

in prisons and the attacks of the PCC

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Photo: Mauricio Lima/agência France Presse – July 22, 2006

Policeman watching bus that was set on fire over the Eusébio Matoso bridge on the Marginal Pinheiros highway, in São Paulo's south zone, during a wave of violent attacks authorities attributed to the PCC.

FROM May 12- 20, 2006, 439 people were killed by gunfire in São Paulo State, according to autopsies prepared by 23 local coroners' offices, which were then examined by the Regional Medical Council. Compared to the same period in previous years, as well as to the weeks before and after this period, the number of deaths was quite high, suggesting an exceptional situation. These deaths were accompanied by waves of violence including: rebellions in 73 prisons in the state, aggression and attacks against public agents, above all police officers and penitentiary agents, against civilians, against private buildings such as banks and against public buildings such as police stations. Fires were also set to public transport vehicles such as buses.

The most surprising development was the temporary paralyzation of activities in the country's largest city, São Paulo, quickly exacerbating the fear

and insecurity that have long been widespread among residents. The wave of violence was soon associated to Organized Crime,² particularly the so-called Primeiro Comando da Capital (PCC) [First Command of the Capital],³ which irradiated from the prisons in the São Paulo penitentiary system. Although there was a truce in the days after May 20, the actions continued through mid-August, culminating in the kidnapping of a reporter from the Rede Globo [Brazil's leading television network]. The reporter was freed after one of the kidnappers demands was met: the transmission, by the network, of a three-minute message from the PCC.

With these events as a reference, this article analyzes what made the attacks possible. It seeks responses in social, political and institutional conditions that steered the emergence of organized criminality inside Brazilian prisons, with particular emphasis on São Paulo.

The events of May 2006

The attacks of May 2006 sparked a profusion of reporting and editorials, pronouncements by authorities, statements by common citizens and analyses by specialists. The focus of the debate was the public safety crisis that had been dragging on in the State and certainly in Brazil, for decades. There were many disagreements about the roots and nature of the problems.

In the first place was a disagreement among authorities. On one hand, between federal and state authorities, and on the other among São Paulo state officials themselves. It is important to remember that the country was just a few months from presidential and gubernatorial elections, and the issue of public safety clearly was in the forefront in political and public debates. There were also disagreements among state executive authorities and among the three branches of state government. Disagreements between the Secretary of Public Safety and the Secretary of Penitentiary Administration about the handling of the crisis and its immediate resolution were more than evident. In addition, the waves of violence revived traditional disputes between the public safety areas of state government and representatives of the Public Ministry [the State Attorney's office] and the Judicial Branch. The traditional disagreements between the civil and military police forces were less evident.

Differences among the citizenry appeared in numerous print and television interviews, as well as in "letters to the editor" of the major newspapers. These sources compose a repertoire of heterogeneous reviews of the events, expressions of fear and insecurity, reports of living conditions in the city and criticisms of public safety policies. Meanwhile, specialists spoke from an accumulation of knowledge gained in their professional experience or from research, such as lawyers, professionals in the health field, journalists, and academic researchers. They are different from the others, because they explore in greater depth the social reasons for the violence and its impact on the justice system.

While all of these actors had a contribution to make toward an understanding of the facts, the distinct voices reveal that not enough is known about the man known as Marcola [considered to be the top leader] and his companions. Information about the PCC is also limited. PCC and its leaders have proven to be more than mere agents of organized criminality. The images that were fed by police and disseminated by the print and electronic media appear to correspond to only part of reality. The attacks and rebellions were orchestrated by daring and violent delinquents, who were able to impose a curfew on the city and flood São Paulo State with spectacular and astounding blood baths reminiscent of the gangland style found in Chicago and New York in the early 20th century.

There was, however, another side: the leaders were sustained by an organization maintained by an hierarchical structure of disciplined and obedient “employees” capable of executing orders without questioning them. Possibly operating from a base of support networks disseminated in distinct mobile points throughout the state, they revealed that they had an able and agile communication system among leaders, followers and those who took orders, through protected channels barely permeated by external interference by means of cell phones, telephone exchanges and “carrier pigeons”. This system was tested during the waves of attacks, proving that the organization was prepared to control the simultaneous execution of countless rebellions; to attack distinct targets without a predetermined logic and with a high level of surprise; to appear at any location and disappear immediately; to issue orders and soon after, suspend actions and negotiate with high state authorities.

What was most surprising is that the base territory of the entire organization is within the prisons of São Paulo State, in particular maximum security facilities where the main leaders of PCC are found. For the past few years, organized criminality has been well situated within the prisons, an expense of the massive incarceration policy executed by the state governments of Governors Mario Covas (1995-2001) and Gerald Alckmin (2001-2006). If the issue was limited to domination of the prisons, it is more probable that the waves of violence would have gravitated around simultaneous rebellions, as took place in February 2001. But something new appeared: the functionality of the relations behind and over the prison walls. Organized criminality, more specifically the PCC, had mounted a very solid external support network. What made these waves of violence possible?

Changes in the profile of criminality and violence in Brazil

It is still premature to conduct an exhaustive analysis of the social and political reasons for these events. Certainly, they have more complex roots than it is possible to analyze within the scope of this article. Whatever the reasons, the emergence of organized criminality in Brazil cannot be separated from the conditions and trends found in contemporary society, in particular since the

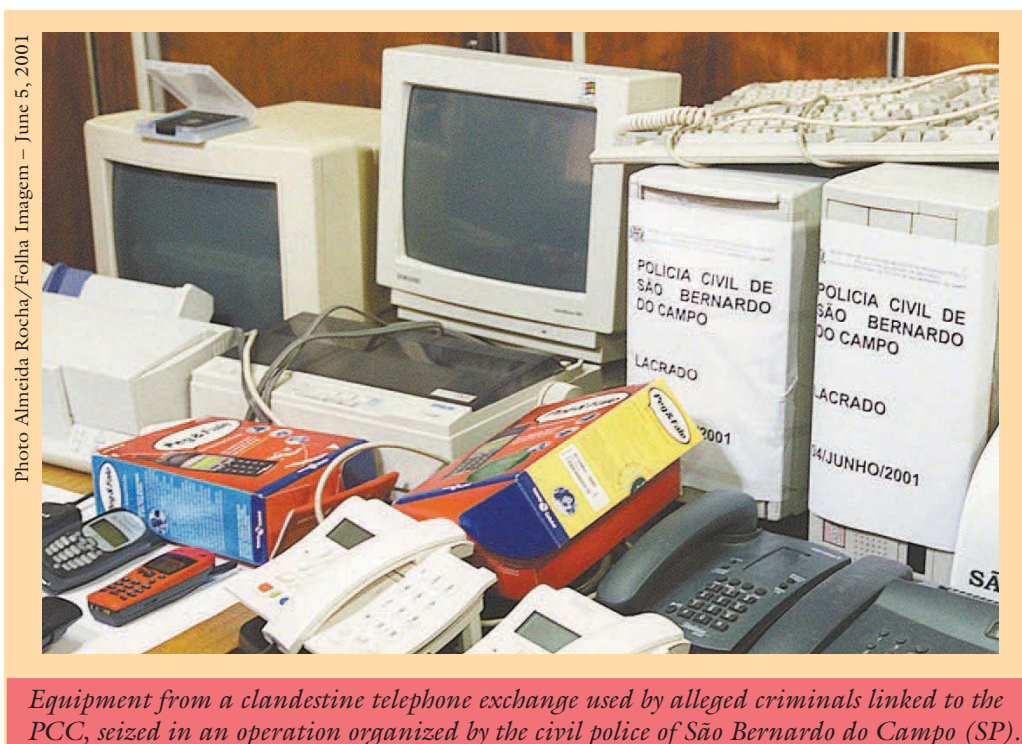
1970's, in the wake of the neoliberal changes that inaugurated the so-called era of economic globalization and the weakening of the nation-states. In a short space of time these changes promoted deep deregulation of markets, above all financial markets. This triggered an ordered sequence of processes: alteration of traditional national borders, incentives to an increasingly malleable flow of capital, the creation of space for illegal activities that made the ownership of capital autonomous, monetary circulation to physical paradises free from institutional constraints, apt for the financing of operations such as trafficking in drugs, people and human organs, weapons smuggling, fiscal and financial fraud, pirating of merchandise and services, falsification of pharmaceuticals, the spread of gambling and other modalities (Ram, 2001; Naim, 2006).

It is equally certain that none of this would have been successful if not for the spectacular technological developments, above all in the field of computing and telecommunications, which stimulated, above all, the mobility of people, goods and services, making many activities hidden, poorly accessible and invisible to the institutional controls of nation states, with increasingly outdated *modus operandi* and inefficient results (Bauman, 1998; Ziegler, 2003). In the same manner, the rapid emergence and dissemination of organized criminality found favorable conditions in the also global standards of urban development. The accelerated rise of megacities, with more than eight million inhabitants and with their polycentric systems, instituting zones of social and spatial segregation, set the stage for the rise of new standards of poverty and new forms of social inequalities (Davis, 2006), in particular inequalities of rights, which condemn expressive portions of the low income urban population to social life immersed in the world of illegalities (Telles & Cabanes, 2006).

In Brazil, this scenery is aggravated by the crisis in public safety, which has been dragging on for at least three decades. Crime has increased and become more violent; organized criminality has spread through society reaching economic activities far beyond traditional crimes against property, increasing the homicide rates, above all among adolescents and young adults, and disorganizing forms of social life and standards of inter- and intra-class sociability. Nevertheless, public safety policies continue to be formulated and implanted according to conventional, aged models, which are incapable of accompanying the quality of the social and institutional changes underway within society. Crime became modernized; although the application of law and order remains enclosed in the old police model of running after known bandits or supported in networks of informants – in spite of enormous investments in public safety, promoted either by the federal government, or by state governments in the expansion and training of human resources, as well as in the re-equipping of police forces.

For this reason, it is not surprising that organized crime has emerged at the surface of daily life and the waves of violence of May 2006 were possible.

Nevertheless, contrary to what may have appeared at first sight, the waves of May 2006, in São Paulo, despite their exceptionality, did not constitute a unique and isolated phenomenon. There were precedents. The examples are countless and can be seen in the various rebellions that shook the penitentiary systems of São Paulo and Rio de Janeiro States since the early 1990's. For nearly 20 years now they have displayed a high level of organizational ability, as demonstrated in São Paulo State by the rebellions in the Hortolândia House of Detention and in Penitentiary I at Tremembé in 1995 and above all by the mega-rebellion of 2001 that simultaneously shook 29 penitentiary establishments, supported by cell phones and clandestine telephone exchanges, in a synchronized organization never seen before.



Equipment from a clandestine telephone exchange used by alleged criminals linked to the PCC, seized in an operation organized by the civil police of São Bernardo do Campo (SP).

The situation was not very different in Rio de Janeiro, with the eclosion of two rebellions in a short period of time: that at the Bangu 3 prison in November 2001, and in penitentiary establishments in September 2002. In the latter, part of the city was paralyzed by the intimidation of the Comando Vermelho, probably the most important association of organized criminals in that state, which was able to interrupt commerce by closing stores and even shopping centers. It also interrupted school activities and public transport, leaving thousands of passengers unable to move through the city (Caldeira, 2004, p.45). In the same context, there were assaults on public buildings in February 2003.

Although these organizations have spread their activities and field of influence beyond their states of origin, there is no clear evidence that a type of

congress has been established between them, as to a certain degree took place in U.S. cities in the past century (Enzensberger, 1967; Gurr, 1989), in the sense that they adopted common and connected actions. It is more probable that the circulation of information within the criminal environment, facilitated by intermediaries of all types, and the broadcast of information by means of electronic media, also has contributed to disseminated modalities of actions judged by the principal leaders as successful because they were capable of surprising the authorities responsible for repressing crimes.

This is where the political scope of these rebellions and attacks are found. They do not involve organized popular collectives that struggle against social injustices and inequalities and affirm the conquest of rights. Appealing to unchecked violence, without sparing deaths, and capable of terrorizing society, their actions place them in direct conflict with police and judicial authorities, with professional politicians, the media and informed public opinion and stimulate growing reactions that also appeal for violence in an interminable cycle of revenge. It is not without reason that the waves of attacks by organized crime are followed by reactions from civil and military police that also result in deaths, whose circumstances lack, as a rule, rigorous investigation.

To understand how organized crime emerged on the daily public scene, it is necessary to go back to the 1960's and 1970's. Since this time, Brazilian society has experienced progressive growth in violent urban crime, in addition to other manifestations of violence in social and interpersonal relations. Recognizing regional differences and social, political and institutional singularities of each Brazilian state, some trends have been established since 1988. The crimes of theft, drug dealing, and extortion by means of kidnapping, along with homicides were those that had the highest growth rates.

The rise in crime is a phenomenon found on all continents, in particular North and South America, and more recently in southwest Asia and in African countries. For this reason, it is not expected that Brazilian society was immune to this movement of growing trends, above all because these countries are found on the international routes for drugs and other transnational modes of organized crime such as weapons smuggling, activities that appear to fuel violent crime. But it is surprising to find that rates of violent criminality in Brazil, in cities such as Rio de Janeiro and São Paulo, are higher than those in some U.S. cities.

Until the late 1990's, there were no official statistics on criminality for the country as a whole, a need that is just beginning to be filled. The data available, for the years 1999 - 2001, presented by the National Secretary of Public Safety (Senasp), an organ of the Ministry of Justice, indicate that, relative to the country as a whole, the rates of violent crime for 100,000 residents – homicide, theft, theft followed by death, extortion by kidnapping, drug dealing, rape – are, roughly, higher than in other countries with

characteristics of social organization similar to those of Brazil. The homicide rate for Brazil (28.46 homicides per 100,000 residents, in 2002) was a bit lower than the average expected for countries of low and medium income (=32.1 homicides per 100,000 residents) (cf. OPAS, 2005). Considering the period 1991 - 2000, this rate grew, for the country as a whole, by 72.58%.

It is important to note that Brazil was in first place in 1999, in the *ranking* of deaths by homicides of youth from 15 - 24, with rates of 86.7 and 6.5 per 100,000 respectively for

males and females. These rates are more than double those for countries such as Mexico and Russia (www.paho.org). These trends grew over the decade, not leveling off until 2002 (Cardia et al., 2006), a period that coincided with the second administration of President Fernando Henrique Cardoso (1998-2002). Since then, homicide rates have been declining in the metropolitan regions of Rio de Janeiro and São Paulo, for reasons that are still not well known (Adorno, 2005).

The growth of crime and violence in Brazil, is to a large degree, a consequence of the emergence and dissemination of organized criminality, in particular that related to drug dealing, a phenomenon that has intensified since the 1980's (Zaluar, 2004). As is known, drug trafficking requires an emerging market of consumers searching for new social experiences and with means to regularly acquire drugs. To function, this market requires the cooperation of poor citizens, without work or without hope for a defined future, to serve as salaried workers to control: drug distribution, points of sale, the circulation of money and debts contracted by consumers and small dealers. In contrast, they must obey commands, including killing rivals and promoting urban disorder. Little by little, a type of urban slavery is established, similar to that found in rural areas.

The increase in the numbers of urban criminality indicate substantive changes in the standards of urban delinquency and criminality. Until the mid 1960's, individualized actions prevailed, mostly related to crimes against property. The distribution and accessibility to firearms was much lower, above all those that are highly lethal. Although there were recriminations among members of syndicates and gangs, most homicides were motivated by disagreements in interpersonal and intersubjective relations, particularly involving romantic disputes and personal revenge. Crimes related to drug consumption were still limited and did not appear as the object of collective disturbances or as an issue emphasized in public policies adopted by agencies responsible for repression of common crime. In the late 1960's, this situation began to change with the fast spread in consumption and the entrance into the illegal drug trade of citizens from low-income socioeconomic stratum, inhabitants of popular neighborhoods of large urban centers.

The peculiarity of organized crime in Brazil – and - in general, its prevalence in prisons – reveals aspects that distinguish it from other modalities

found in the world. In various countries, the ethnic, racial or national components (for example Italian and Irish in the United States in the past century) are often decisive in establishing identity ties among members of a criminal association. Meanwhile in Brazil, the construction of identity relations among criminal groups is found first in the criminal act itself, in the condition of the incarcerated criminal. They are also very probably based on the social filiation to which the overwhelming majority of its participants belong, that is, to the social economic strata from where they are preferentially recruited, residents of the metropolitan territories on the frontier between legality and illegality.

To understand the singularities of organized criminality in Brazil, it is necessary to look critically at the models of analysis that prevail, until recently, in the specialized international literature. Thus, the model of the Mafias and its form of development in Italian society (Lupo, 2002) since the 19th century, and its later dissemination in the United States in the early decades of the 20th century, does not appear suitable for explaining the forms that collective crime organization has assumed in contemporary Brazilian society.

National and regional ties had some presence in the history of crime in Brazil in the end of the 19th and early 20th centuries, due to intense waves of immigration (Monsma et al., 2003). Nevertheless, this does not explain the organizational characteristics indicated in the specialized studies. While this process certainly has its singularities in each of Brazil's large metropolitan regions (singularities due not only to social and institutional relations, but also to timing and rhythm), some of their characteristics appear more or less identical, as indicated by the specialized literature (Zaluar, 2004; Misse, 2006; Mingardi, 1998). The contemporary history of the emergence of organized criminality, above all related to drug dealing, for the city and state of São Paulo, is still to be reconstructed, while valuable clues can be found in the few existing studies, reports and memoirs (Bicudo, 2002; Carlini et al., 1996; and more recently, 2003; Christino, 2001).

If despite the advances represented by the studies of Zaluar (2004), Misse (2006) and Mingardi (1998) mentioned above, little is known about organized criminality in Brazil (Schilling, 2001), knowledge about criminal organization within the prisons is even less developed (Caldeira, 2003; Salla, 2006; Lima, 2003, Barbato Junior, 2007; Azevedo, 2004) and more specifically about the control and subjection of broad masses of inmates by associations such as the Comando Vermelho and PCC. Two pioneer studies (Paixão, 1987; Campos Coelho, 2005) – of which the later studies of penitentiary organizations are, to a large degree, tributaries – had the merit of raising hypotheses to explain the emergence of organized criminality in this society.

The modality of organized criminality with its origin in the prisons was established in the 1970's in Rio de Janeiro, and grew rapidly in the following decade. In São Paulo, however, this process expanded later, in the 1990's, although there were signs of its existence in the previous decade. Until then,

the prisons were populated by criminals who mostly acted individually, in small groups or gangs lacking identity ties that sustained them over time.

Paixão (1987) indicated that the first known groups of organized criminals in the 1980's (the Falange Vermelha, Serpentes Negras), in both Rio de Janeiro and São Paulo, were more than a sub-product of a conviviality among common prisoners – as often suggested by scholars. Paixão maintained they were a consequence of what he identified as the “modernization of metropolitan criminality”. Bank robberies and drug trafficking were criminal activities that required increasing “organized action as a requirement of efficiency”, according to Paixão (1987,p.77). This organizational capacity resulted not only in economic gains but also in prestige for some in the world of crime, those who rose among the mass of prisoners. This was one of the bases for the constitution of leaders in the prison environment and even for the constitution of groups that began to demand their own identity in the world of urban criminality.

These leaders, to a large degree, became stronger because they understood how to manipulate and monopolize the resources available in prison to accumulate wealth, exploiting from within illegal activities such as drug dealing, extortion of other inmates and their families and the control of locations and activities.

It is important to remember, as the few available studies indicate, that in Brazil, the prison population is largely composed of poor inmates with few personal resources, people who are susceptible to immediate influences and vulnerable to arbitrary and violent



Photo Mauricio Lima/Agence France Presse - 18.2.2001

Banners with the initials PCC (Primeiro Comando da Capital) and the criminal organization's motto [peace, justice] was displayed by the rebel prisoners in the Carandiru Penitentiary Complex.

actions of from a variety of sources. Although not very aggressive, they wind up being co-opted by the organized crime leaders. Three elements appear to explain the subjection of the inmates to these emerging leaders: fear, calculation and resignation (Paixão, 1987).

The fear is associated with the permanent threat of physical violence. From whatever source, violence constitutes a normative code of behavior. Everything is subject to dispute: conflicts between gangs; suspected informants; involvement in drug trafficking, the exploitation of internal activities, the trafficking of influence over the “powerful”, whether those in the inmate population or the administration; possession of personal objects; obtention of sexual favors, which involve not only inmates, particularly the younger ones and first timers, who are often sold within the population, but also their wives, girlfriends and daughters; maintenance of privileges won or granted and disputes over work posts. It is common to find homicides practiced in a barbarous manner, publicized mouth to mouth as a sign of virility and courage. Beyond this spectrum of violence there are also rapes, aggressions of one inmate against another, the settling of scores notably found during the rebellions and riots, the “death pacts” and the confrontation, at times dramatic, between organized inmates within the prisons and established authorities (Adorno, 1991).

The calculation of advantages and disadvantages also does not appear to be absent in this social territory. Not rarely, for many inmates, the criminal organizations, inside and outside the prisons, are considered and experienced as a source of material assistance and self-protection against the arbitrary actions of the police and even against the attacks of rival gangs. The by-laws of the PCC, which were presented in the media, are quite illustrative of this model of self-protection. The by-laws speak of loyalty, solidarity and union in the struggle against injustices and oppression within the prisons. Item 4 calls for the contribution of those who are free to the brothers who are in prison, by intermediary of lawyers, money, help to families, and prison breaks. At the same time, it threatens with penalty by death without forgiveness, those found in liberty who are “well established” and who forget to contribute to their imprisoned brothers. It is an organization impregnated with rigid values. At the same time that it preaches solidarity and calls for struggle against injustice, it also calls for the application of the death penalty without appeal or judgement. As if translating traces of the Brazilian political cultural, it establishes a sort of moral syncretism between tradition (personal self-protection) and modernity (an appeal to justice and to law).

It is certain that physical violence and self-protection constitute important dimensions as resources of oppression of the leaders over the mass of inmates who lack the power or capacity to counter the organization on their own. Nevertheless, these elements do not work on their own. They combine with a third element, the strong resignation of the inmates in accepting this

rough and primitive form of personal domination. Campos Coelho (2005) suggested that the power of a group of inmates who were actually known as the Security Laws (and later became known as the Falange Vermelha) came from a number of sources including: the prestige that the leaders had in the world of crime because of the nature of the criminal activity that they practiced (bank robbery); by not constituting a closed group and for being permeable to new adhesions; for the respect for the rules created by the prisoners themselves; and finally, for the fidelity “of each and all in relation to the ‘society of the captives’” (ibid, p.344-5).

Considering all of these factors, history came to repeat itself in the case of the formation of the PCC and in its later ascent on the inmate population of São Paulo. This contributed to solidifying the web of solidarity among the inmates, by the imposition of violence and fear, but also through the construction of a perception of belonging, revealed in the fact that the members of the group called each other “brothers”.

None of this would have prospered if, on the part of the government, the prison authorities had not frequently hesitated to rigorously prohibit the illegalities practiced by the leaders and the growing prestige of the power acquired among the prisoners and among criminals out of prison. Fearful that actions demanding correctional discipline would compromise the fragile balance of internal prison order, they wound up favoring the constitution of these organized leaderships. Finally, the strengthening of organized criminality was even benefited by the policy of massive imprisonment executed by the administrations of São Paulo Governors Covas and Alkmin.

Penitentiary policies and organized criminality

Everything indicates that it would be possible to relate the formation and consolidation of the PCC to the isolation measures imposed through the creation of special prison units, such as the annex to the Casa de Custódia [Custody House] of Taubaté, or even to the creation of the differentiated disciplinary regime.⁶ Therefore, it is necessary to review recent developments in penitentiary policy in Brazil and in particular in São Paulo State.

Prisons in Brazil, except for some brief moments in its history, have always had decrepit conditions of habitability caused by overcrowding, material privations, violence and arbitrary treatment. The innovations introduced in the penal codes (for example in 1890 and in 1940) in terms of execution of sentences, which could reverse this situation, were implemented on a very limited scale. Since the middle of the last century, prison policies have followed the same guidelines, and were rarely reformed: they were conceived as responses to the emergencies provoked by the rise in crime, by rebellions and escapes, by difficult conditions of incarceration, by the instability of prison institutions always towing behind the unexpected changes in their direction. This situation generates unease in the prison population, which is a frequent

source of rebellion and riots. It is not unusual that, in this scenery of poor innovation, government interventions have been insufficient to confront the problems that had accumulated over time, which were limited to expanding capacity (Fischer & Adorno, 1987).

During the military dictatorship (1964-1985), the prison system was completely subordinated to the national security policy. Its guidelines were the contention of political opposition and of criminality at any cost and the arbitrary imprisonment of suspects and the persecuted, this policy contributed to the overcrowding of public prisons and jails. In this context, arbitrary action, torture, ill treatment of common criminals, which were common for decades in Brazilian prisons (Salla & Alvarez, 2006), appear to have expanded.

The return to the democratic state of law in the second half of the 1980's did not substantially alter this situation, in spite of the institutional changes that were being introduced. For a long time persisted: imprisonment for investigation without judicial order; frightful clandestine activities of paramilitary organizations, even of those under direct government responsibility, such as torture as a common method of investigation in police stations and precincts; arbitrary application of regulations, including the use of maximum security cells as an instrument of contention and repression of the prison population and ill treatment issued daily to inmates. In addition, the absence of protection of the rights consecrated in international conventions (the right to work, professionalization, schooling, decent humane treatment, legal and social assistance) made evident the failure of the prison system in the ten years following the country's return to the state of law (1985-1995).

Since the democratization of the country, the penitentiary policies have been immersed in a contradictory dynamic: on one hand are the inheritances of arbitrariness and violence, of authoritarian management, of invisibility of the territories of incarceration, and little control over administration. On the other, the establishment of the state of law imposed the need for agencies and agents to adjust to democratic guidelines, of which the policies for the so-called humanization of the prisons in Rio de Janeiro and São Paulo, in the 1980's, during the administrations of Governors Leonel Brizola and Franco Montoro, respectively, constituted inaugural marks. Little by little, timid but significant advances were noted in inmates' rights. This includes demands for greater transparency in the administration of prisons and control of corruption and the arbitrary application of regulations by public agents. This trend continued in the next decade with the creation of secretariats of Penitentiary Administration with no ties to the state secretariats of Public Safety or even of Justice, as well as the creation of special auditors and complaint centers, in conjunction with expanded cell capacity, to mitigate the effects of prison overcrowding.

These advances were accompanied by resistance to the changes from conservative political forces and agencies responsible for applying law and



*Rebellion in the Provisional Detention Center of Guarulhos (SP) which resulted in the deaths of seven inmates. Alongside the bodies are written the words *The seven worm* (sic) CdL, code for the Democratic Command for Liberty faction, a group rival to the CrBC (Revolutionary Brazilian Command of Criminality), accused of having committed brutal assassinations.*

order, in particular the military police. Encouraged by the reigning impunity,⁷ cases of torture and ill-treatment continued, as well as corruption and other illegalities practiced by government agents. In the dominion of the prisons, penitentiary agents found more than a few opportunities to confront higher authorities publicly committed to introducing institutional changes and implanting guidelines recognized to protect inmates rights. They provoked instability within the prisons by not providing services and by collusion with the movements that resulted in escapes and rebellions, and with the level of inmate deaths. The massacre of Carandiru, in 1992, with the death of 111 inmates, and the case of the 42nd Police district of São Paulo were, exemplar in this sense.⁸

The administrations of Presidents Fernando Henrique Cardoso and Luiz Inacio “Lula” da Silva’s first mandate (2003-2006), inherited this institutional situation. Public safety and prison policies were administrated within a tense and delicate situation: that of having to rigorously apply law and order, not rarely responding to the appeal of public pressure, while simultaneously respecting the human rights of the inmates under tutelage and custody of the prisons and complying with international norms to which the country is signatory. On one hand, these governments acted in keeping with the trends of Brazilian prison law. While at the beginning of the democratic reconstruction process some changes were voted in prison and

penitentiary legislation in an attempt to remove the “authoritarian remains”, the “humanist” trend of penitentiary legislative reform was interrupted at the dawn of the 1990’s, under pressure from public opinion left insecure by the wave of violent crime, above all kidnappings followed by the killing of those kidnapped, which occurred throughout the country. The situation led to Law no. 8.072, known as the Heinous Crime Law, of July 25, 1990, which although it had a poor legal foundation, led to a growth in the number of inmates, by calling for longer sentences and limited parole.⁹ Later laws, such as No.8.930/94, 9.677/98 and 9.695/98, expanded those crimes considered to be heinous (Teixeira, 2006).¹⁰

The events of May and August 2006 once again stimulated various proposed laws that would impose more rigorous penalties and reduce the age of criminal responsibility. Two of these initiatives were instituted: on March 29, 2007, the President sanctioned two public safety laws, which had been quickly approved by Congress. The first determined that the possession and use of cellular telephones and radio communicators in prisons was a grave lack of discipline by an inmate and a crime if committed by a guard.¹¹ The second restricted the rights of the authors of “heinous crimes” by establishing that inmates condemned for this type of crime could only obtain a parole for their sentence and provisional liberty after completing at least 40% (two-fifths) of their sentence for first time offenders and 60% (three fifths) for recidivists.¹² Voted in the context of the national commotion in a hurried initiative by a federal government and Parliament eager for firm and immediate responses to the popular outcry, these initiatives did not necessarily produce the expected results, and won discredit and criticism from legal scholars and technical operators of penal law.

On the other hand, the government interventions sought to modernize prison administration, respecting international conventions that regulated the basic rules for treating inmates. In 1996, the Fernando Henrique Cardoso government launched the National Human Rights Program (PndH) that included a set of proposals for government actions for the prison system, placing on the federal government’s political agenda explicit commitments to the promotion and protection of these rights for the incarcerated population (Adorno, 2000). These trends were reaffirmed with the edition of the National Public Safety Plan, in 2002. The Lula government gave continuity to these initiatives. Although each government had its own style, in general the actions sought: a) increased capacity in the penitentiary system and drastic reduction of overcrowding; b) to create penitentiaries subordinated to the federal government for crimes established by the federal justice system; c) to promote and finance the construction in the states of maximum security penitentiaries to contain the leaders of drug trafficking and other activities of organized criminality.

A result of these opposing trends is the expressive growth in the rates of imprisonment, over nearly three decades. From 2000 – 2006 alone, the

prison population nearly doubled. Nevertheless, the National Penitentiary Department (Depen), of the Ministry of Justice, calculated that the deficit in the penitentiary system was only 103,433 vacancies.

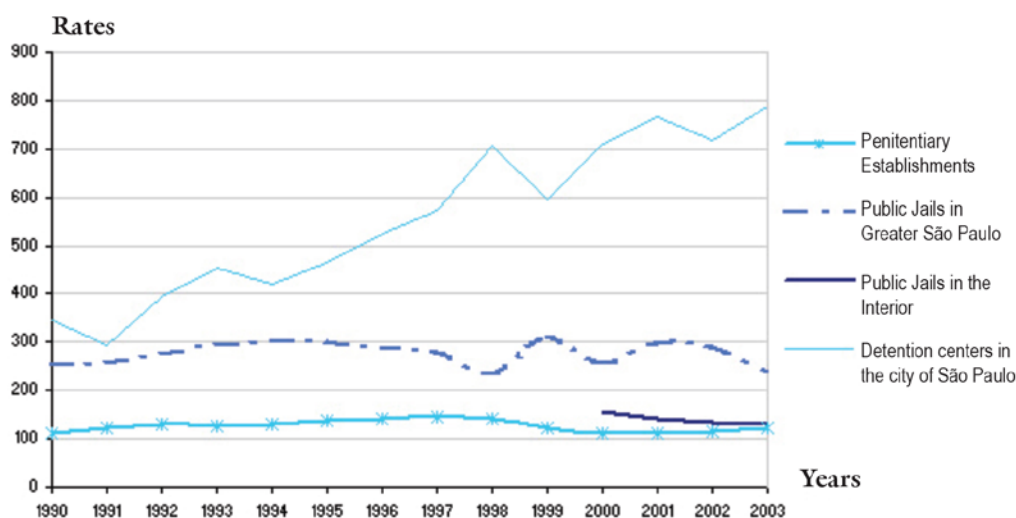
Table 1 – Incarcerated Population and imprisonment rate for 100,000 residents – Brazil, 1969-2006

Year	Inmates	Rate (per 100 thousand)
1969	28,538	30
1988	88,041	65.2
1993	126,152	83.2
1995	148,760	95.4
1997	170,207	108.6
2000	211,953	134.9
2002	248,685	146.5
2003	308,304	181.5
2004	336,358	185.2
2005	361,402	196.2
2006	401,236	214.8

Source: Ministério da Justiça and IBGE, for 1969.

In São Paulo State, the stage of the events of May 2006, this scenario was even more accentuated. In 1989, there were 28 prison establishments under the responsibility of the Coordination of the Penitentiary Establishments of São Paulo (Coespe). In 2006, the equivalent state agency, the Secretariat of Penitentiary Administration (SAP), was responsible for 144 prison institutions (Salla, 2007). It is also noted that in 2006, 90.57% of those incarcerated were in the penitentiary system, which indicates the state government's success in transferring from public jails and detention cells at police stations, inmates sentenced by the Justice system. Graph 1 indicates this movement, showing the accentuated growth in the rate of occupation in the São Paulo penitentiary system, compared with the public jails and detention cells at police stations, in the capital and interior of the state, in the period from 1990- 2003:

This frenetic rhythm of growth of the incarcerated population deepened the deficiencies of the prison system throughout the country. The already deteriorated conditions of habitability, the deficits in services and assistance (legal, healthcare and from social workers) to inmates only grew. In 1994 the São Paulo penitentiary system had one employee for 2.17 inmates (14,702 employees for 31,842 inmates). In 2006, the proportion dropped to one employee for 4.99 inmates (25,172 employees for 125,523 inmates). That is the inmate population nearly quadrupled, while that of the employees (nearly 80% of whom are security guards) did not even double. For Brazil as a whole, the situation is no different and even more grave in some states.¹³ It is understood that the maintenance of internal order in the prisons became weaker. It is also understood the reasons for which conflicts among inmates



$$(1) \text{ Occupation Rate} = \left[\frac{\text{Incarcerated population}}{\text{Capacity}} \right] * 100$$

Source: Secretaria da Administração Penitenciária (SAP), Coordenadoria dos estabelecimentos Penitenciários (Coesp), Secretaria de Segurança Pública (SSP), Departamento de Polícia Judiciária da Macro São Paulo (Demacro), Departamento de Polícia Judiciária da Capital (Decap) and Fundação Seade.

Graph 1

Justice and security: prison movement and the incarcerated population. Rate of prison occupation, according to types of establishment. São Paulo State – 1990-2003.

and between inmates and prison guards actually grew sharply in response to the tougher application of internal sanctions, such as isolation of leaders in maximum security cells and in quite rigorous regimes of compliance.

The consequences of this process of massive incarceration also include changes in the form of administrating the prisons. The maintenance of internal order has been assured at the cost of severe control and discipline, which is also not lacking in paradoxes. On one hand, prison wings are created or special disciplinary units to contain leaders and organized groups. In December 2003, Law no.10.792 regulated the so-called Differentiated Disciplinary Regime. Under this law, inmates who provoke rebellions and acts of indiscipline can be held for up to 360 days in special prisons or special wings, while confined 22 hours per day in individual cells, without realization of activities and with rigorous visiting restrictions. Thus, in some units there is a prevalence, at least apparently, of control over the inmates, discipline, immobilization and a blocking of communications with the outside world.

On the other, however, in most prisons in the country, even those considered to be maximum security, controls over the inmate population are weak and incapable of containing the organization of inmates, illegal activities, revolts and escapes. The insufficiency of dynamic security – that is, activities

that help maintain internal order, such as work, education, sport, leisure and cultural activities “– wind up countering and annulling the expectations placed on the toughening of discipline and control of inmate behavior. One of the consequences of this situation is the accentuated militarization of the state prison systems, a trend that reaffirms the inheritances of the authoritarian regime. In 2003, according to Lemgruber (2004), 45.8% of Brazilian states had military police working in internal security in prisons. It is not rare to find prison units in Brazil where prison security was nearly completely substituted by armed civil or military police who control the daily activities of the prison.

* * *

Penitentiary policies that have been implanted by state government have not been able to interrupt the cycle of expansion and deepening of organized criminality in civil society. To the contrary, there is strong evidence that the mass incarceration associated with the rigorous contention of the leaders of organized criminal groups has produced adverse effects. First, it has stimulated sharp perceptions of injustice among the inmates, favoring and legitimating violent reactions orchestrated by the leaders. It is not without reason, that in the PCC By-Laws, item 14 affirms that the priority of the command is to “pressure the state governor to deactivate that concentration camp ‘annex to the Casa de Custódia e Tratamento de Taubaté, from where rose the seed and the roots of the command, amid many inglorious struggles and considerable atrocious suffering”. In the communiqué attributed to the PCC, exhibited on the Rede Globo television network in August 2006, as part of the demand to release the kidnapped journalist, they admonished: “We want the law to be complied with in its totality. We do not want any favors”.

These are moments of social effervescence (Durkheim, 2000) that are perfect for breeding a preparation of attacks, the most striking example of which were the waves of violence of May 2006. They are also moments of “war” (Foucault, 1997), in which the distinctions and opposition between “us” and “them” becomes polarized, among those assumed to be denied justice and the others, considered their oppressors and enemies. The same communiqué read: “we made very clear that our struggle is against the governments and the police forces”. In these times, the solidarity among “brothers” is reinforced, as well as the ties among those who are incarcerated and those “on the outside”.

In the case of May 2006, the war was waged between criminals and the police. It was a war long in the making, as has been shown. The confrontations were being fed by daily disputes, which were often banal, due, for example, to the breaking of agreements involving interests concerning a wide variety of objects. The spark was the threat or the transfer of inmates. The environment within prisons had been tense for a long time, due to the changes in

penitentiary management. It is known that expectations of changes in prison administration are regularly received with disturbances. In an environment in which social relations are precarious arrangements, lacking in reciprocity, marked by unequal and hierarchical relations, subject to unexpected rupture, changes in administration accentuate these sentiments. The reactions are always ready. The preparation for war is permanent. It is not unusual that the order to unleash the attacks came from within the prisons.

It is not to be expected, however, that the PCC and its demands for justice could constitute the embryo of a social revolution and the construction of a new society based on justice, equality and democracy. What is at play are business interests, as the studies of Zaluar and Misse show well. The leaders are not afraid to take punitive measures; they do not hesitate to kill and issue justice with no right to defense. They expect to defeat their enemies; although they do not expect to win sympathy, solidarity or support from those who live tormented by their criminal actions. They do not have a political plan for the construction of a democratic society; their conception of society is crude, based on loyalty between “brothers” and on the social conception of the extensive family, a constellation of material and moral interests.

On the other hand, there is no more space for innocence and for the innocent. Public policies result in often unexpected effects. Security, law and order and justice cannot be isolated from pressure from common sense or from the political interests of the day, nor from the interests of the agencies responsible for containing crime and violence. In democracy, authorities are elected precisely, to in the name of the citizens, make good decisions. In an era of profound changes in the widest spheres of social existence, including the domain of respect for or transgression of laws, making good decisions requires technical wisdom, a sense of proportion and justice in decision making, and an ethical sense of responsibility. Only in this way will it be possible to have success in the “strong and slow boring of hard boards” which is politics (Weber, 1970, p.123).

Notes

- 1 Conselho Regional de Medicina do estado de são Paulo, *relatório final da análise de 493 laudos necroscópicos referentes ao período de 12 a 20 de maio, coletados nos 23 iMIs do estado, cujas necropsias associaram a causa mortis como decorrente de ferimentos por armas de fogo*, Sept. 1, 2006. Quoted by Mesquita Neto (2007, p.27-9).
- 2 The concept of organized crime and its application to Brazilian society has stimulated intense debate among scholars. In this article, the concept of organized criminality will be used, however, the recognition that this concept is susceptible to a series of contradictions and the source of disagreements (Fontanaud, 2002). see in this regard: Zaluar (2004), Misse (2006), Mingardi (1998), Oliveira & Zaverucha (2006), about the extensive foreign bibliography, referred to in Rayan & Rush (1997) and Leclerc (1996).

- 3 Little is effectively known about the origins and the history of organized criminality in the state of São Paulo, in addition to Mingardi (1998), Christino (2001) and Amorim (1993). There is accumulated knowledge comparable to the studies about Rio de Janeiro, in particular the long studies of Zaluar (2004) and of Misse (2006), already mentioned. Nevertheless, what is known about the emergence of the PCC is also quite unsatisfactory, although, everything indicates that this organization was constituted, in 1993, in the annex of the Casa de Custódia e tratamento de Taubaté (SP), known for its long history of ill treatment of inmates. Everything indicates that the organization grew from resistance to the bad treatment, as a form of protection against the arbitrary acts of the penitentiary agents and even against the tough disciplinary regime imposed by the direction of the penitentiary establishment.
- 4 Only for mortality for external causes, a category that includes homicides, is there national data. Nevertheless, it comes from the Ministry of Health and not from the public safety or Justice departments of the federal government.
- 5 Cf. www1.folha.uol.com.br, Cotidiano, 19.1.2001. The complete text was reproduced by the press, it is not possible to determine, however, the authenticity of this document and its authorship.
- 6 The annex of the Casa de Custódia e tratamento de Taubaté was inaugurated in 1985, it then became the Centro de Readaptação Penitenciária (decreto n.23.571, de 17.6.1985). Aimed at violent imprisoned leaders of the rebellions, it keeps the inmates in rigid conditions of incarceration. This tough system of isolation and immobilization of the inmate was formalized in Resolution saP n.026 of May 2001, which instituted the Differentiated Disciplinary Regime. Federal law n.10.792, of Dec. 1, 2003, made it legal.
- 7 For the control of abuse committed by penitentiary agents, there are, in Brazil, auditors in only nine states. In the same way, in 2003, half of Brazilian states do not have a monitoring system for the penitentiary system. (Lemgruber, 2004). The lack of these organs or the constitution of *ad hoc* groups to conduct investigations, which rarely have properly prepared personnel, indicates that the levels of investigation of irregularities are low and thus, of punishment for the illegal practices in the prison units.
- 8 In the Massacre of Carandiru, the Military Police invaded the Casa de Detenção de São Paulo and executed 103 inmates. The other prisoners died in conflicts among the prisoners themselves. In São Paulo's 42nd Police District 18 prisoners died from suffocation, among the 51 who were confined by police on duty to an unventilated cell of 1.5m x 4 m. The police crowded them in the cell in reprisal for an escape attempt.
- 9 The law was approved in a rush and was the expression of strong pressure from society in light of the sense of insecurity that grew in the late 1980's. The trigger for the approval of a law was the increase in the crime of extortion through kidnapping, particularly that of two businessmen, one in Rio de Janeiro and another in São Paulo.
- 10 Only with the manifestation of the federal Supreme Court, in 2006, in *Habeas Corpus* n.82.959-7, was there a reversal in the disposition of the law for complete serving of a sentence in prison.
- 11 Federal Law n.11.466, of March 28, 2007, published in the *Diário Oficial da União*, March 29, 2007, edição extra.
- 12 Cf. www.mj.gov.br/depen. Lei Federal n.11.464, de 28.3.2007. *O Estado de S. Paulo*, "Lula sanciona lei mais dura para crime hediondo", 31.3.2007.

- 13 See the tables with data gathered by Julita Lemgruber for 2003. In Ceará, for example, there were thirteen prisoners per employee, and in Espírito Santo, fourteen. See www.segurancahumana.org.br/home.htm
- 14 According to the Censo Penitenciário de 1994, conducted by the Ministry of Justice, 55% of the inmates did not have any work activity. In 2003, the percentage of inmates working fell to 26.1% (Lemgruber, 2004).

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ABSTRACT – The advent of organized crime in Brazilian prisons, especially in the state of São Paulo, constitutes the object of this article. The waves of attack unleashed by the Capital's First Command (PCC – Primeiro Comando da Capital), in May 2006, which resulted in countless deaths, brought cities to a halt, and cornered authorities in charge of preventing these events, keeping them from applying law and order, are the starting as well as reference points taken. The advent of organized criminality is analyzed under the light of determined axes: the international scenario and the Brazilian context, the historical antecedents, the taking root of crime in society and the role of penitentiary public policies.

KEYWORDS – Organized Crime, Prisons, Penitentiary Public Policies, Brazil, São Paulo.

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