

# Brazilian prisons in times of mass incarceration: Ambivalent transformations

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## Abstract

Most of the scholarship on the ‘punitive turn’ has claimed that there have been two main trends in punishment since the 1970s: the rise of incarceration rates (quantitative dimension) and the worsening of prison conditions (qualitative dimension). Scholars argue that, in parallel with the rise of mass incarceration, there has been a fall of the rehabilitative ideal. In this view, prisons in core countries have basically operated as a warehouse, working towards neutralisation and incapacitation. Both trends are also viewed as reflecting a global convergence of penal policies. The analysis of the Brazilian case challenges this supposed universality. Drawing on official prison data, reports from non-governmental organisations, and secondary data, I argue that mass incarceration has not been accompanied by the same qualitative changes to prisons in ‘Western countries’ and Brazil. First, features of the so-called warehouse prison, such as low levels of prison activities, have always been present in Brazilian prisons, and are not an effect of mass incarceration. Furthermore, the consequences of mass incarceration in Brazilian prisons have, in fact, been ambivalent and, in some cases, may have alleviated inmates’ suffering, rather than intensifying experiences of confinement. Finally, instead of

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neutralising and controlling criminals, Brazilian prisons under mass incarceration have contributed to the emergence, empowerment, recruitment and organisation of gangs, whose powers now transcend the physical barriers of prison walls.

#### KEY WORDS

gangs, Global South, mass incarceration, pains of imprisonment, prison labour, punitive turn, warehouse prison

## 1 | INTRODUCTION

Between the late 1990s and early 2010s, discussions of the ‘punitive turn’ colonised the agenda of criminological research in so-called ‘Western countries’ (e.g., Cavadino & Dignan, 2006; De Giorgi, 2002; Garland, 2001a; Nelken, 2011; Pratt et al., 2005; Wacquant, 2009). This scholarship emerged to make sense of newly-identified trends and patterns of punishment. Penal changes at that time had two distinct dimensions – a quantitative one and a qualitative one. On the one hand, incarceration rates and the sizes of prison populations were increasing at an extremely accelerated pace, reaching rates ‘markedly above the historical and comparative norm for societies of this type’ (Garland, 2001b, p.2). This quantitative dimension is now referred to as *mass incarceration*. On the other hand, this quantitative change has also impacted qualitative transformations in punishment: criminologists have claimed (i) there has been a fall of the rehabilitative ideal. From this perspective, prisons no longer operate towards the reintegration of inmates, but in addition to (ii) being harsher and having worse conditions, (iii) they now work as a warehouse that neutralises and incapacitates criminals (e.g., Bauman, 1998; Feeley & Simon, 1992; Garland, 2001a; Hallsworth, 2002; Pavarini, 2007). Together, these two dimensions are considered the main features of the punitive turn, which has supposedly been spread across the world.

This discussion has become a little tired in the Global North due to the centrality of other topics in public and political debates – for example, police brutality, migration, and economic crises. Yet it remains a very vivid topic in Brazil and Latin America. The dramatic increase in incarceration rates is probably the main factor resulting in the incorporation of the ‘punitive turn’ paradigm into criminological accounts in the region. From 1990 to 2016, the Brazilian prison population increased by over 700%, from nearly 90,000 to 726,700 inmates (Fórum Brasileiro de Segurança Pública, 2017). In proportional terms, this represents a variation of imprisonment rates from 61 to 352. Following the presumed global trend, the Brazilian penal system did also experience an expansion beyond imprisonment. Transcarceration, that is, the expansion of alternative sentencing, is also a reality in Brazil. In 1987, only 197 alternative sentences were enforced in the country. Fifteen years later, this number exceeded 100,000. Then, in 2009, this soared to 671,078 (Ministry of Justice, 2010, pp.16–17). This clearly confirms that Brazil, too, has experienced the quantitative increases in its criminal justice system.

Though some Brazilian criminologists have reproduced the idea of a local ‘punitive turn’ in which mass incarceration was followed by the very same or similar qualitative changes experienced by countries in the Global North (e.g., Arantes, 2012; Figueiredo, 2021; Silva & Farias, 2017; see, however, Godoi, 2017), I argue in this article that this has not happened. On the one

hand, some aspects considered to be new features of Western prisons in times of the punitive turn already preceded the rise of mass incarceration in Brazil and are therefore not a product of it. On the other hand, mass incarceration has produced not only different, but quite opposite, outcomes in Brazilian prisons. This challenges reliance on the presumed universality of some northern theories, notably those that suggest that there has been an international convergence of penal policies (e.g., Garland, 2001a; Pavarini 2002; Wacquant, 2003, 2009). To substantiate my argument, I draw on official prison data, reports from non-governmental organisations and secondary data.

The article is structured as follows: in section 2, I analyse the supposed fall of the rehabilitative ideal in Brazil through the variation of prisoners' activities in four different periods – two before and two after the rise of mass incarceration; in section 3, I explore whether or not Brazilian prisons have experienced any clear deterioration or harshening in their standards of living – these being represented mainly, but not only, by a comparison in prison occupancy levels (overcrowding); in section 4, I approach the question of prisons being institutions of control and neutralisation, analysing the relations between prison staff and inmates, as well as the ascendancy and empowerment of gangs within Brazilian prisons. In so doing, this article provides relevant elements for comparative studies on the punitive turn, mass incarceration, and their effects on prisons in different jurisdictions, widening a growing debate and exchange of criminological ideas between the Global North and South.

## 2 | FALL OF THE REHABILITATIVE IDEAL?

If the rise of incarceration rates is the main element representing the punitive turn, the reduction of 'rehabilitative' activities made available for prisoners is what best represents the qualitative transformations prisons have undergone in recent decades.<sup>1</sup> It is often argued that these rehabilitative activities used to enable prisoners to learn skills, transforming them into skilled workers – or, in other words, exploitable subjects. After the punitive turn, the productive investment in prisoners supposedly ceased to be a goal of the prison system, which is intended to have moved away from its older disciplinary model (e.g., Chantraine, 2006; De Giorgi, 2002; Feeley & Simon, 1992; Garland, 2001a; Hallsworth, 2002; Irwin, 2005; Jiménez Franco, 2019; Pavarini, 2007). The scholarship on the punitive turn claims that prisons now operate merely or mostly as a warehouse, as an institution of control, segregation and incapacitation, neutralising dangerous classes and the risks they pose to the society and citizens who pay their taxes and obey by the law.

The Brazilian context suggests that this may well have little to do with countries beyond the so-called Global North. As represented in Figure 1, a comparative analysis of prison activities in different years show us a historical pattern in Brazil: most prisoners have remained idle when serving time, and just a small minority of them have been involved in 'rehabilitative' activities.

There are some methodological questions and issues that emerge from Figure 1 and challenge a full comprehension of this picture. Why were those four specific years chosen? Why does data on the first two years relate only to convicted prisoners while data concerning 2008 and 2014 encompass both convicted and remanded prisoners? Why are prisoners divided into these three categories?

The first two questions are problems of the same origin: scarcity of official information and lack of standardised data. Bosworth (2001) has already indicated some relevant methodological issues when doing historical criminology. Yet, historical research can be even harder in contexts beyond the Global North, where state institutionalisation and modernisation are relatively recent trends (see Fonseca, 2018). If 'Paris is full of archives and libraries for any researcher interested

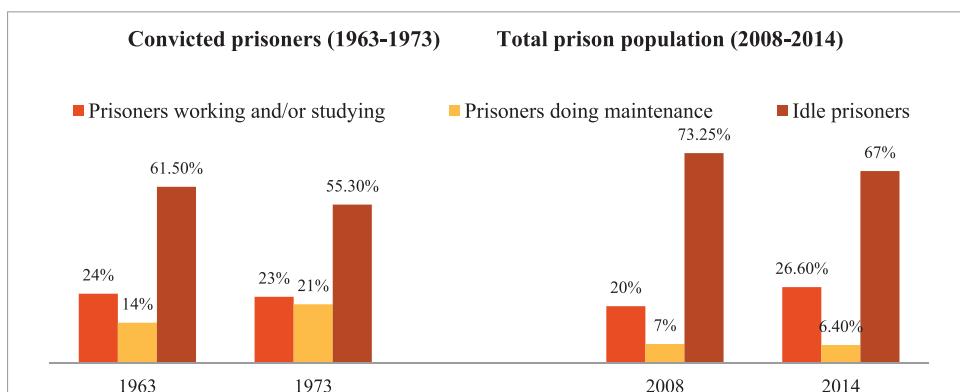


FIGURE 1 Prisoners' activities

Source: Instituto Brasileiro De Geografia E Estatística [IBGE] (1965, 1976); Ministry of Justice (2009, 2016). Extracted and adapted from Dal Santo (2019).

in crime and punishment of the past' (Bosworth, 2001, p.434), this is definitely not the case in Brazil. In this regard, the Brazilian state developed a national system of prison statistics (*Infopen*) only in the 2000s, with the first compiled report published only in 2004. Yet not every report has contained the same sort of information, which is why 2008 and 2014 are represented in the graph. They: (i) represent doing time during mass incarceration in two different decades; and (ii) are the first and the latest (maybe last?) years with qualitative information on prison labour activities, distinguishing them into different categories of activities – for instance, agricultural, handcraft, industrial and bureaucracy and maintenance as support to prison staff. From 2015, all reports indicate only whether prisoners are involved in working or learning activities, with no detailed information.

Before 2004, some statistics of the Brazilian criminal justice system used to be published in national statistical yearbooks. These yearbooks, however, provided information of many broadly different domains, such as geographical, economic, social, etc., not being specialised reports on national criminal justice. Different from the *Infopen* reports, these yearbooks provided only, and at best, information on convicted prisoners, not considering pretrial people. From the late 1970s there is not even information on prisoners, but only on arrests made throughout the year, which displaces the focus on information on those being punished to those who punish. It follows that no prisoners' information of any year before mass incarceration – that is, before the 1990s – regarded the whole prison population, as is the current standard of statistics published in *Infopen* reports. This explains why only data from 2008 and 2014 entail the general prison population, while data from 1963 and 1973 are limited to convicted prisoners.

This, however, does not explain why 1963 and 1973 were the years selected. The original idea was to have one year per decade, so there would be a representative year for the 1960s, the 1970s, the 1980s, the 1990s, the 2000s and the 2010s. However, there are no such data for a single year between the 1980s and the early 2000s. Nonetheless, considering the Brazilian socio-economic context, the most important periods for the purposes of this comparison are exactly the decades of 1960 and 1970. These were periods of urbanisation and industrialisation (Instituto Brasileiro De Geografia E Estatística (IBGE), 2006; Marini, 2000, pp.49–96; Pochmann, 2012, p.16). According to the rationale presented in the introduction – as well as to traditional claims from the political economy of punishment (Rusche & Kirchheimer, 1939) – periods of economic development tend

to result in more 'inclusive' punishment or, in other words, tend to promote more productive investment on prisoners. And yet, the percentage of prisoners involved in 'rehabilitative' activities has always been low in Brazil even in periods of economic development and industrialisation. So, even despite the lack of historical, standardised statistics on prisons and prisoners, 1963, 1973, 2008 and 2014 can be considered satisfactory exemplifying years, representing periods before and during mass incarceration.

Finally, why is there this qualitative division between learning and working activities on the one hand, and activities to support prison staff (maintenance and bureaucratic tasks) on the other? Due to economic scarcity and not being a political priority, Brazilian prisons have a long tradition of using prisoners as part of their own staff. For this reason, prisoners involved in doing maintenance or bureaucratic tasks are not benefitting from specific prison programmes aimed at capacitating prisoners but are only being used as an alternative way to overcome a staff deficit (Ramalho, 1979, p.19). The division of these two categories may be contested. In so doing, I do not mean to deny the value, the dignity and the potential capacity of these activities to be helpful to prisoners. Nonetheless, they are not thought, organised and made possible for prisoners to learn or develop new labour skills; they are rather of more use and value for the prison management itself. Therefore, they are here considered a different sort of category, separated from the activities intentionally planned and made available for prisoners.

The debate on prison activities and the rehabilitative ideal is actually much wider. Many scholars have claimed that the whole point of resocialisation is a naïve understanding which must be demystified (Foucault, 1975; Melossi & Pavarini, 1977; Rusche & Kirchheimer, 1939). Rather than rehabilitating inmates, prisons are considered institutions which operate towards the discipline of marginalised people, achieved by teaching them obedience (Melossi, 2018), rather than teaching useful skills to potential workers. In addition, very often the 'supply' of prisoners willing to get involved in learning or working activities is much higher than the actual opportunities prison management can offer in Brazil. When working opportunities are provided, prisoners tend to be chosen by their very experience in those available roles. Prisoners with no working experience or labour skills may be dismissed (Ramalho, 1979, p.82). This means that these activities are an opportunity for generating more profits, since prisoners can legally earn less than the national minimum wage. As Kalica (2014) puts it, these are labour activities that do not help re-entering society.

Despite all these caveats, my initial claim is still valid: most prisoners have remained idle when serving time in Brazil, be this during or before mass incarceration. But there is a further point to be made about idle prisoners. If the percentage of idle prisoners seems to have increased, this may well be due to the distinct populations compared. Had pretrial prisoners been included in the totality of prisoners from 1963 and 1973, the percentage of idle prisoners would certainly increase. This is because prisons in which they are located do not have the same facilities and structures as prisons for properly serving time. Moreover, if only the category 'prisoners working and/or studying' is considered, it seems hyperbolic to affirm that there has been a fall of the rehabilitative ideal in Brazilian prisons after mass incarceration. It may well be the case that there are proportionately more people nowadays involved in 'rehabilitative' or capacitating activities than there were in the past – even if only slightly. It does not follow from this that Brazilian prisons are a good, or a better, place now. Rather, provided that prisoners' activities are an accurate or reasonable indicator, the so-called rehabilitative ideal has never been institutionalised or pursued in practice in the country.<sup>2</sup> It is therefore the case that mass incarceration has not produced the fall of the rehabilitative ideal in this country; the absence of the rehabilitative ideal in Brazilian prisons is not a consequence of mass incarceration, but a feature that precedes it.

### 3 | DETERIORATION OF PRISON LIFE CONDITIONS?

As previously mentioned, the worsening or hardening of prison life conditions constitutes another main trend highlighted by theories on the punitive turn, also as a product of mass incarceration. The barbaric and inhumane conditions of the Brazilian prison system are internationally recognised. They have been the focus of several reports from international organisations for human rights, such as the United Nations (2016) and Human Rights Watch (2015). These conditions have also given rise to complaints in the Inter-American Commission of Human Rights.<sup>3</sup> The dire situation is also acknowledged at the local level. The Brazilian prison system has recently been the subject of a Parliamentary Committee of Inquiry (Brazil, National Congress, 2009), and is currently the subject of a plethora of judicial cases yet-to-be judged by the Brazilian Supreme Court. Often considered the context of the greatest violations of human rights and fundamental guarantees in Brazil, the Brazilian prison system consists of overcrowded prisons that act as a hub for infectious diseases, violence, torture and deaths; they are institutions characterised by material deprivation, lacking adequate food, water, cleanliness and hygiene, and are often ruled by gangs.

This context of inhumanity, however, is not a new feature of Brazilian prisons either. Again, this is not a product of mass incarceration. Material deprivation, lack of legal assistance, food, health-care and hygiene, for instance, are observed in the whole history of 'modern' prisons in Brazil, from the 1800s to the present (Human Rights Watch, 2015; Maia et al., 2017a, 2017b; Ramalho, 1979; United Nations, 2016; Varella, 1999). In fact, modern prisons reproduce some features of pre-modern or colonial prisons from the late 18th century (Araújo, 2017). It must be acknowledged that scholars of prisons have consistently indicated how difficult it is to measure levels of pain and suffering (see, e.g., Crewe, 2011; Liebling, Hulley & Crewe, 2012). It is also questionable whether pains of imprisonment can be compared either between different places or times. Acknowledging that, I here use levels of occupancy as an exemplifying category of poor standards of life in prison. This choice is justified in three instances. As per the European Court of Human Rights, overcrowding is a form of torture itself and constitutes an inhumane punishment (c.f. Roig, 2014, pp.513–517). In the Brazilian context, overcrowding was indicated by the Parliamentary Committee of Inquiry on Prisons final report as 'perhaps the mother of every other problem in prisons ... [insofar as] overcrowding prison cells generate insalubrity, diseases, riots, rebellions, deaths, degradation of the human condition' (Brazil, National Congress, 2009). Finally, because it is measured in quantitative terms through rates of occupancy, overcrowding can be considered an objective and comparable indicator. Subsequently, I also bring other aspects to reinforce the main claim developed throughout this section.

A historical analysis of prisons in Brazil indicates overcrowding as one of its intrinsic features, present throughout its whole history. A wider and more detailed analysis of variations of rates of occupancy in Brazil is affected by a problem already mentioned above: the lack of prison statistics, which also denotes that prisons were not a priority for the Brazilian state in the past. Similarly, prisons were not a priority for researchers either. It was only in the 1970s that relevant research on prisons emerged more consistently. Thompson (1976) and Ramalho (1979) are examples of authors who, by conducting ethnographic research, noted the importance of overcrowding at that time. From a historical approach, scholars have provided accounts of overcrowding in Brazilian prisons back in the 19th century (Aguirre, 2009; Holloway, 2017; Koerner, 2006; Maia, 2017). This feature is also observed in studies focusing on a more recent history, notably from the 1950s (Adorno, 1991, p.71; Coelho, 1987, pp.319–320).

The context of poor and missing official data prevents us from identifying the national level of prison occupancy in years before mass incarceration. One must therefore find alternative ways

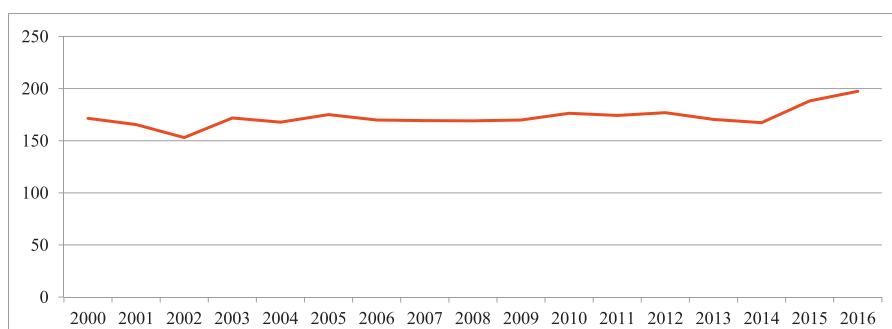


FIGURE 2 Prison occupancy rate (%) (2000–2016)

Source: Ministry of Justice (2017). Extracted from Dal Santo (2019).

that are methodologically flexible enough to overcome this obstacle. Information gathered by Thompson and Ramalho on the conditions of São Paulo Detention House (*Casa de Detenção de São Paulo*) makes it possible for us to compare, to some extent, the conditions of overcrowding then and now – though it does not represent a full and homogeneous picture of national prisons. According to these authors, the São Paulo Detention House rates of occupancy had varied between 259.3% (Ramalho, 1979, p.115) and 272.7% (Thompson, 1976, p.106) in 1976. This House of Detention later ceased to operate and was demolished, which precludes any accurate comparison using the same case study. Nevertheless, the current rate of prison occupancy in São Paulo state is 183% (Ministry of Justice, 2017, p.26). The conditions of comparison here are not ideal. However, the São Paulo Detention House was the main and the biggest prison in Latin America. At that time, São Paulo state inmates accounted for over a third of the total Brazilian population (Instituto Brasileiro De Geografia E Estatística (IBGE), 1981, p.287). This clearly expresses São Paulo Detention House's relevance and representativeness as a prison institution of that period. Furthermore, according to Thompson (1976, p.107), there were another 7,200 prisoners in overpopulation in São Paulo countryside's penitentiaries, accounting for twice as many people in the same situation as in the São Paulo Detention House. This is a fair illustration of Brazil's prison overcrowding in a pre-mass incarceration era.

A context of national data on prison occupancy rates was made possible only in the late 1980s. According to Adorno (1991, p.71), 88,041 people were incarcerated in Brazil in 1988, when the Brazilian prison facilities had officially only 43,345 prison beds. This means that the national rate of prison occupancy was 203.1%. In 2016, this rate was 197.8% (Ministry of Justice, 2017). Thus, in a national-level comparison before and after the rise of mass incarceration, overcrowding was worse in the former than in the latter.

The lack or paucity of official statistical data on the national prison system makes it almost impossible to analyse the variations in prison occupancy rates over longer periods. However, the improvement in data organisation and production systems in recent years allows us to compare these rates throughout the 21st century. Figure 2 shows stability in levels of Brazilian prisons occupancy. These rates have fluctuated at around 170%, apart from the last two years of the period analysed, when the referred rates reached 188.2% in 2015 and 197.4% in 2016. Although the prison population increased from 232,800 prisoners in 2000 to 622,000 in 2014, prison occupancy rates have remained fairly stable, fluctuating between 167.3% and 171.5% over the period.

Based on the conditions of overcrowding in prisons, it is possible to argue that the cruel and inhumane standards of life and the high levels of pain and suffering experienced in Brazilian

prisons were not produced by the rise of mass incarceration in the country. As well as the lack of any rehabilitative ideal, dreadful conditions of life are just another intrinsic feature of the Brazilian prison system, having persisted over time since its origins.

We have seen so far that two of the main features of the so-called warehouse prisons (i.e., prisons after the punitive turn) in the Global North are simply constitutive features of prisons in Brazil. Low levels of working and learning activities, overcrowding and inhumane living conditions are key elements of Brazilian prisons and have remained so under mass incarceration. It might be the case that mass incarceration has aggravated some of these conditions. This, however, still needs empirical evidence, and not mere ‘importation’ of predefined and presumed global theoretical models.

It is necessary to keep in mind that these extreme conditions have haunted the Brazilian prison system since the foundation of its first modern unit, having persisted even in moments of economic development. Elements beyond rates of occupancy reinforce this. A good illustration is the very first modern Brazilian prison – the Rio de Janeiro House of Correction. According to Koerner (2006), in its first 20 years of operation, approximately one out of every four inmates died while serving their time. These deaths were mainly caused by the precarious and unsanitary conditions of prison facilities and by the spread of infectious diseases. Those who survived often came out of prison with physical impairments severe enough to make them incapable of working, restricting their access to the labour market. In addition to highlighting the aspect of being a hub for mortality and diseases, this case also materialises and links the lack of resocialisation purposes of prison to the dreadful conditions of life experienced within those institutions. These features were also present in other prisons across the country at that time (Maia et al., 2017a, 2017b). In recent times, prisons have remained hubs for contagious diseases and mortality. This includes having rates of tuberculosis, hepatitis, STDs (HIV since the 1980s), deaths, and, more recently, Covid-19,<sup>4</sup> much higher within prisons than outside them (Adorno, 1991; Human Rights Watch, 2015; Ministry of Justice, 2016, pp.55–56).

If we have seen aspects that have persisted over time in prisons, I now turn to some of its new features. Mass incarceration did promote changes in relationships internal to prisons, both in terms of prisoner-staff and prisoner-prisoner relations. One of these changes, for instance, is the emergence of gangs and its consequences. I discuss the ascendancy of gangs in the next section. For now, it is worth mentioning how some aspects of social relations in prisons have been affected by mass incarceration. The *Primeiro Comando da Capital's* (PCC) hegemony consolidation in some Brazilian states has produced the consolidation of a collective consciousness, which was responsible for replacing punishment and physical violence as the prevailing ways of internal conflict resolution with collective discussions and also informal judgments by its members (Biondi, 2010; Dias, 2011; Feltran, 2008, 2010; Willis, 2015). Furthermore, the emergence of this collective spirit promoted a sense of parity shared among inmates, in contrast to the hierarchical relationships which previously used to prevail in prisoners' interactions (Dias, 2011; Feltran, 2008; Manso & Dias, 2018). The PCC has also forbidden the use of weapons, eradicated crack cocaine use and trafficking within prisons (Darke & Karam, 2016; Dias & Salla, 2017, p.22), and determined the end of sexual violence (Dias, 2011, pp.203–213; Feltran, 2008) – practices which were prevalent in previous decades (Ramalho, 1979; Varella, 1999, 2012). Though still present in the relations between staff and prisoners, torture is now not as frequent and apparent as it used to be in the past (Varella, 1999, 2012). New patterns of relations that followed the consolidation of the PCC reached not only prisoners, but also their families. The PCC has managed to provide prisoners with essential goods including, for example, a welcome and hygiene kit, as well as the

bus fare for when they leave prison (Darke, 2014, p.64); and has also provided their families with transport to visit inmates, subsistence costs, and some basic needs (Dias, 2011, pp.233–235).

That said, one must not see the changes in social relations and behaviours promoted by these groups in a binary way, as either fundamentally good or bad, labelling these inmates as either heroes or villains. They do not represent the revolutionary social banditry of peasant societies to which Hobsbawm (1969) once referred. If positive examples were given above, there are also negative situations to which one can point. Though currently promoting a kind of ‘peace among inmates’, the PCC process of ascendancy and empowerment was not achieved through a peaceful manner alone. Owing to struggles between rival groups, it included peaks of homicides and collective conflicts within prisons, mainly between 1994 and 2001 in São Paulo (Dias, 2011, pp.148–161; Dias & Darke, 2016, p.218). More recently, a series of riots and conflicts in prisons where hegemony is in dispute between rival groups have ended up with more than 100 deaths (Darke, 2018, ch. 3).

Current patterns of relationships and sociability experienced in Brazilian prisons are, above all, complex and ambivalent. On the one hand, the examples discussed above reveal aspects of sensible improvement when compared with past decades. On the other hand, other cases represent intensification in wider conflicts. As anticipated at the beginning of this section, comparing levels of suffering and pain across time is a difficult task, since these are subjective issues. Nonetheless, the quantitative indicator and qualitative elements considered above suggest that one cannot state categorically that the conditions of life in prison have been worsening or hardening due to mass incarceration. Brazilian prisons have always been absolutely inhumane. Measuring what is more or less inhumane turns out to be a thorny task.

#### 4 | INSTITUTION OF CONTROL AND NEUTRALISATION?

Finally, the last main feature of prisons in their warehouse model regards its eventual new purpose and operation. It is often argued that prisons ceased to be institutions of reform and productive investment in inmates. Replacing their old functionality, they have now supposedly operated towards control, surveillance and neutralisation of groups of dangerous people. This is at least the history told by punitive turn theorists on prisons in ‘Western countries’ from about the 1980s (e.g., De Giorgi, 2002; Garland, 2001a; Jiménez Franco, 2019).

Comparative analyses of prisons in the Global North and South have already been made by different authors. Birkbeck (2011), for instance, compared penal facilities in Latin and North America and, based on the cases of Venezuela and the USA, concluded that penal interventions occur in distinct qualitative ways in the two regions. While Latin America produces an ‘internment’, especially marked by the *release*, North America promotes an actual imprisonment, through confinement. Among the main differences observed by the author are: spatial organisation and categorisation of prisoners and prisons; capacity of surveillance; supervision and task performances; accountability; and formalisation and levels of bureaucratisation. Birkbeck (2011) concludes that these penal facilities are different in nature, perform distinctly, and produce distinguished outcomes.

One of the main general differences, according to Birkbeck, is that levels of control in Southern prison facilities are structurally and fundamentally lower than those attached to Northern facilities. To begin with, there is a substantial difference in the categorisation of prisons. Consequently, the allocation of prisoners among prison facilities and the prison structure made available to them varies greatly between North and South. In the USA, formal differences between jails and prisons (the latter being distinguished in minimum-, medium- and maximum-security levels) effectively result in material differences in prison infrastructure and, therefore, in the experiences of serving

time. In the context of Brazil, these differences also exist, but they are often limited to a legislative dimension. Despite being legally established, the distinction between *cadeias públicas* or *Centros de Detenção Provisória* (facilities for pretrial prisoners), *penitenciárias* (for convicted prisoners, and these facilities being medium- or maximum-security), *Colônia Agrícola* or *Industrial* (for prisoners granted the possibility of working or studying outside prisons, but who must return to sleep there), and *Casas de Albergado* (open prisons and institutions for people convicted to weekend detention only) are noted more in books than in practice. These differences between expectation and reality are mainly either due to the lack of units intended for a specific sort or level of punishment (in which case prisoners are allocated to other existing units) or owing to the material mismatch between legislation and the actual prison structures. Again, this context makes contemporary confinement in Brazilian prisons reminiscent of experiences in the late 18th and 19th centuries (Araújo, 2017; Ferreira, 2017). This scenario does not mean that prisons in Brazil cannot operate towards control and incapacitation. However, this reality does affect the flow of inmates within and among prison facilities and does indicate a smaller capacity for, or lower interest of, the state to manage inmates from a more detailed categorisation. This, in turn, directly influences the question of prisoners' control, not least from a perspective of different levels of risks.

The main difference between Southern and Northern penal institutions, however, lies in the very issue of prisoners' surveillance. This involves two distinct dimensions: one regards the physical presence of staff (especially guards), while the other relates to the availability of technological resources. Whereas the rates of inmates per custody agent in the USA and Canada are three (three inmates for every custody agent) and 1.1 respectively (Birkbeck, 2011), this rate is over eight in Brazil (Ministry of Justice, 2017). The comparison is even starker if comparing Brazilian with Nordic prisons (Skarbek, 2020, p.46). Once more, a contemporary feature of Brazilian prisons closely resembles the context of 19th-century national prisons (Costa, 2017, p.142). In addition, the difference in levels of technological resources for prison surveillance, inspection and management further accentuates this inequality in the domain of prisoners' control. Apart from maximum-security prisons, Southern penal institutions tend not to have high-tech tools and devices. This context of obsolete apparatuses and lack of available technology results in a greater demand for human resources (i.e., prison staff). However, as outlined above, this demand is far from being met in the case of Brazil.

Another common trend which affects levels of prisoners' control is the frequent involvement of inmates in activities of maintenance and administrative tasks, as discussed above. This is actually a common element of prisons in Latin America (Cerbini, 2021; Peirce & Fondevila, 2020; Weegels, 2020) and other peripheral contexts (Butler, Slade & Dias, 2018; Jefferson & Martin, forthcoming), not being observed in prisons in core countries. Given this context, some scholars refer to Brazilian – and Latin American – prisons as 'co-governed' (Biondi, 2017; Cipriani & Azevedo, 2020; Darke, 2018; Darke & Karam, 2016; Dias, 2011; Skarbek, 2020) prisons, where inmates rule prisons in collaboration with prison staff in an endemic way, and not extraordinarily. In some Brazilian prisons, there are inmates who, in addition to being prisoners, are also *chaveiros* (Human Rights Watch, 2015), which literally means keyholders. They are responsible not only for controlling their own cells, but all cells. This whole picture confirms that there is a much lower level of public or state control in Brazilian prisons.

Also relating to this, the low level of bureaucratisation in Brazil significantly weakens prison management. Consequently, a series of unimaginable events for the Global North often take place in Brazilian prisons: people in custody without a single charge against them;<sup>5</sup> pretrial detainees in such a condition for over 90 days; inmates forgotten in prisons – abandoned there after serving their full sentence;<sup>6</sup> prisoners who have served enough time to get a 'prison regime progression'<sup>7</sup>

but remain serving time in a regime more severe than the one they should find themselves in had prison regime progression occurred automatically.<sup>8</sup> Unlike countries such as the USA and the UK, penal 'oversight' is mainly a task for judges, and not for parole or probation boards – which is to say, it is dependent upon judicial, and not managerial or administrative, activity. Hence, if prisons management is not capable of controlling these sorts of situations, one cannot even presume what is effectively controlled (or what could be controlled) within prisons in Brazil.

All these structural issues reveal how distant Brazilian prisons are from any eventual purpose of control. Where incapacitation or neutralisation goals are concerned, the situation gets even worse. The mere presence of gangs across the national prison system jeopardises any possibility of neutralising inmates. Nonetheless, gangs do not only 'exist' in prisons. According to researchers (Biondi, 2010; Dias & Salla, 2017), the PCC controls nearly 90% of prisons in São Paulo state, whose prison population still represents a third of the total prison population in the country. The PCC is a Brazilian gang founded within a prison in São Paulo's countryside in 1993 – that is, in the early years of mass incarceration in Brazil. It emerged from the organisation and bond of prisoners as a reply to the violence, harshness and arbitrariness from prison staff against them, who were frequently beaten, abused and maltreated, and also as a retaliation against the general inhumane conditions of life in prison (Biondi, 2010; Feltran, 2008). This gang not only emerged in prisons but is now a powerful player both: (i) in criminal activities such as bank robbery and in the drug market throughout Brazil and South America (Manso & Dias, 2018); and (ii) in the production of order within and outside prisons (Adorno & Salla, 2007; Feltran, 2010; Manso, 2012; Willis, 2015). In this context, important issues are discussed by its members who are in custody and others who are not. Important decisions are made within prisons, and key messages and orders surpass the boundaries of prison walls. Despite these physical walls, there is no actual barrier that fully neutralises interactions and key communications between the 'worlds' inside and outside the prisons. Some researchers have shown that there is no such thing as two distinct or unconnected worlds – they are thoroughly interconnected (Adorno & Salla, 2007; Biondi, 2010; Dias, 2011; Dieter & Freitas jr, 2020; Feltran, 2008; Godoi, 2017; Manso, 2012; Moore, 2021; Willis, 2015). Prison has therefore failed to neutralise criminals and has actually made it possible for gangs to be founded and organised, and have their power expanded beyond prisons.

The PCC is not an exception as the only powerful group of prisoners in Brazil. There are many others spread throughout Brazil. Most of them are powerful locally, on a state or regional level, rather than nationally. In this regard, there is another important feature of Brazilian prisons involving the state 'granting' or transferring power to these gangs. In regions where there are two or more powerful and rival groups, the 'labelling' and internal allocation of prisoners may rely upon an eventual link of a new detainee to gangs which are present in that prison (Darke & Karam, 2016; Karam & Saraiva jr, 2017, p.48). However, this definition does not necessarily require an effective 'membership' or any bond from the new detainee with any given gang. When a new prisoner arrives at a prison in these conditions (housing two or more rival gangs), they are very likely to be asked about their 'criminal bond' – whether they 'belong' to one or another gang. In case they do not have any bond at all, the mere place of their origin or residence may be a defining element in establishing to which prison wing they are going to be sent. Prison staff take the region they come from and check which gang is known to have control over it. In cases such as in Rio de Janeiro (Karam & Saraiva jr, 2017) or Rio Grande do Sul (Cipriani, 2016), different sectors of the same prison are controlled by different gangs. In this context, being sent to a wrong sector may result in threats to a prisoner's life.

Another way in which prison management and, more specifically, the allocation of inmates has contributed to the expansion and empowerment of gangs relates to the attempts of breaking

up gangs and isolating gangs' leaders. Some of them were removed from São Paulo prisons and sent to other regions. Rather than demobilise and weaken the PCC, these practices helped that gang to be spread across Brazil and establish relationships with local gangs of Brazilian states beyond São Paulo (Manso & Dias, 2018). Therefore, in addition to making possible the foundation, organisation and empowerment of gangs, the Brazilian state may well be – either directly or indirectly – favouring, helping, or fomenting recruitment for these gangs.

Gangs' and prisoners' empowerment and mobilisation have also brought forth state responses. In addition to building prisons of maximum security in which leaders of criminal groups have been allocated, the Brazilian state has also expanded and hardened new policing powers and passed some tougher laws. One of these new laws has established the *Regime Disciplinar Diferenciado* (RDD – Differentiated Disciplinary Regime), which is an adaption in the Brazilian prison system that seeks precisely to control and neutralise 'dangerous people' and 'criminal leaderships'. Serving time in RDDs basically means being in full isolation in an individual cell for 22 hours per day. This is a clear penal policy towards incapacitation and control. Yet, this: (i) does not affect a representative percentage of prisoners; and (ii) does not mean all prison policies recently established by the Brazilian state were fundamentally more repressive. As Marques (2017) observed, the human-rights paradigm has, to some extent, also oriented penal policymaking processes since the 1990s.

Considering all the above, it is inappropriate to claim that Brazilian prisons have become an institution of control and incapacitation under mass incarceration. This does not imply denying that surveillance is also present, in some contexts and moments, in the operation of prisons. That said, inmates are key players in the production of order in Brazilian prisons, and this reduces the capacity for the state to control its prisoners. Furthermore, rather than neutralising inmates, Brazilian prisons have been a place for gangs' development, empowerment and recruitment under mass incarceration.

## 5 | CONCLUSION

In this article, I have shown that the presumption of a global convergence of penal policies is not a movement with a concrete, empirical basis – at least in the Brazilian context. Theories of the punitive turn have a limited capacity to grasp particularities of mass incarceration in the country specifically, but also in Latin America more broadly. The quantitative aspect of the punitive turn (mass incarceration) was not followed by the same qualitative changes observed in Global North countries – they are actually quite distinct, and in some cases even opposite.

This article has shed light on new trends and relationships that have emerged within Brazilian prisons in the context of mass incarceration. This is mainly related to the emergence, organisation and empowerment of gangs, which have become important players in the production of order both inside and beyond prisons. In contrast to this, I have also explored some historical features of Brazilian prisons that have been preserved throughout time and have remained central in contemporary times. Among these unshaken features, I have highlighted the low levels of prisoners involved in working or learning activities and the lack of any rehabilitative ideal, as well as elements which attest to the inhumanity of prisons and are attached to high levels of pain and suffering, such as overcrowding, widespread contagious diseases and high rates of mortality.

It is therefore important to consider that some elements now considered key features of the contemporary warehouse prison in the Global North are in fact intrinsic features of the

Brazilian prison system. They have preceded the rise of mass incarceration and are not its product or consequence. Since their origins, Brazilian prisons have remained overcrowded, harmful and insalubrious. Even in times of economic development, they have had extremely inhumane conditions and a small percentage of prisoners involved in 'rehabilitative' activities, mainly owing to their precarious facilities. Paradoxically, however, mass incarceration has produced some internal changes in prisons that may well have alleviated inmates' suffering in some ways, rather than intensifying experiences of confinement. Finally, the presumed main goals of the warehouse prison are far from being achieved in Brazil. Rather than promoting inmates' control and incapacitation, mass incarceration has probably made these goals unattainable, as it has directly and indirectly contributed to the emergence, empowerment, recruitment and organisation of gangs, whose powers now transcend the physical barriers of prison walls.

In summary, this portrait indicates that the Brazilian prison system is better described as an institution of *inhumane conditions for more and more prisoners*, rather than of necessarily *more and more inhumane conditions for prisoners*. Changes in prisons' internal relations experienced by inmates since the rise and empowerment of gangs are extremely complex and ambivalent, and so are state responses to them.<sup>9</sup>

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## END NOTES

<sup>1</sup> It does not mean that there is consensus in the literature in this regard, but this has become the dominant position. For responses to this claim from different perspectives, see, for example, Melossi (2018), Phelps (2012) and Zedner (2002).

<sup>2</sup> This does not mean that Brazilian prisons have not worked towards discipline. For a discussion on how structural and cultural elements have shaped Brazilian prisons as productive institutions in a different way when compared with core countries, see Dal Santo (2022, forthcoming).

<sup>3</sup> On Urso Branco/RO prison, available at: [http://www.corteidh.or.cr/docs/medidas/urso\\_se\\_05\\_portugues.pdf](http://www.corteidh.or.cr/docs/medidas/urso_se_05_portugues.pdf) [Accessed 23 October 2017]; on Curado/PE prison complex, available at: [http://www.corteidh.or.cr/docs/medidas/curado\\_se\\_02.pdf](http://www.corteidh.or.cr/docs/medidas/curado_se_02.pdf) [Accessed 23 October 2017]; on Pedrinhas/MA prison, available at: [https://issuu.com/justicaglobal/docs/resolucao\\_pedrinhas\\_14\\_de\\_novembro](https://issuu.com/justicaglobal/docs/resolucao_pedrinhas_14_de_novembro) [Accessed 23 October 2017]. Recently, the Inter-American Commission of Human Rights united the charges on Curado and Pedrinhas prisons to two other charges of human rights violations in the Instituto Penal Plácido de Sá Carvalho (Rio de Janeiro) and the Unidade de Internação Socioeducativa (Espírito Santo), establishing a *supercause* against violations in Brazilian prisons, available at: [https://brasil.elpais.com/brasil/2017/02/24/politica/1487961377\\_891224.html](https://brasil.elpais.com/brasil/2017/02/24/politica/1487961377_891224.html) [Accessed 23 October 2017].

<sup>4</sup> Regarding COVID, see <https://noticias.uol.com.br/saude/ultimas-noticias/redacao/2021/01/20/covid-19-infetou-75-das-prisoes-de-sp-mortes-ocorreram-em-24-cadeias.htm?fbclid=IwAR1StHdxNYWgmMZWF5c0bCZMITMtszeK3AzVxwL5zChqA1cJSKl52b4Ftno> [Accessed 18 June 2022].

<sup>5</sup> See, for example, <https://www.jota.info/justica/preso-por-dois-meses-sem-denuncia-mpf-13022015> [Accessed 6 July 2022].

<sup>6</sup> See, for example, <https://www1.folha.uol.com.br/fsp/brasil/fc0309200818.htm> [Accessed 19 June 2022].

<sup>7</sup> According to the Brazilian Law, there are three sorts of 'prison type' – closed, semi-open and open. The expected path for a prisoner is to start serving time in a closed prison. In theory, after serving one-sixth (ordinary crimes) or two-fifths (heinous crimes) of their sentence, inmates get a prison type progression, moving on to the following type – semi-open. After another one-sixth or two-fifths, they are (or should be) then granted an open prison type. In addition to these quantitative elements, prisoners must hold a positive report about themselves as a qualitative condition for having their prison type progressed.

<sup>8</sup> See, for example, [https://noticias.uol.com.br/cotidiano/ultimas-noticias/2017/01/14/rio-gasta-r-67-mi-por-anocom-presos-que-ja-poderiam-estar-soltos.htm](https://noticias.uol.com.br/cotidiano/ultimas-noticias/2017/01/14/rio-gasta-r-67-mi-por-ano-com-presos-que-ja-poderiam-estar-soltos.htm) [Accessed 19 June 2022].

<sup>9</sup> A similar version of this article was originally published in Portuguese: see Dal Santo (2019).

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