WHY PUNISH? WHAT PUNISHMENT? WHAT PUBLIC SECURITY?[1]

Giuseppe Tosi [*]
Marlene Helena Oliveira Silva[**]

1. PUBLIC SECURITY: A SOCIAL OR POLICE ISSUE?

It can be said, in a simplified way, that there are two ways of understanding the issue of security and punishment, which depend on the different conceptions of man and society adopted. The political philosophies that consider man to be a social and political being, from Aristotle to Marx, state that man cannot exist "outside" society or "without" society. Man is naturally social because, from conception to death, he needs others to "become man" and develop his human potential. From this perspective, using the language of human rights, guaranteeing citizens' economic, social and cultural rights becomes a priority, because only a good family and school education, decent housing, a good job, a good health service and social security can guarantee the formation of a good, law-abiding citizen.

On the other hand, political philosophies that consider man as an individual who exists in a hypothetical pre-social state of nature, and from whose free association the Civil State is born, will have a different conception of public security. Take, for example, Thomas Hobbes (1983), a 17th century writer and founder of modern natural law (*jusnaturalism*). For the English philosopher, all men are born free and equal and, therefore, all men have equal rights to all things. Man is not a naturally social and sociable being, in fact, he is naturally unsociable, solely concerned with satisfying his desires and achieving his own happiness against the happiness of others if need be. This inevitably leads to a conflict over the possession of goods, a war of all against all, *bellum omnium contra omnes*, which ends up endangering the lives of individuals, thus preventing civil progress, the enjoyment of freedom and other natural rights.

[*] Professor of the Department of Philosophy and member of the Human Rights Commission at UFPB, PhD in Philosophy from the University of Padua, Italy.
[**] Master's student in Social Work at UFPB and technical assistant manager of the Centre for Monitoring and Inspection of Alternative Sentences and Measures at the Paraíba Department of Justice and Citizenship.

[1] Published in: NEVES, Paulo S. da Costa- RIQUE, Célia D. G.-FREITAS, Fábio. F. B. *Police and Democracy: challenges to human rights education*. Recife: Bagaço, 2002, pp. 241-258.

Man becomes a wolf to another man, *homo homini lupus*; and to guarantee and defend themselves against each other, men decide to sign a pact or social contract, in which each one renounces a part of his freedom, if everyone else does the same, and hands it over to a sovereign. Because, as Hobbes (1983) warns, "pacts without the sword are mere words", this sovereign will be the only one with the power to use force to enforce the pact and guarantee the lives of the subjects and other fundamental rights.[1]

From this perspective, civil and political rights prevail. The state must fundamentally guarantee the social order, in other words, guarantee the physical integrity of all its members, especially the lives and property of those who have resources, money, land and goods. The social issue becomes fundamentally a police issue, with the aim of defending good citizens (who are confused with citizens in possession) from people who threaten tranquillity and social order.

The two visions of the issue of public security should be considered together: one states that the issue of security is primarily "a social issue", the other, "a police issue"; however, one vision does not work without the other.

As we know, the National Human Rights Program (1996) deliberately limits its activities to civil rights, i.e. only part of the broad spectrum of rights recognised today by United Nations resolutions. Only recently have social, economic and cultural rights been included in the programme, a much more difficult and complicated inclusion because it implies a profound reformulation of the State's economic and social policy. Now, if the issue of security is not simply a police issue, but a social issue, any programme that limits itself only to the police or judicial aspect of the issue will always be partial and flawed.

[1] Thus, since the beginning of human relations, in many different eras, respect for community rules has become an imperative, giving rise to the preservation of the common interest. Thus, everyone began to give up part of their personal goals to make up the rules of coexistence, allowing them to be punished for breaking these rules, with the general good prevailing over the individual. However, these rules have evolved over the course of human history to meet the needs of human relations and have led to the gradual adaptation of legal systems and punitive methods, although conflicts have remained over the purpose and effectiveness of punishments.

On the other hand, in countries where the social issue is not as acute and serious as in Brazil, the problem of public security continues to exist and maintains a specificity that must be considered. It is important to note that these are not "richer" countries, but "fairer" countries, i.e. countries where the distribution of wealth is fairer, allowing the majority access to fundamental social rights. The United States is an example of a country that is rich but unjust, and it is no coincidence that the handling of the issue of public safety in that country leaves a lot to be desired. Brazil, as President Fernando Henrique Cardoso said in a moment of lucidity, is not a poor country, but an "unjust" one, which is why the social issue is so important for public security.

There is no intention here to polarise the two positions in such a way as to make them irreconcilable. Despite the different and contrasting ways of looking at the issue of security, it is obvious that it is a fundamental issue, crucial for any society: without the guarantee of life and the physical and moral integrity of citizens, no other fundamental right can be guaranteed, and society simply collapses. Therefore, there is no doubt that public security bodies have a crucial role to play in maintaining a minimum level of civil coexistence.

We need to look at how power works in society. As the ancient physicists used to say, nature has a horror of emptiness, *horror vacui*, in other words, it doesn't accept a vacuum but tends to fill it immediately. In the same way, it can be said that society is horrified of the power vacuum, it doesn't accept power gaps. Historical experience shows that human society cannot exist without some kind of authority, government, democratic or authoritarian rule. People, at least those who have known until this day, cannot live together peacefully without someone to govern them, to command them.[2]

In modern societies, only the State, using Max Weber's famous definition, has the "legitimate monopoly of force". For this reason, all citizens in a civilised State do not carry weapons (except in exceptional and authorised cases) and hand over this prerogative to the public security apparatus: the army for external security and the police for internal security under the control of the executive and judicial branches.

When the State is unable to maintain order and security in a territory, "others" move in to fill the void. This happens in the favelas of Brazilian city like Rio de Janeiro.

[2] In this sense, anarchism (the lack of power or government) as a political theory would be a mere utopia.

1. PREVENTIVE AND PUNITIVE MEASURES

Concluding these initial thoughts, it can be said that, from whatever point of view one looks at the issue of security, all societies must maintain certain measures against those who threaten order and social coexistence, jeopardising the fundamental rights of citizens. The profound divergence between the two philosophies lies in the emphasis that the former places on **preventive** measures, while the latter emphasises **punitive** measures.

Preventive measures are all those that promote the guarantee of citizens' economic, social and cultural rights, minimising or eliminating the situations that constitute the "breeding ground", the "humus" from which crime is born and violence proliferates. This is undoubtedly Brazil's biggest problem, and the major flaw in the National Human Rights Programme, which threatens to put its entire effectiveness into crisis, turning human rights into mere rhetoric.

On the other hand, it is also true that preventive measures are necessary, but not sufficient to guarantee public safety; they reduce the rates of violence, but they don't solve the problem. This, at least, is the experience of the human societies we know so far. Philosophers, from Plato to the English humanist Thomas Morus, have imagined perfect utopian societies in which there would be no need for police, because the good education of citizens and the practice of the principles of social justice would be enough to guarantee order; however, to date, no society has eliminated violence and crime.

Why is that? There's plenty of room for philosophical debate here, but it can't be done now. For some philosophies and religions, this is because evil is (mysteriously and inextricably) rooted in human nature itself. For example, the Judeo-Christian tradition justifies the presence of evil in the world by the myth of original sin, which definitively broke the cosmic harmony that existed in the earthly paradise and brought violence into the world. For the Bible, the beginning of human history is a fratricide: Cain kills his brother Abel. Other philosophies deny that evil is present in human nature, and affirm, on the contrary, the man's natural goodness in the state of nature (Rousseau), blaming institutions and "society" for spoiling this natural goodness through competition, greed, private property and the capitalist spirit.

For this discussion, it is enough to recognise that, whatever the origin of evil, its containment or extirpation requires the use of punitive measures in addition to preventive ones. This does not mean that the security agencies should play a purely repressive role, even though it is not its main role, the police exercise, and must increasingly exercise, a preventive role. Community policing is a form of crime prevention, as is the work to raise awareness among the population in neighbourhoods, in schools, and the work being carried out in the Civil Police Academies, in the Military Police Education Centres and in the Community Police courses. These are preventive actions in which the police and the community exercise dialogue and use the weapons of criticism, leaving aside, for a moment, the criticism of weapons.

It's also true that society assigns the police a mainly repressive and punitive role, and only a secondary, preventive one. In this way, the police find themselves needing to apply punitive measures, even though they know that, without an improvement in the social situation, these measures will be mere palliatives, and when one "thug" is arrested, thousands more are being created by the unjust social system. This is the dilemma faced by the conscientious police officer, for which there is still no solution.

2. FREEDOM AND MORAL AND CRIMINAL RESPONSIBILITY OF THE SUBJECT

This work will not be concerned with the preventive measures that are urgently needed in the country for a more effective solution to the security problem, but with the punitive measures that the security apparatus is obliged to adopt.

The need for punishment has its fundamental *raison d'être* in the existence of human free will, i.e. without the recognition of human freedom, there could be no moral and criminal responsibility. If human beings were mere fruits of the social environment in which they were born and determined, they would not be free beings, and the criminal would be a sick person who should be treated with therapeutic measures, not punitive ones. In fact, some currents of legal sociology, such as in the Soviet Union during a certain period, defended the point of view of a "criminal" sociological conditioning so great that it removed the freedom and, therefore, the criminal responsibility of the subject and proposed that criminals be sent to mental institutions or halfway houses.

Now, it is true that there is a huge influence of the social environment and prisons are full of poor people not only because the rich manage to escape justice, but also because the poor have had less access to basic social rights. On the other hand, it should also be noted that not all those who live in the same social condition of poverty or deprivation become criminals, in fact, the majority do not take up crime, which points to the existence of a certain space of freedom for individuals. Therefore, the first assumption to answer the question "why punish?" is: because we are free beings and responsible for our actions from both a moral and a penal point of view. Morally we are responsible in the depths of our conscience and - for those who have faith - before God and divine justice; criminally we are responsible before others in the external forum, before men and human justice.

3. TWO PHILOSOPHIES OF PUNISHMENT: "ANCIENT" AND "MODERN" PUNISHMENT THEORY

Once the "need" for punishment has been affirmed, at least in the societies known so far, the second question that arises concerns the objectives and modalities of punishment and refers to the model or conception of punishment, or the philosophies of punishment. There are, in the penal tradition of the West - that is, of those peoples who, like Brazil, are products of the expansion of European culture over the world - two fundamental ways of looking at the penal question: the first is of a traditional and religious type, the second is of a more secular and modern type.

The first model of punishment remained in the West throughout the Middle Ages and lasted for a long time into the Modern Age. Punishment was justified as the re-establishment of a universal cosmic order determined by God through natural law and divine positive law (the Ten Commandments). Breaking the laws, which were both religious and civil, meant breaking with this universal and sacred order. Punishment was, in a way, a necessary sacrifice to re-establish the cosmic and social order. The origin of punishments predates the very creation of organised society, going back to the earliest groups of men, who attributed a divine character to them, because failure to comply with the obligations owed to "beings supernatural" deserved severe punishment, such as torture and death.

It was the repression of crime as a way of satisfying the Gods for the offence committed against the group. Thus, at first, the sovereign acted in a discretionary and autocratic way, disconnected from a legitimate legal system linked to the idea of justice; only at a second moment did the offence acquire a notion of law and the penalty a legal sanction, albeit with a more accentuated retributive character. Based on taboos and mystical ideas, the penalty came to represent the right to punish with the basic characteristic of revenge.

From this perspective, the suffering inflicted was, on the one hand, a tribute to the harmonious normative regularity of the world and, on the other, a collective atonement for the faults committed by a member of the religious community. Punishment was seen as penance[3] (hence the word "penitentiary") to expiate a guilt that was, at the same time, a sin (such as heresy) that required a full confession (hence the practice of torture) to provide total purification (it was no coincidence that the maximum penalty was given by means of "purifying" fire).

The first protest against this order of atrocities, against the practice of torture, the death penalty and all kinds of cruelty was promoted by the Enlightenment of the 18th century, the same that left us with the Declaration of the Rights of Man and of the Citizen of the French Revolution of 1789. The Enlightenment supported the idea that punishment should no longer refer to the need to restore and compensate for the universal order infringed by the sinner, and that the main aim of punishment was to isolate the deviant from the social group, neutralise their dangerousness and admit them back into the group after having "re-educated them to obedience and social discipline". It was an Italian enlightenment scholar, Cesare Beccaria, who, in 1764, wrote a small book that had a great fortune and spread throughout Europe: **Dei Delitti e delle Pene** (On Crimes and Punishments). The conclusion of the book reads:

> From all that we have seen so far, we can draw a very useful general theory, but one that is very little used in the ordinary legislation of nations, namely: *for a penalty not to be the violence of one or many against a private citizen, it must be essentially public, prompt, necessary, the minimum possible under the circumstances given, proportionate to the offences, dictated by the laws* (BECCARIA, 1994, p. 104. Emphases added).

[3] The definitions in the "Aurélio" dictionary mostly refer to the religious meaning: "**Penance**: atonement, affliction, torment. Christian virtue that leads to repentance for one's sins, insofar as they constitute an offence against divine designs. An act of atonement for sins, undertaken on one's own initiative, or at the direction of the Church or her delegates. The sacrament which consists in the contrite accusation of one's sins, made to a legitimate minister of the Church or his delegates, in order to obtain divine forgiveness or absolution, confession. Absolution taken as a sign of forgiveness."

Beccaria, stating the inefficiency and injustice of the punishments practised at the time, emphasised the need to apply sanctions that affected human freedom to a lesser degree:

> punishments that go beyond the need to preserve the deposit of public salvation are by their very nature unjust, and the more just the punishments, the more sacred and inviolable the security and the greater the freedom that the sovereign preserves for his subjects (BECCARIA, 1994, p. 13).

The Enlightenment, which marked the period of decline or "secularisation" of the influence of religious principles on European culture and society, also "enlightened" penal doctrine and revolutionised it in a profound and lasting way: with the Enlightenment, the "rationalist and utilitarian conception of punishment" was born. For the first time**,** the common practice of torture as a method of investigation and the death penalty as a way of punishing defendants was openly condemned, sparking a long debate that has yet to end.

Beccaria's work was a vitally important inspiration for the maturing of penal reform in recent centuries. His vision of punishment was utilitarian, in other words, he established the idea that just punishment should be subordinate to useful punishment, guaranteeing the certainty that punishment would be an example for the future and not revenge for the past. Thus, his ideas revolutionised the punitive system in force until then: "it is better to prevent crimes than to punish them". The aim of punishment was to prevent the defendant from causing further harm to citizens and to deter others from committing similar harms.

According to this conception, the main purpose of punishment is no longer to atone for guilt or re-establish a divine order, but to guarantee order and social coexistence among men, seeking to repair the social damage caused by the offence. The suffering inflicted on the offender is no longer understood as atonement, purification or redemption. In fact, this suffering has a dual function: on the one hand, it has a retributive meaning in view of the social values and interests violated or jeopardised by the crime; on the other, it seeks to develop a corrective function. It was hoped that the memory of the suffering experienced would serve as a lesson to the defendant to prevent him from repeating his criminal behaviour.

For this reason, the penalty had to be inflicted rationally, i.e. strictly necessary and sufficient to achieve this goal. It should also be emphasised that the main objective of punishment has always been to punish the wrong done by the offender; however, the critical sense of jurists, philosophers and legal thinkers has led to the evolution of this punitive trend, diagnosing the crisis of punitive modalities and generating the possibility of new ways of punishing. The Enlightenment saw the criminal as a person who should be isolated from society, temporarily, because of his dangerousness, and in the most serious cases, perpetually, an extreme measure that Beccaria (1994, p. 62-70) recognised as a substitute for the death penalty, which he called "perpetual slavery".

The repercussions and wide-ranging debate provoked by the book by the Italian enlightenment thinker gave rise to legal doctrines and jurisprudence that emphasised the disciplinary nature of the penalty, i.e. its function of re-educating the prisoner, theories that evolved into the most recent theses on the re-socialisation of prisoners.

At the beginning of the 19th century, the prison sentence proved to be a suitable means of reforming a delinquent, which was an evolution for the time, but in recent decades, its efficiency has not provided such optimistic results. In this context, in the same way that the death penalty and corporal punishment were replaced by the prison sentence at a certain point in history, this too began to be questioned from the beginning of the 20th century, as it became ineffective in containing crime. In fact, this negative outlook was to be expected, as prison is the antithesis of a free society, acting in an unnatural way and leading to crime. As a result, just as with the death penalty and other forms of torture, the failure of the prison sentence was inevitable since, as well as not curbing delinquency, it provides an opportunity for inhumanity and encourages repeat offences.

Most of the time, imprisonment accentuates the convict's *criminogenic* profile, making them more dangerous to society than they were before they were imprisoned. Thus, sending a citizen to prison solely to fulfil the desire of a State that is eager to punish ends up representing fear and a lack of commitment to the future of the convict and of society itself. In line with this concern, criminal legal systems are being motivated to accept the application of non-custodial sentences and measures, following the trends of international instruments such as the Universal Declaration of Human Rights and the Tokyo Rules,[4] which aim to safeguard respect for the human dignity of offenders.

Today, the dominant theories in the philosophy of punishment have refined and advanced Beccaria's theses. The current debate is marked by reflection on the usefulness, rationality, humanisation and social efficacy of punishment, with one of the central issues being the rehabilitation and resocialisation of the prisoner. Nowadays, the great object of

criminal policy has been the failure of the prison sentence, and consequently of the penitentiary system, prompting studies into new viable and appropriate options for the application of the State's punitive protection through alternative sentences. This is due to the historical realisation that the problem of crime must be dealt with in terms of its real content, because the mere classification and punishment of conduct, forgetting the human aspect that surrounds the problem, makes criminal law an ineffective instrument and a driver of crime.

4. ABSOLUTE, RELATIVE AND MIXED THEORY OF PUNISHMENT

There is currently a debate within the rationalist theories of punishment as to their theoretical foundation and effectiveness. Simplifying the positions, three theories of punishment can be defined: absolute, relative and mixed.

5.l **Absolute Theory**

The absolute theory of punishment emphasises the "retributive character" of the penalty, which is seen as an imposition of the penalty for the evil of the crime. Obviously, the pretension of compensating for the evil in the same proportion is impossible, since the penalty would have to be applied in the *quantum* equivalent to the offence committed, and we would thus have the very reintroduction of the law of talion: “eye for an eye, a tooth for a tooth”. In a way, these theories can be seen as a rationalisation of the old law of talion, which was nothing more than the officialization and ritualisation of collective revenge: an institute that our society apparently repudiates, but which, in fact, is still very present and has to do with the dark feelings of hatred or the aggressive instincts of society that persist even in the most "civilised" societies (ZOLO, 1999).

[4] The Tokyo Rules were drawn up at a congress held in Tokyo, Japan, on 27 August 1990 and organised by the Asian and Far Eastern Institute for the Prevention of Crime and the Treatment of Offenders.

Obviously, most legal philosophers do not recognise these obscure origins of the theory and consider retribution to be the essence of punishment, arguing that it is not a human product, but a principle with intrinsic validity, which the legislator must recognise. This theory states that the criminal should be punished merely for having broken the criminal law, without considering the usefulness of this punishment for the offender or for society. It thus claims that punishment is a just evil that should be applied to an unjust evil, regardless of its divine, moral or legal character. The rational core of the doctrine states that there must be some kind of proportion between the penalty and the punishment, not all offences can be punished in the same way, but there will be a greater penalty for major offences and a lesser penalty for minor offences; from this derives the "retributive" character of the theory.

This theory has been criticised on the grounds that it is impossible to eliminate the evil of the crime with the evil of the penalty, considering that retribution is never proportional to the damage caused by the crime. Other arguments have also been put forward, arguing that the retributive theory only punishes the offence committed, but does not prevent it from happening again, contrary to the principle that no responsible person punishes for the sin committed, but rather so that they don't sin again.

5.2 Relative Theory

The central concept of the relative theory of punishment is the "preventive function" of punishment and it is distinguished into the theory of "general prevention" and the theory of "special prevention". The theory of **general prevention** sees punishment as a psychological coercion of all citizens. For this theory, the purpose of the penalty is to intimidate the public into turning away from committing crimes. Psychological coercion occurs at first on an abstract level, warning the individual belonging to the social group that if they commit an offence, they will be subject to a penalty. If this individual has not been sufficiently intimidated, to the point of committing the offence, prevention reaches a second level: it enters the "concrete world", applying the penalty with the main aim of preventing the convict from committing a crime again.

The theory of **special prevention**, also part of the relative theory of punishment, considers the purpose of punishment to be to prevent offenders from committing future crimes through correction and education, as well as custody. While general prevention seeks to prevent crime in the community, special prevention is aimed at the offender who, with the lesson represented by the penalty, must be kept away from future offences so that he can adapt to the social norms prevailing in society.

Special prevention includes intimidation and neutralisation of the commission of the crime, but also the re-socialisation of the prisoner. From this perspective, society, through the resocialising prison system, redeems its guilt for the poor socialisation of the offender and promotes their reintegration into society.

The relative theory seeks to prevent the commission of new offences to intimidate the offender (special prevention), as well as other members of society (general prevention), into not committing them again.

5.3 Mixed Theory

The mixed theory defends an intermediate position: it starts from the idea of retribution as a basis, adding special and general preventive purposes. Here, retribution and prevention are two opposite but complementary poles, which act in each of the stages or phases of the sentence, fulfilling different functions.

a) When it comes to the **threat of punishment**, general prevention is decisive. This means that no society can survive without a set of rules and punishments for those who break them, and without a "general and preventive coercion" that acts on all citizens as "permanent psychological pressure".

b) When it comes to **penalisation**, the idea of retribution predominates. This means a modification of the preventive theory and the introduction of the retributive principle, which establishes proportionality between the penalty and the offence. In a purely preventive way of thinking, even a serious offence could carry a minimum sentence once it has been proven that the criminal is repentant and no longer a danger to society. Similarly, in a purely utilitarian logic, if it were shown that forgiveness is more effective than condemnation, the penalty would lose its *raison d'être*. However, when it comes to applying the penalty, it is not this principle that prevails, but the principle of retribution, which states that the crime should be punished according to its seriousness, without considering the effectiveness or usefulness of the penalty.

c) When the sentence is carried out, **special prevention** predominates, i.e. the utilitarian principle of re-education, socialization and reintegration of the prisoner into society prevails. In this case, the retributive theory of punishment can be softened with the introduction of sentence "discounts" once the prisoner's non-hazardousness has been proven.

The mixed theory seems the most appropriate for a modern rational theory of punishment and, in fact, it is the most appropriate for describing how the modern penal

system acts (or should act) if it followed the legal systems in force. However, if the Brazilian penal system is viewed from these premises, we can see that it is flawed at all three points:

- at the time of the **threat of punishment**, because the conditions of great inequality and social injustice mean that the mechanisms of "general prevention" no longer work as mechanisms of psychological inhibition of crime for a large part of the "marginalised" and "excluded" population of society;
- at the time of **sentencing**, because the security apparatus is unprepared, powerless or poorly directed to contain the growth of violence, especially in large metropolitan areas. Justice, in turn, acts in a selective, elitist, slow and inefficient manner, thus creating a climate of generalised impunity that in turn feeds crime in a vicious circle;
- when the **sentence is carried out**, the failure of the country's prison and security system can be seen most clearly, due to the appalling conditions in which prisoners are held, making any attempt at resocialisation impossible. The almost weekly riots in prisons and police stations are the clearest index of the collapse of the prison system: if there is anything like Dante's hell on this earth, it is Brazil's prisons.

If the purpose of sentencing is to re-socialise the offender, this objective is obviously not being achieved in the current structure, with a prison population far beyond the capacity of the existing establishments, not to mention the fact that most of them are in a precarious situation and therefore do not offer the minimum conditions necessary for the re-socialisation of the offender.

6. Conclusion.

The failure of our security system, and particularly the prison system, shows that we are a long way from a "rational" system of punishment defended by modern philosophies of punishment. This is also due to the persistence of the traditional model of punishment, which is still present in popular culture and in the culture of police officers and security agents. In fact, one cannot think that the modern rational model has replaced the old religious model in a linear fashion. Despite the transformations that have taken place in the two centuries since the publication of Beccaria's book, the two conceptions of punishment coexist and cannot be radically separated as before/after, past/present. In

practice and in our penal culture, the idea of punishment as revenge, punishment, atonement, suffering remains, as demonstrated by the mistreatment, torture and inhumane conditions in which prisoners are kept, often with popular consent and approval.[5]

It must also be stressed that society itself, which marginalises individuals and generates inequality, does not have the right to segregate them indiscriminately, as it would be cultivating pseudo-rehabilitated people who leave prison with a much higher *criminogenic* profile than when they entered, and who will certainly turn against society through crime.

What can we do? We can't fall into pessimism and inertia, thinking that there's no way out and leaving everything as it is. Something needs to be done and is being done to improve the security system and the Brazilian penal system: just think of the experience of alternative sentencing, the introduction of work and study as a way of recovering the prisoner, the initiatives of "model" prisons and agricultural penitentiaries that escape the hell of most Brazilian prisons. By associating the Alternative Sentencing Law with modern criminal policy, it should be ensured that the use of prison sentences only occurs as an *extreme ratio*, in a merely subsidiary way. However, for the rehabilitative objectives proposed by the new legislation not to act in isolation, criminal policy must find solutions for the whole of criminal law. Thus, when the prison sentence becomes indispensable in a specific case, the prison must be an environment that allows the exercise of citizenship and life with dignity. It follows that rehabilitation is possible even in prison, if the degrading and unnatural environment of prisons is changed.

Although alternative sentences to prison represent progress in the legal sphere, they may also prove to be flawed and be overcome in the medium to long term. In a society driven by the capitalist system, which generates social inequality, unemployment, hunger and illiteracy, violence and crime can only prevail as a constant, and it is up to the state to concern itself with preventive work and not just punitive work.

[5] On torture in Brazil, see Maia (2000).

It's undeniable that alternative punishments are better, more dignified and more effective than prison; it's undeniable that they can help to alleviate Brazil's serious prison problem. In any case, we mustn't forget that they are "penalties", they are punishments, which basically mean "distributing pain, suffering and affliction". All our efforts in favour of these alternatives to prison are certainly valid because of their ethical, humanitarian and even economic sense, but that's not all, because, in reality, the best thing is to prevent crime with serious programmes at primary level (getting to the root causes of crime), secondary level (creating obstacles to crime) and tertiary level (rehabilitating offenders with a view to preventing them from reoffending). Defending the construction of prisons is only justified as a measure of last resort and emergency, because the most viable solution is to build more factories, schools, hospitals, health and leisure centres. However, the exact opposite is happening: the shift from the welfare state to the penal state, with a decrease in social spending that could prevent crime and an increase in spending on repressing crime (SANTORO, 2002).

For this reason, we should have no illusions that the Brazilian penal system can improve without improving society. A society's security system can be seen as an index of the degree of that society's "civilisation" or "moral progress": it can be very rich and powerful and deeply unjust, and the security system will express this, as is the case in the United States. We can't imagine that a rational and efficient security system could be in place in Brazil when society is profoundly unjust and unequal and continues to suffer from strong social exclusion. As Beccaria said (1994, p.104), "the sweetness of punishments", harsher or softer punishments, depend on the degree of civilisation and education of a people.

The situation is complex, the picture dramatic, the solutions difficult: you can't solve the problems of public security without having solved the problems of society. At the same time, we are fully aware that all of us who are taking part in this human rights course are endeavouring to ensure that **the police act as protectors of human rights** by promoting measures to improve the system with proposals for a more rational system that respects human rights, we will also be contributing to improving our society.

BIBLIOGRAPHY

ALBERGARIA, Jason. **Das penas e da execução penal.** Belo Horizonte: Del Rey Editora, 1996.

AZEVEDO, David Teixeira. Penas restritivas de direitos: a destruição de um sistema punitivo. In: **Penas restritivas de direitos:** críticas e comentários às penas alternativas. Lei 9.714, de 25.11.1998, São Paulo: Revista dos Tribunais, 1999. p. 45-61.

BECCARIA, Cesare. **Dei delitti e delle pene, 1764.** Torino: Einaudi, 1994.

BITTENCOURT, Cezar Roberto. **Falência da pena de prisão**: causas e alternativas. São Paulo: Revista dos Tribunais, 1993.

_____ . **Juizados especiais criminais e penas alternativas à pena de prisão**: doutrina e jurisprudência. 3. ed. Porto Alegre: Livraria do Advogado Editora, 1997.

_____ . **Novas penas alternativas**. São Paulo: Saraiva, 1999.

BRASIL, Ministério da Justiça. **Programa Nacional de Direitos Humanos**. Brasília,1996.

COSTA, Tailson Pires. **Penas alternativas**: reeducação adequada ou estímulo à impunidade? São Paulo: Max Limonad, 1999.

GOMES, Luiz Flávio. **Penas e medidas alternativas à prisão**: doutrina e jurisprudência. 2 ed. São Paulo: Editora dos Tribunais, 2000. (Temas Atuais de Direito Criminal, l).

HOBBES, Thomas. **Leviatã, ou matéria, forma de poder de um Estado eclesiástico e civil (1651)**. Tradução João Monteiro e Maria Beatriz Nizza da Silva. São Paulo: Abril Cultural, 1983. (Col. Os Pensadores).

JESUS, Damásio Evangelista de. **Penas alternativas**. São Paulo: Saraiva, 1998.

MAIA, Luciano Mariz. Tortura: a banalidade do mal. In: SEMINÁRIO NACIONAL SOBRE A EFICÁCIA DA LEI DE TORTURA. Brasília: STJ, nov./dez. 2000.

REVISTA CONSULEX. Penas alternativas [s.l.: s.ed.] n. 3, n. 26, 1991.

SANTORO, Emilio. **As políticas penais na era da globalização.** In: DIREITOS HUMANOS, DESAFIOS DO SÉCULO XXI**,** Rubens Pinto Lyra (Org.) Brasília: Brasília Jurídica, 2002 (no prelo).

ZOLO, Danilo. **Filosofia das penas e instituições penitenciárias**. [s.l.: s.n.], 1999.