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A LOOK AT THE UNCONSTITUTIONAL STATE OF AFFAIRS RECOGNIZED BY THE SUPREME COURT OF BRAZIL

UM OLHAR SOBRE O ESTADO DE COISAS INCONSTITUCIONAL RECONHECIDO PELO SUPREMO TRIBUNAL FEDERAL DO BRASIL

UNA MIRADA AL ESTADO DE COSAS INCONSTITUCIONAL RECONOCIDO POR EL TRIBUNAL SUPREMO DE BRASIL

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ABSTRACT
Approaching factors of multiple orders and touching the national Penitentiary and Prison System is to seek to understand the roots and constraints of the formal and legal structure assumed by penal establishments that, today, are recognized as an “Unconstitutional State of Things” due to decision, in 2020, in the Argument of Non-compliance with Fundamental Precept n. 347 at the Honorable Court of the Federative Republic of Brazil. First of all, here we have bibliographical research (supported by literature of political and legal classics, *eg,* Immanuel Kant, Norberto Bobbio), documental (*vg* Constitutions of 1824 and 1988, angular and underlyingly supported) and jurisprudential (Argument of Breach of Fundamental Precept - ADPF n. 347 sustained in a jusphilosophical construct), with a qualitative and interdisciplinary focus, on the recognition of the "Unconstitutional State of Things" to fall on the Prison System in Brazil with a view to critically and reflexively understanding the prison environment and the vectors that affirm the “state of affairs”.

KEYWORDS: Criminal Law. Human dignity. ADPF N° 347. Prisons. STF.

RESUMO
Abordar fatores de múltiplas ordens e tocar o Sistema Penitenciário e Carcerário nacional é buscar compreender as raízes e constrangimentos da estrutura formal e legal assumida por estabelecimentos penais que, hoje, são reconhecidos como “Estado de Coisas Inconstitucional” por decisão, em 2020, na Arguição de Descumprimento de Preceito Fundamental n. 347 do Excelentíssimo Tribunal de Justiça da República Federativa do Brasil. Em primeiro lugar, aqui temos pesquisa bibliográfica (apoiada na literatura de clássicos políticos e jurídicos, por exemplo, Immanuel Kant, Norberto Bobbio), documental (vg Constituições de 1824 e 1988, angular e fundamentada) e jurisprudencial (Arguição de Descumprimento de Direitos Fundamentais Preceito - ADPF n. 347 sustentado em construto jusfilosófico), com enfoque qualitativo e interdisciplinar, sobre o reconhecimento do "Estado de Coisas Inconstitucional" a recair sobre o Sistema Prisional no Brasil com vistas à compreensão crítica e reflexiva do ambiente prisional e os vetores que afirmam o “estado de coisas”.

PALAVRAS-CHAVE: Direito Penal. Dignidade humana. ADPF N° 347. Prisões. STF.

RESUMEN
Abordar factores de múltiples órdenes y tocar el Sistema Penitenciario y Carcelario nacional es buscar comprender las raíces y condicionantes de la estructura formal y jurídica asumida por los establecimientos penitenciarios que, hoy, se reconocen como un “Estado de Cosas Inconstitucional” por decisión, en 2020, en el Alegato de Incumplimiento del Precepto Fundamental n. 347 de la Honorable Corte de la República Federativa de Brasil. En primer lugar, aquí tenemos investigaciones bibliográficas (apoyadas en la literatura de los clásicos políticos y jurídicos, *por ejemplo,* Immanuel

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Kant, Norberto Bobbio), documentales (*vg* Constituciones de 1824 y 1988, angulares y sustentadas subyacentemente) y jurisprudenciales (Argumento de Incumplimiento de Precepto Fundamental - ADPF n.347 sustentado en un constructo jusfilosófico), con enfoque cualitativo e interdisciplinario, sobre el reconocimiento del "Estado de Cosas Inconstitucional" que recaerá sobre el Sistema Penitenciario en Brasil con vistas a la comprensión crítica y reflexiva del ambiente carcelario y los vectores que afirman el “estado de cosas”.

PALABRAS CLAVE: Derecho Penal. Dignidad humana. ADPF N° 347. Prisiones. STF.

INTRODUCTION

The history of penalization and enforcement of measures restricting human freedom is extensive and abundant in elements and phenomena of political, human, social and legal orders observed throughout the history of the world and, especially, in the history of what currently exists. expresses itself as a geopolitical unit, the Federative Republic of Brazil.

In 1822, Brazil declared its independence, at the time a mere Portuguese colony. Then, there was the granting of the Political Constitution of the Empire (1824) signed by the then Emperor Dom Pedro Primeiro.

The Political Charter of 1824 is considered the first national constituent, although it took place under an anti-democratic process. However, it is a starting point for knowing and analyzing elements and phenomena that influence the *status* of the penalty and the *modus operandi* gives execution of sentences throughout the country's legal history.

Investigating the foundations of institution and justification of modern law, it is observed that criminal law that does not guarantee is retrograde to the protection of values and juridical and social goods that are unique to peace, order and security of the relationships developed in the *polis* , especially in achieving the normative purposes related to the penal execution, now famous for the deprivation of liberty in filthy spaces and truculent measures on human lives massively stratified socially, politically, ethically, culturally and economically.

Exempli gratia, it is known that Brazil has episodes of punishments of flogging, whipping, death, mutilation, *et cetera*.

Today, in *corpus* de *lex*, there is a prohibition of disgraceful, inhuman and contrary sanctions to the established legal order (angled by guaranteeing norms in criminal matters).

It is tolerated through a serious, robust and complex legal process due, in contemporary times, to penalties, especially timely imprisonment after the formation of a condemnatory criminal sentence, which fall on what we can call the “soul” or “psyche” of the individual. human being possibly having sealed the guilt after a rigorous procedure respectful of the presumption of innocence, non-culpability, non-incult relativization of fundamental rights, *et cetera*.

The vectors of these historical elements occur before different phases of human revenge, the backbone of criminal law that readjusted punishments and their punitive mechanisms to the political and social values of groups or societies of different times. Therefore, it is not surprising that normative values, including those of the penal field, are paced by space-time and are updated to this.

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Moreover, the mass media periodically report on events involving the reality of prisons from which data is collected that configure worrying human conditions, therefore, not silenced and averse to treaties, conventions, pacts and legal norms (national and international). international) in terms of public-subjective rights, many of which have already been incorporated into national legislation, ensuring the dignity of the human person in its most holistic appropriations.

The mediatized situations in criminal matters are among the most demeaning, as they reveal scenarios of systemic, continuous and nullifying legal outrages, especially the fundamental approvals without which the nature and condition of the human species are lost, as well as the State of Law raised to the democratic nature into structural bulk.

Therefore, it is clear to recognize that the incriminating norms, the penalization and the execution of sanctions have a delicate history and a sensitive political-legal scope, maintaining a sensitive framework for maintaining normative and institutional structures that legitimize the existence of prisons and, perhaps, the conditions themselves (especially negative ones) that are widely observed there.

The prison *locus* is undoubtedly a theme from which society and the rulers cannot escape due to the expressive marks and stains that are externalized and degenerate the spirit of human dignity and the structure of the Democratic State of Law, which at the present time is lived and aimed at guardianship in favor of the good and healthy development of today's societies.

Thus, approaching factors of multiple orders that affect the national Penitentiary and Prison System, considering important characters and normative values of the first Magna Carta and other constitutional texts between 1824 and 1988 (discursively underlying), is to seek to understand the roots and the constraints of the formal and legal structure assumed by penal establishments that, today, are recognized as an “Unconstitutional State of Affairs” due to the decision, in 2020, in the Argumentation of Non-compliance with Fundamental Precept n. 347 at the Honorable Court of the Federative Republic of Brazil.

Faced with the recognition of the “Unconstitutional State of Affairs”, there is a worrying scenario that requires an immediate and guided (re)discussion regarding the fulminating *status of boni juris* in criminal matters, human dignity, fundamental rights and good or bad execution of the prison sentence when observed in Brazilian penal establishments.

The theme calls for scientific investigation in view of the significant amount of denaturing of the institution of penalization and the adjective prison *locus* to that, historically of failures of a systemic nature and of potentially disruptive effects on the entire social fabric.

First of all, here we have a bibliographical research (based on the literature of political and legal classics, *eg* Immanuel Kant, Norberto Bobbio) and documentary research (*e.g.* Constitutions of 1824 and 1988, angular and underlyingly supported) with a jurisprudential focus (Argument of Breach of Fundamental Precept - ADPF n. 347) supported by a jusphilosophical construct of *numerus clausus* decisions of the Colombian Constitutional Court - CCC), with a qualitative and interdisciplinary focus, on the recognition of the "Unconstitutional State of Things" to fall on the Brazilian Prison System in

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order to critically and reflectively understand the prison environment and the vectors that affirm the " state of affairs".

1- METHODOLOGY

The research activity marked by inquiry and the possibility of discovering reality is a practice of permanent theoretical overlap. Research is an activity and attitude of a systematic, critical and creative nature, on a theoretical and practical level. Research can also be seen as pragmatic, formal, which aims to discover answers to problems that will be pursued through the use of scientific procedures (MINAYO, 1993; DEMO, 1996; GIL, 1999).

Search Type

In the case of exploration of the legal scenario on normative effectiveness, the work was elaborated through documentary and bibliographical research.

The aspired exploratory character is of investigative background of phenomena and processes considered complex, of difficult systematization and that allow the angularization of interpretative perspectives marked by the interrelationship of the human being in history and culture (VASCONCELOS, 2002).

In this way and firm in the signaled search, it can be said that the document is an extremely precious source for every researcher in the social sciences, considered irreplaceable in any reconstitution of a relatively distant past, many times being the only testimony of the recent past (CELLARD, 2008).

For Gil (2008), "one must consider that the documents are a rich and stable source of data. [...] they become the most important source of data in any research of a historical nature." Still in studies by Gil (2008), bibliographic research is considered to be one that uses contributions from different authors and, in the case of documentary research, the materials have not yet received an analytical treatment, or can be re-elaborated under the terms of the proposal of study.

Data Collection Instruments

The art of structuring the research allows, prematurely, the performance of previous analyzes through the observation of what is demanded. Everything that is traced allows the creation of strategic paths that approximate, as a rule, what is studied and what is intended to be studied. That is, approaching the study context, through formal or informal means, generates this effect (DUARTE, 2014; MENDES, 2014).

Documentary and bibliographical research is considered fundamental for the purposes of this study. As you can see, in documentary research, the materials have not yet received treatment in what they really want to study. In bibliographic research, in turn, the material has already been published, usually referring to books, articles and periodicals available on the internet (GIL, 1991).

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The main documentary sources, in this study, are the news referring to the prison population of the Jornal do Tocantins in the reference period.

But, to point out, how to collect data? Intriguing question, but subject to a resolute answer. From this plan, Gerhardt and Silveira (2009, p. 56) emerge to answer that data collection:

> [...]. It comprises three operations: 1) Conceiving an instrument capable of providing adequate and necessary information to test the hypotheses; for example, a questionnaire or an interview or observation script; 2) Test the instrument before using it systematically to ensure its degree of adequacy and precision; 3) Systematically put it into practice and thus collect relevant data. (GERHARDT; SILVEIRA, 2009, p. 56).

Having clarified “how to collect” data, the chosen instruments are capable of adequately collecting the necessary information, documentally and bibliographically, to test the hypotheses outlined in this work.

2- INTRODUCTORY NOTES TO KNOWING A PERSON

It is observed, as in the legal literature, that the terminology of the *person* lends itself to various incitements or provocations that, importantly, embark on the search for a transcript capable of being possessed, by the impetus of gnosis, by each and every human being with a minimum degree of capacity for abstraction from the world and phenomena occurring in society.

above nomenclature is processed to inform and model views and behaviors of public life (individuals and institutions) that do not advance to known conflict zones or, even, apparent ones for the normative incidence and applicability (etymological territories inferred by culture, history , by the legal system, by the values and customs of domestic or international law incorporated into the Constitutional-Positive Order and in force) and not sponsors of the use of force or the exercise of power that is aimed at legitimizing “truths”, virtues or interests thrown at the reconfiguration of other people or institutions (cognitively and behaviorally or redefinitions of social statutes or conceptions involved in institutional ethics, respectively) and territories (etymological or physical) to architect the world, known to have multiple meanings and narrative possibilities.

One arrives, rhythmically, at the core of this section, which focuses on safeguarding the human person in the expression and possession of the dignity that embodies him by natural and legal requirement *to* anchor the very notion of rights (*lato sensu*), undeserved situations of location space of the human being (*in* divisions of legal sectors with particular treatments), whether in prison or outside it.

Without further ado, to the point question. *What is a person for the legal universe?*

Perhaps objecting to some conceptual reduction can be confirmed confluent when exploring guided, the setback, would prove reluctant or non-contributory to what is expected on this excursion. Well, compulsing the literature *ius*, three words stand out that well express the key idea for the term investigated here, namely: a) *Phersu*, b) *prosopon* and c) *persona*.

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The word *Phersu,* of archaic Etruscan origin, means mask and pays tribute to a goddess (Persephone) during the festive days dedicated to that character (CASTEÑEDA, 1989).

Note that, at this first moment, it is obtained that *person* and *mask* have a semantic correlation.

As far as it is concerned, the word *prosopon*, of Greek origin, is reported as a synonym for *face* or *face*. Likewise, he perfected the idea of a *mask*, as it was used in festive moments dedicated to Dionysus (CASTEÑEDA, 1989).

It is thought that, in this second moment, it is realized that *person*, *face* or *face* and *mask* are correlated for the semantics of conceptual intent.

About the word *persona*, which comes from Latin, it is understandable that it has been transferred to the contemporary meaning level, coming to mean *character* (GOGLIANO, 1982). However, taking Antiquity as a *mask*.

Examine that, in this third moment, *person*, *character* and *mask* intertwine in order to offer congruent semantics and meaning.

Having done this, it is found that the term *person* launches itself to the incorporation of knowledge made possible, by the legal tradition that is mirrored in the social and public, as an attribute external to the human being, but incorporated to him when he is in the habit of presenting himself in contexts of revealed social or group contact and interaction or, purely, when it is expressed in any way in ordinary life. It serves as a social, public and, why not, legal garment as it settles down, settles down, unfolds and develops life in *societas*.

In the face of the fight, the *person* , in Legal Science, holder of rights and flexed when fulfilling duties, improves in the *subject* , being by natural inheritance and, also, construct *ius* fictional to the touch of the culture of moral and ethical fates, to which it squanders the respective condition of possession and mounts a tutelary external to the being, but inseparable from it so that it presents itself and appears socially without waiver of recognition and noble or non-denaturing treatment of goods bound to the figure of the person possessing human nature.

On top of that, the *person would be*, under social and public relations, giving life to a *character* that brings him closer to the political and rational being expected of coexistence in the *polis*, distancing him from the exclusively natural and animal condition and inferred by the wildest emotional conducts or instinctual awakened in meeting rubrics merely ciphered by individuality.

The limits imposed by the norms within the State aim, mainly, at the non-confusion by some political subjects of the power conferred on them due to popular representation. In this way, power should not be invoked to limit natural guarantees, but to coordinate them for the common interest (ARENDT, 2016).

Further ahead, observing the norms applied to a certain people, we reach the prelude to understanding the *subject of law*, given that a certain people is logically constituted by individuals or, in a legal view, by *subjects of law (and duties)*.

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The proposed analysis of the *subject of law* is visceral to the philosophical approach, here represented by studies such as Immanuel Kant.

See in Immanuel Kant the search for the conceptualization of the *subject*. Initially, it should be said that an explicit concept of *subject is not objectively perceived in the studies developed by Kant*.

> The subject of law appears in Kant essentially linked to taking possession of the outside world. It is the subject that integrates objects outside of what is legally mine through occupation and who, in this sense, identifies himself, in his matrix, as an owner (JUNIOR, 2012, p. 40).

It should be immediately noted that the idea of the *subject* in Kant is related to the external world, that is, to the things of the world. And, in the moral self-determination about the property of things, the concept is based. In other words, Kant brings an idealization of the subject, linking him to the rationality of autonomy that underlies the quality of freedom of being over things.

> [...] the subject is nothing but that core of moral autonomy, reason that is self-determined, pure intelligibility completely devoid of any empiricism. Exactly in law, on the boundary between interior and exterior, when the interior is projected outwards in the form of exterior freedom, what is accomplished by the human action of taking possession of the phenomenal world, the very relationship that that nucleus of morality can establish with objects cannot be anything other than that of a link with something that is external to it. (JUNIOR, 2012, p. 41).

The mere link between the *subject* and the external world is the phenomenal property that ensures the autonomy of the being over the thing, thus revealing itself in the moral expression of an intelligible possessor and nothing more than the value expressed on an external body impossible to be truly possessed.

This binding of the *subject* to the outside world creates an intermediate state that can be understood as the field of exchanges and flows of bodily experiences that define a form of relationship reaffirmed in a kind of contract or law of continuous possession (KANT, 2004).

The maintenance of this state results, so to speak, in the quality of *subject of law*. That is, as a being interacting with the external world, being capable of abstractly acquiring the possibility of maintaining a link with this external state to be established in a given time (and space). From what has been said, the *subject* is known from the autonomy exercised over the external world.

3- NOTES TO THE BRAZILIAN PENITENTIARY AND PRISON SYSTEM

Brazil has a prison population of 748,009 (seven hundred and forty-eight thousand and nine) in custody for 442,349 (four hundred and forty-two thousand, three hundred and forty-nine) places in different prison units. Considering the prisoner population enrolled in each penitentiary regime, it is observed that 362,547 (three hundred and sixty-two thousand, five hundred and forty-seven) people are serving their sentence in the closed regime; 133,408 (one hundred and thirty-three thousand, four hundred and eight) people are serving sentences in the semi-open regime; and 25,137 (twenty-five thousand, one hundred and thirty-seven) people are serving sentences in the open regime. In

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addition, 222,558 (two hundred and twenty-two thousand, five hundred and fifty-eight) people are provisionally protected (INFOPEN, 2019).

Punctuating the alarming *retro numeric* presented and performing simple arithmetic calculation, there is a deficit of prison vacancies that is around the worrying mark of 305,660 (three hundred and five thousand, six hundred and sixty). That is, there are more people held in prisons than vacancies in Brazilian prisons. Therefore, prison overcrowding is undeniable.

The aforementioned data, which well reflect the delicate reality of penal establishments, are part of the last statistical report (2019) available on the online platform of the National Penitentiary Department - DEPEN.

From what is already known, it is understood that there is a real mismatch between the reality experienced by prisoners and the legal utopia, given the clarity that the norms do not match the reality of the system, and the prison distances itself from fulfilling the resocializing function (PENNA, 2017).

In addition, it is known that the Penitentiary and Prison System in Brazil occupies a prominent position in the world *ranking* of the worst and most crowded prisons in the world, according to data presented in reports from the National Council of Justice - CNJ (2017) and of the Department National penitentiary – DEPEN (2019).

When making initial deductions, it must be said that it is incompatible with the ends gives feather and with The legality of greeting gives reprimand The escape The maintenance and guarantee of conditions worthy of the rights not covered by the possible incriminating sentence of stabilized legal and legal effects, in if talking in prisoners definitive (CUNHA, 2021).

Do not escape conviction are only applied to convicted prisoners, limited to certain terminations of law and procedure. Likewise, one should not observe The maintenance in conditions arbitrary or violent The rights or guarantees inscribed in the intangible heritage of the person prey temporarily (MIRANDA, 2022).

The settings in situations f r o m establishments prisoners unworthy to greeting and execution gives feather they can clearly figure pair penalty state-owned, The what It is tight fur ordering legal national (not permission of *at the bis in ditto*). Other side iniquitous in what if realizes the state's inefficiency is shown in the excessive imprisonment of people in the regime provisional. Figured frame is outrageous The level human rights elementary.

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> On December 30, 2013, the IACHR approved its Report on Rights of Persons Deprived of Liberty in the Americas and recognized The use excessive gives prison preventive, relating it The others problems as The over crowded and The lack in separation in between processed and convicts. It is reality was perceived in other instances through the Organization of American States (OAS) itself, as well as during the Third Meeting in Authorities responsible by Policies Penitentiaries and Prisons, in which reference was made to the "wide use of detention preventive", approaching The estimate what, at region, "more in 40% gives population prisoner if find in prison preventive (REPORT IN MANAGEMENT, CNJ, 2017).

Finally, dealing with the variables surrounding definitive or provisional imprisonment is ratify the Rule of Law in its guarantor corpulence of Jupiterian goods human, legal and juridical scintillating freedom and limiting obscure scenarios involving the cessation of the *iusliberals*. That is, with observance by the holder of *jus punished* due process of law, gives reasonable duration of the process, the preservation of physical, moral integrity and worthy of person, among others.

4- UNCONSTITUTIONAL STATE OF AFFAIRS - ARGUMENT OF BREACH OF FUNDAMENTAL PRECEPT - ADPF N. 347/STF

The system national prison and penitentiary, explicit due to blatant violence against rights and people, reaches, in the current framework of 34 (thirty-four) years of democratic rule of law, the declaration or recognition of the Unconstitutional State of Things - which made the Supreme Court in a recent trial of the Argument of Non-compliance with a Fundamental Precept in a precautionary measure (Complaint of Non-Compliance with a Fundamental Precept - ADPF No. 347/PSOL) (PENNA, 2017).

The Unconstitutional State of Affairs, partially recognized in a precautionary measure by the Excelsa Corte do Brasil, aims to promote the practical adoption of measures, by all State entities, converging to remedy injuries to fundamental assets of extreme violation in Brazilian prisons.

In the core, the action calls for the recognition of the clear violation of legal and fundamental commandments to the imprisoned population, as well as the determination of different measures to the punitive systems directed by the Public Power (Executive Power), since, it is understood by the existence of protective laws and the lack of political interest in executing them efficiently and effectively (ANDRADE, 2016).

The Unconstitutional State of Affairs , briefly, is made in the excess of negative and serious records of violations of minimum rights, subjective, public and fundamental basic norms (fundamental rights and guarantees of the constitutional or *infra sphere*), in certain social sectors, *in casu* , it is defended, in the Argument of Breach of Fundamental Precept referenced, that violations of rights in the system prisoner are unsustainable in the Democratic State of Law (ARENDT, 2008; CAMPOS, 2019) .

There are many implications of a vilifying nature of the human condition in an environment where sentences are carried out, and it is not the main object *of* the debate to approach and scrutinize

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all vectors and reflex elements, but those of a basic core that radiate effects to the entire physical and symbolic structure of incarceration country with a dark history and sensitive human norms.

The explanations advanced here should not be taken as a defense of the impunity of the fact considered to be a criminal offense, of criminal, criminal or generic offense (common to all branches of law) that blemishes social order and peace, nor the defense of immoral, arbitrary and offensive practices to democratic, republican values and good national customs.

All elements from the orbit of the underlying cause are defended as pointers of reflections and criticisms of the loss of good care for human nature and the lack of care for the due applicability of constitutional and legal norms, largely ignored relatively or absolutely in certain concrete contexts (*eg* the imprisonment), regardless of any excess of conduct negatively evaluated by the political body.

It should not be forgotten that the prison environment, under known conditions, is largely intended for the confinement of any person in the event of violation of a protected criminal good or lack of maintenance duty (civil arrest of a defaulting maintenance debtor).

Therefore, any individual is able to commit criminal offenses, which subject to the deprivation of liberty, being able to resort to prison treatments along the lines of those meted out to those caught in the scourge.

In the end, the proper perception of the Democratic State of Law in an environment of serving a sentence or of provisional measures to restrict freedom does without greater respect for the beacons of state action. Given that, in observing the State divorced from public norms [one speaks directly of those that, although enacted, existing, in force and having legal effects, have content effectively compatible with constitutional norms (of “all or nothing” and principles), infraconstitutional [(if infralegal norms, those with a superior pyramidal topographical position must also be considered – *eg* state penitentiary law norm must symmetry to the federal penitentiary law norm and the Magna Carta), ethnic, moral, proportional, just *et cetera*], not will be for the protection of the interests of the people who, sometimes, are also in prison.

On the face of it all, perceiving oneself as a person in constant political-social exchanges is understanding oneself as an individual who will maintain (directly or indirectly) future relationships with peers in the *polis*, peers who may eventually be deprived of liberty or not. Instead of people deprived of their liberty, it is known that they will be able to return to social life in an opportune moment of relaxation or revocation of the prison or, even, by the fulfillment of the execution of the sentences enshrined in a condemnatory edict, as well as other conditions that soften the fulfillment of pity (BOBBIO, 1992; DWORKIN, 1999; CUNHA, 2021).

5- PENITENTIARY PUBLIC POLICIES IN RHETORIC TO THE UNCONSTITUTIONAL STATE OF THINGS INSTALLED IN BRAZILIAN PRISONS

It is known that *penitentiary public policies* are guided by the vectors of human dignity, custody, surveillance, security, order and re-education of the segregated person, deserving

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appreciation of the vectors of a) human dignity and b) re-education, of little or no expression, when deals with the actuational purposes of public policies in prison space.

Human dignity and re-education appear, mostly, in discussions that deal with the functions of criminal execution, but not exactly as *a major vector* alongside other specimens clearly famous for their distressing or punitive nature, inheritance of the retrograde criminal spirit invested in criminal matters that demonstrates distance from the clearest human postulates to the human-criminal guaranteeing nature (ARENDT, 2016).

It is observed the existence of countless documents that deal with potential *penitentiary public policies* , many idealized, at the national level, by the National Council of Criminal and Penitentiary Policy – CNPCP, by the National Council of Justice – CNJ; National Penitentiary Department - DEPEN, the Federal Criminal Police (new public security body in Brazil, advent of Constitutional Amendment 104/2019, responsible for the security of penal establishments); at state level, state secretariats responsible for managing prisons limited to their territorial areas; state penitentiary and prison departments; the state or district Criminal Police (new public security body in Brazil, advent of Constitutional Amendment 104/2019, responsible for the security of penal establishments).

However, the difficulty, resistance and even the lack of technical knowledge of managers is known, or in the discrete results obtained from the few policies applied in prisons, with several elements that clarify the problems of imperfection or non-effectiveness of the instruments (*vg*. difficulty in accessing financial resources from penitentiary funds, pecuniary penalties or as a condition for conditional suspension of the process , etc .; adequate idealization and written disposition of projects by technical staff, which may be approved and executed, respecting the executive schedule ; possible diversion of funds, corruption, favoritism, etc. ; specialization of sectors and servants to supervise the allocation and faithful perception of results of approved and executed projects, among many other elements internal to the management of the penal establishment and external to the prison environment).

It is emphasized that penitentiary public policies must be perceived in order to enforce, in particular, the assistance to the arrested or hospitalized person, so that they have preventive conditions of criminal offense and guidance to the return to social coexistence under confirmed dignity.

According to the Criminal Execution Statute (Ordinary Federal Law 7.210/84), six types of assistance to the arrested person are considered: a) *material* – food, clothing and hygiene, b) *to health* – medical, pharmaceutical and dental care, c) *legal* assistance – legal assistance provided by the Public Defender's Office, c) *educational* – school and professional instruction, d) *social* – accompaniment and support in various matters and e) *religious* – freedom of worship without obligation. Therefore, it is these types of assistance to be especially addressed in policies, plans and programs of perception in prison *locus.*

In addition to all this, it is observed that there are ideological, political, cultural and social constructs that, when moved in a planned way to the concrete plane (subject to practical perception

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by the prisoner population and by the social body), are capable of resulting in transformations of space, structures and dignified conditions for penal execution, repression of criminality and compliance with the effects of the re- socializing penal model.

6- CONSIDERATIONS

The Unconstitutional State of Affairs is a formal structure for recognizing the ever-notorious imperfection of prison confines and the public policies operated there (laws, projects, programs, actions, measures, etc.). Nevertheless, a mere formal act is not capable, *per se*, of convincingly determining and informing individuals (in the simple capacity of a human person, ignoring the political territory to which they belong) of public affairs, the correct starting point of an ancient and systemic problem of modern societies reviving the penal executive project (read criminal legislation and penal execution) of a long-lived society in the historical plan supported by other values and ideals.

Late state act, but still expected, is the material and formal recognition of failures in prison environments, represented by the Judiciary (Montesquieu's Theory of Separation of Powers).

With this, scientific, governmental and organized social spaces are gained, freedom to deal more closely and with greater diligence with the disruptive, disabling, inoperative, inefficient and ineffective vectors that promote a project of penal execution that is not capable, until the present day, of to meet the social and normative ends established in the Democratic State of Rights and Enlightenment goods famous in the Western World ventilated for the re-education of the transgressor of public norms.

The discursive fervor aligned with the opening of physical spaces enables more and better public/social/popular/national/international control, all of which potentially transform the watched and criticized reality.

The greatness and complexity of the theme is not being vigilantly denied to the rational ballot that links this study, not demanding, here, developments that are attested by the discursive sufficiency (conclusive funneling of cause), but by the theoretical instigation capable of conducting current actions to the prison *locus* as a political-legal structure and project.

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