

## The theory of labelling approach and the culture of selective incarceration in Brazil

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**ABSTRACT:** The present work will discuss the culture of incarceration in Brazil in order to understand how a selective punishment system occurs. For this, we will analyze the Labeling Approach theory, created in 1960 with the publication of the book *Outsiders*, written by the American sociologist Howard Becker. This theory explains how a subset of individuals has suffered a process of labeling even by the institutions that control public security. Becker argues that delinquency is a social deviance, created by specific groups of society to frame particular individuals and, as a consequence, put on them the stigma of outsiders. The Labeling Approach theory represented a real rupture in traditional criminology by positioning itself in a critical way and by shifting the problem to the reaction of the other instead of focusing on the action of the deviant. In this perspective, this work will seek to expose the true social, political and legal scenario of Brazil, in order to understand how this process of labeling certain social categories influences the country's prison population profile, aiming to comprehend why this selective culture of imprisonment of the poorest. In order to address the research problem, qualitative and theoretical methods will be used. This work will also seek to understand concepts, such as culture, in order to understand the national penitentiary system.

**Keywords:** Culture; Labeling Approach; Incarceration; Selectivity.

**RESUMO:** O presente trabalho tratará sobre a cultura do encarceramento no Brasil para entender como se dá o sistema seletivo de punição estatal. Para isso, analisaremos a teoria do *Labelling Approach*, surgida em 1960 com a publicação da obra *Outsiders* escrita pelo sociólogo americano Howard Becker. Essa teoria explica o processo de etiquetamento que determinados indivíduos sofrem inclusive por meio das instituições de controle de segurança pública. Becker afirma que a delinquência é um desvio social, criada por grupos específicos da sociedade para enquadrar pessoas particulares e assim, por consequência, colocá-las o estigma de outsiders. A teoria do *Labelling Approach* representou, assim, uma verdadeira ruptura na criminologia tradicional por se posicionar de forma crítica e deslocar o problema para a reação do outro ao invés de focar na ação do desviante. Nessa perspectiva, o trabalho procurará expor o verdadeiro cenário social, político e jurídico do Brasil, a fim de entender como esse processo de etiquetamento de certas categorias sociais influenciam no perfil da população carcerária do país, visando compreender o porquê dessa cultura seletiva de aprisionamento dos mais pobres. Para abordar o problema de pesquisa, serão utilizados os métodos qualitativo e teórico. Esse trabalho também visará compreender conceitos como o de cultura com a finalidade de entender o sistema penitenciário nacional.

**Palavras Chave:** Cultura; Labelling Approach; Encarceramento; Seletividade.

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## Introduction

Currently, there is an expressive dissatisfaction among the Brazilian people about public policies that has frustrated them, which is increased by the inefficient policing and the impunity for certain crimes and for certain social strata. The result of this catastrophic equation is the uncontrolled growth in violence and crime and the clamor for the hardening of sentences, especially for the deprivation of liberty.

What happened is that the prison system of the country can no longer handle the demand of convicted and provisional prisoners, which indicates the high rate of incarceration. On the other hand, it must be understood that the criminal problem is not being attenuated, on the contrary, it is increasing.

In this way, the present work tries to understand this process of imprisonment and of selective punishment, based on the profile of the people who are most imprisoned. The scope of this work emerged precisely from the still superficial debate of the notorious "culture of selective incarceration" that does not pay attention to the nuances that circumscribe the term culture, and to how this cultural system reflects in society and to how it makes each society different from all others, in such a way that the importation of foreign models of public policies does not mean that the same results will be accomplished.

The purpose of this study is to deepen the subject of selective criminal culture in Brazil, based on a survey of the definitions of culture and on aspects that interfere and influence the historical and cultural construction of a country, not forgetting the criminological theory of the Labeling Approach, which attempts to explain the process of labeling certain individuals that ultimately impacts on a preference of specific social categories to suffer the criminal punishment.

Here we will analyze the main postulates of the Theory of Labeling Approach, created in 1960 in the United States with the publication of the book *Outsiders*, written by the social scientist Howard S. Becker. This book represented a significant milestone in criminology for having a critical position on the phenomenon of delinquency, treating it as a social deviation.

In this view, the transgression would be the result of a process of labeling that involves both the individuals considered as deviant and those who are responsible for the elaboration and application of sanctions to others individuals. Thus, the theory mentioned above tries to understand how social control institutions apply specific social labels, creating and propagating the criminal stigma.

This general focus on the labelling approach theory will contribute to the full comprehension of the Brazilian scenario of criminal selectivity, once we try to understand the framework with the appropriate complexity that the topic has. Since merely saying that Brazil lives a culture of incarceration is no longer enough to understand how it arises and how it still stands.

For this, we used the theoretical and qualitative research method, once we will analyze the basic concepts of the Labeling theory and their repercussion regarding the culture of selective incarceration in Brazil. We will also analyze the Brazilian scenario, which deals with this research problem, in order to delineate to what degree the selection made by the repressive state system as a whole selects and maintains the stigmatization of certain strata of society.

Thus, the importance of this work rests, in addition to other aspects, on the urgency of disconcerting certain myths about our political and legal system in order to achieve, in a certain way, a critical vision, which can be useful and necessary for changes in culture and, consequently, in civility, in the sense of impelling the country to a real ethical evolution, and instead of a normative-repressive scenario.

## **I. A QUESTION OF CULTURE**

When it comes to criminal policy and its approach through comparative law, it is not uncommon to hear assertions like "it's the culture of that place" or "culturally they treat crime this way," which are made without actually looking at the issue of the culture of a particular civilization or at the historical construction of a country.

As for this simplistic analysis of the problem of public security and the question of crime itself, Emile Durkheim already criticized the approach of criminology that despised sociocultural relations, since this approach defined abstract and absolute terms, forgetting that pathological behavior alone can only be fully understood if one takes into account the social, historical and social context (DURKHEIM, 1997).

Who also corroborates the view that cultural conditions are fundamental to understand human behavior is the anthropologist Edward Burnett Tylor who in his work "The Science of Culture" (1871) asserts that:

A situação da cultura entre várias sociedades da humanidade, na medida em que possa ser investigada segundo princípios gerais, é um tema adequado  
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para o estudo de leis do pensamento e da ação humana. (CASTRO, 2005 p. 69)<sup>2</sup>.

Thus, culture, history, art, and literature are objects that characterize and distinguish each civilization from one another and also reflect the means of awareness and perception of the world by the individual. After all, it is not uncommon for us to judge some behavior as wrong or inappropriate according to our view of the world given to us by a particular culture.

Hebert Marcuse states that "culture provides the soul of civilization" (MARCUSE, 1997, p. 9). This premise makes us reflect on the importance that a cultural baggage has for the structuring and development of society, insofar as it provides the values and principles to be realized by a specific civilization without which this would not be possible.

In this sense, the same author circumscribes more clearly the definition of culture (MARCUSE, 1997):

Cultura aparece então como o complexo de objetivos morais, intelectuais e estéticos, considerados por uma sociedade como meta de organização, da divisão e da direção do seu trabalho (...) Em outras palavras, cultura é mais que uma mera ideologia (...) Cultura como um processo de humanização. (MARCUSE, 1997)<sup>3</sup>.

In this way, it is possible to see the necessary relationship between culture and society – that shall not be confused – and the different forms of organizations among civilizations. They distinguish themselves from each other in that they have different aspirations and goals to be achieved, and these impositions are the result of their specific cultures. Society, in this scenario, is the concretization of these principles, the materialization of cultural objectives.

Thus, creations such as government, state, and politics – the core of various scholarly discussions – are, first of all, idealized constructions in the field of culture, established in the realm of necessity, namely, civilization. Therefore, when it comes to transporting, for example, a certain idea of state or even of a legal model of one country to another, one cannot forget the historical burden behind that prototype, and this “transportation”, for questions that now become more clear, may not obtain the same result, perhaps it may even result in the opposite effect had in the place of its original implementation.

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<sup>2</sup> “The situation of culture among various societies of humanity, insofar as it can be investigated according to general principles, is a suitable subject for the study of laws of human thought and action” (CASTRO, 2005 p. 69, our translation).

<sup>3</sup> “Culture then appears as the complex of moral, intellectual, and aesthetic goals, considered by society as a goal of the organization, division, and direction of its work (...) In other words, culture is more than mere ideology(...) Culture as a process of humanization” (MARCUSE, 1997, our translation).

This dichotomy between culture and civilization takes on more pronounced contours when one considers the possible distancing that may exist between them. If culture, as seen above, overlaps the ideals and aspirations to be sought by a society and civilization, in turn, must be the consolidation of these objectives, and it is not possible to reach them as desired, points of disequilibrium will naturally appear.

In this sense, Professor Marcio Pugliesi (2015, p.108) points out:

A separação, pelas condições de inserção na civilidade, entre os meios concretamente existentes para um dado indivíduo e as aspirações que, por condições da cultura, acaba por assumir – conduz diretamente às mais perniciosas formas de desequilíbrio<sup>4</sup>.

And one of these forms of imbalance is the phenomenon of crime. Therefore, if we take this perspective into account, it is not difficult to understand the many nuances that crime and violence have in different areas of the planet, since these also derive from a cultural issue.

In other words, when the aspirations imposed by culture distance themselves from the concrete means to satisfy them in the field of civilization, the frustration of some in not being able to reach the goods and values wanted by the majority creates a framework of imbalance. This framework emerges from the moment that individuals in the community who do not have the same opportunities to achieve what is intended foster other means, not considered legitimate by that group, to realize them.

In this connection, in civilizations where the dominant culture strays too far from the reality of what the majority of the population can actually achieve, the apparent balance becomes even more precarious and crime is one of the ways of expressing it.

This is where the contemporary crisis of law (PUGLIESI, 2015. p. 118-120) is found, since it is well-known that the opportunities for full insertion in society do not take place equally for all, there is no way to establish a minimum of balance or consensus without the use of force.

And in a society ruled by capitalism, with the inclusion of new technologies that accelerate the production of consumer goods increasingly and where they are rapidly suppressible by others, things are no longer created to last but to be used and then discarded.

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<sup>4</sup> “The separation, by the conditions of insertion in civility, between the means concretely existent for a given individual and the aspirations that, by conditions of the culture, ends up assuming - leads directly to the most pernicious forms of imbalance.”(PUGLIESI, 2015, p. 108, our translation).

Thus, those who follow this accelerated process of autophagy<sup>5</sup>, as well as becoming prisoners of this system, become slaves to the satisfaction of consumerist impulses, which can occur legally (accepted by the current order) or not.

For this reason, Pugliesi concludes (2015, p. 119.):

Isso sublinha o fato de que o progresso indefinido das técnicas não é a base suficiente e necessária para o progresso indefinido das sociedades humanas. Sem uma correspondente prefixação de rumos culturais que organizem o exercício das técnicas, o regresso à barbárie é uma possibilidade<sup>6</sup>.

The social inequality, a crystalline reality in capitalist societies, calls into question the power and capacity of the culture to develop directions that, in fact, represent some human progress, since the difference in opportunities to reach culturally desired goods and the competition that the system imposes makes it impossible for all to be happy in a honest way.

In the same sense Marcuse points out (1997, p. 100.):

A cultura deve assumir a preocupação com a exigência de felicidade dos indivíduos. Mas os antagonismos sociais que a fundamentam admitem essa exigência na cultura somente enquanto interiorizada e racionalizada. Numa sociedade que se reproduz por meio da concorrência econômica, a simples exigência de uma existência feliz do todo já representa uma rebelião<sup>7</sup>.

In this context, Law, when applied to civilization, appears to us as an instrument to keep cultural aspirations cohesive with the social purpose, expressly forbidding acts that cast doubt on such values, while silently permitting those practices that satisfy the interests of the dominant culture.

And here is another point of connection between culture and civilization as it relates to forms of repression of non-socially accepted behavior. Pugliese points out the distinction between coercion and constraint. While the former is in the field of culture in the form of power, in other words, it is in the idea of what is strictly inhibited by that culture; the second is in civility and is represented by force itself (PUGLIESI, 2015, p. 107).

<sup>5</sup> Expression used by professor Márcio Pugliesi in his work Theory of Law: macrosystemic aspects.

<sup>6</sup> “This underscores the fact that the indefinite progress of techniques is not the sufficient and necessary basis for the indefinite progress of human societies. Without a corresponding prefixation of cultural routes that organize the exercise of techniques, the return to barbarism is a possibility” (PUGLIESI, 2016, P. 119, our translation).

<sup>7</sup> “Culture must take on the concern for the happiness requirement of individuals. But the social antagonisms that underlie it admit this demand in culture only as internalized and rationalized. In a society that reproduces itself through economic competition, the simple demand for a happy existence altogether already represents a rebellion.” (MARCUSE, 1997, p. 100, our translation).

Thus, when this aim is not pursued by all in a way considered legitimate, it is necessary to apply force, and here we highlight the role of Criminal Law, through constraint and all the tools that civilization has to exercise it.

Jean-Paul Marat's Criminal Law Plan corroborates this point of view when he states (Marat apud Pugliesi, 2015, p. 115.):

É a violência que os estados devem sua origem; quase sempre algum feliz aventureiro é o seu fundador e quase em toda parte as leis foram, tão só, em suas origens, que regras de polícia, próprias para garantir para cada um a tranquila fruição de suas rapinas<sup>8</sup>.

It follows that the system of state repression, as it tries to establish order and maintain a particular mode of production which serves specific interests, chooses to imprison and exclude a specific social category in detriment of others, which, consequently, creates and reinforces their stigmata. This process of stigmatization and labeling of some individuals will be discussed next.

## 2 THE LABELLING THEORY

The Labelling Approach Theory, emerged in the 1960s, primarily in the United States, as a result of a period of profound social and economic conflict, in a real counterculture movement, marked by intense discussion about drug criminalization, rock and roll style, minority civil rights struggle, and opposition to the Vietnam War (SHECAIRA, 2012. p.238).

This theory projects a critique of the traditional models of criminology, and it does so when it gathers its efforts in the study of the reaction of the criminological phenomenon instead of studying only the criminal action. That is, according to this theory, what links the delinquents in a target group of state repression is not the act they practice, but the repercussion that the social environment gives them.

Howard Becker, an American sociologist, is the principal name of the Theory of Labelling. His book *Outsiders*<sup>9</sup> marks a real revolution in the study of delinquency and begins to understand the phenomenon of transgression as social.

In the first chapter of this book, the author will circumscribe the concept of Outsider. Thus, when society establishes specific rules and imagines that a person has failed them, this

<sup>8</sup> "It is violence that states owe their origin; almost always some happy adventurer is its founder, and almost everywhere the laws were, only in its origins, that police rules, proper to guarantee for each one the quiet fruition of its preys." (Marat apud Pugliesi, 2015, p. 115, our translation).

<sup>9</sup> First published in 1960

person becomes a particular type of individual not considered reliable by the rest of the group, and is seen as an outsider (BECKER, 2008. p. 15).

In this sense Becker affirms (2008, p.25.):

O grau que um ato será tratado como desviante depende também de quem o comete e de quem se sente prejudicado por ele. Regras tendem a ser aplicadas mais a algumas pessoas que a outras (...) Meninos de classe média, quando detidos, não chegam tão longe no processo legal como meninos de bairros miseráveis<sup>10</sup>.

As for the individual's entry into the deviant career, Howard Becker shifts his questioning as he turns to the question of why people considered normal can resist their deviant impulses. He explains that the middle class, having already reached specific social standards, would have much more to lose, knowing that a deviation would interfere in several spheres of their social life. Thus, it is smarter to follow institutionalized rules.

But those who no longer have the need to maintain a good image before others can follow their deviant instincts. In this way, when the rule is violated a new structure of social relation is established, a status emerges: a criminal label.

This will make the individual who broke the rules be seen in a derogatory way by those who have been able to resist the impulses of deviation. After the act of deviation, the label of outsider is gonna de placed on everything that person is. The deviant, then, tends to approach those who are labeled correspondingly and to learn how to participate in an actual subculture created from that particular deviant act (BECKER, 2008. p. 41).

The author of this line states (2008, p. 41-42.):

Um dos passos mais decisivos no processo de construção de um padrão estável de comportamento desviante talvez seja a experiência de ser apanhado e rotulado publicamente de desviante. Se alguém dá ou não esse passo, depende menos do que ele faz do que daquilo que as outras pessoas fazem, do fato de elas imporem ou não a regra que ele violou<sup>11</sup>.

<sup>10</sup> "The degree to which act will be treated as deviant also depends on who commits it and who feels harmed by it. Rules tend to be applied more to some people than to others (...) Middle-class boys, when detained, do not go as far in the legal process as boys from miserable neighborhoods. " (BECKER, 2008, p. 25, our translation).

<sup>11</sup> "One of the most decisive steps in the process of building a stable pattern of deviant behavior is perhaps the experience of being publicly labeled as deviant. Whether or not one takes this step depends less on what he does than on what other people do, whether or not they impose the rule he violated. " (BECKER, 2008, pp. 41-42, our translation).



And the last step in this “career” is the participation in a deviant organized group, where its members have the collective label of criminals. In this group, a **deviant culture**<sup>12</sup> that reaffirms the criminal/deviant identity is developed.

Regarding this cultural issue, Becker points out that individuals considered deviant already feel that their lifestyle is not well accepted by the rest of society and this entails on a very particular difficulty when they try to interact with other people in community, since their definitions about their behavior and the definitions accepted by the others are not the same.

In such a way, the "deviants" create models of behavior for their relationships that concern their deviant activities and for their relations with society in general. What happens is that as deviants act within a particular culture embedded in a wider society that does not share the same objects and stereotypes as them, their cultures are known as subcultures (BECKER, 2008. p. 91).

On the subject, Sérgio Salomão Shecaira emphasizes that this delinquent subculture promotes the deeper immersion of the individual in the role of deviant, leading him more readily to the recidivism of his behavior not considered appropriate. And the agencies of criminal control and public safety themselves bring on degrading ceremonies that help to maintain this stigma and to remove the identity of the individual (SHECAIRA, 2012. p. 256-257). Examples of such ceremonies may be seen in the treatment given by penitentiary agents or social workers to provisional prisoners when they newly arrive in penal establishments; or on the biased media coverage in some cases.

In the case of a punishment that results in imprisonment, the individual institutionalized by the penal establishment adheres to his new stigmatized identity, assuming a distinctive character, acting accordingly, that is, according to the particularities expected of the label that the prison imposes, until this becomes internalized in his own life outside of prison, in a way that he continues to carry the stigma as an egress (GOFFMAN, 1978. p. 14).

What can be understood from this, then, is that the process of considering and labeling particular actions practiced by specific individuals that have deviants manifests implies on a movement of stigmatization of these agents. And the application of punitive repression is the means of further rooting inequalities and the maintenance of social control standards. Punitive repression, consequently, promotes a disloyalty of the condemned, since a long stay or even several passages by penal establishments distances him from the institutions that represent the

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<sup>12</sup> Becker defines (2008): A set of perspectives and understandings about how the world is and how to deal with it - and a set of routine activities based on these aspects. (page 48).

feeling of belonging in society and causes him to suffer physical and moral degradations as mentioned above.

About the stigma, Erving Goffman pronounces that (1978, pp. 11-12.):

A sociedade estabelece os meios de categorizar as pessoas e o total de atributos considerados comuns e naturais para os membros de cada uma dessas categorias. (...) Baseando-nos nessas preconceções, nós as transformamos em expectativas normativas, em exigências apresentadas de modo rigoroso<sup>13</sup>.

To this extent, the author concludes that for life in society it is essential that individuals share the same model of normative expectation and that when one of the rules imposed is violated there are restorative measures to seek compensation for the loss. However, some standards are most easily suited by most people; on the other hand, there are others that most individuals fail at some point, such as aesthetic beauty standards and social status, which also entails disqualification of certain categories of people. It can thus be said that the existence of a manipulation of these stigmas is one of the characteristics of societies in general.

Under this scenario, Goffman concludes (1978, pp. 148-149.):

O estigma envolve não tanto um conjunto de indivíduos concretos que podem ser divididos em duas pilhas, a de estigmatizados e a de normais, quanto um processo social de dois papéis no qual cada indivíduo participa de ambos, pelo menos em algumas conexões e em algumas fases da vida. O normal e o estigmatizado não são pessoas, e sim perspectivas que são geradas em situações sociais durante os contatos mistos, em virtude de normas não cumpridas(...)<sup>14</sup>.

Thus, as Becker pointed out, there will be situations in which the act practiced will be considered incorrect but, depending on who executed it, no law or consequence will be applied, because the degree of reaction that people will have against a behavior varies intensely, and some of the criteria that explain such an oscillation are: who practiced the act and who felt hurt by it.

Thereunder, this question of the selectivity of the process of social stigmatization and criminal repression in Brazil will be discussed.

<sup>13</sup> “Society establishes the means of categorizing people and the total of attributes considered common and natural to members of each of these categories. (...) Based on these preconceptions, we have turned them into normative expectations, into rigorously presented requirements”. (GOFFMAN, 1978, pp. 11-12, our translation).

<sup>14</sup> “Stigma involves not so much a set of particular individuals that can be divided into two stacks, stigmatized and normal, as a social process of two roles in which each individual participates in both, at least in some connections and some Life Stages. The normal and the stigmatized are not people, but perspectives that are generated in social situations during mixed contacts, by virtue of unfulfilled standards (...)” (GOFFMAN, 1978, pp. 148-149).

### 3 THE BRAZILIAN SELECTIVE SCENARIO

Nowadays, there is a marked dissatisfaction among the Brazilian people about the growing violence and a particular sense of impunity regarding criminal and penal laws, given that, despite the fact that Brazil is a country punishment occurs on a large scale, crime rates do not seem to diminish, recidivism continues at alarming rates and the lack of vacancies in the prison system is worrying.

In fact, violence is a constant in the country. There was an increase in the number of victims by firearm, in 1980 it was of 8,710 and then it went to 42,416 deaths in 2012, a growth of 387%, mostly in the form of homicides. This number becomes more worrisome when we analyze the deaths among young people, which had an increase of 416% and most of them were black, characterizing an expression of 95,6% of the total number (WAISELFSZ, 2015. p. 80).

On the subject, Professor Guilherme de Souza Nucci asserts the characteristic of delinquency in underdeveloped countries, such as Brazil, is a reflection of an unequal, unorganized and unjust society, which ends up losing its sense of ethical values and principles (NUCCI, 2016. p. 142).

This assertion becomes evident when one analyzes the levels of social inequality, which has always been alarming in the country, in the Household Sample (PNAD) of the year 2013,<sup>15</sup> which points out that the difference in the incomes of the poorest and richest countries has worsened in relation to the year 2012 in a proportion from 0,496 to 0,498. This was the first increase since 2001.<sup>16</sup>

Regarding the HDI, which takes into account factors such as life expectancy and health, access to knowledge and a decent standard of living, in 2011 the country reached a better index than that of 2010, reaching the point of 0.718 and the 84th position among 187 countries, against which Brazil remained in the high HDI group. However, in relation to the indicators of social inequality, the indexes drop sharply to 0.519, which means that Brazil's IDHAD (Inequality Adjusted Human Development Index) is lower than it is in many nations, such as Gabon and Uzbekistan (FELLET, 2011).

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<sup>15</sup> The Gini index used worldwide to measure inequality

<sup>16</sup> For more information: <http://www.ibge.gov.br/home/estatistica/pesquisas/resultado.php?consulta=2013>.

In addition, one cannot forget the slave quarters that have become the national prisons. In 2014, the National Justice Council (CNJ) published a survey where the number of the prison population in the country was updated to 711,463 inmates, taking into account the domestic prisons that revolve around 147,937 people. According to this research the country arrives to the proportion of 358 people imprisoned for every 100 thousand inhabitants. With these new data, Brazil reaches the third place in the ranking of the largest prison population in the world and a deficit of 354 thousand vacancies.<sup>17</sup>

The sociologist Loïc Wacquant, already pointed out the mortifying and unequal situation in the Brazilian penitentiary institutions, a scenario absolutely incapable of promoting any kind of dignity and re-education (2004, p.7.):

É estado apavorante das prisões do país, que se parecem mais com *campos de concentração para pobres*, ou com empresas públicas de depósito industrial dos dejetos sociais, do que com instituições judiciárias servindo para alguma função penalógica - dissuasão, neutralização ou reinserção. O sistema penitenciário brasileiro acumula com efeito as taras das piores jaulas do Terceiro Mundo(...)<sup>18</sup>.

This is a worrying scenario since the overcrowding of the Brazilian prison system prevents any kind of resocialization, which damages fundamental rights and guarantees. According to the study "The New Diagnosis of Prisoners in Brazil," also conducted by the CNJ, there are about 373,991 arrest warrants still unfulfilled, and if they were fulfilled, the prison system numbers could reach more than one million<sup>19</sup>. This increase is also explained by the author Fiona Macaulay (Macaulay apud Nucci, 2016 p.144.):

Esse aumento da população prisional, tanto em termos absolutos quanto em termos relativos, é menos reflexo do crescimento das taxas criminais per se e mais resultado de políticas de sentenças judiciais ou provimentos legais que aprisionam suspeitos e criminosos de forma rotineira. Essas são moldadas por uma ideologia prevalente de que a 'prisão funciona' pela falta de alternativas<sup>20</sup>.

<sup>17</sup> More information on: <<http://www.cnj.jus.br/noticias/cnj/61762-cnj-divulga-dados-sobre-nova-populacao-carceraria-brasileira>>.

<sup>18</sup> "It is an appalling state of the country's prisons, which are more like concentration camps for the poor, or public companies with industrial waste from social debris, than with judicial institutions serving some penal function - deterrence, neutralization or reinsertion. The Brazilian penitentiary system has in fact accumulated the wounds of the worst cages in the Third World (...)" (WACQUANT, 2004, p. 7, our translation).

<sup>19</sup> More information on: [http://www.cni.ius.br/images/imprensa/pessoas\\_presas\\_no\\_brasil\\_final.pdf](http://www.cni.ius.br/images/imprensa/pessoas_presas_no_brasil_final.pdf)

<sup>20</sup> "This increase in the prison population, both in absolute terms and in relative terms, is less a reflection of the growth of criminal rates per se and more as a result of sentencing policies or legal provisions routinely imprisoning suspects and criminals. These are shaped by a prevailing ideology that 'prison works' for the lack of alternatives." (Macaulay apud Nucci, 2016 p.144, our translation).

With regard to this problem and, and it is possible to say, the utopia of resocialization, it is increasingly clear that imprisonment - in the way it is taking place in the country - is completely ineffective for the re-education and reintegration of the distressed egress to social life. On the contrary, data from Ifopen indicate the growth in the rate of recidivist prisoners, in a contour that in 2017 18% of the prison population returned to delinquency after completing their sentence (CARDOSO; MONTEIRO, 2013, p. 107), that is, the project of resocialization in Brazil is a failure.

On the subject the professor Márcio Pugliesi completes (2015, page 205.):

Assim, a concepção de que alguém não merece confiança porque cumpriu pena – prisional, por exemplo (embora, o simples envolvimento com um caso penal já seja suficiente – embora a comprovada inocência do imputado – para que essas sanções penais sejam aplicadas) – faz parte da representação social do domínio da cultura (a simples desconfiança) (...) Não é necessário insistir na profundidade e extensão dessa pena que, mais cedo ou mais tarde, acaba funcionando como profecia auto-realizável: o apenado volta a delinquir porque é apartado das condições de sobrevivência. O sistema penal, no momento, incide num círculo vicioso insanável: jamais poderá ressocializar ou reeducar sem um ajuste das condições de cultura. Se o excluído pelo cumprimento da pena não puder ser considerado cidadão comum após o cumprimento desta, por questões de apenamento moral jamais perecível, será necessário um longo trabalho cultural para que seja possível dar – ao ressocializado – a efetiva possibilidade de ressocializar-se<sup>21</sup>.

In order to complete this framework that in itself is already degrading and autophagic, not only Brazilian prisons but before them, the criminal process itself that should, in theory, obey basic principles - such as equality, the presumption of innocence and individualization of the sanctions - is extremely disparate and miserably selective. In this process, depending on your social and racial position, you will have more "chance" to receive a more severe punishment or a deeply stigmatizing treatment. In this sense, the doctrine of Salo de Carvalho (2015, page 649.):

A seletividade racial é uma constância na historiografia dos sistemas punitivos e, em alguns casos, pode ser ofuscada pela incidência de variáveis autônomas. No entanto, no Brasil, a população jovem negra, notadamente aquela que vive na periferia dos grandes centros urbanos, tem sido a vítima preferencial

<sup>21</sup> "Thus, the conception that someone does not deserve trust because they have served their sentence - prison, for example (although simple involvement with a criminal case is enough - although the accused 's proven innocence - for these criminal sanctions to be applied) part of the social representation of the domain of culture (simple mistrust) ... It is not necessary to insist on the depth and extent of this penalty that, sooner or later, works as a self-fulfilling prophecy: the grieving returns to crime because is separated from the conditions of survival. The penal system, for the moment, has an insurmountable vicious circle: it can never resocialize or re-educate without an adjustment of the conditions of culture. If the person excluded by the sentence cannot be considered a common citizen after the fulfillment of the sentence, due to questions of moral regret that are never perishable, a long cultural work will be necessary so that it is possible to resuscitate the effective possibility of being re-socialized." (PUGLIESI, 2015, p. 205, our translation).

dos assassinatos encobertos pelos “autos de resistência” e do encarceramento massivo, o que parece indicar que o racismo se infiltra como uma espécie de metarregra interpretativa da seletividade, situação que permite afirmar o racismo estrutural, não meramente conjuntural, do sistema punitivo<sup>22</sup>.

This selectivity is demonstrated when it is estimated that 77% of inmates have incomplete elementary education, 60% are black (CARDOSO; MONTEIRO, 2013, p. 106). Adorno in his work entitled "Racism, criminality and criminal justice: white and black defendants in comparative perspective" (1996) categorically stated that the grieving blacks are treated with more severe penalties compared to those of white color.

Finally, in the face of these latest data, it is said that Brazil is the country of impunity, but in fact this is the country of selective punishment, where the masses of people who have been reduced to numbers here are mostly black and poor, while middle-class criminals who hide behind offices tend to take advantage of their social position and make them almost free of any responsibility.

## CONCLUSION

The present work sought to study the relationship between the stigmatization process of particular individuals through the imputation of particular labels, especially the label of criminal, and how this reflects in the culture of selective incarceration in Brazil.

What can be said is that the culture of a country is not built overnight, it is the result of historical transformations and sedimented on customs throughout the life of that civilization.

In this way, any criminological approach that ignores these cultural aspects, which are unique to each society, is bound to be superficial and insufficient. And as we have seen, in Brazil it would not be different, since its economic, social and political factors contribute to the scenario under study.

The low index of human development, corruption, public policies that do not aim to tackle the root of the problem but only its effects, the worrying rates of schooling of the

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<sup>22</sup> “Racial selectivity is a constancy in the historiography of punitive systems and, in some cases, may be overshadowed by the incidence of autonomous variables. However, in Brazil, the young black population, especially those living on the periphery of large urban centers, have been the preferred victims of the killings covered by the "cars of resistance" and massive incarceration, which seems to indicate that racism infiltrates as a sort of interpretative of selectivity, a situation that allows us to affirm the structural, not merely conjunctural, racism of the punitive system.” (CARVALHO, 2015, p. 649, our translation).

majority of the population and the labeling of some social categories in detriment of others, reflects in judicial matters and, in particular, in the criminal law.

In a country where the majority of those incarcerated are black and with very low levels of schooling, it is not possible to claim equal rights for all their citizens are guaranteed. On the other hand, this country selectively chooses certain people to be punished, while others are privileged by their social status, having a protective shield against all state sanctions.

Thus, the issue of crime in Brazil is not the result of complete impunity or inapplicability of the laws, but of a true selection of those who practice the act and of those who "deserve" to suffer the consequences of punishment.

Becker, in his theory of the Labeling Approach, has already pointed out that deviance is a social creation, that is, the rules with non-compliance generate the deviation and are applied only to particular persons and these, in turn, are labeled criminals.

With this, Criminal Law preliminarily selects the class of people who have more social and economic chances of carrying the stigma of criminals by the instances of state control.

What the profile of our prison population reveals to us is precisely this process of labeling institutionalized and internalized by society in general, which also explains the stigma carried by the egress, which even after having served the sentence for his "deviant behavior" still finds difficulty of being inserted in the social environment and ends up assuming his deviant identity and behaving as such.

Thus, the policy of mass incarceration of the lowest categories of the population continues to be fed by the state apparatus, since it is a more comfortable and even economical way of showing an apparent concern of the State with crime, instead of facing the real causes of it, such as poor public education and the social indices of the country, which is a much more arduous and long-term task, considering that it does not generate votes for a short elective period.

Therefore, we can affirm that Brazil feeds this tortuous scenario by having a political culture focused on authoritarianism and on the incarceration of poor stigmatized people, which uses the system and criminal repression to camouflage their inability to guarantee to everyone, equally and equanimously, the prerogatives imposed by law and, above all, to mask its incompetence in exterminating the real causes that make this a country that punishes and punishes badly.

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