

Toward a dictatorship over the poor?

Notes on the penalization of poverty in Brazil

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Abstract

Like many countries of the Second World caught in the throes of post-Fordism before they could reap the full benefits of Fordist-style development, Brazil is tempted to import the US-style discourse and policy of 'zero tolerance' because, enshrouded in the aura emanating from America as the world's sole symbolic superpower and global Mecca of crime control, they appear cutting edge, effective and efficient; and because they are the indispensable order-maintenance counterpart to policies of economic deregulation and fiscal austerity adopted by Latin American countries under the press of international financial agencies. But in Brazil, as in neighboring nations, this borrowing promises to produce a social catastrophe of historic proportions because the depth and scale of urban poverty are much greater, violent crime is more prevalent and more entrenched in the history and economy of the country, and because the Brazilian police is not a remedy against violence but a major source of violence in its own right. Moreover, Brazil does not possess a rationalized court system capable of ensuring minimal protection of constitutional rights and its prisons are plagued by fantastic overcrowding, gross lack of access to food, hygiene and health and inordinately high levels of brutality, akin to concentration camps for the disruptive fractions of the (sub)proletariat. Under such conditions, to respond to the disorders generated by the rise of absolute and relative poverty associated with incorporation in the emergent neoliberal global order with the penal apparatus is tantamount to instituting a chaotic dictatorship over the poor, and therefore antithetical to the project of nation building on a pacified and democratic basis.

Key Words

Americanization • Brazil • inequality • neoliberalism • penal policy • poverty • prison
• violence

Neoliberal penalty is paradoxical in that it purports to deploy 'more state' in the realm of police and prisons to remedy the generalized rise of objective and subjective insecurity that is *itself caused by* 'less state' on the economic and social front in all the countries of the First World as in those of the Second. It reaffirms the omnipotence of the Leviathan in the restricted domain of public order maintenance, symbolized by the running battle against street delinquency,¹ just when the latter claims and proves to be incapable of stemming the decomposition of wage labor and of bridling the hypermobility of capital that are destabilizing the entire social edifice by claspng it in a brutal pincer movement. And, as I showed elsewhere, this is not a mere coincidence: it is precisely *because* state elites, having converted to the ideology of the all-mighty market come from the USA, reduce or relinquish its prerogatives in social and economic matters that they must everywhere enhance and reinforce its mission in matters of 'security', after having abruptly reduced the latter to its sole criminal dimension (Wacquant, 1999/2002). But, above all, neoliberal penalty is all the more seductive as well as all the more nefarious when it is applied to countries traversed by deep inequalities of social condition and life chances, shorn of democratic traditions and devoid of institutions capable of cushioning the shock caused by the mutation of work and self on the threshold of the new century.

This is to say that the alternative between the *social treatment of poverty* and its correlates, anchored in a long-term vision guided by the values of justice and solidarity, and its *penal treatment*, trained on the most restive fractions of the subproletariat and focused on the short term of electoral cycles and moral panics orchestrated by a media machine running out of control, before which Europe now finds itself in the wake of the United States,² poses itself in particularly dramatic terms in the newly industrialized countries of South America, such as Brazil and its main neighbors, Argentina, Chile, Colombia, Paraguay and Peru, which have been among the leading importers of US-style penal discourse and policies around the world. From Brasília to Caracas to Buenos Aires, public officials have raced to adopt measures patterned after those showcased by (or glibly attributed to) Rudolph Giuliani in New York City; and politicians have run head over heels to be photographed alongside the living incarnation of penal rigor, William Bratton, latter-day prophet of the religion of 'zero tolerance' and globe-trotting 'consultant in urban policing' since he was fired from his position as head of the New York City Police Department in 1994. Not because these policies are particularly efficient – indeed, we now know that they are remarkably inefficient, even in many ways counterproductive (Eck and Maguire, 2000; Harcourt, 2001; Wacquant, 2002b) – but because they are ideally suited to *dramatizing* publicly their new-found commitment to slay the monster of urban crime and because they readily fit the negative stereotypes of the poor who are everywhere portrayed as the main source of street deviance and violence.³ But, aside from its symbolic profits, the deployment of made-in-the-USA penal rhetoric and the implementation of the proactive policies of penalization of poverty that it commands promise to have dramatic and far-reaching consequences on the social fabric as well as on state-society relations. This is particularly true of Brazil, which has been among the most enthusiastic champions of crime policies patterned after Giuliani's New York and which supplies in this regard a living laboratory for anticipating the disastrous impact of 'zero tolerance' in Second-World countries.

First of all, for a number of reasons having to do with its history and its subordinate

position in the structure of international economic relations (a structure of domination concealed by the falsely ecumenical category of 'globalization'), and despite the collective enrichment brought by the decades of industrialization, Brazilian society remains characterized by vertiginous social disparities and mass poverty, which together feed the inexorable growth of criminal violence that has become the main scourge of the big cities. Thus, since 1989 violence has been the country's leading cause of mortality; the homicide rate for Rio de Janeiro, São Paulo and Recife has reached 40 per 100,000 people, while the national rate exceeds 20 per 100,000 (twice the US rate of the beginning of the 1990s and 20 times the level of the societies of Western Europe). The diffusion of firearms and the explosive development of an organized drug economy linked to international trafficking, in which the criminal underworld and the police are deeply intertwined, have resulted in the propagation of crime and the fear of crime everywhere in public spaces.⁴ In the absence of any social safety net, it is certain that the youth of the popular neighborhoods crushed by the weight of chronic unemployment and underemployment will continue to look to the 'booty capitalism' of the streets (as Max Weber would say) for the means to survive and to realize the values of the masculine code of honor, if not to escape from the grind of day-to-day destitution. The spectacular increase in police repression in recent years has been without effect, since repression supplies no traction on the engines of this criminality, which aims, through predation, to create an economy where the official economy does not or no longer exists.⁵

Next, criminal insecurity in Brazil is particular in that it is not attenuated but clearly *aggravated* by the intervention of the law-enforcement forces. The routine use of lethal violence by the military police and the habitual recourse of the civilian police to torture by means of the *pimentinha* (electrical shocks) and the *pau de arara* (hanging cross) to make suspects 'confess', summary executions and unexplained 'disappearances', all maintain a climate of terror among the popular classes who are their prime target and banalize brutality at the heart of the state. One statistic: in 1992 the São Paulo military police shot dead 1470 civilians – as against 24 killed by the New York City police and 25 by that of Los Angeles – representing fully one-quarter of the victims of violent death in the metropolis that year. This is by far the absolute record in the Americas (Chevigny, 1995: ch. 5; Cavallaro and Manuel, 1997). This police violence partakes of a centuries-old national tradition of control of the dispossessed by force, issued from slavery and agrarian conflicts, which was reinforced by two decades of military dictatorship during which the fight against 'internal subversion' disguised itself as the repression of delinquency. It is backed up by a hierarchical, paternalistic conception of citizenship based on the cultural opposition between *feras e doutores*, the 'savages' and the 'cultivated', which tends to assimilate *marginais*, workers and criminals, so that the enforcement of the class order and the enforcement of public order are merged (Da Matta, 1978; Pinheiro, 1983; Huggins, 1985).

A third factor seriously aggravates the issue: the close alignment between class hierarchy and ethnoracial stratification and the *color discrimination* endemic to the Brazilian police and judicial bureaucracies. It is known, for example, that in São Paulo as in the other big cities, darker-skinned detainees 'benefit' from special vigilance on the part of the police, that they have more difficulty getting access to legal aid and that heavier sentences are imposed on them than on their white counterparts for the same crimes.⁶ And, once behind bars, they are subjected to the harshest conditions of detention and

suffer the most serious carceral violence. Penalizing poverty amounts here to 'invisibilizing' the color problem and bolsters racial domination by granting it the imprimatur of the state (Bodé de Moraes and de Souza, 1999; da Silva, 2000).

Moreover, the blatant disinterest and patent incapacity of the courts to enforce the law encourage all those who can to seek *private* solutions to the problem of public insecurity – via fortification into 'gated communities', armed guards, the tolerated and even encouraged vigilantism of the *justiceiros* and victims of crime (Caldeira, 1996/1997) – with the principal effect of spreading and intensifying violence. For, despite its return to constitutional democracy, Brazil has yet to construct a state of laws worthy of the name. Two decades of military dictatorship continue to weigh heavily on the functioning of public force, as well as on collective mentalities, with the result that a broad spectrum of social classes tends to identify the defence of human rights with tolerance of *bandidagem*. So that, besides deep-seated urban marginality, violence in Brazil finds a second root in a political culture that remains profoundly marked by the scars of authoritarianism (Péralva, 1992; Méndez et al., 1999).

Under such conditions, deploying the penal state to respond to disorders spawned by the deregulation of the economy, the desocialization of wage labor and the relative and absolute immiseration of large sections of the urban proletariat by enlarging the means, scope and intensity of the intervention of the police and judicial apparatus amounts to (re-)establishing a *veritable dictatorship over the poor*. Now, who can say, once the legitimacy of this authoritarian management of the social order by the systematic use of force at the bottom of the class structure has been affirmed, where the perimeter of its utilization will stop? And how can one fail to see that, in the absence of the minimal juridical guarantees, which only a rational bureaucracy (conforming to the Weberian schema) charged with the administration of justice can provide, recourse to punitive law-and-order techniques and policies made in the USA is fundamentally antithetical to the establishment of a pacified and democratic society, whose basis must be the equality of all before the law and its agencies of enforcement?⁷

A final consideration of simple common sense mitigates against an increased reliance on the carceral system to curb the rise of poverty and associated urban disorders in Brazil: the appalling state of the country's prisons, which are more akin to *concentration camps for the dispossessed*, or public enterprises for the industrial storage of social refuse, than to judicial institutions serving any identifiable penological function – be it deterrence, neutralization or rehabilitation. The Brazilian penitentiary system in effect sports the defects of the worst gaols of the Third World but carried to a level worthy of the First World owing to its size and to the studious indifference of politicians and the public⁸: staggering overcrowding resulting in abominable living conditions and catastrophic hygiene, characterized by lack of space, air, light and food (in police lockups, detainees, who are more often than not innocent, are crammed in for months and even years on end, in complete illegality, as many as eight to a cell designed for one, like at the Casa da detenção in São Paulo, where they can be recognized by their sickly appearance and jaundiced complexions, which has earned them the nickname '*os amarelos*', 'the yellow ones'); denial of access to legal assistance and basic health care, the result of which has been the dramatic acceleration of the spread of tuberculosis and the HIV virus among the popular classes; pandemic violence among the inmates, in the form of mistreatment, extortion, beatings, rapes and murders, due to acute overpopulation, the lack of

segregation of diverse categories of convicts, enforced idleness (even though the law stipulates that all prisoners must participate in education or job training programs) and the failings of supervision (da Silva, 1997; Goifman, 1998, 2002).

But the worst of it, yet again, is the routine violence of the authorities, ranging from everyday brutality to institutionalized torture and mass killings during the riots that periodically erupt in reaction to inhuman conditions of detention (whose highpoint remains the massacre at Carandiru prison in 1992, during which the military police killed 111 prisoners in an orgy of state savagery out of another era), which is deployed with practically total impunity (Human Rights Watch, 1998; Leal, 1999). In its present state, the Brazilian carceral apparatus only serves to aggravate the instability and poverty of the families whose members it confines, and to feed criminality by its manifest contempt for the law and the culture of mistrust of others and defiance of authority it fosters. Neither the planned expansion of the system – in 1998 a program was hatched to double prison capacity by building 52 new establishments, 21 in the state of São Paulo alone – nor its indispensable modernization, through the improvement of the physical plant, training of personnel and the introduction of computers, will be able to remedy the congenital inability of imprisonment to exert any durable effect on crime. Even in the United States, where the police, courts and prisons are endowed with colossal means out of all proportion with their Brazilian counterparts, the criminal justice system treats only a tiny portion of the most serious offenses, since barely 3 percent of violent crimes are eventually punished with a term of confinement. Besides, international comparison shows that there exists nowhere any correlation between the level of crime and the level of imprisonment (Mauer and the Sentencing Project, 1999: 105; see also Christie, 2000; Stern, 1998).

In short, the adoption of US-style measures of street-sweeping and mass imprisonment of the poor, the useless and those factious to the dictatorship of the deregulated market is guaranteed to aggravate the evils from which Brazil already suffers in its difficult journey toward the establishment of a democracy that is not only a façade, namely:

the delegitimation of many institutions of law and justice, the escalation of both violent criminality and police abuse, the criminalization of the poor, a significant increase in support for illegal measures of control, the pervasive obstruction of the principle of legality, and the unequal and uneven distribution of citizen rights. (Caldeira and Holston, 1999: 692; see also Caldeira, 2002)

Whatever the claims of the zealots of the neoliberal New Eden, the priority, for Brazil as for most countries on the planet, is to wage a broad battle, not against criminals, but against poverty and inequality, which is to say against the social insecurity that everywhere pushes people into crime and normalizes the informal economy of predation that feeds violence.

By putting into theoretical light and international perspective the causes and mechanisms of diffusion of neoliberal penalty invented in the United States in order to entrench the new regime of deregulated employment, I hope that this article will contribute to amplifying the *discursos sediciosos* on crime, law and society in Brazil⁹ that endeavor, at the margins of the frantic media exploitation and political fantasies of rigid law-and-order enforcement now shared by the Right and the Left, to reconnect the crime question and the social question, the physical insecurity of which street crime is the

vector and the social insecurity generated everywhere by the desocialization of wage labor, the retrenchment of social protection and the all-out 'commodification' of human relations. For what is at stake in the choice between constructing, however slowly and laboriously, a social state, and the escalation, without limits or brakes since it is essentially self-sustaining, of the penal response is nothing other than the kind of society Brazil hopes to build in the long run: an open and convivial community, animated by a spirit of equality and concord, or an archipelago of islets of opulence and privilege lost in the middle of a cold and furious ocean of poverty, fear and contempt for others.¹⁰

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Notes

- 1 Governments of the right have always made 'law and order' the plinth of their hierarchical conception of society. What is new nowadays is that politicians of the left, or pretending to be left, have elevated 'security' to the rank of a fundamental right by feigning (like Tony Blair in England or Lionel Jospin in France) to 'discover' that the poor are the first victims of street crime (which has always been the case, in all times and in all countries) the better to justify its canonization as priority of public action under the pretext of 'social justice'.
- 2 For a thorough analysis of the advent of the penal state in the United States, in relation to labor market deregulation and the concurrent shift from 'welfare' to 'workfare', see Wacquant (2002a); see also the issue of *Actes de la recherche en sciences sociales* devoted to the transition 'From social state to penal state' (n. 124, September 1998), and the germane analyses of David Garland in *The culture of control* (2001).
- 3 Belli (2000); the case of Argentina is discussed in Wacquant (2000).
- 4 In Rio de Janeiro in 1992, three-quarters of male homicide victims were killed in public places and two-thirds of victims were struck in connection with drug trafficking (Soares et al., 1996: 241–2).
- 5 See Batista (1998); Gullo (1998); Zaluar and Ribeiro (1995); Zaluar (2001); da Silva (1995); for a comparison with Europe and the United States, see Wacquant (1994/2003).
- 6 See Adorno (1995); racial discrimination in the justice system has deep historical roots, as Ribeiro (1995) shows in *Cor e criminalidade. Estudo e análise da justiça no Rio de Janeiro, 1900–1930*.

- 7 The present functioning of the Brazilian police and judicial administrations is so inefficient, chaotic and deficient from a strictly juridical standpoint that they would need to be restructured from top to bottom to be brought up to the minimal norms stipulated by international conventions (Pinheiro, 1997).
- 8 With 170,000 prisoners, Brazil boasts a prison population three times greater than that of France, for a national incarceration rate of 95 prisoners per 100,000 inhabitants close to that of the major European countries, but which conceals pronounced regional disparities: in 1995, the date of the most recent prison census available, it reached 175 per 100,000 in the state of São Paulo, 164 in Mato Grosso do Sul, 150 in Paraíba and almost 130 in Rondônia, Rio de Janeiro and the federal district of Brasília (Conselho Nacional de Política Criminal e Penitenciária, 1998).
- 9 I invoke here on purpose the journal *Discursos Sediociosos. Crime, Direito e Sociedade*, published by the Instituto Carioca de Criminologia in Rio, which has sought to break out of the law-and-order dogmas that severely constrict and constrain public debate on crime and punishment in Brazil; see also Pinheiro et al. (1998) and Batista (1990).
- 10 This dystopia is already in the making, as depicted by Teresa Pires do Rio Caldeira in *City of walls: Crime, segregation, and citizenship in São Paulo* (2001); the dire implications of an all-out 'war on crime' in the context of the entrenched inequalities for Brazilian citizenship are further discussed in Leite (2000).

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