

# FROM PUNITIVE SELECTIVITY TO NECROPOLITICS: THE IMPACT OF THE COVID-19 PANDEMIC ON THE BRAZILIAN PRISON SYSTEM

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## *Abstract*

The article seeks to evaluate the impacts that punitive selectivity and necropolitics have brought to the Brazilian prison system with the advent of the Covid-19 pandemic. Given the theme, this article was built having as research problem the following question: to what extent the impacts of the Covid-19 pandemic in the Brazilian prison system are tributaries of a punitive selectivity that, in the pandemic scenario, transmuted into necropolitics? As an initial hypothesis, it is possible to affirm that the Brazilian punitive selectivity, in the pandemic period, assumed a necropolitical bias. As a result, young, black or brown men, with low education and, consequently, poor, incarcerated in Brazil, were differentially affected by the pandemic caused by the coronavirus - to the extent that their chances of contamination and death, in the context of prisons, were enhanced by Covid-19. As a general objective, the research seeks to evaluate the criminal selectivity as a factor of social exclusion of certain groups and how these factors impacted the prison in the pandemic period, allowing us to speak of a necropolitical scenario.

## *Keywords:*

Covid-19. Necropolitics. Prison System. Punitive Selectivity.

## *Summary*

1. Introduction. 2. The Brazilian prison system: social exclusion and punitive selectivity as two sides of the same coin. 3. From selectivity to necropolitics in the Brazilian prison system: covid-19 pandemic impacts. Conclusion. References.

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## Introduction

Brazil had, by the year 2022, the third largest prison population in the world, composed of approximately 820.689,000 people imprisoned in hostile and degrading environments - as recognized by the Federal Supreme Court (STF) in the context of the injunction issued in ADPF No. 347/2015<sup>4</sup>, in which, using a judgment technique generated by the Colombian Constitutional Court, ratified the thesis that the national prison system is immersed in an unconstitutional state of affairs<sup>5</sup>. Even if the seriousness of the problem was recognized in 2015, the prison system is in chaos, mainly due to overcrowding: there are 634,469 vacancies for the national contingent of inmates, which makes any human existence in these environments degrading<sup>6</sup>. Contrary to the constitutional prohibition - Article 5, subsection XLVII<sup>7</sup> - the Brazilian prison reality is characterized by the imposition of cruel and infamous punishments<sup>8</sup>. Statistics on the national prison population allow us to affirm that being male<sup>9</sup>, young<sup>10</sup>, black or

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<sup>4</sup> BRASIL, 2015.

<sup>5</sup> CASTRO; WERMUTH, 2021.

<sup>6</sup> SAFETY FORUM, 2022.

<sup>7</sup> BRASIL, 1988.

<sup>8</sup> KELNER, 2018.

<sup>9</sup> 97.01% of the prison population is composed of men; the figure for women in custody corresponds to 2.99% (BRASIL, 2021).

<sup>10</sup> The age brackets of the prison population are: 18 to 24 years (21.22%), 25 to 29 years (20.69%), 30 to 34 years (16.7%), 35 to 45 years (19.28%), 46 to 60 years (7.06%), over 60 years (1.26%) and no information (13.79%) (BRASIL, 2021).

brown<sup>11</sup>, of low educational level<sup>12</sup> and poor<sup>13</sup>, in Brazil, significantly increase the chances of being arrested - notably if the offense committed is related to property crimes<sup>14</sup> and/or drug trafficking<sup>1516</sup>. And it was precisely this social group that suffered, forgotten in prison and, therefore, differentially, the impacts of the Covid 19 pandemic. Given the panorama outlined, this article was built having as research problem the following question: to what extent the impacts of the Covid-19 pandemic in the Brazilian prison system are tributaries of a

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<sup>11</sup> The distribution about color/ethnicity/race in the Brazilian prison system observes the following numbers: yellow (0.98%), white (32.52%), indigenous (0.19%), brown (50.28%) and black (16.03%) (BRASIL, 2021).

<sup>12</sup> The education of inmates is evidenced with 3.45% illiterate; 5.85% literate; 51.35% with incomplete primary education; 13.15% with complete primary education; 14.98% with incomplete secondary education; 9.65% with complete secondary education; 0.95% with incomplete higher education; 0.56% with complete higher education; and 0.04% with education above complete higher education (BRASIL, 2019).

<sup>13</sup> As Castro and Wermuth (2021) point out, although there are no specific data related to the topic, the markers of schooling and incidence of offenses denounce the socioeconomic clipping of the prison population in the country, either because educational instruction tends to denote, as it advances, better income conditions, or because the incidence of crime demonstrates the so-called forced distribution of income.

<sup>14</sup> Sinhoretto and Lima (2015, p. 126) point out that the selective bias of the Brazilian penal system is evident every time it comes across criminal types that involve the circulation - considered necessary or undue - of wealth, so that the Brazilian punitive apparatus acts, above all, in the face of young people and blacks who commit offenses of this kind because they belong to the subalternized layers of society.

<sup>15</sup> According to Christie (1998, p. 120), drugs considered illicit by criminal law are, in contemporary times, "the main form of crime used as an instrument to control the poorest in society.

In relation to the national prison population, 71.04% of the incidences of criminal offenses are related to property and drugs (BRASIL, 2021).

<sup>16</sup> Arts. 204 and 207 of the 1890 Penal Code and art. 72, paragraphs 1 and 31 of the Federal Constitution of 1891.

punitive selectivity that, in the pandemic scenario, transmuted into necropolitics?

As an initial hypothesis, taking into consideration the data collected from a set of research conducted on the subject in the field of Criminal Sciences, reflected in the bibliography that supports this study, it is possible to affirm that the Brazilian punitive selectivity, in the pandemic period, assumed a necropolitical bias. As a consequence, young, black or brown men, with low education and, consequently, poor, incarcerated in Brazil, were differentially affected by the pandemic caused by the coronavirus - to the extent that their chances of contamination and death, in the context of prisons, were maximized by Covid-19.

As a general objective, the research seeks to evaluate penal selectivity as a factor of social exclusion of certain groups and how these factors impacted the imprisonment in the pandemic period, allowing us to speak of a necropolitical scenario. In order to achieve the general objective, the specific objectives of the text, which are reflected in its structure in two sections, are: a) to analyze, from studies already conducted in the field of Criminal Sciences, the criminal selectivity and social exclusion in the Brazilian prison; b) to evaluate the Brazilian prison system under a necropolitical perspective from the impacts of the Covid 19 on the incarcerated population.

## 1 The Brazilian Prison System: Social Exclusion and Punitive Selectivity As Two Sides of the Same Coin

In Brazil, imprisonment has always been a form of social “discarding” of people considered “abnormal” to the behavioral standards of the hegemonic society. Many cultural behaviors of people of African descent, such as capoeira, were criminalized because they were

considered an affront to good manners, and so imprisonment was a form of punishment that primarily acted as a regulator of social spaces, creating rigid hierarchies and consequently consolidating processes of marginalization begun in the colonial period<sup>17</sup> fulfilling “a fundamental role in the processes of naturalization of subalternity”<sup>18</sup>.

Neder and Cerqueira Filho<sup>19</sup> point out that the political ruptures that took place in the country, represented by the end of slave labor (1888) and the end of the monarchical regime (1889), significantly influenced the structuring of social control over the poorest layers of the population. This control was characterized by a pendulum dynamic - and contradictory - between sacralization (charity) and secularization (duty), evidencing the permanence of a pattern tributary to the institutional model of the absolutist Portuguese State (sacralization) and the process of rupture initiated with the political emancipation (1822) towards the constitution of the Brazilian State (secularization). In fact, comparing the Penal Code of 1890 and the Constitution of 1891, it is clear the influence of a repressive ideology on the former - notably with regard to the so-called “Crimes against freedom of labor”<sup>20</sup>, while the latter was deeply influenced by liberalism - which is evident in the constituent concern to declare the rights of citizens. This explains why the Penal Code of 1890 typified, as a crime, in its article 399, the “vagrancy”, and, in article 206, criminalized the “strike” - in a clear attempt by the hegemonic classes to impose,

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<sup>17</sup> BATISTA, 2003; MARCOLLA, 2022.

<sup>18</sup> FLAUZINA, 2008, 62.

<sup>19</sup> NEDER; CERQUEIRA FILHO, 2006.

<sup>20</sup> Arts. 204 e 207 do Código Penal de 1890 e art. 72, parágrafos 1º e 31 da Constituição Federal de 1891.

through criminal legislation, the “order” necessary for “progress” to the subalternized population. In parallel to the Penal Code of 1890, there were other legal provisions that showed, according to the analysis of Flauzina<sup>21</sup>, a concern with the repression of leisure.

This ideology, in the 20th century, permeated the Penal Code of 1940, still in force, which, even with a “facade of neutrality and objectivity” regarding primary criminalization, shows a punitive architecture that “elects the agencies of secondary criminalization and the redoubts of tertiary criminalization, as spaces for the reproduction of the commandments of positivist criminology<sup>22</sup>”.

In this way, the penal system relativizes the gravity of the conducts practiced by the higher social classes (economic, environmental, state, political crimes, organized crime, etc.), while “it overestimates infractions of relatively less social harm, although of greater visibility, such as crimes against property, especially those whose authors are individuals belonging to the weaker and marginalized social strata<sup>23</sup>”. In the core of this system, prison represents nothing more than a giant mechanism of social control that operates from a punitive discourse<sup>24</sup> and that, in the lexicon of Foucault<sup>25</sup>, acts in a biopolitical<sup>26</sup> way, promoting gaps between people who should be accepted or excluded from social life. Therefore, the penal system does not simply intend to definitively exclude the individual from social life (through, for

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<sup>21</sup> FLAUZINA, 2008, 83.

<sup>22</sup> FLAUZINA, 2008, 89.

<sup>23</sup> ANDRADE, 1997, 267.

<sup>24</sup> ZAFFARONI, 2001.

<sup>25</sup> FOUCAULT, 2014.

<sup>26</sup> For Foucault (2014, p. 154) biopolitics can be considered a form of manifestation of power, whereby the State manages through public policies the biological life of individuals.

example, direct murder - thanatopolitics<sup>27</sup>), but to create mechanisms to enhance, for some subjects, the possibilities of death, as it, in parallel, modulates their existences.

The assumption of life by power, brought about mainly after the 19th century, is based on the assumption that the act of managing life and death is a phenomenon implicit to the exercise of political power, which ends up privileging the phenomenon of death (thanatopolitics). For Flauzina<sup>28</sup> the state sovereignty “ultimately has the right over life because it can produce its extinction”.

In the Brazilian prison system, the “docile bodies”<sup>29</sup> are transformed into “superfluous bodies” in the face of a “biopolitical strategy of containment/elimination of those individuals who, from a historical perspective, have always been the preferential targets of the agencies of the national punitive system”. The Foucauldinian thesis regarding biopolitics, in this context, should not be interpreted with a humanitarian character, but rather, from the violent state control and the “continuous and increasing demand for the mass killing of the

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<sup>27</sup> As stated by Duarte (2010, p. 226-227), Foucault understood that from the moment life became the political element par excellence, which must be administered, calculated, managed, regulated and normalized, what is observed is not a decrease in violence. On the contrary, this care of life has brought with it the continuous and growing demand for mass death, since it is in the counterpoint of depurating violence that more and better means of life and survival of a given population can be guaranteed. Every biopolitics is, to that extent, also a thanatopolitics, that is, “there is no contradiction between the power to manage and increase life and the power to kill by the millions to ensure the best possible vital conditions.” (DUARTE, 2010, 227).

<sup>28</sup> FLAUZINA, 2006, 95.

<sup>29</sup> Expression used by Foucault (2014) to refer to the exercise of disciplinary power that aims to domesticate/domine individuals.

'other' as a privileged instrument for the guarantee of better means of survival of a given population<sup>30</sup>".

According to the Brazilian Yearbook of Public Safety<sup>31</sup> the country currently has 820,689 people deprived of liberty, and the Brazilian prison has only 634,469 places distributed in 1,560 penal establishments, a factor that demonstrates prison overcrowding. This mass incarceration has color and social class, as the State exercises its dominant social control over black, young, and poor men.

In fact, statistics show that 67.5% of the prisoners are black, poor, and poorly educated<sup>32</sup>. The same profile is seen in homicide victims in Brazil, that is, 67.29% are black men, 80.59% are single, 46.6% have between 4 and 7 years of schooling, and have precarious financial conditions<sup>33</sup>. The comparison between these statistics shows that the spiral of violence in the country is directed at a specific profile of the population.

Nevertheless, criminal selectivity is also evident in the analysis of the typical crimes that are mostly prosecuted by the criminal system. This is because only five crimes correspond to the imprisonment of 80% of the people deprived of liberty. Among them are: "narcotics trafficking (27%), robbery (21%), homicide (14%), theft (11%) and carrying weapons (7%)<sup>34</sup>".

From this point of view, the selectivity of criminal law differentiates the types of people one wishes to punish based on their culture and

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<sup>30</sup> WERMUTH; NIELSSON, 2023, 61-62.

<sup>31</sup> FÓRUM DA SEGURANÇA, 2022, 14.

<sup>32</sup> SECURITY FORUM, 2022, 14.

<sup>33</sup> IPEA, 2021.

<sup>34</sup> MESQUITA, 2017, 04.



tradition. According to Zaffaroni<sup>35</sup>, “these stereotypes allow the cataloging of criminals who match the image that corresponds to the manufactured description, leaving out other types of delinquents (white-collar, gold-plated, traffic delinquency, etc.).”

Furthermore, the structural violence caused by a historically unequal society, as is the case of Brazil, which distinguishes which people and which crimes should be punished with imprisonment, propagates fear and greater penal repression. The Brazilian prison has a predominantly black and poor profile, perspectives that will be addressed in the following topic from the point of view of the necropolitics rooted in the criminal justice system under the impact of the Covid-19 pandemic.

## 2 From Selectivity to Necropolitics in the Brazilian Prison System: Covid-19 Pandemic Impacts

According to the classic Foucauldian lesson regarding biopolitics, massacres and wars become vital for the management of life and the domination of a given population<sup>36</sup>. The refinement of the Foucauldian thesis lies precisely in this point: biopolitics, even though it is a diagram of the exercise of power that aims to “manage the life of the population”, cannot be naively understood by its “humanitarian character”. There is always a violent aspect of this control that needs to be grasped. This aspect is rooted, in a biopolitical scenario, in the continuous and increasing demand for the mass killing of the “other”. This is considered a condition of possibility to ensure better means of survival for a given population.

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<sup>35</sup> ZAFFARONI, 1991, 130.

<sup>36</sup> FOUCAULT, 2014.

The biopolitics, in this sense, is, par excellence - as already discussed in the previous topic - thanatopolitics. This means, according to Duarte<sup>37</sup>, that “there is no contradiction between the power to manage and increase life” - biopolitical dimension - “and the power to kill millions to ensure the best possible vital conditions” - thanatopolitical dimension. In this context, the fundamental point consists in a decision that culminates in determining the moment in which a life ceases to be politically (and economically) relevant and, as a result, becomes a life susceptible to elimination, that is, a naked life - just like that of the obscure figure of homo sacer, rescued from archaic Roman law by Agambenian<sup>38</sup> philosophy to illustrate this process of biopolitical caesuras.

State racism<sup>39</sup>, in this context, is placed as a condition of possibility so that the right to kill can be exercised. This right, in the Foucauldian perspective<sup>40</sup>, does not necessarily manifest itself through direct killing, but can be represented by the mere differential exposure to death: “the fact of exposing to death, of multiplying for some the risk of death or, purely and simply, political death, expulsion, rejection”. Symbolic death, in the prison environment - marked by punitive selectivity that mirrors social exclusion outside the walls, as discussed in the previous section - happens in a similar way. As Ribeiro<sup>41</sup> states, “history has shown us that invisibility kill”, that is, the State's omission in prison kills.

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<sup>37</sup> DUARTE, 2010, 227.

<sup>38</sup> AGAMBEN, 2004; 2010.

<sup>39</sup> In the words of Foucault (2012, p. 52-53), state racism is exercised by society over itself, that is, “over its own elements, over its own products”.

<sup>40</sup> FOUCAULT, 2012, 2016.

<sup>41</sup> RIBEIRO, 2021, 42.

On the subject, it is worth noting that the Brazilian prison system has never fulfilled its resocializing promise. On the contrary, it has produced and continues to produce sterile pain, which does not result in a decrease in violence - which is ratified by the very high levels of recidivism observed in the country<sup>42</sup>. In prison, the human condition is deprived of any level of dignity. Without adequate hygiene conditions, food, appropriate cells, the prison becomes an environment for depositing human waste, absolutely neglected by the State. The custodial sentence, thus, becomes a cruel and infamous penalty - according to Kelner's<sup>43</sup> thesis.

It is at this point that, based on the theory of the Cameroonian philosopher Achille Mbembe<sup>44</sup>, it becomes necessary, in parallel to Foucault's<sup>45</sup> biopolitics - which contemplates, in itself, a thanatopolitical dimension -, to understand the Brazilian prison system as a space of exception<sup>46</sup>, in which a true policy of death - or necropolitics<sup>47</sup> - is underway, which finds reinforcement in the

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<sup>42</sup> The average recidivism rate in the first year is around 21%, progressing to a rate of 38.9% after five years (NATIONAL SECRETARIAT FOR CRIMINAL POLICIES, 2022).

<sup>43</sup> KELNER, 2018.

<sup>44</sup> MBEMBE, 2018.

<sup>45</sup> FOUCAULT, 2012.

<sup>46</sup> AGAMBEN, 2010.

<sup>47</sup> Achille Mbembe is today one of the most prominent thinkers of postcolonialism. He warns, at the beginning of the essay *Necropolitics*, that his proposal is based on the works of Michel Foucault, Hannah Arendt, and Giorgio Agamben, insofar as the text is grounded in the concept of biopower, in its relation to the notions of sovereignty and state of exception. Mbembe (2018, p. 10-11) then points out that his concern revolves around those "forms of sovereignty whose central project is not the struggle for autonomy, but 'the generalized' instrumentalization of human existence and the material destruction of human bodies and populations". This is because he understands that these forms of sovereignty, like the Agambenian field, "constitute the nomos of the political space in which we still live" (MBEMBE, 2018, p. 11).

circumstances arising from the scenario unveiled by the Covid-19 pandemic.

In the book “Pandemic: the story told from inside the prisons”, the organizer Giostri<sup>48</sup> gathered several reports from inmates telling their experiences during the pandemic period in prison. The accounts of the inmates present clear symbolic violence, as well as demonstrate their awareness that the state ignores their existence in every way. In the pandemic, besides the insecurity that haunted the whole humanity, the prisoners suffered from uncertainties regarding the lives of their families and their own survival.

The Federal Supreme Court has established the understanding that the right to health inside prisons is the State's responsibility, and even though this right is provided both in the Federal Constitution<sup>49</sup> and in the Penal Enforcement Law<sup>50</sup>, during the pandemic period, these provisions were completely ignored. For Sánchez<sup>51</sup> most of the documents that address the confrontation of the pandemic by Covid-19 in the prison setting are generic, do not dispose of health-related issues and recommendations for the prevention of contamination, as they do with individuals in freedom, such as “social distancing and hygiene practices, such as hand washing, are very difficult to apply in the country's prisons”.

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<sup>48</sup> GIOSTRI, 2020.

<sup>49</sup> “Art. 6 Social rights are education, health, food, work, housing, transportation, leisure, security, social security, protection of motherhood and childhood, and assistance to the helpless, in the form of this Constitution” (BRAZIL, 1988).

<sup>50</sup> Law No. 7.210/1984 states in its article 10: "Assistance to prisoners and internees is the duty of the State, with the objective of preventing crime and guiding their return to society. (BRAZIL, 1984).

<sup>51</sup> SÁNCHEZ *et al*, 2020.

Many of the incarcerated, in the pandemic context, felt isolated and excluded from society, once they had their visits suspended and, consequently, no longer had outside information from their families. The fear of dying and of not having news about a possible illness of their relatives made the prison system even more gloomy.

Isolated in inhumane environments, with overcrowding, reduced daylight hours, no visits, no outside contact, and fear of dying due to lack of medical care, the inmates have seen a significant increase in the possibility of death as a result of Covid-19. This allows, based on Mbembe<sup>52</sup>, to understand under what practical procedural conditions the right to kill, let die, or expose to death is exercised.

Death and freedom are historically intertwined in the prison system and the spread of terror is a characteristic of this space. Prison does not only represent social isolation, but also human exclusion. As an example of this fact, we can analyze the statement of the prisoner Veiga<sup>53</sup> in which he states that “there is a place called ‘toca’, where there are 15 cells with no light, no water, where you only know when it is day or night when you open the door to ‘pay/supply’ food. There you are beaten, you receive cold water showers, pepper spray”.

In fact, Brazilian prisons are deeply marked by the most absolute structural precariousness. The environments and the cells don't have adequate ventilation and, many times, don't even have sanitary services, water, food, or enough bedrooms. There is no social distance in a place with overcrowding, where 820,689 individuals share 634,469 vacancies<sup>54</sup>.

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<sup>52</sup> MBEMBE, 2018, 5-6.

<sup>53</sup> VEIGA, 2020, 67.

<sup>54</sup> SIQUEIRA; CARNEIRO, 2020, 04; SAFETY FORUM, 2022, 14.

In Brazil, the prison isolates, excludes, and symbolically kills hundreds of people every day. The statistics on the impact of Covid-19 in Brazilian prisons show an increase in the level of violence that underlies the actions of the punitive system. According to the report of the Public Safety Forum<sup>55</sup>, 314 deaths from the virus infection were registered in the pandemic period, while 69,391 prisoners have been contaminated since the beginning of the pandemic<sup>56</sup>.

It is also noteworthy that, although the Brazilian Yearbook of Public Safety shows a 10.4% reduction in mortality inside prisons between the years 2020 and 2021, the percentage of death in prison is higher than outside of bars:

Outside prisons, the rate of intentional violent deaths per 100,000 inhabitants is 22.2 and had a 6% drop between 2020 and 2021, as presented in this Yearbook. In the prison system, the death rate is 155.6 per 100,000 prisoners. Although the figure has dropped significantly in the last year - in 2020 the rate was 173.6 deaths per 100,000 prisoners - it is still much higher than the average outside of bars<sup>57</sup>.

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<sup>55</sup> PUBLIC SAFETY FORUM, 2022, 404.

<sup>56</sup> The pandemic state was confirmed in the world as of March 2020. The recognition of a pandemic by the World Health Organization (WHO) came at a press conference on March 11 of that year, when Tedros Adhanom Ghebreyesus, Director-General of the WHO, pointed out that the term is a dangerous word because of the different interpretations it can generate. However, the magnitude of the disease's proliferation justifies the use of the term (Pan American Health Organization, 2020).

<sup>57</sup> FORUM DA SEGURANÇA PÚBLICA, 2022, 404.

It is estimated that each infected person infects between 2 and 3 people in a common environment. However, when it comes to the prison system, one infected inmate can infect up to 10 people. Therefore, a 150-person prison cell will have 67% infected in 14 days, and all will be infected in an average of 21 days. “Most of those infected (80%) will remain asymptomatic or develop mild forms, 20% will progress to more severe forms requiring hospitalization, of which, 6% in ICU<sup>58</sup>”.

Within prisons, the lethality of coronavirus is five times higher than that recorded in the general population. The first case of a coronavirus-infected person in prison happened on April 8, 2020; after 23 days, 239 infected and 13 deaths were counted, which generates a lethality rate of 5.5%, while in the general population, the lethality rate was 0.96%<sup>59</sup>.

It is at this moment, when penal selectivity puts the lives of those in prison at greater risk, that incarceration policies become necropolitical, that is, the result of the actions of a State that ignores the reality of prison life and simply “lets people die”. Not carrying out public policies to fight Covid-19 in the prison system is also a form of thanatopolitical action, insofar as it reveals a choice about which lives will be kept and which should not be cared for<sup>60</sup>.

The actions to confront Covid-19 presented to society did not point to measures that could safely guarantee the rights of minorities and those in situations of social vulnerability:

[...] it is known that a catastrophe like Covid-19 will affect many, but it will most severely affect the most vulnerable, because

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<sup>58</sup> SÁNCHEZ et al, 2020.

<sup>59</sup> SIMAS, 2020, 55.

<sup>60</sup> FOUCAULT, 2014.

catastrophic risks are not homogeneous, even if global [...]. The vulnerability factors are varied, translating into physical vulnerabilities, arising, for example, from the finding of incidence and worsening of infection with HSCoV-2 in certain age groups and those with comorbidities. Another factor is social vulnerability, which is related to the social injustice of disasters, in which demographic characteristics such as social class, race, place of residence and urban mobility influence to a greater or lesser extent exposure to infection. This vulnerability factor proves to be, in the end, determinant for the worsening of the syndemic and the magnitude of its damage, such as the loss of human lives<sup>61</sup>.

Given the denialism about the lethality of the pandemic, the results were catastrophic and, as Pires<sup>62</sup> assures, social groups historically subjected to processes of vulnerability suffered in disproportionate intensity the adverse effects of the pandemic. From this point of view, Brazil has a higher social vulnerability if compared to developed countries and, as explained by Scherer and Kelner<sup>63</sup>, the lack of information or the "induced misinformation" increases even more the exposure of communities and individuals to the risk of infection.

The aforementioned research points out that the South and Southeast regions show a high percentage of the population already immunized, while regions with greater social inequalities such as the North, Northeast, and Midwest areas still have a low immunization for Covid-19. These numbers are part of the inequality present throughout the country. More developed regions have greater

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<sup>61</sup> SCHERER; KELNER, 2021, 69-70.

<sup>62</sup> PIRES, 2020.

<sup>63</sup> SCHERER; KELNER, 2021, 70.



economic conditions and are less exposed to situations of vulnerability, while other regions are at great social risk.

Importantly, the pandemic “arrives in Brazil at a time when the prison health system is fragile and overloaded, which has resulted in high mortality from potentially curable infectious diseases such as tuberculosis”. Within the prison system, many people have died as a result of belonging to risk groups, i.e. “diabetes, heart disease, hypertension, renal failure, asthma, HIV/AIDS, and tuberculosis. Pregnant women and mothers with children are also part of this group because of their vulnerability<sup>64</sup>”.

Brazil has experienced a genocidal prison policy, anchored by state omission, and in the penal system, mortality has resulted from a strategy of materialization of necropolitics. For Flauzina<sup>65</sup>, in order for population exterminations to occur, there does not need to be wars or external rivalry, it is enough that “within its conceptual spectrum the processes in which the manifestation of violence takes place in a diffuse manner over time, concretizing, in the end, the same purpose of physical elimination of the target public”.

Thus, in the face of a policy of extermination, it is possible to conclude that punitive selectivity reaffirms necropolitics in the Brazilian prison system. Since the pandemic resulting from Covid-19, the prison, which no longer possessed any fragment of human dignity, has become a dungeon of sick bodies waiting haphazardly for their survival.

## Conclusion

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<sup>64</sup> SÁNCHEZ et al, 2020.

<sup>65</sup> FLAUZINA, 2006, 119.

The overpopulation and the social neglect of the Brazilian prison are perhaps one of the most serious problems of the penal system today. The objective of re-socialization foreseen in the Penal Enforcement Law of 1984 cannot be achieved. The Brazilian prison has become a mere depository of people, an inhuman and degrading system shared by thousands of individuals who share overcrowded cubicles, humid, without ventilation or light, with a precarious supply of drinking water, sanitation, clean clothes or hygiene products and, especially, without basic sanitary conditions for the dignified survival of a human being.

The Brazilian prison experiences a kind of social invisibility, the State and society ignore its existence, and the consequence of this symbolic violence is precisely the inhuman, degrading, and cruel conditions rooted inside the prisons. The disparity of the capacity to manage and allocate the amount of 820,689 thousand people in 634,469 vacancies generate the worst human atrocities that can be expected, insalubrity, disease, lack of food, lack of basic hygiene, sanitation, and death.

The Covid-19 pandemic has further aggravated a system that long ago decreed humanitarian bankruptcy. If in a time of "biological peace" the prison system already experienced state omission, with the arrival of the coronavirus, the state was busy sparing the lives that were favorable to it, and the prisoners (young, black and poor) were at the mercy of their own fate. As demonstrated in this study, invisibility kills, that is, there is a greater probability that a young black and poor person will be imprisoned and will experience prison woes than other strata of the population.

Penal selectivity, which condemns certain conducts and omits others of equal or greater criminal relevance, once again "selected its victims" and, in the Covid-19 Pandemic, let them die. In fact, penal selectivity assumed a necropolitical bias in the pandemic period, especially in regard to the Brazilian prison, a factor that confirms the initial hypothesis of this research: punitive selectivity, in times of pandemic, transmutes itself, in effect, into a policy of death.

In relation to the health of the incarcerated, we start from the assumption that fundamental rights are not a choice of the state or discretion of the

ruler. The constitutional provisions, ex vii of the caput of art. 5 of the Federal Constitution of 1988, which states the inviolability of the right to life, equality, and security, are fundamental rights of all humans, without exception. The inefficiency of the State, when of its omission, causes the death of people held in the prison system and generates the state responsibility, since it is the duty of the State to custody the person kept imprisoned who, despite the situation, maintains all the rights and guarantees assured by the constitutional text.

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