municipality, BIAs have become key daily active users of 311. For instance, in Vancouver, BIAs are the second largest user group (+36%) of the 311 app behind citizens (40%) (Mackinnon, 2022).

As self-described "convenors", BIAs have assembled a range of public, private, human and non-human actors in order to accomplish their "clean and safe" mandates. Specifically, I contend that these apps and platforms allow BIAs to police, through other means or at-a-distance (see Bigo & Guild, 2005), by delegating work and agency to technologies and other entities (see Latour, 1988).

While seemingly mundane, BIAs’ app-based practices of monitoring and maintenance ascribe value(s) to the materials, people and places in their areas (see also Akrich, 1992; Latour, 2005; Woolgar & Neyland, 2013). When delegated to and rendered by apps, (ac)counting for aspects of public space in this way not only makes these data seem impartial, but also justifies classification, exclusion and ordering (see Bowker & Star, 1999). For Callon, Méadel and Rabeharisoa (2002), quantification renders qualities countable, which stabilize the product, and transform it temporarily. In other words, the use of apps serves to render BIAs and their assets (ac)countable, and classifications of quantity and quality are inscribed in the infrastructure. Qualities of the space, and the practical condition of mun-

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4 See Mackinnon (2019) for a detailed walk-through of a CRM application.
5 311 in the North American context is a special phone number for reporting non-emergency issues to the municipality. Established as a means of “talking to the city”, 311 lines have been in operation in major Canadian cities since the late 2000s.
of mundane objects, have implications for governance and accountability. (Ac)counting and the resulting maintenance – presented as traditional accountability – do far more.

These apps and platforms, by determining, assigning, and circulating ontological attributes of assets, transform matters of concern into matters of fact, as well as matters of care (Latour, 2004; Mol, 2003; Puig de la Bellacasa, 2017). Technologies and entities, as Woolgar and Neyland (2013) and others argue, are politics by other means. BIAs, and the apps they use for monitoring and reporting, assign ontological attributes, which are political, moral and often dangerous. Similar to brandscapes of control (Murakami Wood & Ball, 2013) or policing by branding (Bookman & Woolford, 2013), the qualities of assets come to shape the area. This elevates ascribed qualities of public assets – the cleanliness of the sidewalks, the lamp posts being free of graffiti, and the garbage bins being empty – to desirable characteristics of these newly important non-human actors. Their only action, “to keep clean” or “to be clean” is both countable and accountable, enabling an alternative means of policing and enforcing clean and safe practices, something that also necessarily reconfigures people and the way in which they interact with these public assets.

In order to secure clean and safe passage (Lippert, 2012), BIAs and apps facilitate the policing and displacement of objects, places and people – a practice of placemaking but also of world making (Gill, 2017; Puig de la Bellacasa, 2017). But who is this world for? Instead of accounting for the human beings, who are nevertheless affected by the business and the BIA practices, through counting and ontological politics, BIAs determine who belongs – and who is (ac)countable. Rather than serving all users and uses of the spaces, accountability is concerned with the ontological and physical security over assets, and (in)directly governing and policing what BIAs consider to be the proper conduct of public and private agencies.

As I have argued elsewhere, public services subsidise the clean and safe practices of BIAs (see Mackinnon 2019, 2021, 2022 also Sleiman & Lippert, 2010); municipalities therefore can and should ensure accountable, transparent, equitable, and inclusive access to resources, as well as the greater protection of all community members. Adding to the growing body of critical criminology informed by science and technology studies (see Benjamin, 2016; Brown, 2006; Luscombe & Walby, 2017; Robert & Dufresne, 2016; Shelby, 2020), more nuanced understandings of sociotechnical arrangements, as well as the role and power of non-humans, are needed. Often black boxed or cast aside as mundane, technologies that govern and police matter. As we mete the convergence of public and private policing through 311 apps and data-driven platforms, more attention needs to be paid to the creation of data and the ordering practices, spatial boundaries, exclusionary logics, and knowledge politics they reify.

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Social media, local justice, and citizen-led digital policing

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Keywords: social media, local justice, citizen-led digital policing

In 1996, Bayley and Shearing declared that ‘the police cannot successfully prevent or investigate crime without the willing participation of the public, therefore police should transform communities from being passive consumers of police protection to active co-producers of public safety’ (Bayley & Shearing, 1996). Almost 25 years and more than a decade of austerity later, the drive from police and governments to ‘responsibilise’ citizens to take on some of the burdens of safety and security for their neighbourhoods and communities has never been stronger (Garland, 1996, 2002; Nalla et al., 2018; Neyroud, 2001; Terpstra, 2008; van der Land, 2014). This drive has been facilitated by the development of digital technologies and in particular social media, with platforms such as Facebook and Nextdoor allowing frontline police to communicate directly with citizens at the level of the neighbourhood, and vice versa. At the same time, the possibilities for proactivity and innovation offered by such platforms mean police have found themselves struggling to control the local security agenda, and indeed to constrain the increasingly proactive and controversial measures adopted by these newly ‘responsibilised’ citizens. This short intervention introduces the concept of ‘citizen-led digital policing’ to analyse this phenomenon, and highlights some of the opportunities and challenges it poses for the authority and legitimacy of policing.

The proactive use by citizens of digital platforms is becoming a staple feature of contemporary security provision— with examples ranging from ‘citizen journalists’ like Bellingcat, who crowdsourced evidence to undertake open-source investigations, to digilante group Anonymous which doxed KKK members in the USA and, most controversially, to ‘paedophile hunters’: members of the public who pretend to be children online in order to ‘trap’ paedophiles and ultimately shame them or bring them to justice. Well-established conceptualisations such as neighbourhood policing (Terpstra, 2008)’ pub-
lic-citizen schemes’ (Sharp et al., 2008), ‘co-production’ of security (Chang et al., 2016) and ‘civilian policing’ (Huey et al., 2012) fail to capture and describe many of these new initiatives, because of the enduringly central role they allocate to police. Instead, we should recognise a distinct category of ‘citizen-led digital policing’, in which citizens self-organise to choose which security and safety issues to pursue, as well as deciding how and when they will involve the police in their activities, rather than the other way around.¹

Rather than being passively ‘responsibilised’ by the authorities, citizen-led digital police are driven by their own sense of justice to act where they perceive the authorities are falling short. Rather than being ‘enrolled’ by police, they define and shape their own security agendas and priorities. Rather than being ‘enabled’ by police, they take advantage of technological opportunities to develop skills and expertise in the performance of policing tasks normally considered the exclusive prerogative of those authorities (Campbell, 2016). And rather than deriving legitimacy indirectly through authorisation by police, they appeal directly to the ‘public’ via social media such as Facebook and YouTube, claiming a democratic mandate from the number of ‘likes’ and supportive comments received (Hadjimatheou, 2019).

Citizen-led digital policing poses a challenge to a model of security governance that relies on the maintenance of clear distinctions between authorised security agencies and those they protect, by blurring the lines between the police and the public, and between responsible citizens and dangerous and unaccountable ‘cyber-vigilantes’ (Huey et al., 2018) ‘digital vigilantes’ (Trottier, 2017) or ‘digilantes’ (Nhan et al., 2017). Nowhere is this challenge better illustrated than with the case of paedophile hunters. Such groups are proliferating around the world, driven in part by the recent shift towards online communications driven by the COVID lockdowns. There are currently an estimated 90 such groups active in the UK alone² with others operating in the USA, Germany, the Netherlands, Canada, Australia, and Cambodia (Hadjimatheou, 2019).

At a time in which the UK has recorded an annual figure of over 10,000 online child sexual abuse harms (NSPCC, 2020), and in which senior police admit that they ‘cannot cope’ with the ‘tsunami’ of child sexual offences online (BBC News, 2017), such groups seem to be addressing an important gap in the safety of children. In 2018 alone, paedophile hunters contributed to the conviction of 254 sex offenders in the UK courts. Yet their activities have also led to numerous suicides (Burke, 2019) and even murder. In the Netherlands a 73-year-old teacher was beaten to death in October 2020 after a group of teenagers looking for something to do during lockdown ‘trapped’ him online posing as an underage boy looking for sex, arranged to meet him, and then attacked him (BBC News, 13 Nov 2020).

What began as ambivalence by law enforcement towards such groups has recently hardened into active hostility, with police releasing public statements urging existing groups to cease their activities, and sometimes even seeking their prosecution (BBC News, 2020; The Guardian, 2019). They accuse

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¹ The extent to which this category is new (rather than just distinct from those prevalent in contemporary models of policing) is open to debate. An anonymous reviewer of this article asserts a continuity with the police-civilian collaboration in brutality and lynching in 20th century USA, which Skolnick and Fyfe argued was carried out in response to the perceived inadequacies of legal routes to dealing with crime or other social ‘problems’ (Skolnick & Fyfe, 1993, p. 24). In my view, these vigilante collaborations diverged from much contemporary paedophile hunting both in their explicit embrace of illegal and violent methods and in their use of such methods to enforce social norms (e.g. against miscegenation) that were no longer reflected in the criminal law. However, I cannot defend this position fully here.

² A rise of 15 on 2018 (see Carter, 2020; Milne, 2018).
paedophile hunters of using poor evidential practices that might undermine the success of prosecutions, of assaulting suspects, of being more interested in personal notoriety than justice, and of prioritising the naming and shaming of suspects and their families over objective investigations.

Yet while these accusations are not unfounded, they could also be levelled at police themselves. For social media appears to exert the same irresistible pull to glorify personal successes and humiliate the failures of others on police as on paedophile hunters. In the UK, community policing teams themselves routinely use neighbourhood pages on Facebook and Nextdoor to name and shame offenders by posting photographs of them online, alongside their names, misdeeds, and place of residence. These posts often also celebrate the skills and ingenuity of named local officers in bringing these dangerous criminals to justice. Instead of expending precious time and resources contesting the authority of those citizen seeking security – or ‘policing the boundaries of policing’ (Trottier, 2017, p. 64) – police should reflect critically on their own practices and conceptualisations of justice in a social media era. Criminology, too, would profit from a shift of focus away from the identity of security actors and towards the nature of contemporary security practices and the social and technological conditions that shape them.

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Technical solutions to social problems: On digital participatory surveillance and the threat of the homeless

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“A bed with a mattress and clothes ... belonging to a tramp,” wrote a resident of Brussels in Dutch as he reported an ‘illegal trash dump’ through FixMyStreet, a mobile application that allows city residents to report incidents of disorder in urban public spaces to local authorities. He attached a photo (see Figure 1 below) to the report of the modest belongings he was asking the local municipality to remove, along with a short explanation: “This concerns the homeless. Please contact the police.”
In a different case, a resident of a central Brussels’ nightlife district filed a report on malfunctioning street light fixtures, explaining its urgency by reporting that:

Every day the homeless people from the park do their physiological needs in our street. Yesterday a car with a broken window ... today a stolen purse ... When will someone fix the lights on this street? Are you waiting for a lady to be rape(d) or kill(ed)?

As part of the research project PUL-MOBIL (Producing Urban Legibility: Mobile City Applications and the Governance of Minor Offenses), which is funded by the Brussels’ regional research agency Innoviris, I’ve examined the open-data FixMyStreet Brussels platform where many other reports refer explicitly or implicitly to the city’s sheltered and unsheltered homeless. Using the open-source data in the Brussels-area version of FixMyStreet, I conducted a search of over 105,000 unique reports of urban disorder and minor offences, coupled with over 289,000 textual and visual communications between citizens and local authorities, to identify incidents relating to homelessness using relevant keywords in French, Dutch, and English. In this essay, I examine these reports, together with a small number of interviews conducted with municipal personnel in the Brussels region.

The growing presence I detected of reports relating to homelessness corresponds to the rise in the number of the city’s homeless, which exceeded 3,800 in 2016 (de Wolf, 2019). Some FixMyStreet reports include detailed reports and imagery, while others affix no words to their request to remove the belongings of the homeless from public spaces; others benevolently ask their local authorities to find a solution to help the unhoused. In one case, a resident reported a cache of cartons and clothes, succinctly decrying it as a “sleeping spot of the homeless and other filth.”

Mobile City Applications and the Homeless

Anti-homeless sentiment is nothing new: it finds expression in laws and ordinances (Mitchell, 1997), in the architecture and design of public space (Petty, 2016), in differential policing (Cooper, 2017), and in the imagination of a normative and “cultural” public space (Goldfischer, 2018). It is thus not surprising that anti-homeless sentiment finds its way into new digital state-citizen interfaces such as
FixMyStreet. However, these reports are indicative of a larger process at hand, one in which social problems such as homelessness are reconstructed and handled not as social problems but as technical issues.

This short essay argues that urban digital participatory surveillance schemes (Reeves, 2012), in the form of Mobile City Applications (Walravens, 2015), can lead to the designation of social woes as incidents of crime and disorder, requiring technical enforcement measures instead of social and welfare interventions. I propose that the Mobile City Application entails a new “smart city” interface of legibility through participatory surveillance, one which prompts residents to misconstrue societal failings, such as homelessness or youth truancy, as decontextualised, easily solvable, geo-taggable isolated incidents.

State actors seeking “technological fixes” as societal cure-alls are nothing new and instead reflect a long-standing element of modernity (Johnston, 2018). This perspective today can be found in smart city “solutions,” which are often adopted as utopic, nominally depoliticised positivist progress with local authorities working to reconstruct citizens as consumers or clients rather than political actors (Grossi & Pianezzi, 2017). Gibbs, Krueger, & MacLeod (2013) argue that the “smart city” agenda “means to discipline cities and their populations, reducing ... the urban question to a technical discourse” (Gibbs et al., 2013: 2156). Such a move, I posit, can bring forth unintended social and political implications. In the case of Mobile City Applications, the vague boundaries between the “technical” reports of minor offences via applications such as FixMyStreet and the complaints that require social interventions can be blurred. The presence of homeless persons’ belongings in public spaces can be reported as littering, substance abuse or youth truancy can be reported as vandalism or damage to infrastructure, etc. The unclear border between these two can cause confusion among the residents of the city and disrupt the work of the local authorities who may, as a result, design inappropriate or unsuccessful interventions.

The possibility of anonymous reporting using the FixMyStreet application only serves to exacerbate matters: at the same time that it may protect the privacy of the reporting citizen, it further highlights the potential misuses of the application. Since the vast majority of 80–90% of the (visible or reported) homeless in Brussels are male (Lelubre, 2012), many of which with a migration background, anonymous reporting may provide a platform for racial or gendered complaints. It may thus encourage discriminatory practices in reporting minor offences by publicly airing complaints that would not have been published by identifiable, registered users, or it may serve as an instrument of vigilantism and fuel neighbours’ feuds, thereby placing strenuous demands on local authorities with no possible communication with the reporting citizen.

Social Possibilities and Technical Interventions

Homelessness brings forth a myriad of (local) state interventions. Punitive measures, such as street sweeps and anti-vagrancy laws, have proved popular, yet often fail due to their reductionist nature (DeVerteuil, May, & Von Mahs, 2009) or result in mere temporary displacement. In Brussels, local authorities have turned instead to a wide range of municipal and third-sector social interventions to assist the homeless both in their daily needs and towards finding accommodation. On a map produced by Bruss’Help, a Brussels-region development centre, dozens of organizations and initiatives to support the homeless are marked, ranging from temporary shelters to medical aid clinics, and from free locker rentals to shower facilities (Bruss’Help, 2021). Street agents, including police officers, social workers, and street safety and prevention officers (Gardiens de la Paix/Gemeenschapswachten), are well versed in how to reach these contact points that provide support to the homeless.

However, this array of support and prevention and the social outcomes they promote have no place
within the existing confines of FixMyStreet and similar Mobile City Applications. When a report is made on the FixMyStreet platform, it goes through an initial screening by the Brussels-region agency for mobility, which assesses whether the report is suitable for publication (e.g., that it refers to a new incident and does not use hate language or infringe privacy rights) before forwarding it to the regional service or the local municipality it finds responsible. Reports aimed at the local municipalities (the Brussels region is comprised of 19 municipalities) are electronically sent to a contact person within each municipality. In many municipalities, the contact person is a part of the roadworks service since FixMyStreet was initially focused on tackling potholes. If the report concerns an illegal trash dump, as some of the report quoted above do, the report would be forwarded to the relevant department where it will be manually added to the existing work platform of the department. Its details are then made legible to all sanitation workers and assigned to a specific team. The sanitation team, working on a tight schedule, is unlikely to engage with the homeless other than in clearing abandoned waste. Once their task is completed, the team updates their department, which at a later time will confirm with the municipal contact person that the issue was handled. The reporting citizens can then be informed that the case was closed. At no point in this work process is there the possibility of devising or enacting a social intervention to support the homeless involved nor an oversight of repeated incidents, but rather only a scope for technical interventions that can quickly “solve” each individual report.

Conclusion

Technological design is never devoid of ideological considerations. The possibility of rapid, mobile, unmediated, geotagged, and trackable reporting of urban incidents to local authorities carries a heavy, though largely unacknowledged, ideological baggage: one that recasts citizens as individual consumers and local authorities as service providers. The expectations of citizens for a quick handling of their technical complaints contrasts with the patience required for social interventions to take place. When citizens denounce their unhoused neighbours, there is little scope within the semi-automated municipal work process to offer support rather than displacement. This is not a given. Mobile city Applications could be developed differently to include the possibility of mobilising municipal prevention teams and social workers to engage vulnerable people, such as the homeless, to find solutions and offer advice. This would require addressing ethical reflections and practical considerations in how reports on urban disorder and received and will likely bring forth dilemmas as to how beneficial a further “datafication” of prevention and social services would be. A different option would be to instruct citizens on best practices for reporting urban incidents, to encourage them to distinguish physical malfunctions from social disorder, and to help direct their concerns through the most appropriate channel. The current uses of Mobile City Applications risk bringing forth consternation among urban residents and municipal personnel while alienating vulnerable populations. Tapping one’s phone does not make social woes disappear: to find ways to bring the social dimension into municipal handling of urban disorder, future reflection and engaged research are sorely needed.

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Digital literacy and information inequality in Dutch WhatsApp Neighbourhood Crime Prevention groups

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Keywords: neighbourhood watch, Whatsapp, digital literacy, participatory policing, participatory surveillance

Introduction

In many neighbourhoods in the Netherlands, citizens aim to safeguard their neighbourhoods via WhatsApp Neighbourhood Crime Prevention (WNCP), a grassroots form of participatory policing (Larsson, 2017). Since 2015, over 9,250 Dutch WNCP groups have been registered on www.wabp.nl (‘Groep Zoeken’, n.d.). In these WhatsApp groups, neighbours exchange information about suspicious situations, crime, police actions, and other safety-related topics. Such information-sharing practices often result in problematic forms of participatory surveillance, because good intentions to safeguard a neighbourhood can create significant issues and have ambivalent effects on citizen wellbeing (Albrechtslund, 2008). Specifically, WNCP groups can cause risky forms of vigilantism, normalise suspicion, violate privacy, increase discriminatory practices, and create issues of accountability. When it comes to citizen wellbeing, WNCP practices make some citizens feel safer while they evoke anxiety for others. Moreover, WNCP practices increase social control while simultaneously stimulating social cohesion (de Vries, 2016; Lub & De Leeuw, 2017; Mehlbaum & Steden, 2018; Mols, 2021; Mols & Prid-
WNCP groups are a citizen-initiated form of crime prevention that most often does not directly include community police officers. This differentiates the participatory policing in WNCP groups from top-down forms of participatory policing practice initiated by law enforcement, such as those encouraged by public vigilance campaigns (Larsen and Piché, 2010; Larsson, 2017; Reeves, 2012) or projects targeted towards engaging citizens in community policing (Ryan, 2008; Shearing, 1994). In the WNCP context, power and control are in the hands of citizens, yet there are significant disparities. This essay, informed by two related research projects (including interviews and focus groups with twenty WNCP moderators, fifteen participants, and five police officers), argues that WNCP practices reinforce a problematic power imbalance in Dutch neighbourhoods. Differences in digital literacy and information inequalities influence WNCP group dynamics and participation.

**Digital literacy**

“And behind us, many elderly people live there...So we [WNCP moderators] went by their houses but then it became clear that from, I believe, 26 houses, only two of them had WhatsApp.” (quote from interview with Klara, moderator of a WNCP group)

Klara moderates a WNCP group that covers multiple streets in a suburban neighbourhood, and actively tries to include these neighbours. However, as her quote illustrates, one of the streets has a limited number of people able to join the WNCP group because the others do not have smartphones or do not use WhatsApp. Her case touches upon a critical issue that comes up time and time again in WNCP groups. At the very least, an informational imbalance emerges in neighbourhoods in which many citizens participate in WNCP groups but others are left out; these others are actively monitored by their neighbours but cannot take part in or react to surveillance practices to which they are subject. Furthermore, even within WNCP groups different levels of digital literacy create power inequalities. Not all participants are avid WhatsApp users, and many are unaware of what others can see about them. For instance, people can open information about a message sent in a group conversation to check who has received and read the message (activated by swiping left or by selecting the message). This allows neighbours to see whether others have read their messages, and to hold these others accountable for not responding or acting. When it comes to preventing criminal activities, this knowledge poses questions about when neighbours are (unknowingly) seen as being responsible for action and when they can be held accountable for failing to act on concerning activities.

**Information inequality**

“I’m part of 17 WNCP groups, and that’s also two groups in the nearby village, because when something happens there, I can see that, then I’ll think. Yes, for example, in [village name] there was a robbery, and the robbers fled towards our village. So they [WNCP participants] posted that and I saw it! So I posted it in our group.”

(quote from interview with Ron, moderator of multiple WNCP groups)

Self-appointed WNCP moderators determine who can control what information. Ron manages and participates in an (exceptionally) large number of WNCP groups, and he makes decisions about which information is shared where and with whom. Moreover, his WNCP network also includes a separate group made up of community police officers and local WNCP moderators (appointed by Ron). Ron has
control over all the information and over the connections to community police officers and other WNCP groups, whereas the WNCP participants can only access what is shared in their specific WhatsApp group. Information inequality arises in many WNCP groups because participants are often unaware of the complexities of the networks of which they form part, and, in some cases, even of police involvement in these networks. Police are involved in some WNCP groups: as an illustration from the author’s research into 21 groups, ten of the groups are not in direct contact with law enforcement (some do not want a direct connection, while for others the community police service refuses involvement). In three groups, a community police officer participates in the WhatsApp group. In the remaining eight groups, police officers are indirectly involved through, for example, separate WhatsApp groups or one-to-one conversations with moderators. While WNCP group conversations are transparent, the underlying networks are not, enforcing a problematic power imbalance that provides some community members with more control and connections than others. Thus, the lack of transparency about WNCP involvement and WNCP network structures makes the scope of surveillance practices ambiguous and violates the privacy of WNCP members who are unaware of the underlying networks.

Concluding remarks

Differences in digital literacy and information inequality lead to power imbalances in Dutch neighbourhoods connected via WNCP. Citizens, community police, and municipalities need to be aware that WNCP practices produce an arrangement of relationships within a neighbourhood context that is characterised by unequal power structures and opaque information-sharing processes. These issues can be (partially) overcome by educating citizens about safe and privacy-preserving surveillance practices, by actively involving and informing non-participants (e.g. by distributing leaflets about the WNCP group in the neighbourhood or by actively reaching out to neighbours who are not part of the group), and by demanding more transparency from the WNCP moderators. Moderators need to communicate to (prospective) participants about the information they share and who has access to it, they need to be transparent about the other actors involved in the group, they need to educate participants about WhatsApp features, and they need to lay out clear ground rules and unequivocal guidelines for using WNCP. It is notable that many WNCP groups make use of the ground rules presented on www.wabp.nl, which instruct participants first and foremost to be aware of and notice suspicious situations (in Dutch: signaleren), then to alert the police first if there is a suspicious situation (alarmeren), then to inform the WNCP network via WhatsApp (app), and finally to react (reageren) (‘Huisregels’, n.d.). However, research shows that these guidelines are often not adhered to. WNCP participants do not contact the police and act in accordance with police instructions, but instead act and communicate with their WNCP network before they may decide to involve law enforcement (Mols and Pridmore, 2019). Therefore, the guidelines need to be amended or replaced in anticipation of citizens’ urge to act directly.

Finally, the concerns over power and information inequality and a lack of transparency in WNCP practices touch upon wider issues of control and transparency in participatory policing practices. Within public participatory policing campaigns, law enforcers control the distribution of information and often fail to educate citizens on appropriate forms of participation, potentially leading to citizens unknowingly being monitored and reported via social media (e.g. Marx, 2013; Reeves, 2012). Increasingly, citizens across the world are taking up or participating in law enforcement activities. Researchers, governments, and law enforcers need to take active roles in preventing the problematic forms of power imbalance and information inequality that are reinforced by these activities.
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