

Prêmio Mundo Cão de Literatura
Criminológica Brasileira

THE RADICAL CRITIQUE OF PUNITIVE IMAGINARY

THIAGO FABRES DE CARVALHO

 EDITORA
Blimunda


CRIMLAB

Translation by
Beatriz Santos

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Established in 2016 by Leandro Ayres França, **CRIMLAB** began as a collaborative study group bringing together researchers, academics and those interested in reading and discussing criminological publications. Its main mission has been to promote criminological knowledge and make it accessible to society. The group has evolved through different formats, welcomed different generations of participants and developed numerous projects.

The **Prêmio Mundo Cão** de Literatura Criminológica Brasileira was launched in 2023 to promote criminological literature published in Brazil. The name of the prize honours the space where the study group held its first meetings and events, in Porto Alegre (Brazil).

The winner of the second edition of the prize was *Introdução à Criminologia: A crítica radical do imaginário punitivo*, written by Thiago Fabres de Carvalho (Tirant, 2023). The following academics were on the jury for this edition: Adrian Barbosa e Silva, Adriana Eiko Matsumoto, Aline Passuelo de Oliveira, Alysson Ramos Artuso, Ana Carolina Mezzalira, Ana Luisa Zago de Moraes, André Carneiro Leão, Caroline Velasquez Marafiga, Christiane Russomano Freire, Clarice Beatriz da Costa Söhnngen, Dani Rudnicki, Daniel Silva Achutti, Érica Babini Lapa do Amaral Machado, Felipe da Veiga Dias, Fernanda Prates Fraga, Guilherme Gustavo Vasques Mota, Henrique Britto de Melo, Hugo Leonardo Rodrigues Santos, Leonardo Marcondes Machado, Luiz Phelipe Dal Santo, Marco Aurélio

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Leandro Ayres França

Eduarda Rodrigues Ribas

Khalil Pacheco Ali Hachem

Mateus Augusto Silveira Ribeiro

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FOREWORD TO THE BRAZILIAN EDITION

The idea for publishing this book arose immediately when, just a few months after the passing of my brother Thiago — on what was the greyest Ash Wednesday of our lives, February 26, 2020 — I came across this beautiful and profound text titled “INTRODUCTION TO CRIMINOLOGY: THE RADICAL CRITIQUE OF THE PUNITIVE IMAGINARY” among the files stored on his laptop.

I soon realized that this material was the same one he had just finished during the Carnival holiday earlier that year, when we were on a family reunion at our countryside property in Ibitiruí, in the municipality of Alfredo Chaves, in the state of Espírito Santo.

I remember teasing him while he was typing on his laptop in the kitchen, a glass of wine beside him. I said, “Thiago, only you could manage to tune out all the noise of the children running through the living room so you can keep writing!” He laughed and replied with a smile, “That’s true, isn’t it, Lê!? Only me.”

In the last two years before his untimely passing, Thiago was incredibly prolific, writing with dedication as though he knew he would no longer have much time left to express his truths and share the vast knowledge he had acquired throughout all his years of study.

Still immersed in profound grief, I became certain that, when the time was right, I would have to undertake the responsibility for publishing this work. I felt this not only because I am fully aware of the immeasurable value of his research — for its significant academic contribution to the

field of Critical Criminology (I would be “committing a crime” to keep it restricted to family and friends) — but also because this publication is a well-deserved tribute to the extraordinary human being my brother was.

Thus, at the end of 2022, I reached out and sent the manuscript to our dear friend Saulo Salvador, for whom Thiago had enormous affection and friendship. We then arranged our first meeting at a café in the city of Vitória, determined to carry out this beautiful mission of unveiling a previously unpublished book by Thiago, whose “Final Considerations” had been completed just days before his passage to another realm, following his luminous path into a different dimension.

It was a meeting filled with coffee, deep affection, tears, and laughter. We reminisced about stories of Thiago, spoke of the great honor it was to have shared life with someone so remarkable and special, and also discussed how we could fulfill this responsibility. Right then and there, a visibly moved Saulo began to outline the planning of this work.

In addition to Saulo’s careful editing and formatting of the text, it was essential that the entire work and its publication reflect “Thiago’s imprint”. This immediately led him to suggest involving their friends, professors and researchers Salo de Carvalho and Alexandre Wunderlich, for whom Thiago held deep admiration and affection, to participate in the project.

Alexandre immediately embraced the idea with great enthusiasm and facilitated the publication of the book through Tirant lo Blanch publishing house [reference to the first edition, published in Brazil]. Meanwhile, Salo lovingly wrote the postface, joined by Achutti, Mariana, and Raffaella.

Thiago had always been a humanist who, the more he devoted himself to study and research in the field of Law — always intertwined with literature, music, poetry, or other artistic expressions — the more he strengthened his conviction that violence (repression) should not be reciprocated as a means of resolving criminal and social conflicts.

He was a loving and devoted father to Davi, a caring son to Léa and Perseu, and a generous brother to Letícia, Renata, Manuela, and Guilherme. Throughout his life, he was my model for what it means to be human and

a source of immense pride (as he surely was for many others). He was the most sensitive part of me, precise in his words and gestures of love. Thiago cherished his family and was surrounded by a legion of students and friends.

Thiago was also a dreamer with a restless spirit, who could never live indifferent to injustice. He was a voracious reader, who channeled much of his “anguish” into his studies, having as his principal mentor Professor Lenio Luiz Streck, who supervised his Master’s and Doctoral studies at UNISINOS.

Thiago was intense, never sparing his affections, and would say “I love you” with the same innocence as a child says it to another. Without embarrassment, without reservations, and without fear of rejection. He believed in forgiveness as fervently as he despised prisons, which he called a “people-grinding machine”. And he remained faithful to this conviction until his final days and in his last work, concluding this book with a poetic passage, his signature style:

However, as Drummond immortalizes in the verses that open this book, it is a paradox that the same fear that creates “jailers, buildings and writers, and this poem”, as adduced by the poet, also creates in return “other lives”, maybe from an open and unceasing time of non-violence. Even when immersed in fear, it is still possible to glimpse some room for freedom, even for love. It is also possible to love in fear, as the poet’s song alerts us: “it was out of fear of airplanes that I first held your hands”¹.

Beyond its significance for academic knowledge, reading this book will be like hearing Thiago whisper words of love and hope into our ears, envisioning a gentler future for the generations to come.

Enjoy your reading.

LETÍCIA FABRES DE CARVALHO.

1. This verse is an excerpt of the song “Medo de avião”, by Brazilian composer Belchior.

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1

**INTRODUCTION
TO *PUNITIVE
IMAGINARY*: THE
RADICAL CRITIQUE
OF PENAL CONTROL**

INTRODUCTION

In the extraordinary song *A Ponte* (The Bridge), the Pernambucan composers Lenine and Lula Queiroga instigate their listeners' dialectical hermeneutic imagination by throwing simple indagations and offering no easy answers. However, they also throw some riddles like: "What do you do to wash the clothes? Where does the day dawn? This place is a marvel but how can you get out of the isle?"¹. Then, they leave an open room for the audience's reflections.

At the beginning of the song, at that brief moment of the musical measure where the answers are silent, the authors open a range of possibilities to the production of innumerable meanings. Each one of us would be allowed to dialectically think and produce our own answers. Therefore, the *hermeneutical circle* is opened - the structure and movement of understanding. Our previous understandings and judgments compose a mosaic of possible answers from meaning anticipation of the linguist ground of an intersubjectively shared tradition.

Later on, the composers offer us the simple but surprisingly resolutions of these riddles: "What do you do to wash the clothes? Go to the *fountain*, go to the *fountain*. Where does the day dawn? At the *horizon*, at the *horizon*. This place is a marvel but how can you get out of the isle? Through *the bridge*, through *the bridge*"². Simple, direct, incisive, creative and admirable verses.

These answers may or may not coincide with our own, which are any less accurate or correct than those of the authors. Necessarily, there is always a meaning anticipation grounded in a previous understanding related to the existential horizons of each performer in his concrete singularity. Later, Lenine and Queiroga show in a very subtle and unexpected way the “method” that took them to the end of the quests, which is *the bridge*. The bridge is the *epistemic* key of understanding. They say “*the bridge* is not of iron, it is not of concrete, it is not of cement. *The bridge* is until where your thoughts go. The bridge is not to go or come back, the bridge is only to *pass thorough*, walk through the waters of this moment”³. Therefore, the “method” is the *journey* itself neither the departure nor the arrival, neither the questions nor the answers, although these could only arise from those.

In this regard, at the same measure of the song afore mentioned, this research aims to throw an introductory answer to questions and riddles apparently insoluble: After all, what is *criminology*? Which are the main sources of *punitive imaginary*? Which are the *horizons* of criminological knowledge? Which *bridges* allow the *journey* to the understanding of the *criminal question*?⁴

This is because it seems to exist a widespread disagreement about the “origins” and the delimitations of an epistemological statute to this field of reflection, as Pavarini already warned us: “under the term criminology, a plurality of discourses can be understood, a heterogeneity of objects and methods oriented but non-homogenizable among themselves (...) towards the solution of a common problem: how to guarantee social order”. Therefore, as adduced by the author, behind every criminological reflection there is always this concern about social disorder and the threat to the established order. It is always the “demands for order” that drive the production of hegemonic criminological discourses.⁵

Still on Pavarini terms, the configuration of the object “criminology” has not a defined meaning *per si*, but only when conditioned and

determined by external elements. That way, the Ariadne's thread of a possible comprehension of criminological discourses is searched on the qualitatively distinct *penal policy* demands.⁶ It is therefore a knowledge always politically conditioned, always theoretically based towards the practical ends of legitimation and reproduction of the social order.

Historically, defining an epistemological statute for criminology was not an easy task. This knowledge has been practically relegated to a theoretical common sense, superficial, aligned with the most reactionary lines of scientific positivism, and politically perceived as the articulation of discourses justifying disciplinary power and biopower. According to Salo de Carvalho, beyond the existence of multiple knowledges about the *criminal question* throughout different moments of history, "to point the genesis of modern criminology would indicate not only the setting of the investigation range but also the choosing of political (criminal) project".⁷

Remarkably, from an historical and anthropological view, the symbolic representations that aim to comprehend the meanings of violence and the mechanisms or the strategies of its overcoming pass through imaginary sources of almost all human societies. In primitive societies, from mythological tales to philosophical statements, there is always an intense effort in the attempt to understand conflict and violence as the constitutive elements of divine and human relationships. From there comes a certain deep connection between violence and the sacred, as pointed by René Girard.⁸

The sources of evil, the constructions of deviance and the deviant, and the establishment of mechanisms and strategies for their extirpation emerge in human societies like symbolic systems sanctioned from their imaginary establishment.⁹ In more updated terms, the phenomena we call *crime* and *punishment* express a universe of social imaginary meanings produced from a memory collectively shared. Therefore,

penalty is always a social statement forged from “demands for order” of a given concrete society related to its political and social struggles among classes or antagonistic groups. Just like insanity, crime is socially created, both rising as the most traditional symbols of selection and the definition of what is experienced as something different, dangerous and, for that reason, stigmatized as the target of a discomfort that needs to be eliminated.¹⁰

Thus, the symbolic and functional character of the rite presents an unquestionable social strength. That is because it seems inevitable to humankind the idea that evil resides outside oneself, that is possible to circumscribe it, and for that reason jettison it. Such beliefs express “a way of feeling that evil — which lurks everywhere — can be localized, granting it a representational character: that this evil is a symbol of all evils or that all evils are contained within this evil. Such logic serves as an outlet, leading us to perceive evil as external rather than within ourselves, our surroundings, or those who identify it and act accordingly. At the same time, the symbol above which evil falls is excluded. Thus, the idea this evil affects us all and that we should face it in solidarity does not work, what works is that it is impersonated in someone that can be banished”.¹¹

Consequently, the genealogy of criminological thought has always been immersed in the complexity of defining the questions and answers about such evils, which required the task of more precisely circumscribing a *phenomenology* to be understood, capable of demarcating the necessary *bridges* for opening the pathways of the journey, that is, the “methods” that would lead to the movement of understanding.

Hence Pavarini’s conclusion that the object of criminology would be the criminal question, that is, a set of non-homogenizable phenomena among themselves consequently requesting plural methods¹², and several bridges for their proper analysis, some might say. Multiple

questions, innumerable riddles, several answers from which emerge the necessary bridges for the journey, for the structure and for motion through criminal phenomenon understanding. That is also the difficulty for criminology in defining and establishing itself scientifically as a precisely delimited field of investigation.

To face these questions we intend to build some bridges, possible paths, since the always previously anticipated indagations and answers are the ones that lead us to the paths of the journey. Therefore, the hypothesis that guides this work consists in the perception that criminology constitutes, on the “epistemological” sense, a *critical hermeneutics of the criminal question*. By electing some fundamental questions, it intends to trigger the journey to the solution of the riddles that involve the comprehension of the *phenomenology of violence (the criminal question)* historically understood as the comprehension of the *crime* (or *deviance*), of the *criminal* (or *deviant*), of the *penal responsibility*, and of the answers or formal and informal *social reactions* to social conflict (specially the *public penalty*).

In Classical Literature, criminology is defined as every attempt of scientific approach of study of criminal phenomenon.¹³ For Edwin Sutherland and Donald Cressey, criminology is a field of knowledge that apprehends crime as a social phenomenon. Within its scopes would be included the social processes of creation and violation of laws, and the reaction processes facing these violations. Therefore, its main objective would consist of developing a set of general and diverse principles regarding the processes of construction of law, crime and forms of reaction.¹⁴

In that sense, first of all the proposed journey requires highlighting the genealogy of the modern *punitive imaginary* to offer the theoretical articulation that allows us to obtain answers to the questions initially offered to finally produce meanings about the possible meanings and scope of *criminology*.

1. INTRODUCTION TO *CRIMINOLOGY*: ON THE GENEALOGY OF MODERN *PUNITIVE IMAGINARY* - THE *POLITICAL THEOLOGY* OF PUNISHMENT

From a historical and anthropological viewpoint, the emergence of a knowledge about the *criminal question* clearly represents the desire always present, in all human societies, of constructing a universe of symbolic representations capable of encouraging and ensuring the pacification of the social group shaken by the blood spilled. A universe capable of casting the destructive and lethal violence within the community and reaffirming the *institution* of permanent social bonds. Thus, the *punitive imaginary* consists exactly in symbolic sources that aim to explain both the genealogy and the necessity of the interdict, the foundation of the social order, the law and the justice (penal).¹⁵

Therefore, the *punitive imaginary* notion developed herein as an universe of symbolic representations about the *criminal question* is based on the assumption that punitive systems, what is nowadays called *penal systems* — which encompass the justification discourses from official punitive power, and/or its critique, and the concrete punitive practices and/or social reactions to conducts deemed intolerable —, are not satisfied only in reflecting and defending established positions but also in equally building and performing instituting functions, “which presupposes the imaginary creation of new social-historical meanings and the deconstruction of established meanings that oppose to them”.¹⁶

In such a way, the *punitive imaginary* is articulated as a continuous game among the official forms of social control, especially those imposed by established or statutory law (supported by the dominant legal and criminological discourses justifying the exercise of punitive power) and a broad spectrum of symbolic representations in permanent tension with such instituted forms. In this sense, the *punitive imaginary*

rests both on the instituted forms of established law, with its justificatory practices and discourses, and on a *legal imaginary*, i.e., a kind of *infra-law*: “generator of the most diverse forms of customs, habits, practices and discourses that never cease to act, from within, on the official models of established law”.¹⁷

Hegemonic punitive symbolic representations emerge from the concrete historical conditions of a given political community, being linked not only to its material conditions of reproduction of social life, but also to its symbolic universes (mythical, cultural, religious) that guide specific social practices. In turn, such representations never invalidate permanently or erase alternative symbolic imaginaries with their distinct forms or strategies for confronting the same problematic situations. Official forms of conflict resolution never suppress or eliminate everyday mechanisms, daily intersubjective mediations that contradict or even openly deny symbolic representations and dominant practices; just as they do not eliminate the irrational and illegal violence exercised by the established powers and their concrete underground practices despite normative programming.¹⁸

Undoubtedly, *l'uomo vive sempre in società e questa presuppone sempre un ordine*¹⁹. For that reason, social control is always an intrinsic and indispensable component to preservation of order. That is because social order consequently produces, as an imposition of a given dominant definition of social reality, the conditions and the boundaries of disorder. To set order also means to impose and represent the images of deviance. The instituted forms emerge and rely on the instituting forces, and the latter never cease to work against the former. For this very reason, every definition of the social order is precarious and changeable.²⁰

As Dias and Andrade highlight, it is impossible “to think in deviant behavior without mentioning an objectified and heteronomous normative order that ‘reduces the resulting complexity’ of men’s opening to the world and to life and make that interaction possible. On the other

hand, and inversely, the existence of a social order as the imposition of a given definition of social reality necessarily implicates legitimation and defense strategies, and therefore punishment”²¹

In that scenario, the systemic consolidation of a knowledge geared towards the understanding and the explanation of deviant behavior and social control strategies has a complex historical genesis. The authors completely disagree about its emergence. A first explanatory approach, which is considered the richest in historical perspective, states that the 13th century would be the foundational bases of modern *punitive imaginary* as a systematized knowledge from which the criminological field is articulated. Far from being merely random, the reason for this choice would lie in the fact that specifically in this historical context the main transformations that fully define the main foundations of the modern penal justice system begin, and consequently the range of concerns that circumscribe what is called the *criminal question*.

For Anitua, the emergence of sovereignty, centralization and unification of power in the figure of the monarch, the pope or the emperor, engender new modes of production of legality and the exercise of power that lay the foundations of the punitive power that would emerge in modernity.²² Indeed, it was Michel Foucault, above all, who masterfully described this set of transformations that marked the appearance of the penal justice system that endures, in various aspects, to the present day, establishing the fundamental questions of criminological reflection. Indeed, the Greek system of seeking the truth present in the Oedipal tragedy, and the Germanic legal model based on dueling and the vindictive system gradually gave way to the rise of the centralized and bureaucratic power of the germs of the Absolutist State, based on the revival of Roman law promoted by the legal and political architecture of the Catholic Church. A law based on the spectacular capacity for abstraction and generalization of behavioral expectations, since it was erected from the *ratio scripta* (written reason).²³

At the dawn of the 13th century, this centralization and bureaucratization produced the “conflict confiscation” by the State, which engendered the gradual overcoming of the Germanic legal model, based on dueling and the vindictive system linked to it. The regulatory mechanisms of revenge began to be gradually confiscated by the sovereign State in its process of establishment. The *disputatio* of the Germanic law gave way to Roman penitential-canonical *inquisitio*. In this new model, the search for truth through inquiry was the prerogative of the notables, now a bureaucratic body at the service of the sovereign; the accusation was driven and conducted by the figure of the Prosecutor, the representative of the monarch, who demanded the application of a verticalized justice, imposed from above and exercised in an implacable and caricatured manner, capable of demonstrating the violent and inflexible power of political power.

Assault, previously understood as a harm to a third party (victim), now assumes the form of a *violation* of the law of the State. The concrete victims are nullified, and, in their place, an abstract victim emerges: the sovereign, the State, the law, society. Here lies the genesis of the notion of crime in liberal and individualist modernity, in which the idea of harm is replaced by the idea of infraction. The infraction will no longer be a harm committed by one individual against another. Now it will be an offense or injury by an individual to order, the State, the law, society, sovereignty, the sovereign. Infraction is one of the great inventions of medieval thought later rationalized by liberal and Enlightenment criminal thought.²⁴

According to Anitua, the educated and literate officials would be responsible for exercising the “legitimate” violence demanded by the State and for dedicating themselves to the task of creating a theoretical body of thought capable of justifying it. Thus, “more than usurping the jurisdictional function, the State and the Law (the king and his specialized jurists) appropriated interpersonal power relations, the

conflict itself. The state monopoly of *jus puniendi* meant that not only society in assembly was replaced, but also the victims of their complaints, and in their place appeared state functions that should be respected by the former. From then on, the State would be interested in resolving conflicts, more than issues between individuals, which would be revealed in the lack of accusations and in the emergence of secret denunciations as the initial driving force behind actions that would promote trials and punishments.²⁵

The centralization of power, bureaucracy, and inquisitorial forms of truth production feed the webs of the absolutist and canonical criminal justice in a scenario of fierce jurisdictional disputes. This entire process resulted in the “breakdown of the accusatory system and paved the way, hand in hand with canon law that recovered forms of the Roman imperial process, for the inquisitorial procedural system.” The notion of “infraction” transforms each and every harm to others into a crime against the sovereign, always eager for reparation or punishment.²⁶

In this sense, despite the jurisdictional disputes between the State and the Church, the procedural models intertwine and are profoundly similar since the sentence and the truth are affirmed, in both cases, basically by two paths: the flagrant crime (intra-legal), already present in feudal and Germanic laws; and a second model which was effectively adopted, the *inquiry model (inquisitio)*. Thus, based on this model, the fight, the duel, is replaced as a mechanism for resolving conflicts, giving way to the model of investigation and evidence to verify an accusatory hypothesis promoted by the representative of the sovereign. The damage caused no longer matters, “what resulted transcendental was the indiscipline, the disobedience, the lack of respect for the law of the sovereign”. From there on, the crime and the criminal are invented.²⁷

The *dominant punitive imaginary as episteme* assumes the form of a sacred knowledge, revealed by a transcendental authority based on an incontrovertible political power as the great main character. The exercise

of this power is carried out through the technique of interrogation, by questioning since “one does not know the truth and seeks to know it”. In fact, “in order to determine the truth, the power is directed to notables, people capable of knowing according to their notability, wealth, age, etc.”, requiring them to “meet freely and give a collective opinion”. In these terms, “the inquiry had a double origin: *administrative*, related to the emergence of the State in the Carolingian era, and *religious*, ecclesiastical origin, present in the Middle Ages (inquiry understood as a looking into the souls, hearts, acts, intentions)”. According to Foucault, “it is not a progress of rationality, but a technique of administration, a form of management. The inquiry is a specific way of exercising power”. Its introduction into the legal scenario began with the Church and, consequently, it is imbued with religious categories. The very notion of infraction brings the idea of moral fault (violation of the law and religious fault are intertwined). For this reason, “inquiry is a form of knowledge-power”.²⁸

The foundations of criminological and penal knowledge are closed, wrapped in the justification of an irrevocable and unlimited, transcendent and unquestionable, violent and implacable political power. Above all, it is established and developed as inquisitorial knowledge-power. The punitive imaginary is rooted in the “duplication” of the victim and the nullification of the offender, transformed into an object (*reus*, from the Latin *res*, meaning “thing”) of the questioning. The accused becomes the object of the accusation, and the confession should be extracted from him, since the truth resides in the body of the accused. In this path, “the practice of confession will soon require torture”, which becomes embedded in the state’s punitive modalities”.²⁹

The beautiful movie *Goya’s Ghosts* by the Czech director Miloš Forman portrays the inquisitorial criminal enterprise with finesse. In Madrid in 1792, Francisco Goya disseminated engravings that disturbed a select bureaucratic body of the bloodthirsty Spanish Tribunal of the Holy Office. The images depict a disfigured clergy, with monstrous features,

grouped around goblets of drinks and gold or in orgasmic ecstasy, and torrid sexual scenes in the execution of tortures of men and women declared to be bearers of evil and heresy.

Frightened and indignant, the cardinals discuss not only about the offensive meaning of the paintings, but above all the “dangerous soul” of their author. “This is how the world sees us”, says one of the clergymen, furious, shaking an engraving in his hands. However, Francisco Goya is the painter chosen by one of them to paint his self-portrait. He justifies this by saying that the renowned artist had been appointed by the king and queen as the court painter. “They consider him a great painter of Spain,” says Brother Lorenzo authoritatively.

The conflict takes on a more serious tone, as the “disturbing engravings” signal that “this Goya” is inevitably “a representative of the forces of darkness”. Advocating for the integrity of the artist’s soul, brother Lorenzo claims the need to “return to the old customs”, since he “has encountered women who do not know how to say a single prayer”. “They, they deserve to be burned”, the cardinal declares. “I am talking about the customs of the past, about the fear of God”, he suggests in response. The persecution is revived and inadvertently falls on the beautiful young Inês Bilbatua, daughter of a noble and wealthy merchant.

Inês is arrested by the Inquisition, accused of Judaism simply because she refused to eat pork at a party in the Tavern, accompanied by her brothers, and where, by chance, there were informers from the Holy Office. Tortured persistently in a cowardly and cruel manner, Inês confesses the practice of Jewish rites, despite being completely ignorant of them. Denunciation, torture, confession. These three enormous inquisitorial monuments systematically produce witches and heretics, in the name of the Father, the Son and the Holy Spirit. And, later, criminals, in the name of the State and social defense.

The beautiful young woman, which was Francisco Goya’s model in a painting, could never suspect in her sweet and simple innocence that the

inquisitorial punitive system, always ready to dig up heresies in every corner, daily created its demons in order to trigger and justify its holy inquisitions. “Have you ever seen a ghost?”, Goya asks the sweet Inês. “No, but I have seen a witch,” she replies. “And what was she like?” the painter retorts. “She was slouchy and gave me the creeps. And she stank”, the young woman adduced. “That’s interesting, because the witch I know is young, very kind and smells of jasmine”, Francisco Goya wisely concludes. Witches are products of power, they do not exist in themselves, they do not have an ontological existence. Words of power are responsible for their appearance. Francisco Goya, with his political and criminological wisdom, understood this from the beginning. The kind young woman who smells of jasmine could be immediately converted into a witch, as long as the punitive inquisitorial power affirmed it. And so it was.

Inês could never have imagined that shortly after she would be judged a witch, precisely because she did not like the taste and refused to eat pork. And for this only. Paradoxically, not only for this. She was also punished for being a woman, beautiful, sexually dangerous. The female sexual potency as the incarnation of danger and sin. The “crime”, this conduct of refusing pork, was only the alibi for her damned existence, her persecution and subsequent condemnation. The conduct itself is and always will be a pretext to persecute people and groups defined as dangerous. These are the forces of the gears of the punitive system that emerge from the “confiscation of conflict”, from the political and spiritual union between the State and the Church, never completely undone. From then on, the penal system will be, in the words of Louk Hulsman, the permanent expression of medieval scholasticism.³⁰ No attempt of secularization will be completely possible or sufficient to purify and dissolve this sacrosanct mixture. The crime will always be the moral fault, and the punishment and chastisement the expiatory redemptions. The punitive process will always be the penitential and purifying ritual for the possible and desired salvation by the official power. And the

spectacular torture will appear as its most fruitful political-theological manifestation. From torture to the penitentiary (place of penance, of the imposition of suffering and of redemptive repentance).

In this sense, the movie articulates with great precision the fundamental bases of the inquisitorial penal system, articulated from the “confiscation of conflict” and the epistemology of truth generated by the medieval punitive imaginary. Historically, these foundations establish the main imaginary sources of modern criminal systems (the invention of the offense, the monopoly of punitive power, the structure of the inquiry as a mechanism for producing “truth”, the emergence of the king’s prosecutor, the sacralized truth of the penal sentence, etc.), never dissolvable, but rather politically appropriated and transformed by modern criminological thought.

2. THE *PUNITIVE IMAGINARY* OF MODERNITY: FROM PENAL ILLUMINISM TO INTEGRATED PENAL SCIENCES IDEOLOGY

For another line of criminological thought, it would be precisely from the 18th century, with rationalism and Enlightenment philosophy that it would be possible to perceive the emergence of criminology. Thus, a systematized and consistent knowledge about crime and punishment would have emerged as a *political philosophy* of penalty. Mainly supported by the contractualist discourse, criminology would later be identified by its systematizers as synonymous with the *political philosophy of punishment*.

The contractualist philosophers Thomas Hobbes, J.J. Rousseau, John Locke and, especially, the Milanese Cesare Beccaria, among others, would have been its precursors. The justification of the political power of the Modern State would be basically based on the power to punish

and for this reason it needed adequate philosophical justification. What is the legitimacy of the power to create prohibited conduct and impose corresponding punishments? What is the exercise of the sovereign's punitive power based on? These are the fundamental questions over which the theorists of the *social contract* and penal thought called *classicism* (or *Classical School*) focused on. The entire epistemic framework that originates to delimit the understanding of the criminal question in the genesis of modernity will express the intense social, economic, political and cultural transformations experienced in the period. In the emergence of the sociocultural paradigm of modernity, if on the one hand the Liberal State of Law represents the institutional architecture necessary for the desires of insurgent capitalism and asserts itself as a response to a world marked by the plurality of moral conceptions; on the other hand, modern scientific rationality expresses the attempt to engender a new interpretation of the world without resorting to the dogmas of the Christian faith, based on the search for qualified knowledge capable of guaranteeing the complete description and control of that phenomena.

In an intense attempt to break with the truth revealed by divinity, modernity consolidates a model of thought that seeks to be based on a new search for truth, precisely that which is dictated by science. Ruth Gauer asserts that scientists of that time when trying to understand cosmic phenomena disassociating them from religious belief, did not prevent a new belief from being sanctified, specifically the belief in scientific truth. Thus, the modern experimental scientific method seeks to respond to the ideal of experimentation and the cumulateness of knowledge that sustains the belief in a world capable of being planned and constructed rationally.³¹

In the terms of Sousa Santos, by presenting itself as a global model the scientific rationality is also a totalitarian model, since it denies the rational character of all forms of knowledge not guided by epistemological principles and their methodological rules, that is, by the typical rigor of

natural sciences, based mainly on empirical and mathematical knowledge. In fact, this new vision of the world and life operates two fundamental distinctions between scientific knowledge and common knowledge, on one hand, and between nature and the human person, on the other hand. As already noted, scientific rationality disregards all forms of knowledge seen as potentially disturbing and problematic: common sense and humanities, since they represent vulgar forms of knowledge. On the other hand, the separation between man and nature is summarized by the belief that the latter is extension and movement and, therefore, passive, eternal and irreversible, a mechanism whose elements can be dismantled and then related in the form of universal laws. Therefore, nature has no other quality or dignity that prevents us from unveiling its mysteries, an unveiling that is not contemplative but active, since it aims to know nature in order to dominate and control it. As Bacon says, science will make the human person 'the lord and possessor of nature'.³²

Such scientific model undoubtedly represents the need to affirm and reproduce the new ascending capitalist social order. The ideals of order and progress, present since the genesis of the modern paradigm, cement the role of science as an instrument designed to ensure the belief in a world completely guided and oriented by prospective calculation. In the words of Boaventura de Sousa Santos, "the ideas that govern observation and experimentation are the clear and simple ideas from which one can ascend to a deeper and more rigorous knowledge of nature. These ideas are those of mathematics". In this way, scientific rigor is measured by the rigor of measurements. To know means to quantify. In other words, "the scientific method is based on the reduction of complexity". That is, "to know means to divide and classify in order to later be able to determine systematic relationships between what has been separated".³³

In this sense, knowledge based on the formulation of general and eternal laws of nature has as its metatheoretical premise the idea of order and stability of the world, the idea that the past repeats itself in the

future. For this very reason, the idea of the machine-world is so powerful that it will become the great universal hypothesis of the modern era, *mechanism*. As Sousa Santos points out, “mechanicistic determinism is the right horizon for a form of knowledge that aims to be unitary and functional, recognized less for its capacity to deeply understand reality than for its capacity to dominate and transform it”³⁴

On a social level, this is also the cognitive frame most suited to the interests of the rising bourgeoisie, which saw the society forged in its image and likeness as the final stage of humanity’s evolution. According to Michael Löwy, “the idea of natural laws of social life and of a science of society modeled on the natural sciences is, in its origins, inseparable from the Third Estate’s intellectual struggle against the feudal-absolutist order. Both the doctrine of natural law and that of a natural science of society have a utopian-revolutionary, critical dimension (both are, in fact, closely linked to the 18th century). Modern positivism was born as a legitimate descendant of the philosophy of the Enlightenment.”³⁵

Within the scope of Enlightenment political philosophy, the dominant *punitive imaginary* seeks to establish itself scientifically based on the premises of rationalism and mechanism. The hypothesis of the state of nature appears as the central justification for the need to affirm the social contract, from which punitive power will find its rational justification. From an epistemic view, criminology takes the form of *political theory*, as a discourse on good governance, on ways of preserving public order, harmony and happiness. In these terms, it asserts itself as a speculative philosophical discourse of accommodation of the individualistic liberal values of the victorious bourgeoisie in its struggle against absolutism and the *old regime*. However, a very attentive discourse to the new forms of disobedience, dissent, non-integration and, thus, of violation of the laws that govern the individualistic and competitive world of capitalism.³⁶

The social contract, by assuming homogeneity and consensus around the bourgeois social order, will serve as a theoretical premise for the

punitive discourse founded under legality and universal equality, since crime represents a political harm that affects everyone, a violation of the associative pact that protects the interests of the entire society united around the “common good”. The criminal, in turn, assumes the figure of the traitor, a public enemy who has attacked the social order. However, the material inequalities that make society heterogeneous and conflictual disappear on the altar of contractualism to the extent that the laws of the market, seen as natural and universal, legitimize the political domination of the economically hegemonic classes.

As a scientific discourse, criminology emerged precisely within the scope of this controversy between Enlightenment and Positivism. Its conceptual articulation synthesizes the contradictions of bourgeois society and capitalist system of production, rising within the molds of the epistemological paradigm of modernity. “Bourgeois science”, therefore, was born tied to the demands of order of the rising capitalism.³⁷

The aspirations of a new world guided by reason and science are aligned with the political configuration of the Rule of Law, an institutional model that translates the ideals of legal certainty and security against the insecurity and the atrocities promoted by the absolutist police state. The classical penal, criminological discourse (*punitive imaginary*) proposes a set of epistemological premises that aim to undermine arbitrariness and limit punitive power to the milestones of formal legalism.

In Bustos Ramíres’ terms, the fundamental basis of Enlightenment thought consists of the recognition of a “natural state”. From this, “the conceptual, theoretical method then allows within the milestone of this original or primary state, the attribution of certain qualities to the relations between men and at the same time establishes the terms of passage to an *organized* state. That is, a secondary or derived state. In the natural state, men enjoy freedom and *natural* equality, which is lost by the *Social Contract*. But this makes them gain their *civil* liberty and the *ownership* of everything they possess”³⁸

The premise of the contract structures the sources of the punitive imaginary, since crime will be identified as a political damage to the society gathered round the social pact and the criminal “is configured as a traitor, precisely the one who breaks the commitment of organization, a product of original or natural freedom”; thus, it ends up ceasing “to be a member of the organization and starts to be treated as a rebel”. On epistemic level, “criminology appears inseparable from politics”. There is still no profound difference between criminal law, criminology and penal policy, since everything boils down to a single problem: the legitimacy of the state’s punitive power.³⁹

In other words, the legitimacy of the power to punish rests, above all, on the notion that punishment must be proportional to the actual social harm caused by the offender and limited to what is necessary to prevent further criminal acts. Based on the Enlightenment and Contractualist premises, classical criminal philosophy defines crime as concrete political harm to a consensual social order, more precisely a violation of the associative pact that protects the interests of the entire society gathered round the “common good”. The criminal, in turn, assumes the figure of the traitor, a public enemy who has attacked the social order through an external action, result of a free and rational choice. For this reason, the sentence will only be justified as retribution for the act committed, also fulfilling political functions in the ideal plan: to punish, to defend the social order shaken by the offense and to dissuade potential offenders from carrying out the same harmful actions.⁴⁰

Thus, the classical reform movement will seek to base punitive power on such foundations, aiming, especially, at the uncompromising defense of bourgeois freedoms. From there on emerges the principle of the legality of crimes and sentences, since only the State (sovereign) can define what is licit and illicit, and such definition will be expressed in laws, which must be clear and unequivocal in order to ensure maximum freedom and contain all forms of arbitrariness and violence

coming from the sovereign. The essential concern is to strictly limit the sphere of authority, to circumscribe it within precise limits in order to ensure the minimum rules of collective life that guarantee the free play of the market.⁴¹

In this way, the classical punitive imaginary will fulfill the important and fundamental political mission of ensuring the dominant order of capital, offering the philosophical justification for the punitive power to promote the violent discipline of the hostile and insubordinate workforce. A “penal policy of a bloodthirsty type” was usually used to contain, control or even eliminate a huge surplus of workers marginalized and excluded from the production process. In addition, a grandiose institutional apparatus (*Hôpital Général*, in France; *Hasphuis* and *Spinhuis*, in Holland; *Bridewell* and *Workhouse*, in England; *Casa di Lavoro* and *Casa di Correzione*, in Italy) gradually emerges to consolidate the project of social disciplining of the workforce. An apparatus of institutional confinement that through the imposition of hard and alienating work had the function of forcing the unemployed workforce to accept the most intolerable employment conditions by using terror. Finally, the penitentiary will be the synthesis of this institutional archipelago of workforce control. In epistemic terms, the classical punitive imaginary will condense a set of contradictory and heterogeneous discourses that will never manage to overcome the contradiction between the principle of formal equality before the law and the unequal distribution of wealth and social opportunities.⁴²

From the mid-19th century onwards with the rise of positivism, the ideal of rigor in the scientific method reached its highest point. Since the natural sciences are an application or a concretization of a universally valid model of knowledge and, moreover, the only valid one, social sciences must obey the same canons of empirical observation and experimentation if they search to always present precise knowledge of social reality. So that a scientific rationality would also be capable of guaranteeing social order through absolute control.

The order that was sought was, from the beginning and simultaneously, the order of nature and the order of society, the order required by capitalism.⁴³ An order guided by the values of market exchange, individualism and oppression, as much as necessary for the realization of the first ones. Therefore, criminological thought would also be restricted to the limits set by capitalist society and the modern scientific rationality.

In fact, this rationality was guided by a mechanistic and particularistic view of the universe and social reality, corroborating the configuration of a society based on the individualistic interrelationship among human beings, from which the great desire of the bourgeoisie to transform nature producing an enormous quantity of goods, just like Francis Bacon's formula, i.e., subsuming absolutely everything to commercial praxis, reaches since then an immeasurable level.

Since the end of the 18th century and the beginning of the 19th century, positivism has been the scientific translation of industrial bourgeois society. From this political background, it asserts itself as "an ideology that arose from the fear of popular revolutions, aimed at disqualifying the idea of equality. Hierarchical classifications served to order local problems (the poor and the undesirable) and general problems (peripheral nations and cultures)".⁴⁴

In epistemological terms, the positivist paradigm is based on a certain number of premises that structure a coherent and operational "system" of scientific ideation and aim to establish "the postulate of an axiologically neutral science": 1) society is governed by natural, universal and invariable laws and, in the realm of social life, a natural harmony reigns; 2) therefore, society can be studied based on the same scientific canons employed by the natural sciences; and 3) "the sciences of society as well as those of nature, must be limited to the observation and causal explanation of phenomena, in an objective, neutral manner, free from value judgments or ideologies, previously discarding all preconceptions and prejudices". However, "the axiom of the evaluative neutrality of the

social sciences logically leads positivism to deny, or rather to ignore, the historical social conditioning of knowledge”.⁴⁵

Within the scope of the *punitive imaginary*, this impressive scientific system seeks to undertake a violent rupture with classicism. In general terms, criminology emerges as a positive, explanatory causal science of crime and criminals, structured under “the scientific canons of the natural sciences”. From this base, it builds with extreme solidity its fundamental representations on the *criminal question*: 1) the acceptance of the social order as data; 2) the belief that crime can be substantiated as something intrinsically evil and that the criminal is necessarily *different from* the normal citizen; 3) the postulate that crime is always the product of factors that leave no other alternative of behavior”.⁴⁶

The “mechanistic interpretation of society” leads inexorably to the repudiation of free will and the consolidation of “social determinism”. Human behavior is always causally determined, which allows its universal laws to be uncovered. Thus, the understanding of the *criminal question* assumes a definitively “etiological” aspect, that is, of a science that explains criminality by examining its causal determinations. In this sense, both crime and criminals are pre-constituted ontological natural realities, independent of legal definition and social reaction processes.⁴⁷

In these terms, the positivist punitive imaginary by not questioning the problem of the social order, and of the political elements that underlie the legal definitions of crime, instrumentalizes the legitimization of the hegemonic order. By assuming individual or social determinism as the basis of human action, criminological positivism believes “in the possibility of a rational, scientific resolution of the criminal question”. Knowing the determinations of crime would allow the construction of a “social medical engineering” capable of directing individuals towards conformist action. Should such an objective prove impossible, the needs of social defense would legitimize all sorts of reactions, even at the cost of the physical elimination of the incorrigible criminal.⁴⁸

The judgments of dangerousness and the predictions of recidivism replace the judgments of disapproval of conduct, articulated in criminal law under the legal concept of culpability. The postulate of scientific neutrality leads the task of the criminal lawyer and the criminologist to the fields of objective, neutral, and absolute “truth”. The premise of accepting the social order as data, in which a natural harmony reigns, always consensual, addresses the problem of the historical and contingent nature of deviant actions. There are natural crimes, precisely those that violate the values of the majority, and the consensus around majority values is of the order of nature. Every deviation, every conflict, every questioning around the values of the dominant order constitutes a pathology, a dysfunction to be corrected or eliminated. So that every reaction will also appear as something natural, “the healthy body of society that reacts against its sick part”.⁴⁹

Consequently, positivism articulates in an extraordinary way the accommodation of the bourgeois values of industrial society, projecting the uncompromising defense of capitalism, its forms of appropriation of wealth and its disciplinary regimes of domestication of labor. *The ideology of social defense* constitutes, therefore, the synthesis of the dominant punitive imaginary, uniting in a quite evident way classicism and positivism, despite their essential differences.

For this reason, such a synthesis appears quite clearly in the attempt to bring together and unite criminal dogmatics (the science of criminal law) of classical origin, and positivist criminology, the so-called “integrated model of criminal science”. Given the absolute diversity of objects and methods, the apparently impossible integration of such heterogeneous scientific models was only possible at the cost of submitting criminology to criminal law, as an “auxiliary and dependent science” of the supreme and sovereign criminal science. This deeply undermines the self-proclaimed autonomy of the new criminological science, which accepts the legal definitions of criminality as the starting point for its scientific analyses, destroying its supposedly natural roots.⁵⁰

Furthermore, the analysis of criminals, previously seen as naturally or socially determined subjects, is now restricted to detained subjects selected by repressive agencies (prisons, mental hospitals, police stations). Thus, “positivist criminology is interested in an object (la criminalidad) resulting from a double selection: that operated by the legal definitions of criminality and that put into practice by social control apparatuses”. Paradoxically, the integrated criminal science model imposes on positivist criminology the acceptance of criminality as an essentially normative phenomenon, never natural or phenomenological. Within the core of the integrated criminal science model, criminology continues to confer scientific legitimacy on the demands of order in capitalist society and consolidate discourses justifying its political criminal options, that is, the exercise of punitive power pointed at its reproduction and preservation.⁵¹

3. CRIMINOLOGY, HERMENEUTICS AND IDEOLOGIES: THE RADICAL CRITIQUE OF *PUNITIVE IMAGINARY*

a. *Punitive Imaginary*: conceptual approaches

The proposed historical reconstruction allows us to understand the *punitive imaginary* according to the critical tradition, announcing its unveiling based on power relations and on a genealogy of social conflict (violence), highlighting and reconstructing symbolic sources that seek to understand the *criminal question*, perceived as a critical hermeneutics of conflict and social reaction, more precisely as axes of relations among individuals, society and authority.

This perspective recognizes that each historical society symbolically justifies its existence and the reproduction of its specific relations, its image of the social order. For this reason, it always defines the imaginary

sources for understanding deviation and its forms of reparation and/or punishment. Therefore, for an adequate understanding of the *punitive imaginary* it is necessary to shake the epistemological ground analyzed until now in search of a *fusion of horizons* that enables the collapse of this fragmentation imposed by the scientific paradigm of modernity.

The symbolic representations that allow us to interpret/understand the criminal question (*critical hermeneutics* of violence and penal reaction) depend inexorably on the manner which the *institution of the social world* is interpreted/understood, that is, “it is linked to the need, for a social group, to give itself an image of itself, to represent itself in the theatrical sense of the term, to represent and stage”.⁵² Thus, every punitive imaginary is always a bundle of symbolic representations in dispute, continually traversed by the material relations of production of social life and by the contradictions, tensions and political, ideological and scientific struggles that arise from them, since it is always constituted as a discourse on social integration, on how to ensure social cohesion.

In this sense, from then on it is possible to formulate some answers to the set of questions raised in the introduction of this study: After all, what is *criminology*? Which are the main sources of *punitive imaginary*? Which are the *horizons* of criminological knowledge? Which *bridges* allow the *journey* to the understanding of the *criminal question*?

As noted, the hypothesis that guides this work consists of the perception that *criminology* is constituted as an *imaginary*, i.e., a set of symbolic representations forged from permanent tension, inherent to the configuration of the social and historical world, between *instituted forms* and *instituting forces*. Thus, continually affirming itself as a *critical hermeneutics of the criminal question*. By electing some fundamental questions, it intends to trigger the journeys towards the solution of the riddles that involve the comprehension of the *phenomenology of violence and social reaction* (***criminal question***), historically understood as the comprehension of the ***crime*** (or ***deviance***), of the ***criminal*** (or ***deviant***),

of the *penal responsibility*, and of the formal and informal *social reactions* or responses to social conflict (specially the *public penalty*).

From this background of common problem, from all criminological reflection, namely, the question about “*how to guarantee social order?*”, the most varied plots of the *punitive imaginary* are woven, resulting in a set of symbolic representations about the criminal question always marked by the permanent tension between the historicity of understanding and the ideological phenomenon.

Initially, it is essential to clarify that the *imaginary*, as Bartolomé Ruiz explains, consists of the unfathomable aspect of human being, from which the creative element emerges, always beyond all psychic and social conditioning. It constitutes a kind of “*inscrutable depth* of the human person, which enables imagination and also rationality as dimensions inherent to humans. Imagination and rationality are creations of the imaginary, and they necessarily coexist co-referred within the symbolic dimension inherent to the human being”.⁵³

In fact, it is important to understand that the ways of comprehending reality are always permeated by imagination and myth, and even scientific thought is not completely objectively determined by causal processes or pure concrete empirical manifestations. It is therefore necessary to overcome the “ontology of determination”, which seeks to reduce “the anthropological and the sociohistorical to something predefined by an essence, teleology, laws or regularities”. In this sense, the notion of *imaginary* developed here seeks to think about reality from the perspective of *indeterminacy*, so that “human praxis is not limited to discovering the already implicit but to creating the unprecedented”. In these terms, “if reality is indeterminacy, the path of sociohistorical creation is open”.⁵⁴

From the point of view of *critical hermeneutics*, criminology has developed historically as cognitive, symbolic, and imaginary representations of violence and its specific forms of reaction in historically

concrete human societies. For this reason, its sources are multiple and multifaceted, since they are rooted in the most diverse forms of knowledge, myths, worldviews, cultural and religious traditions, which range from common knowledge to philosophical and scientific knowledge. In fact, social institutions cannot be reduced to the imaginary but can only exist in a symbolic network. At the same time the imaginary translates certain schemes of comprehension of the world, always linked to a certain form of material organization of social life, it can also produce illusions and fanciful solutions to real contradictions.⁵⁵

In this sense, taking an epistemological position with regard to the numerous attempts to understand the criminal question necessarily implies assuming a position regarding the problem of knowledge itself. Every form of understanding the criminal question is also permeated by imaginary mobilizations, because “the imaginary, as a mobilizer and evoker of images, uses the symbolic to express itself and exist and, in turn, the symbolic presupposes the imaginary capacity.”⁵⁶

From the point of view of the philosophical tradition, the discussion about the conditions of possibility of knowledge, that is, of the apprehension of reality, goes back to an inexhaustible tension between numerous positions. Historically, the debate could be significantly summarized by the prevalence of reality (of the object) over the subject of knowledge, according to classical ontology, or by the primacy of the subject over the object in terms of the subjectivist ontology of modernity. Is there an intrinsic order of reality that the subject would only describe objectively, or is reality created subjectively by the activity of thought and the linguistic forms of its representation? In other words, the epistemological problem of the forms of production of human knowledge is directly linked to a philosophical tradition, that is, linked to the reflection on “second-order knowledge”, or in other words to the fact that human thought allows “returning upon itself and formulating the question of the possibility of knowledge itself: how is it possible to know?”⁵⁷

In the philosophical sphere, critical hermeneutics seeks to overcome in a very forceful way the limitations present in the classical and modern positions in order to highlight that “all experimental knowledge is not reduced to a description of reality but consists of a construction of reality with the data available to science”. Scientific thought, in terms of hermeneutic, critical theory always configures a rupture with accumulated knowledge, embodied in the “overcoming of epistemological obstacles and the conceptual (re)construction of reality”. Therefore, it starts from the “evidence that in the social sciences ideological neutrality is an epistemic impossibility, since the subject is not a mere observer who describes an object while standing outside it, but a participant in the social, while reconstructing it as a real and conceptual order”.⁵⁸

In this sense, the sources of the punitive imaginary rest on the most diverse forms of knowledge, whose roles of myth, imagination, and beliefs also act as producers of meaning in the social and historical construction of what is designated as “reality”, so that the horizons of criminological knowledge are forged from a dialectical tension between the concrete forms of social life and its imaginary projections that always ideologically shape its historical manifestations.

For this reason, as stated initially, the *punitive imaginary* as a universe of symbolic representations on the *criminal question* is based on the assumption that punitive systems, what are currently called *penal systems* (which encompass the discourses justifying official punitive power and/or its criticism, and concrete punitive practices and/or social reactions to behaviors deemed intolerable), are not satisfied with defending established positions but also perform instituting functions, “which presupposes the imaginary creation of new social, historical meanings and the deconstruction of the established meanings that oppose to them”.⁵⁹

Thus, the *punitive imaginary* is articulated as an uninterrupted game between the official forms of social control, especially those imposed by established or statutory law (supported by the dominant legal and

criminological discourses justifying the exercise of punitive power) and a broad spectrum of symbolic representations in permanent tension with such instituted forms. In this sense, the *punitive imaginary* rests both on the instituted forms of established law, with its practices and discourses of justification, and on a *legal imaginary*, i.e., a type of *infra-law*, “generating the most diverse forms of customs, habits, practices and discourses that never cease to act, from within, on the official models of established law”.⁶⁰

Hegemonic punitive symbolic representations emerge from the concrete historical conditions of a given political community, being linked not only to its material conditions of reproduction of social life but also to its symbolic universes (mythical, cultural, religious) that guide specific social practices. In turn, such representations never definitively empty or erase alternative symbolic imaginaries with their distinct forms or strategies for dealing with the same problematic situations. Official forms of conflict resolution never suppress or eliminate everyday mechanisms, daily intersubjective mediations that contradict or even openly deny symbolic representations and dominant practices, just as they do not eliminate despite normative programming the irrational and illegal violence exercised by the established powers, with their arsenal of discourses justifying the unbridled exercise of state punitive power and its intrinsic underground illegalities.⁶¹

b. *Punitive Imaginary as an ideological phenomenon*

If the *punitive imaginary* consists of an unveiling of the *criminal question* in its relations with the *entire social world*, based on the ever-evident need for the cohesion of the political community, of the institution and of the integration of the social order, it could never cease to be an *ideological phenomenon*. This is because ideology has as its most primitive general function the explanation and subsequent justification of the founding act that *institutes* the political community. In the words of Paul Ricouer inspired by the construction of Jacques Ellul: “ideology

is a function of the distance that separates the social memory from an event that, however, is to be repeated. Its role is not only to spread the conviction beyond the circle of the founding fathers to convert it into a creed of the entire group but also to perpetuate its initial energy beyond the period of effervescence. It is in this distance, characteristic of all *post factum* situations, that images and interpretations intervene. It is always in an interpretation that retroactively shapes it, through a representation of itself, that an act of foundation can be taken up and re-actualized. Perhaps there is no social group without this indirect relationship with its own advent. This is why the ideological phenomenon begins so early: because with domestication through remembrance consensus begins, but convention and rationalization also begin. At this moment, ideology has ceased to be mobilizing and has become justifying, or rather it continues to be mobilizing under the condition of being justifying”.⁶²

As a discourse of justification of the founding (*institutional*) act, ideology, in its mobilizing dimension, can be cited as “the general material process of producing ideas, beliefs and values of social life”. Therefore, its role would be not only to forge the founding and instituting mythology of the community, but above all to ensure the continuity of social bonds, the dominant definition of reality and the established order. In the same way, ideology would also function as a set of ideas and beliefs that “symbolize the conditions and life experiences of a specific, socially significant group or class”.⁶³ Indeed, such ideas and beliefs are always intertwined with the material conditions of existence of such specific groups or classes, since “consciousness can never be anything other than conscious being, and the being of men is their real-life process”, in such a way that “it is not consciousness that determines life, but life that determines consciousness”.⁶⁴

However, these meanings do not completely exhaust the characteristics and representations of the ideological phenomenon. According to Terry Eagleton, there is also a third meaning for the

word ideology. It also appears as a set of discursive elements that act to promote and legitimize the interests of specific social groups facing opposing interests. In fact, “ideology can be seen here as a discursive field in which self-promoting social powers conflict and collide over issues that are central to the reproduction of social power as a whole”. In this particular case, ideology takes on the aspect of a discourse that is especially ‘action-oriented’ independently of any commitment to ‘truth’. For this reason, it presents itself not as a truthful discourse but basically as a persuasive rhetoric, exclusively concerned with the production of certain effective effects and political purposes, without any connection to the concrete situation ‘as it is’⁶⁵

Here, this persuasive rhetoric aims to ensure a specific order of power relations and political domination. In this regard, Karl Marx and Friedrich Engels point out in a classical passage that “the ideas (*Gedanken*) of the ruling class are, in every epoch, the ruling ideas. That is, the class that is the dominant *material* force of society is at the same time its dominant *spiritual* force. The class that has at its disposal the means of material production, at the same time has at its disposal the means of spiritual production, which means that at the same time, and on average, the ideas of those who lack the means of spiritual production are subject to it. The ruling ideas are nothing more than the ideal expression of the dominant material relations, the dominant material relations conceived as ideas; therefore, the expression of the relations that make a class the dominant class; consequently, the ideas of its domination.”⁶⁶

A fourth meaning of ideology could still be highlighted. It is, thus, the emphasis on the promotion and legitimization of sectoral interests, restricted, however, to the activities and practices of a dominant social group in order to forge and obtain the guarantee of the adhesion and complicity of subordinate classes and groups. In addition to this, a fifth definition allows us to understand ideology as “the ideas and beliefs that help to legitimize the interests of a dominant group or class, mainly

through distortion and dissimulation”. Still according to Eagleton’s view, “there is finally the possibility of a sixth meaning of ideology, whose emphasis falls on false and illusory beliefs, considering them, however, as originating not from the interests of a dominant class but from the material structure of society as a whole”.⁶⁷

The *punitive imaginary* as an ideological phenomenon, presents precisely all the dimensions aforementioned. Punitive forms and their symbolic horizons are linked to the founding and institutional mythology of the community, since punitive practices carry with them the belief in their capacity to preserve social bonds, more precisely to ensure the dominant definitions of reality and the established order, despite their explosive contradictions.

This is because, on a social and historical level, at the base of every political community, there is always a “magma of meanings”, what Castoriadis calls a set of imaginary social meanings that give a specific meaning to the data of experience. For the author, the way the sociohistorical world appears is inextricably intertwined with the symbolic. The world is not possible outside of a symbolic network, so that both language and social institutions only present meaning as sanctioned symbolic systems. However, this symbolic network is based on “what already exists”, since it refers to something, not necessarily to symbolism. The support points of this network are both in nature and in the social meanings themselves, which are always changing. For this reason, the imaginary meanings play an important role in establishing a set of principles on which the historical events of the community are based. History is impossible and inconceivable outside of the *productive* or *creative imagination* which Castoriadis conceives as the product of a *radical imaginary*, a moment in which the source of the constitution of a universe of meanings is established, before any explicit rationality. This universe, in turn, establishes the *effective (imagined) imaginary*, which confers unity and legitimacy to collective actions.⁶⁸

In the same direction, François Ost asserts that law consists of an uninterrupted historical narrative, which derives its genesis, strength and continuity from the fact of its collective sharing. This thesis is formed from the following assertion: “It is from narrative that law emerges”. According to the author, since *Antigone*, in the famous first oral interlude, Sophocles puts these words in the mouth of the chorus: “The passions that institute cities, men taught themselves”. It would be seen, therefore, that the Greek heritage helps in the perception that every political community is based on the tension between “passion” and the “laws that institute cities”. As Ost reminds us, “at the origin of political institutions and codes, there are drives, aspirations, a whole interplay of passions”; It was from this political imaginary, a product of passions, that men taught themselves and transformed it into civic laws, that “the collective meanings that will ensure the social bond” would be extracted precisely.⁶⁹

In this sense, it is not difficult to see that the Constitution (the imaginary institution) of society effectively consists of an inaugural act, a moment of “radical rupture” or “change that represents the emergence of the social-historical in pre-social nature”, in which socio-historical meanings begin to express the meaning and value of life in common in a given society. For this very reason, the unity of society rests, irrevocably, on the unity of its world of meanings. Social and legal institutions emerge, therefore, from the inexorability of a “founding moment”, which engenders from a set of imaginary meanings the always ideological articulation of the consensus according to which the meaning and value of life in society possess the hegemonic forces.

On a strictly legal level, François Ost perceives the paradoxes related to the inaugural instant, trapped in an irremediable circularity, since, in the first place, it is necessary to observe the impossibility of identifying any beginning of legality: anything like a point zero of law. In fact, some might say that “there is always law before the law”. Likewise,

there is always power before the power in the same way that there is always legitimacy before the legitimacy - so that, regarding the act of institution (the constituent power), once it has been imposed, it will always have been legitimate. Thus, just as no one creates language from zero, no one institutes in an absolute way. For this reason, Ost explains that “our action, our discourse, and even our freedom are only possible on a background of interaction that is already given; without these prior structures of sociality, the very gesture of refusal or revolt would have no meaning”. Further on, he realizes that “it is always after the *fait accompli*, writes Ricouer, that I become aware of the precedence of the rule in relation to any new option”⁷⁰

In the most essential legal-political spectrum, the Constitution, as a “general ordering of social and political relations”, expresses this inaugural instant, the “founding moment”. And, as such, far from being a moment of affirmation of pure violence, by founding the law it seeks to establish the production of a symbolic instance that, in the current world, operates the hybridism and reanimation of the multiple fragmented inheritances that coexist in pluralistic societies⁷¹, so that every political constitution is necessarily ideological, in the sense of “a discursive field in which the social powers that promote themselves conflict and collide on issues that are central to the reproduction of social power as a whole”. Every instituted order manifest itself as a performative discourse, as a type of rhetorical discourse that aims to produce practical effects to conform a given order of domination.⁷²

Quite clearly, every consensus based on a political Constitution is obtained with the support of ideology. Every social order, as highlighted, is the result of an ideological construction based on the discursive adherence around a founding mythology. In modern society, this primordial myth is the State, the expression of a supposed and fictitious “general will”. As adduced by Marx and Engels, “since the State is the form in which the individuals of a dominant class assert their common

interests and in which the entire civil society of an era is summarized, it follows that all common institutions are mediated by the State and acquire a political form through it. Hence the illusion that the law is based on the will and, even more, on the will detached from its real basis – on *free* will. In the same way, law is reduced to the laws”.⁷³

From this point of view, from its intrinsic ideological dimension, we can glimpse that a foundation is always a promise, François Ost endorses Jacques Derrida’s thesis. And, as a promise, the Constitution is always inserted in the temporal, social and historical dialectic, between the *instituting forces* and the *instituted forms*; it rests on the nature of the *instituting time* to invert itself in the forms of the *instituted time*, since “there is no instituting force that is not supported by instituted forms”.

This dialectic of *instituted time*, as the time of demarcation, or the time of measurements, according to Castoriadis, and *instituting time*, seen as the time of meaning and manifestations that animate social forces, corresponds to the dialectic between *instituted society* and *instituting society*. The former appears precisely as the “global institution of society, figuration-presentification of the magma of meanings that it, each time, brings into being”. It is precisely the organization and articulation of society itself that provide the content, arrangement and orientation of social action and representation/discourse. In this context, Castoriadis argues that “society creates individuals for whom there is perception, speech and reflection, who are indefinitely self-reproducible as social individuals, for each of whom there is, always and simultaneously, a private world and a public world, and whose life in society is, in a certain sense, the life and functioning of society as an instituted society”.⁷⁴

On the other hand, the *instituting society* arises from the perception that the imaginary meanings of society are never completely secure and precise; from there on, it undermines the belief that everything must and can be in the network of meanings, that everything somehow must make sense, and even that the institution could cover everything. But,

according to Castoriadis “[...] this coverage is never secure: what escapes it, sometimes almost indifferently, can be and is of decisive gravity. What escapes it is simply the enigma of the world, which lies behind the common social world, as to become, i.e., an inexhaustible provision of alterity, and as an irreducible challenge to all established meaning. What escapes it is the very being of society as an instituting society, that is, finally as the source and origin of alterity, or perpetual self-alteration”⁷⁵

In this spectrum, in the complex scenario of contemporary democracies, the notions of a “narrative community” and a “founding narrative” hold undeniable relevance for understanding legal and punitive imaginaries, since they capture and absorb the tension of the incessant game between the established legal imaginary and the incessant creation of alternative and innovative socio-historical meanings. According to Ost, it is important to understand that “[...] jurists, therefore, do not escape this narrative community. On the contrary, it is within it, in the center its shared meanings, that they operate. The Constitutions that they write are, from this point of view, the account of the history of the political morality of this community. ‘Constitutions, as examples of accounts that tell the history of men, give meaning to their individual and collective lives,’ writes D. Rousseau, who continues in these terms: ‘Constitutions are the mythologies of modern societies’”⁷⁶

For François Ost, the Constitution expresses, in symbolic terms, the “inaugural instant”, the “founding moment” and the “institutional act”, that gap for the opening and the construction of a social and historical time. Thus, the Constitution represents the fabric of operational fictions that seek to express the meaning and value of life in society, with every constitution having an irrevocable an ideological, mobilizing (instituting) and justifying (instituted) dimension. Its primary function would be to explain and justify the existence of social order, in order to establish a social, temporal and political space, ending a stage of complete absence of lasting bonds. To *institute*, in the words of the Belgian author, means

to generate and strengthen social bonds and offer individuals the points of reference necessary for their identity and autonomy.⁷⁷

This act of institution at the moment it inaugurates a social and historical temporality, also aims to forge and consolidate a shared memory. It is only upon this memory that a collectivity is built and it is the law's role to conceive it. According to Ost, "[...] against the backdrop of this original chaos – an ever-threatening state of nature – the role of the law is to set the limits: to establish who is who, who did what, who is responsible for something. To establish the facts, certify the acts, establish responsibilities. To remember the genealogical order, distribute the roles, break the tie between the complainants. To tell a founding narrative, revive collective values, strengthen the consistency of the common language, the 'institution of the institutions' – the language of the promises that the social body made to itself, the language of the laws thanks to which we have 'words to say', to say what connects and differentiates us, to say where the limit of the acceptable and the unacceptable is trespassed".⁷⁸

In these terms, every *punitive imaginary* is rooted in the images and interpretations that each historical community produces about its founding moment, which produces a collectively shared social memory at the same time mobilizing and justifying, instituting and instituted. Above all, it is from this "indirect relationship with its own advent" that a community engenders its understanding of intolerable violence and its punitive practices, its control mechanisms, in an attempt to ensure the always precarious and changing social cohesion.

Therefore, the *punitive imaginary* asserts itself as an *ideology* precisely because it aims to produce arguments, discourses, always driven "by the desire to demonstrate that the group that professes it has reason to be what it is", since "ideology is always more than a *reflection*, insofar as it is also *justification* and *project*". In this sense, "this 'generative' character of ideology is expressed in the second-degree founding power that it

exercises with reference to enterprises, institutions, which receive from it the belief in the just and necessary character of the instituted action”.⁷⁹

The definitions of the images of deviation and deviance, on the one hand, and the configuration of the mechanisms of control and social reaction, on the other, thus present an inevitable ideological dimension, as they always express the belief in the just and necessary nature of the action instituted by the dominant social order, at the end of the day according to its Constitution. Historically, the *punitive imaginary* also assumes an ideological dimension in the sense of scientifically declared, yet partial and illusory, discourses expressing “ideas and beliefs that help to legitimize the interests of a dominant group or class, mainly through distortion and dissimulation”, especially by repudiating the observation of the material structure of society as a whole.⁸⁰ Its dynamic nature, however, allows for permanent openness to questioning, since the institution and its justifying capacity never eliminate the tensions led by the instituting and mobilizing forces.

Inevitably, the justifying dimension of ideology finds its limit precisely in its mobilizing dimension, of constant questioning, because “every ideology is simplifying and schematic. It is a grid, a code, to give an overall view, not only of the group, but of history and, ultimately, of the world”. In Ricouer’s terms, “this ‘coded’ nature of ideology is inherent to its justifying function. Its capacity for transformation is only preserved on the condition that the ideas it conveys become opinions, that thought loses rigor in order to increase its effectiveness, as if only ideology could mediate not only the memory of the founding acts, but the systems of thought themselves. This is how everything can become ideological: ethics, religion, philosophy. ‘This mutation of a system of thought into a system of belief’, Ellul states, is the ideological phenomenon. The idealization of the image that a group has of itself is merely a corollary of this schematization. In fact, it is through its idealized image that a group represents its own existence, and it is this image that, by

counter-reaction, reinforces the interpretative code. This can be seen in the following example: from the first celebrations of the founding events, the phenomena of ritualization and stereotyping appear; a vocabulary has already been born and, with it, an order of 'correct denominations. This is the realm of *isms*. Ideology is, par excellence, the realm of isms: liberalism, socialism, etc.”⁸¹

Therefore, it seems clear that the punitive imaginary always asserts itself as an ideology, with its specific isms: inquisitorialism, classicism, positivism, constructivism, criticism, abolitionism. The realm of isms invades the social narrative on the criminal question, since the schematizations built are based on this idealized image that each social group has of itself. The systems of thought become systems of opinion and beliefs, impregnating social representations with conflict and strategies of social control and reaction.

Herein lies, within the scope of the *punitive imaginary*, what Paul Ricouer calls the “doxic character of ideology”, i.e., the fact that “the epistemological level of ideology is that of opinion, of the *doxa* of the Greeks. Or if we prefer Freudian terminology, it is the moment of rationalization. That is why it expresses itself through maxims, slogans, and lapidary formulas. That is also why nothing is closer to the rhetorical formula – the art of the probable and the persuasive – than ideology. This approximation suggests that the doxic optimum that corresponds to the average cultural level of the group in question should be surpassed. However, once again we should not be too hasty in denouncing fraud or pathology: this schematism, this idealization, this rhetoric, are the price to be paid for the social effectiveness of ideas”⁸²

For all these reasons, ideology has an operational dimension, not merely a thematic one. This means understanding that “the interpretative code of an ideology is something more *in which* men inhabit and think than a conception *that* they can express.” It is above all from ideology that we think, much more than we can think about it. In these terms, it would be

impossible for an individual or group to formulate everything, thematize everything and propose everything as an object of thought, from a blind spot, from a zero degree, from an absolutely non-ideological place.⁸³

There is always ideology before an ideology, some might add. There is always an uncritical instance that indicates the impossibility of absolute transparency of our cultural codes, presenting itself as the very condition of the production of social messages. In Eagleton's terms, it would be impossible for someone to hold ideological points of view while at the same time being aware of their ideological nature. This is because "ideologies are discourses incapable of critically considering themselves, blind to their own terrains and boundaries. If ideology was to recognize itself as such, it would immediately cease to be what it is." As Louis Althusser rightly reminds us, Ideology never states: 'I am ideological'".⁸⁴

This non-reflexive and non-transparent statute of ideology is aggravated by the specific *temporal* aspect of ideology. Here, the dissimulation function inherent to ideological thought is fixed, resulting in the inability of the guiding scheme to assimilate the experiences actually lived by the group, since, according to Ricouer, "every group presents traits of orthodoxy, of intolerance towards marginality. Perhaps no radically pluralist, radically permissive society is possible. In some field there is something intolerable, from which intolerance arises. It begins when the novelty seriously threatens the possibility for the group of recognizing itself, of finding itself again".⁸⁵

Thus, despite its unmistakable function of dissimulation, it would be impossible to raise awareness in any other way than through a code that is also ideological. It is precisely this paradox that would allow us to more precisely uncover the function of domination operated by the ideological phenomenon. This function would be essentially linked to the problem of authority, related to the hierarchical aspects of social organization. In this sense, "what ideology interprets and justifies, par excellence, is the relationship with authorities, the system of authority".⁸⁶

For this reason, one of the traditional views on the ideological phenomenon consists of identifying it with the imperative need to legitimize the power of a dominant class or social group. It involves producing discourses that contribute to maintaining relationships of domination. Thus, “a dominant power can legitimize itself by *promoting* beliefs and values compatible with it; *naturalizing* and *universalizing* such beliefs in order to make them obvious and apparently immutable; *denigrating* ideas that might challenge it; *excluding* rival forms of thought, perhaps through some undeclared but systematic logic; and *obscuring* social reality in order to favor it”. Such mystification generally takes the form of concealment or repression of social conflicts, promoting an imaginary solution or the denial of real contradictions.⁸⁷

For Paul Ricouer, following Max Weber, all authority seeks to legitimize itself, and political systems are distinguished according to their type of legitimation. However, every claim to legitimacy is correlated to a belief, by individuals, in this legitimacy, wherein the claim issued by the authority and the belief to which it responds are essentially asymmetrical. In the words of the author, “there is always more in the claim that comes from authority than in the belief that goes to authority”. In fact, here lies an “irreducible phenomenon of surplus value, if we understand by this the excess of the demand for legitimation in relation to the supply of belief. Perhaps this surplus value is the true surplus value: every authority demanding more than our belief can carry, in the double sense of bringing and supporting. It is here that ideology asserts itself as the substitute for surplus value and, at the same time, as the system that justifies domination”⁸⁸

To this extent, the two senses of ideology analyzed are articulated and complement each other, to the extent that the phenomenon of authority is also coextensive with the constitution of the group, since the founding act is essentially political. For this reason, ideology-dissimulation permeates all the features of ideology-integration, since there is no entirely transparent legitimation. There is always a certain opacity in the

phenomenon of authority, resulting from the justifying and, therefore, conservative function of ideology - which leads to a certain reproduction of models of authority which Paul Ricouer calls “political overlapping”, since “each power imitates and repeats a previous one: every prince wants to be Caesar, every Caesar wants to be Alexander, every Alexander wants to Hellenize an oriental despot”.⁸⁹

Finally, ideology presents its function of deformation. According to this essential function, which derives from Marx’s definitive construction: “ideology is this contempt that makes us believe in the image as the real thing, the reflection as the original.” Thus, “the novelty Marx brings us stands out against this previous background of a symbolic constitution of the social bond in general, and of the relation of authority in particular. And what he adds is the idea that the justifying function of ideology applies, by privilege, to the relation of domination arising from the division into social classes and the class struggle. It is in this way that we are indebted to him for this specific theme of the ideological functioning in relation to the dominant position of a class.”⁹⁰

From there on, it is clear that the ideological dimension of the punitive imaginary consists of the intersection of the three primary functions of ideology, demonstrating the justifying and dissimulating nature of any construction regarding deviation and social control. This is because the punitive power exercised by a political authority is structured on this fundamental surplus value, on this deficit of belief in the legitimacy of this exercise since it always hides the domination of race, class and gender on which it is based. Clearly, ideology is above all a discursive phenomenon, obviously anchored in a materiality, since signs are material entities, because it concerns meanings. In Eagleton’s precise words, “it is not, as a certain historicist Marxism seems to suggest, the founding principle of social unity, but rather attempts, in the face of political resistance, to reconstitute this unity on an imaginary level. As such, ideology can never be simple ‘ineffability’ or a carelessly disconnected thinking; on

the contrary, it must appear as an organizing social force that actively constitutes human subjects at the roots of their lived experience and seeks to equip them with relevant forms of value and belief to their specific social tasks and to the general reproduction of the social order". Precisely due to its discursive dimension, it is essential to deeply analyze the practical effects it produces, elucidating the points at which power exerts a profound impact on certain statements and insists on inscribing itself within them.⁹¹

For all these reasons, alongside the evident ideological dimension of the *punitive imaginary*, there exists its inescapable hermeneutic dimension, that is, the fact that the symbolic representations seeking to understand the criminal question are shaped by effective historical consciousness and the conditions of possibility for the very enunciation of *truth* in the social sciences. As Raúl Zaffaroni highlights, the question of criminology's scientific unity and autonomy is directly linked to the power relations that permeate the social formations from which this knowledge about criminality emerges, particularly those situated on the margins of global capitalism. There is no neutral criminology, for there is no criminological knowledge that seeks to understand the question without being oriented either toward justifying the hegemonic social order or toward its critique.⁹²

c. *Punitive Imaginary as a hermeneutical phenomenon*

The inevitable ideological dimension of the punitive imaginary is compounded by its indispensable hermeneutic aspect, since the images and symbolic representations of social conflict, deviation, deviance, control and social reaction are historical constructions, linked not only to the material conditions of production of social life, but, above all, to the way in which society is *instituted* and conceived as an instituted order. Thus, the *understanding* of the *criminal question*, its discourses,

rituals and symbols are restricted to the tension between the mobilizing, justifying and dissimulating functions of ideology and the explanatory and supposedly non-ideological forms of science and historical consciousness.

The positivist model of science, which predominated in modernity, has always presented itself, from an epistemological point of view, as a theoretical and methodological system capable of producing a non-ideological truth, precisely as a means of unmasking the precarious, illusory knowledge of pre-modernity, so that the so-called social sciences became captive to the scientific canons imposed by the so-called natural, positive sciences. Thus, the criteria of “explanatory capacity, associated with proof of falsification” have established themselves as definitive archetypes of scientificity. Therefore, the fundamental question that arises is whether the punitive imaginary — through its scientific discourses and social theories (*criminologies or criminological theories*) — insofar as it claims a scientific status, could ever attain a completely non-ideological position.⁹³

Is there, then, a science completely free from ideologies? Could *punitive imaginaries* — and their supposedly “scientific” counterpart: *criminology* — ever attain such a position? Paul Ricoeur offers an insightful response by warning that “if it is true that the images a social group attributes to itself are interpretations that immediately belong to the constitution of the social bond; in other words, if the social bond itself is symbolic, then seeking to derive these images from something prior — something that would be real, a real activity, a real life process from which reflections and secondary representations would emerge — is utterly futile. A non-ideological discourse on ideology encounters, at this point, the impossibility of reaching a social reality that precedes symbolization. This difficulty is further confirmed by the idea that we cannot start from the phenomenon of inversion to explain ideology but must instead conceive it as a specification of a much more fundamental

phenomenon — one that stems from the representation of the social bond after its symbolic constitution. Disguise is a secondary episode of symbolization”.⁹⁴

In these terms, every social scientist, or in the specific case of the *punitive imaginary*, every criminologist, socially represents the *criminal question* based on an existential pre-understanding, immersed in its historicity and in the facticity arising from its concrete political and linguistic community. Their symbolizations, their “scientific” discourses, therefore, possess the inevitable opacity arising from the failure of every attempt to define an absolute social reality, apprehensible in all its deepest dimensions. The impossibility of apprehension of totality is a limit of language, of knowledge, of reflection. Thus, the exercise of a radical critique lies precisely in this primordial, although always necessary, impossibility.

To say that there is always ideology before an ideology means accepting the universality of the hermeneutic task, in the sense that the production of all knowledge is always already anchored in a shared symbolic universe. Philosophical hermeneutics, within the scope of the linguistic turn, promotes a “scientific revolution” in the realm of the theory of knowledge, as it inquires precisely into the totality of our access to the world (Weltzugang) since “it is the model of language and its form of realization – that is, dialogue – that supports not only the understanding among individuals but also the comprehension of the very things that constitute our world”.⁹⁵

In this sense, “*understanding* ceases to appear as a mere mode of knowing and becomes a *way of being* and relating to beings and to being itself”.⁹⁶ The totality of the world thus emerges as the vital context of existence itself. Consequently, the question about how knowledge is possible and what are its condition of engendering becomes a secondary issue to the globality of the question regarding the understanding of existence itself within the horizon of our being-in-the-world with other

people. What does it mean “to Be” in a world? Who is this Being that understands? The experience of human existence - with its finitude, mobility, projection toward the future and, ultimately, its precariousness - will belong to the primordial form of understanding.⁹⁷

The epistemological problem (what is understanding?) presupposes and requires, especially in the context of historical knowledge typical of the sciences of the spirit, the confrontation of the ontological problem (who is this Being that understands?), so that understanding is inevitably existential. Therefore, “instead of asking how we know, we will ask what is the mode of being of this being who exists only through understanding.”⁹⁸

In fact, the overcoming of epistemology by hermeneutic ontology lies precisely in the assumption that the place from which we speak is the world, where we have always found ourselves. The world is the place where the possible, meaning and language manifest themselves. According to Ricoeur, “it is in the relationship with my situation, in the fundamental understanding of my position in being that understanding is primarily implied”. *Fundamental ontology* reveals that the movement of understanding is not directed towards the apprehension of a fact but manifests itself as a possibility of being.⁹⁹ In this sense, “philosophy and social sciences are intimately associated and this connection is based on the nature of linguistic understanding”.¹⁰⁰

The hermeneutic movement is situated in the circle of understanding language, always conceived as a virtuous circle, capable of generating the new. Understanding is not a linear, methodological activity, constructed by the relationship between a subject and an analyzed object but is instead manifested from existentiality, from the being-in-the-world of the being who understands. Especially in the sciences of the spirit, subject and object are mutually implicated to the extent that “the subject gives itself to itself in the knowledge of the object”.¹⁰¹ Circularity is the core of possible understanding that transcends any fixed notion of beginning and end and is situated in the present center

of language. Therefore, understanding implies a dialectic of the past and the present, as both beginning and end are already referred in the effort of comprehension. Thus, from the present, the past is revealed and the future anticipated. The entire movement of understanding necessarily implies pre-understanding, an anticipation of meaning, *a priori*, but it should not be confused with subjectivism, worldview, nor something that can be circumvented by method. We have always understood, and we do not ask ourselves “why do we understand?”¹⁰²

The method always arrives too late, as the prejudices and prior opinions occupying the interpreter’s consciousness are not at his/her free disposal. They are conditioned by the hermeneutic situation, always already immersed in the language of a tradition intersubjectively shared. This is because all understanding is supported by an “effective historical consciousness,” as it is governed by inalienable prejudices. Understanding possesses an intrinsic historicity that precludes any possibility of objectification. Indeed, “in historical understanding, I open myself to the tradition, that is, I allow it speak to me, permitting the true meaning hidden within it to become clear.”¹⁰³

Thus, hermeneutic understanding encompasses and involves a dialectic between belonging and distancing, which means that we do not live within closed horizons, nor in a single horizon. Therefore, understanding means a *fusion of horizons*, a relationship of mutual implication in which the world with its “objects” is continually reconstructed and, in some way, increases in the being of the interpreter as the interpretation advances. This concept excludes both the idea of total and unique knowledge, because it implies the tension between the self and the strange, between the near and the distant, in the search for meaning. The meaning of the world is precisely that which can be produced in the opening of understanding, a perspective from which the project is structured by the previous position, previous vision and previous conception. It is an existential characteristic of the worldly subject, and not a property affixed

to an entity. From the hermeneutic circle, with the awareness of finitude as a premise, understanding is structured and emerges in the core of dialogue. According to Almeida, “the events of life, the knowledge of the world, the formation of linguistic judgments and everything else that may come to be, have as a necessary antecedent the possibility of being”. The opening manifests itself as a disposition (anguish, passion, suffering) and is realized through language. Understanding is “the prior structure of any interpretation, that is, we only interpret what we have already understood before: the Being. We only interpret what presents itself as a possibility to us, we can only interpret what affects us in the world of meaning in which we live. Therefore, we can say that understanding is the mode of being of the *Dasein*”. In this sense, “we have always understood”.¹⁰⁴

We cannot fall into the error of transforming *consciousness* into the origin or the possibility, of understanding, temporality, historicity or any other existential that characterizes *Dasein*. This is because consciousness does not generate the worldly entity and, therefore, does not define it. Consciousness itself is a product of the world. The solipsistic consciousness, automated, deaf and mute to the world, is nothing more than a fantasy of subjectivity (philosophy of consciousness). Consciousness is a relationship, it is an ontological mark of this entity that is capable of projecting itself onto the other. There is only consciousness within the relationships that *Dasein* establishes; therefore, it is made possible before it can make anything possible.¹⁰⁵

Thus, reality is always linguistically constructed, as an opening, it is the endless effort in the pursuit of the apprehension of meaning and always requires reference to its genesis. In this sense, truth is the revelation of reality (unveiling). Truth, as a revelation of being, can never be understood in an object-like manner, that is, as something that has become present and imposes itself once and for all. It is not *Dasein* that assigns meaning to beings, just as there is no independent meaning attached to things that *Dasein* only needs to discover. The previous structure of understanding,

the previous totality of meaning, opens up in *Dasein's* projection toward the world, where it encounters the 'other'; yet, in this movement, what it sees is itself - and this is the essence of circularity.¹⁰⁶

Our opinions about things are not exclusively our own, as they are, by principle, the product of (our) history and our previous structure of understanding. Therefore, every process of understanding starts from prior judgments that project themselves onto the 'thing itself' that must be understood continuously as a reprojection. The *hermeneutic circle*, Vattimo states, "reveals a particular reciprocal belonging between the 'subject' and the 'object' of interpretation which, precisely for this reason, can no longer be designated as such, since both terms originated and developed within a perspective that implied their separation and opposition and was expressed through them. The fact that, for Heidegger, interpretation is nothing more than the articulation of what is understood - that it always presupposes an understanding or a pre-understanding of the thing, simply means that before every explicit act of knowledge, before every recognition of something as (als) something, the knower and the known mutually belong to one another: the known is already within the horizon of the knower, but only because the knower is within the world that the known co-determines".¹⁰⁷

Furthermore, the hermeneutic approach encompasses the *dialectical* dimension of understanding reality. In fact, the "dialectical procedure begins with the phenomenon and sets out in search of the whole that gives it meaning." It seeks to know the totality that justifies the part and, in this way, "projects itself towards the universal that reconciles the finite and the infinite".¹⁰⁸ In this sense, the hermeneutic task is inevitably dialectical, for "the fundamental hypothesis of dialectics is that there is nothing eternal, nothing fixed, nothing absolute. There are no ideas, principles, categories, or absolute entities established once and for all. Everything that exists in human and social life is in perpetual transformation, everything is perishable, everything is subject to the flow of history".¹⁰⁹

Hermeneutics also does not forget the dimension of totality. Every act of understanding aspires to totality, despite its impossibility, insofar as the totality of reality is infinite and inexhaustible. However, “the methodological category of totality means the perception of social reality as an organic, structured whole, in which no element, aspect, or dimension can be understood without considering its relation to the whole”.¹¹⁰

The dialectical dimension, inherent to the hermeneutic-critical perspective herein explained, assumes the “*principle of totality*” as something indispensable to the reflection of the social, in terms of the Marxist tradition. A dialectical legacy of Hegel, this principle expresses “the need to conceive society as a totality, that is, as a complex and articulated reality, formed by mediations, contradictions and processes”. Indeed, it is a matter of perceiving it as a *concrete* totality, that is, “constituted from the relative autonomy of its multiple partial moments”.¹¹¹

Thus, the notion of “fusion of horizons” seeks to clarify exactly what the dialectical tradition defines as the “*point of view of totality*”, an inexhaustible attempt to overcome the scientific fragmentation typical of modernity. According to Coutinho, the rise of the *social sciences* led, in the context of modern society, to the blocking of reflection on society as a whole, since the process of specialization of scientific knowledge “makes it difficult to capture the antagonistic contradictions and general evolutionary trends of social life, which point to the construction of another social order”, because “particular social sciences tend towards positivism, immediacy, and the acceptance of social reality as an aggregate of insurmountable ‘data’”.¹¹²

In this sense, the dialectical hermeneutic dimension of criminology consists precisely in its configuration as a *historical-ontological critique* of violence, social control and punitive power, since criminology must strive to subject the findings of particular social (and criminal) sciences to two evaluation criteria. Firstly, “to the screening of *totality*, through which an attempt is made to dialectically relate the objects formulated

by particular science with the social totality, *mediating and defetishizing* such objects, making them cease to be mere ‘facts’ and become processes or moments of processes”. Secondly, “to the screening of *historicity*”, since, for the dialectical perspective, “the totality in question is not a definitive totality, but rather a *process of totalization*, in which the whole is understood as something open and highly dynamic; as a result, the analyzed objects lose their apparent ‘neutrality’, thus becoming transitory states of an uninterrupted becoming”.¹¹³

Thus, the *historical-ontological critique* of the punitive imaginary consists of the fusion of fragmented scientific horizons and results, subjected to the challenge of critical reflection based on the whole of social life, insofar as its primary objective “is precisely to examine to what extent these results correspond or not to the global and historical movement of the object that is being elevated to a concept”.¹¹⁴ Therefore, understanding the criminal question implies inserting its analysis into the ensemble of general social life, into the historical process of power relations and social contradictions inherent to race, class, and gender domination. Only in this way will be possible to confer upon criminology the task of profoundly revealing the historical and spiritual reproduction of the criminal question, as well as utilizing it as a theoretical tool capable of functioning “as an efficient means of demystifying the ideological components hidden within the apparently scientific representations of reality”.¹¹⁵

d. The hermeneutic critique of *punitive imaginary*:
the radical critique of punitive power

The common problem of all criminological reflection, namely, the central question about *how to ensure social order*, by feeding the sources of the *punitive imaginary*, produces a set of symbolic representations about the criminal question based on a permanent tension between the historicity of understanding and the ideological phenomenon.

Historically, the critical perspective, radically critical, is above all a way of life, an incessant pursuit for the transcendence of established existence. In its fundamental bases, *critical philosophy* seeks to destroy the illusion of objectivism, that is, the mirage of a reality independent of consciousness. Indeed, the production of knowledge is thus linked to the intention of a good and truthful life, to the radical transformation of established reality. According to Quinney, “without critical thinking we are limited to the only form of social life we know – the one that currently exists. We are not, then, free to choose a better life; our only activity is the continued support of the system in which we are enslaved”. Forged within the scope of the rejection of capitalist domination and the technical and scientific instrumental rationality of modernity, *critical philosophy* asserts itself as *negative thought*, in its dialectical form that always allows for questioning the present experience. Furthermore, refusing the pursuit of an objective reality is what enables the constant denial of the established order.¹¹⁶

In fact, in terms of critical philosophy, the punitive imaginary is radically confronted in its ideological dimension of justification of the established order, of discourses of legitimization of a punitive power expressed by a legal order that is consolidated as a necessary force to ensure order in capitalist society and its forms of domination. Thus, a critical theory of crime control in capitalist society exposes the way in which the penal justice system is articulated as a class mechanism, always “used by the State and its ruling class to maintain the existing social and economic order”.¹¹⁷

The radical critique of the punitive imaginary proposes precisely to bring to light the selective and hidden nature of the penal justice system, the tensions and contradictions between its ideological discourses and beliefs of justification and its concrete manifestations, as a power that basically operates in a subterranean, illegal, irrational, abusive, violent and genocidal manner. The bureaucratic domination typical of the

modern State rationally legitimizes sacrificial violence, the regularity of permanent genocidal violence. In this sense, the legal system erects mechanisms for the forced and violent control of marginalized and vulnerable groups.

From the perspective of critical philosophy, the capitalist state is the natural product of the class division of society, from which emerges the need for repressive social control as a strategy for maintaining dominant economic and power relations. In this sense, the critical hermeneutics of the punitive imaginary encompasses the dialectical perspective to perceive theoretical thought as the necessity of unveiling the meaning of phenomena within the realm of the historicity of understanding and the existential condition of the researcher - never susceptible to an absolutely non-ideological position.

According to the theoretical perspective herein proposed, the object of research also presents an objective existence that is independent of the mere consciousness of the researcher. However, this objective existence only has meaning when it is apprehended within the scope of language, lacking an absolute “essence” but instead possessing a historical and factual truth. In this sense, the statement that the Brazilian penal system is racist, selective, and violent - insofar as it produces the death and incarceration of black and poor people - represents a *historical and scientific truth*, not just a particular personal opinion of a given researcher. It is a finding that has material and factual dimension, an “objective existence”, even if linguistically impregnated with meanings attributed by the scientist. The *truth*, in this case, emerges as the unveiling of the “being” of the penal system within the sphere of materiality, facticity, and its manifestation in the concrete world, insofar as it embodies the global movement of the social world elevated to the status of a concept.

The critical hermeneutics perspective does not distance itself from the notion that the subject/object relationship in the process of theoretical knowledge is not a relationship of externality, but first and foremost, is

a relationship in which the subject is implicated in the object, that is, directly affected by it. It is, therefore, a relationship of intersubjectivity and implication. For this reason, the study of society does not allow for any claim of ‘neutrality’, generally identified with ‘objectivity’. However, “this characteristic does not exclude the objectivity of theoretical knowledge: theory has an instance of verifying its *truth*, this instance is the *social and historical practice*”¹¹⁸

From a dialectical perspective, scientific theory represents, at the level of thought and ideas, the real movement of the object, its factual reality captured by consciousness. However, such reproduction never manifests itself as a mechanical reflection, “with thought mirroring reality just as a mirror reflects the image it has before it”. On the contrary, the subject plays an eminently active role, because “precisely in order to grasp not the appearance or the form given to the object, but its essence, its structure and its dynamics (more precisely: to apprehend it as a *process*), the subject must be able to mobilize a maximum of knowledge, criticize it, revise it and must be endowed with creativity and imagination”¹¹⁹

In this regard, the orientation of dialectical thought, especially in Marx, has an ontological rather than an epistemological nature, since its interest was not in the abstract question of ‘how to know’, but specifically in ‘how to know a real and determined object’. Thus, knowing “concrete reality” would necessarily imply seeking the synthesis of countless determinations, the totality endowed with meaning, which is never immediately offered to thought. In fact, the “method”, or more precisely *the bridge*, some might say, “is not a set of formal rules that are ‘applied’ to an object selected for a specific investigation, nor even less a set of rules that the subject that researches chooses according to his will, to ‘frame’ his object of investigation”. More precisely, the method implies a certain position (perspective) of the subject that researches, that is, “the one in which the researcher places himself in order to, in his relationship with the object, extract from it its multiple determinations”,

so that “to know theoretically is - to use an expression dear to Professor Florestan Fernandes - *saturating the thought object with its concrete determinations*”.¹²⁰

In this line of thought, it is clear that science is defined as an attempt to know the truth. Despite the impossibility of achieving an objective and absolute truth, still “every process of knowledge is a process of approaching, of approximating the truth”, so that “science is a process of producing knowledge of the truth”, always permeated by social, political and economic tensions and contradictions. For this reason, all science is politically and ideologically conditioned, permeated by “points of view”, whether aimed at maintaining the *status quo* or fostering emancipation and liberation from existing relations of oppression and domination.¹²¹

The *punitive imaginary*, in turn, as a process of understanding the criminal question, presents exactly the same difficulties in the production of knowledge of the truth. Are there criminological truths, or does everything depend solely on the political or ideological positions of the researcher? Is there a concrete facticity with an objective existence, or can the mind of the subject of knowledge manipulate the object at will, according to his ideologies or moral conceptions?

From the theoretical perspective herein proposed, criminology (*the radical critique of the punitive imaginary*) can and should seek the truth, never an objective and universal truth, but rather a hermeneutic truth, as a historical-factual unveiling of the phenomenon investigated from the “fusion of horizons” and the existential condition of the researcher, to make explicit its ideological starting points. The fusion of horizons aims to make precisely explicit that interdisciplinarity and the methodological integration of various knowledges do not represent only an “epistemic” need for the combination and articulation of disciplines related to the criminal problem, but above all “correspond to the very epistemological profile of criminological investigation, similarly, in fact, to what happens in the more general scope of the current human sciences”.¹²²

On the other hand, the historicity and factuality of the process of knowing the truth are immersed in the hermeneutic condition of the subject, insofar as the process of attributing meaning occurs within the movement of understanding, always from the existential point of view of the interpreter, with his inalienable pre-judgments. The explication of these points of view or starting points, their recognition and the attempt to suspend and control them are conditions for the unveiling of historical and factual truth, and not mere preferences of the interpreter or truth as the will of the dominant power.

2

**THE TRUE GRIT OF
PENAL JUSTICE:
THE RADICAL
CRITIQUE OF
*SACRIFICIAL
REASON***

“The wicked flee when no one pursues”

(Proverbs 28:1)

INTRODUCTION

It seems right that “[...] People do not give it credence that a young girl could leave home and go off in the wintertime to avenge her father’s blood, but it happen”. Mattie Ross tells us that “[...] I was just fourteen years of age when a coward by the name of Tom Chaney shot my father down, and robbed him of his life and his horse and two California gold pieces that he carried in his trouser band”. Mrs. Ross, now recalling the events, explains that Chaney was a man hired by her father, a sort of temporary worker: “He had taken Chaney up to Fort Smith to help lead back a string of mustang ponies he’d just bought. In town, Chaney had fallen to drink and cards, and lost all his money. He got it into his head he’d been cheated and went back to the boarding house for his Henry rifle. Papa remonstrated, and Chaney shot him in the breast. Chaney fled. He could have taken the time to saddle the horse, as it seems that no one in that city was inclined to give chase. No doubt Chaney imagined that he had escaped without punishment. But he was wrong. You must pay for everything in this world, one way or another. Nothing is free except the grace of God”.

The “strong-willed” girl has only one thought in her tireless mind: avenge her father’s death. Electra reincarnated. Before the public spectacle of the hangings, she longs for the day when Chaney will be led to the gallows for his crime. Enraptured, she questions the sheriff about the search efforts, the fugitive’s whereabouts, and the chances

of his capture. And she emphatically reaffirms to the representative of law and public justice her desire for revenge: "I intend to see papa's killer hanged". Thus, she inquires the sheriff about hiring a U.S. Marshal, a bounty hunter, a hybrid of vigilante and lawman, who capture criminals on behalf of the authorities in exchange for monetary compensation.

The sheriff provides the name of Marshal Rooster Cogburn, an old man yet renowned for his bravery, deeply feared by wanted outlaws for his unyielding and ruthless pursuit of fugitives. Mattie Ross insists on hiring him. She specifically seeks the assistance of the most relentless and infallible of vigilantes: "They tell me you are a man with true grit". Young Mattie, ever steadfast in her resolve, negotiates the terms of the agreement. The cost of the undertaking: one hundred dollars. Her goal is clear — she wants the criminal captured and delivered to the justice of Fort Smith, the place where her father was murdered, so that he may stand trial before judge Parker. And, ultimately, be hanged.

On the other hand, Officer LaBoeuf is also in pursuit of Chaney for the murder of a senator in Texas. He has been tracking the criminal for months, determined to apprehend him and bring him to that jurisdiction. Upon encountering Mattie, the officer asserts his intention to deliver the outlaw to Texan justice, where a substantial reward awaits — after all, the murder of a senator constitutes a *malum in se* and not merely a *malum prohibitum*. The girl immediately responds with the sharpness and inflexibility of her indomitable spirit, a bravery as unyielding as her will: "When Chaney is taken he is coming back to Fort Smith to hang. I am not having him go to Texas to hang for shooting some senator". LaBoeuf then argues: "It is not important where he hangs, is it?" To which Mattie retorts without hesitation: "It is to me! Is it to you?". The girl does not simply settle by hiring the vigilante. Despite the many dangers and difficulties of the mission, she insists on accompanying Marshal Cogburn and

LaBoeuf in their expedition to capture the man who inflicted upon her the wound of her beloved father's murder — despite their emphatic objections. She resolves to experience every moment, to feel it in her very flesh, to see with her own eyes, to fully immerse herself in the path of revenge. And so, she rides alongside them, mounted on her horse, “Little Blackie”.

Building upon this initial narrative, woven through the cinematic dramaturgy of *True Grit*, the present text aims to discuss the philosophical and ethical-political meanings of revenge and its relationship with criminal justice. In fact, within the broad spectrum of the Western criminal justice imaginary, René Girard emphasizes that “[...] there is no principle of justice fundamentally different from a principle of revenge. The same principle of justice operates in both cases: violent reciprocity, retribution. Either this principle is just, and justice is already present in revenge, or justice does not exist anywhere”.¹²³ Therefore, there is always revenge within justice, just as there is always justice within revenge. From the Greek social imaginary, ranging from mythology to Aristotle's thought, it seems evident that punishment is intrinsically tied to this *principle of revenge*. To punish is, first and foremost, to avenge. However, not through a blind and destructive revenge modeled after the *lex talionis* — an eye for an eye, a tooth for a tooth — but rather through a form of revenge intended to be guided by an ethical framework. And in this sense, through a philosophy of punishment and using the movie *True Grit* as a backdrop, particularly the meanings projected by the character Mattie Ross within the scope of her existential and historical horizon, this text seeks to delineate some key distinctions between destructive and lethal revenge and the dimensions of a punitive imaginary embedded in the symbolic representations of an ethics of revenge. Therefore, the central objective of this text is to more precisely examine the imaginary foundations of Criminal Justice as articulated by the ethical philosophy of revenge.

1. **“YOU SIR PROVED TO BE A MAN WITH TRUE GRIT”:
THE ARCHAIC REPORT OF THE UNTAMABLE
DESIRE FOR REVENGE**

Mattie Ross’s indomitable desire for revenge precisely exposes the imaginary sources of a feeling that has been present since the ancient tales of Greek mythology. From there on, the warning that violence belongs to all and resides within everyone has echoed as an almost unquestionable premise. Great heroes - whether gods or mortals - violent, vengeful, feared, and relentless, are a constant presence in the mythological universe. Since the primordial crime of *Kronos* - who, by castrating his father, engenders the very origin of the cosmos and communal life by freeing Gaia from Uranus’s insatiable desire - the universe unfolds upon the inhospitable terrain of revenge consecration and the perpetual eruption of new forms of violence. For it is from the drops of Uranus’s blood that the Erinyes arise - the goddesses devoted to the remembrance of crime and the relentless demand for revenge, for some form of reparation.¹²⁴

In primitive societies, ethnologists and anthropologists report that violence is a fundamental and primary component of social life — at the same time disjunctive, irruptive, chaotic, and profane, as well as cohesive, enduring, ordering, and sacred.¹²⁵ As René Girard highlights, “[...] once awakened, the desire for violence triggers certain bodily changes that prepare men for combat”, [so that] violence can only be deceived by providing it with an outlet, something to consume. In the myths and practices of primitive, archaic societies, this function was assigned to sacrifice, whose “[...] purpose is to appease internal violence and prevent the outbreak of conflicts”. According to Girard, “[...] it is the entire community that the sacrifice protects from its own violence; it is the entire community that is thus directed toward external victims.

The sacrifice concentrates upon the victim the seeds of discord scattered throughout the group, dissipating them by offering a partial resolution. [...] Sacrifices are made in the name of various objects or enterprises, especially as the social nature of the institution begins to fade. However, there is a common denominator in sacrificial efficacy, which becomes increasingly visible and predominant the more alive the institution remains. This denominator is internal violence: the disputes, rivalries, jealousies, and conflicts among kin that sacrifice initially seeks to eliminate; the harmony of society that it restores; the social unity that it reinforces. Everything else follows from this. Yet, when the internal violence repressed by sacrifice reveals its true nature, it always manifests in the form of blood revenge — an overwhelming, intolerable threat that tends to spread and tear apart the entire social body”.¹²⁶

The archaic account of revenge signals almost in unison that “in the face of spilled blood, the only satisfactory revenge is the shedding of the criminal’s blood. There is no clear distinction between the act that revenge punishes and revenge itself. It is conceived as a reprisal, and each reprisal calls for another. Rarely is the crime punished by revenge seen as the first: it is regarded as the retaliation for an even more original crime”.¹²⁷ For this reason, François Ost’s warning is invaluable because just as it is impossible to reach a zero point of Law, since all legality presupposes a prior plane of interaction and intersubjective recognition, we could argue that: “there is a crime before the crime”. Thus, “[...] men will always have already been confronted with violence; there exists a anterior future of evil, just as there exists a past future of legitimacy”. In fact, “[...] to this anteriority of crime corresponds the enduring nature of punitive memory; if not its permanence — for in the modern world, prescription intervenes — at least its long duration. To punish is then, above all, to remember”.¹²⁸ Revenge and remembrance: these are the most ancient sources of the punitive imaginary. It is therefore essential, from this initial perspective, to restore the lost meaning of revenge.

Not to elevate it to a full-fledged right, but to perceive it not merely in its inevitable immanence, that is, in the fact that within the symbolic representations of punishment “[...] there is no principle of justice truly distinct from the principle of revenge”¹²⁹ - rather, the aim is to see in it an sing inversion, to extract from it an ethical substance. Amidst the turbulent waters of this imaginary, the meaning of revenge undergoes its metamorphoses — an ethical imperative of justice, an ideal shared by gods and men, embedded in mythological narratives of the origin of the cosmos; or a malevolent force to be purged, a lurking danger to be ceaselessly monitored, a demon to be exorcized. Revenge has always been conceived as the other side of punishment.

Indeed, in the precise words of Frédéric Gros, “[...] within our broader system of representations, in order to punish, we must first renounce revenge. The story is well known: the first humans, in order to redress affronts and punish crimes, knew only revenge. They themselves carried out justice. A system of reprisals: for an injury suffered, a thousand others were inflicted, each in turn demanding retribution. A war of all against all. An indefinite whirlwind of violence. Endless dismemberments and eternal hatreds. To counter this chaos, one day, humans invented and established a Rule of Law — a State that administers justice with serenity and puts an end to ancestral conflicts. A State that establishes a fair criminal legislation”¹³⁰

More precisely forged in the modern era, this broader system of representations corresponds to the emergence of the centralized and bureaucratic State, fulfilling the function of justifying the confiscation of conflict and legitimate justice or violence. Foucault points out that this ideology precisely marks the need to overcome the Germanic legal model present in feudalism, in which the law was a regulated form of waging war, but always and only between two subjects, never three. In this model, no representative of authority intervened. Law was the ritualized form of war. However, in this battle, an agreement, a

settlement, financial compensation, or reparation was always possible. The chain of revenge could be interrupted through a pact. Thus, the system that regulated conflicts and disputes in ancient Germanic societies, later revived during feudalism, was governed by struggle and negotiation. It was a test of strength that could ultimately result in an economic settlement. It was a procedure that did not allow for the intervention of a neutral third party seeking the truth or attempting to determine which of the two told the truth.¹³¹

Thus, before representing a shapeless and monstrous element, an image of the chaotic state of nature, revenge has always required regulatory procedures. Even bloody and lethal conflict follows its own rules and mechanisms of self-restraint. Once again, following in Gros' footsteps: "[...] what condemns private revenge to being destructive is precisely that it is private, and more specifically, that it operates outside the law, is prohibited, secret. Because it is kept secret, revenge deprives itself of powerful regulatory mechanisms. For secrecy provokes terror. In such a way that what is called revenge today may be nothing more than the remnant of an outdated form of violence, one that is fiercely eradicated whenever it attempts to resurface, like a dark memory of barbaric times — a degraded form of an archaic system of revenge, which in its time was itself regulatory and capable of creating solidarity, even if not fundamentally pacifying".¹³²

Mattie lives in a North America of incipient modernity, where the Rule of Law is in the process of full consolidation. The influence of European criminal thought is inevitable, despite the differences in legal traditions. Blood revenge has been almost entirely confiscated by the State, and the *disputatio* of the Germanic law gave way to Roman penitential-canonical *inquisitio*. In this new model, the search for truth through inquiry becomes the prerogative of state officials, the accusation is driven forward and conducted by the figure of the Prosecutor, the sovereign's representative, who demands the application of a verticalized

justice — imposed from above and exercised by judges and notables citizens (jurors), neutral and impartial, who render a verdict on behalf of the entire community as violence, once perceived as harm done to a third party (the victim), now also takes the form of an offense against the law of the State. It is, therefore, not an attack on an individual but an affront to the very law of the State. Thus, in the modern liberal-individualist conception of crime, the notion of harm is replaced by that of infraction. An infraction is not a harm committed by one individual against another; it is an offense or injury by an individual against order, the State, the law, society, sovereignty, or the sovereign. The notion of infraction is one of the great inventions of medieval thought later rationalized by liberal and Enlightenment criminal thought.¹³³

Nevertheless, remnants of blood revenge persist within the legal order, manifesting both in the figure of the U.S. Marshals and bounty hunters, always positioned at the boundary between law enforcement and private justice and in the use of public executions, particularly hangings, as an exemplary form of punishment. The violence of crime, which the State seeks to manipulate, is met with “something to be devoured”. In attempting to remove conflict from the victim’s hands, the State assumes the role of the ultimate, abstract victim, deploying a discourse that legitimizes its supremacy - the idea that only the State can contain the whirlwind of reciprocal violence, the war of all against all, which the real victim’s resentment would otherwise perpetuate. This discourse is blatantly unmasked by the caricatural, selective, abusive, and equally chaotic manner in which the State enacts public revenge through the spectacle of executions - an act obedient to a particular political economy of punishment, forged by sovereign power.

Notwithstanding, young Mattie places an unwavering faith in Law. She vehemently demands the fulfillment of agreements, always fights with the Law on her side, and makes a point of repeatedly reminding her opponents: “I have a good lawyer who can...”. Although she is shrouded

in the mantle of revenge, she consistently invokes the protection of public law. When she realizes that Marshal Cogburn is contemplating an arrangement with Officer LaBoeuf to turn the criminal over to Texas justice, driven by the reward money, Mattie begins to make clear the distinction between what she considers a just, ethical revenge, and a blind, lethal, merely personal revenge, which she deems inadmissible and unacceptable.

At the camp, at dawn, suspicious of the agreement, Mattie challenges Cogburn's authority: "I gather that you and Mr. LaBoeuf have come to some sort of agreement. As your employer I believe I have the right to know the particulars". The term "employer", used by her right at the start of the conversation immediately invokes a legal relationship, seeking to define the precise contours of their relationship, which grants her the "right to know the particulars". Deeply irritated, Cogburn retorts: "The particulars is that we bring Chaney in to the magistrate in San Saba, Texas, where they have a considerable reward on offer. Which we split". Outraged, Mattie fires back: "I did not want him brought to Texas, to have Texas punishment administered for a Texas crime. That was not our agreement". The old man dismisses her statement: "What you want is to have him caught and punished". Mattie counters: "I want him to know he is being punished for killing my father". Cogburn interposes and suggests: "You can let him know that. You can tell him to his face. You can spit on him and make him eat sand out of the road. I will hold him down. If you want I will flay the flesh off the soles of his feet and find you an Indian pepper to rub into the wound. Isn't that a hundred dollars' value?". "It is not", Mattie snaps back. "When I have bought and paid for something, I will have my way. Why do you think I am paying you if not to have my way?"

The dialogue continues in a tense tone, as Cogburn believes this is nothing more than the selfish whim of a wealthy girl. He objects: "It is time for you to learn you cannot have your way in every little particular.

If you find I fail to satisfy your terms I will return your money at the end of this expedition". Despite Marshal Cogburn's proper stance, Mattie insists on enforcing the agreement, half of which has already been paid in advance: "Little Blackie and I are riding back to the U.S. marshals' office. This is fraud". The old man cannot hide his irritation anymore: "God damn it!" - he grumbles. At that moment, LaBoeuf intervenes: "What's going on?" "This is a business conversation" - Cogburn replies. "Is that what you call it. It sounds to me like you are still being hoorawed by a little girl" - the Texan horseman mocks. Mattie interjects and settles the matter, putting an end to the argument: "There is no hoorawing in it. My agreement with the Marshal antedates yours. *It has the force of law*".

This entire argumentative battle waged between the main protagonists of the saga of revenge is deeply revealing. Mattie constantly anchors herself in the law, in the strength of her agreement with Cogburn, to demand that things, the "service", be carried out her way. Notably, when she insists that everything must be done according to her terms, she is referring to public punishment. It is the capital punishment imposed by the court that she invokes. Moreover, she wants him to know that he is being punished for killing her father. She seeks to make her suffering public, both in the eyes of the criminal and the entire community. This becomes evident when she demands that the punishment not take place in Texas. She utters "Texas" three times in the same sentence, underscoring the importance she attributes to the location where the punitive acts are made public. For her, Chaney must be punished in Fort Smith, within the heart of the community to which he belongs. No other form of personal revenge satisfies her, no private revenge can replace the rituals and publicity of the hanging she demands. Simply "tell him to his face", "spit on him", "make him eat sand out of the road", or "flay the flesh off the soles off his feet and rub Indian pepper into the wound", as the old Cogburn offers, does not fulfill her symbolic horizon of revenge. No such act, not even the infliction of suffering and pain, can supplant the

judicial ritual she insists upon. And it is with the “force of law” and the “primacy of agreements” (*pacta sunt servanda*) that she aims to uphold her demand for justice.

For that reason, her assertion that “there is no hoorawing in it” gains strength. The feeling of revenge that drives her does not bear the mark of chaotic savagery, which she vehemently rejects. She does not seek to violate, humiliate, torture, or silence the outlaw by stuffing his mouth with sand. Rather, she wants to hand him over to Judge Parker, so that he may be tried according to the law and hanged in the public square of Fort Smith. It is a different kind of revenge at play here — not merely talionic, an eye for an eye, a tooth for a tooth. If that was the case, a single rifle shot would have settled the matter.

2. REVENGE REDEFINED

According to Frédéric Gros, transdisciplinary researches conducted since 1974 by Raymond Verdier and G. Courtois reveal that revenge can be reconducted to solidarity by proposing rules to regulate it: the vindicatory system or vindicatory justice. These studies sought to investigate and conceptualize “a form of revenge that fosters solidarity rather than fragmentation, that brings order rather than destruction, that establishes rules and measures instead of surrendering its actors to the raw immediacy of blind and impure violence”. In this sense, “[...] it is then revealed how much of the revenge presumed at the dawn of the State has been portrayed as a bottomless abyss, as the monstrous childhood of a pre-social and pre-legal humanity. This revenge, as R. Verdier asserts, is akin to the philosophers’ state of nature. It cannot be found because it stems from a modern conception that arose only after the establishment of the State”.¹³⁴

In her saga, this seems to be the form of revenge that young Mattie allows to surface. The fact that she demands a public hanging in accordance with the laws enforced by the court signals her rejection of private acts of violence, which she had the opportunity to condone and carry out. It is not merely about setting an example for others; what she seeks aligns with what R. Verrier envisions as a form of justice that indeed demands repaying evil with evil. However, this is a justice that far from belonging, as the author suggests, to the ages of barbarism, was of a mythical and divine nature, always possessing its share of reason and not merely passion. Some may propose an ideal account of vindictive justice, tracing back to ancient Greece, at a time when familial jurisdiction prevailed, as follows: “the harm inflicted upon a man extends to his entire clan, triggering a blood feud. In the face of humiliation and wrath, revenge for the harm caused becomes an inescapable and definitive obligation. In fact, a declaration of war. However, blood revenge could be forgiven through monetary compensation, executed by means of an ‘act of composition’ (poinê), which was initially determined by the clan — giving rise to a ritualized public peace treaty, and later by the State itself”¹³⁵

At this point, some important questions arise. Is the monetary compensation for blood revenge “the price of the blood already shed, or the price of the blood spared? Is the fortune that a family agrees to receive a monetary equivalent of the victim or a ransom for the spared life of the offender? Does punishment consist in receiving compensation equivalent to the harm done, or does the act of payment serve as compensation for the renunciation of punishment and the acceptance of forgiveness? In the first case, there is a price for the crime. In the second, a price for forgiveness. The question is undoubtedly historical, but the answer is ethical”¹³⁶

It must be understood that the act of forgiveness is not effective in compelling the offender to moral guilt, due to the absence of its purity, which has a price. Primitive revenge is characterized by obligation: to

punish is an “[...] absolute, imprescriptible duty, a hereditary and shared duty”, rather than a right that some may choose to forgo. The explanation lies precisely in the fact that revenge is sacred and eminently religious. Thus, it is understood as a debt of blood, honor, life, strength, and wealth that the offender incurs toward the victim. Conversely, the victim, as a creditor, can only regain structure when the act that harmed it is repeated or through compensation, a metaphorical equivalent of material wealth, such as blood and honor. “Blood does not age”, states an Abkhazian saying mentioned by R. Verdier. “The restoration of the injured party’s integrity and the consequent stability presuppose the subtraction of an equivalent from the offender”.¹³⁷

In the light of this, primitive revenge does not encompass malice, hatred, humiliation, or painful memory, but rather the necessity of restoring lost honor, fulfilling an obligation, and adhering to the rite. In fact, “[...] one does not seek revenge to heal a wound that would otherwise remain open. One does not seek revenge to achieve what Freud calls ‘abreaction’, the release of wounded affect. Revenge is sought to honor the dead, to fulfill a familial obligation, to conform to a rite. Revenge imposes itself as a sacred duty, a ritual obligation rather than a murderous instinct or a sanitary urgency. It is conceived as a ritual obligation and not as a psychological mechanism of compensation”.¹³⁸

On the other hand, it has very little to do with humiliation. This is because the pure system of revenge “[...] is not a logic of war, but a logic of rivalry [...]” which presupposes, beyond the capacity to rival, recognition, equality, and a balance of forces between victim and aggressor, so that both may communicate with each other and with their respective groups. Likewise, what is at stake is by no means a matter of hatred. What binds victim and aggressor is not “[...] a negative affect whose power overwhelms the avenger and threatens to consume it in return”. Rather, it is above all a debt that must be settled. It is understood primarily in terms of exchange. Something that must be repaid: “[...]”

repaying blow for blow, no doubt, but repaying rather than destroying. To take revenge is to seek restitution, and what can be restored are goods and honor. Power is restored, as are the dead”¹³⁹

Finally, revenge is in no way imprisoned by a painful memory. Quite the contrary: “[...] one does not seek revenge to produce a solemn act that serves as the painful perpetuation of the crime suffered. One does not seek revenge to illustrate a memory of mourning. On the contrary, revenge is sought in order to forget”. In other words, the structure of revenge does not imply the remembrance of pain, but rather a means to erase it through a solemn and ritualized act that confers a sense of justice. Forgetting demands and proclaims its own rituals and public ceremonies, as well as the manifestation of time. Forgetting, far beyond a merely temporal event, is a deliberate act, a proclamation, an ethical stance. Nevertheless, in modern society’s perception, despite being just, revenge is not synonymous with justice. In the penal paradigm of modernity, the recognition of the victim has always been tied to these negative and monstrous images: malice, humiliation, hatred, and painful memory. The role assigned to the victim in the dramaturgy of criminal justice has been limited to making itself heard, as a hidden supporting character, through “[...] the hateful cry of wicked revenge”. In these terms, “acknowledging the victim’s suffering meant, then, condemning oneself to allowing the dark poison of uncontrollable violence to seep into the court, leading us into a whirlwind of hatred. This risk had to be measured by revisiting the narrative of revenge”¹⁴⁰

It is in this sense that such “[...] narrative of revenge, which was meant to reassure us in our refusal to allow the victim an active role in determining punishment, gave rise to other ethical figures: not instinctive malice, but ritualized duty; not humiliation, but challenge; not hatred, but exchange; not painful commemoration, but the ceremonies of forgetting. However, it is necessary to take this narrative of revenge for what it is — precisely a narrative. It is not a matter of exalting revenge or

defending its rights. Rather, it is simply to acknowledge that, in the archaic scenario of revenge, as reconstructed by historians of pre-archaic Greece and as ethnologists describe the ‘vindictive system’, there is an implicit outline of a certain sense of justice, which revenge narratives stage in an externalized form. As an epic, revenge serves as the outward symbol of a notion of the just. Beyond the narrative itself, it is this sense of just that we must now seek to recover. What is it that makes revenge just? For even if it is not justice, revenge remains, nonetheless, just. And by rethinking the meaning of this being just, we may illuminate the foundations of a new justice: the journey from just vindicative to relational justice”¹⁴¹ However, in the West the prevailing notion remains that only through the renunciation of revenge can justice and punishment be achieved — despite the existence of ethical texts that describe vindicatory justice, particularly the writings of Aristotle and Nietzsche.

3. MATTIE ROSS AT THE CROSSROADS OF TORTUOUS MOUNTAINS: BETWEEN THE POISONOUS BITE OF REVENGE AND THE EFFORTS FOR THE JUST VINDICATIVE AND THE RELATIONAL JUSTICE

After a failed ambush in which the criminals managed to escape, a heated argument within the group at the night camp nearly puts an end to the expedition, to Mattie’s despair. At dawn, however, the girl walks to the river in search of water and, to her astonishment, spots Tom Chaney on the opposite bank, cooling off and watering his horses. The fugitive looks in her direction, slowly approaches, and with a tone of surprise, says: “Well now I know you. Your name is Mattie. You are little Mattie the bookkeeper. Isn’t this something.” Mattie responds immediately: “Yes, and I know you, Tom Chaney.” The criminal then asks: “What are

you doing here?” Trying to deflect, as if avoiding the core of the issue between them, the girl replies: “I came to fetch water.” But Chaney persists: “I mean what are you doing here in these mountains?” Finally, Mattie reveals the true reason for her presence in such a remote and hostile place: “I have not been formally deputized but I am acting as an agent for Marshal Reuben Cogburn and Judge Parker’s court. I have come to take you back to Fort Smith. [...] If you refuse to go I will have to shoot you.” This unexpected and forced encounter with her father’s killer establishes a sort of hollow, misshapen genesis – a crude semblance of relational justice, bringing victim and aggressor face to face. Yet, in the absence of a mediator, a public ritual, or established rules and procedures, any possibility of restoration is rendered unfeasible, as it allows brute force to prevail. Unsurprisingly, Chaney refuses to submit to a mere girl’s command and moves toward her, to assert his dominance through violence. However, Mattie is armed, stands her ground, and on the brink of her own downfall she shoots him.

At that very moment, it becomes clear that Mattie could have simply fired at the fugitive, let her hatred course through her veins, and put an end to her desire for revenge. But that is not what happens. Instead, she intends only to take him to Fort Smith, stating that she is acting in the name of Marshal Cogburn and Judge Parker’s court. She seeks, at all costs, a different kind of revenge – one with a certain ethical appeal. The shot hits Chaney in the shoulder, but he remains standing and advances toward her. Mattie attempts a second shot but the gun misfires. The criminal then overpowers her and takes her to his gang. At this point, the feared outlaw Lucky Ned, the gang’s leader, steps in to mediate the conflict. He prevents Chaney from acting violently against the girl and decides to hear her out: “What happened?” - he asks. Calmly and with her characteristic bravery, Mattie challenges the gang leader and lays out the factual and legal grounds of her vindictory claim: “I will tell you what and you will see that I am in the right. Tom Chaney there shot my

father to death in Fort Smith and robbed him of two gold pieces and stole his mare. I was informed Rooster Cogburn had grit and I hired him out to find the murderer. A few minutes ago I came upon Chaney watering the horses. He would not be taken in charge and I shot him. If I had killed him I would not be now in this fix. My revolver misfired." The criminal, impressed, responds: "They will do it. It will embarrass you every time. Most girls like to play pretties, but you like guns do you?" Mattie quickly rebuts: "I do not care a thing in the world about guns. If I did I would have one that worked." At this moment in the dialogue, Chaney, embarrassed, interjects: "I was shot from ambush, Ned. The horses was blowing and making noise. It was that officer that got me." Immediately, in an indignant tone, Mattie replies: "How can you sit there and tell such a big story?" Losing his composure, Chaney turns to threatening her: "That pit is a hundred feet deep and I will throw you into it and leave you to scream and rot! How do you like that?" Ned interrupts: "No, you won't." Mattie reinforces the gang leader's authority: "This man will not let you have your way. He is your boss and you must do as he tells you." Even in this rough and makeshift arbitration, poorly mediated by the leader of a criminal gang, Mattie invokes the authority of the law, recounts the criminal acts that demand revenge and reparation, and emphasizes that she only shot Chaney because "he refused to come peacefully". Once again, blood revenge was not her goal. She sought something beyond the principle of an eye for an eye. Her true desire was to bring him before a court. She does not care about guns. She prefers rules, settlements, agreements, rituals, and sacrifices. Once again, she insists on making the events public, even if only before the twisted and fearsome eyes of Lucky Ned, refusing to accept the lies told by Tom Chaney. Above all, she seeks to reaffirm, before everyone present, her sense of dignity and the balance that Chaney's actions had disrupted. Mattie Ross's stance makes it clear that revenge does, indeed, contain an ethical substance - one that transcends blow for blow, blood for blood.

According to the precise terms of Frédéric Gros, there is indeed justice in revenge, just as there is also revenge in justice. And the justice of revenge lies precisely in this pursuit of the self, which restores identity and intersubjective recognition. It is precisely Aristotle who provides us with a masterful set of lessons on this subject. The logical architecture of his thought is enshrined in his fundamental assertion about justice. Given his conception of the political community and his perception on human dignity, justice, as “[...] an exercise of perfect virtue”, is shaped by the principle of equality. Aristotle notes, at the very beginning of the famous Book V of *Nicomachean Ethics* that “[...] ‘the just’ therefore means that which is lawful and that which is equal or fair, and ‘the unjust’ means that which is illegal and that which is unequal or unfair”. Therefore, to judge is to equalize, to restore a broken, torn equality.¹⁴²

Supported by laws crafted by free and equal individuals, always aimed at the well-being of the community, justice can be seen as a “perfect virtue” only when woven concretely, in the heart of real conflicts. According to Aristotle, “[...] this justice is a perfect virtue but not in absolute terms, rather in relation to another”. It is, therefore, a virtue built from a concrete relationship, never capable of being defined or grasped in a mathematical, disembodied, abstract, absolute, or transcendent manner. Consequently, for Aristotle, as Frédéric Gros asserts, the act of punishing is not merely drawn based on an arithmetic compass. It is, in fact, rooted in the ethical situation of revenge. In fact, “[...] this ethical root is anger. The demand to punish does not come from a suffering to be assuaged, but from an anger to be honored”. And here it is necessary to revisit Aristotle’s precise definition of anger: it is, as he writes in the *Rhetoric*: ‘a dark desire (*Orexis meta lúpēs*) for public revenge (*Timōrias phainomenēs*) in response to a public manifestation of contempt (*phainomenên oligōrian*) for oneself or for one’s kin, this contempt being undeserved’. Leibniz will nearly quote this definition verbatim: ‘anger is a desire to harm in response to a contempt’. [...] The ethical origin of revenge is less about suffering and

more about anger. The ethical root of the crime is less about violence and more about contempt.¹⁴³

Following this line of thought, the ethical root of crime lies in contempt, in the absence of recognition (Honneth), or in the “blocking of the face” (Levinás), since aggression and crime never aim merely bodies or wealth. Based on its ethical perspective, the criminal act precisely proclaims a public manifestation of contempt, in which the aggressor, by attacking us, reduces our power to nothing. However, it is important to remember that in Aristotle’s model, there is a structural separation between individuals. For Aristotle, the equal — the one entitled to anger — was exclusively the free citizen. Thus, the origin of revenge resides precisely in anger, the pursuit of honor, rather than in suffering. Conversely, the ethical root of crime is based on contempt, not in mere violence, as the aggressor’s conduct fundamentally expresses public disdain for the victim. At this point, the anger of revenge is deemed necessary and capable of restoring the damaged public image, whereas its absence is equated with servitude. In Gros’ terms: “[...] the anger of revenge, as a response to contempt, is not regarded here as a lamentable violence of the soul, nor as a sign of an inability to master oneself. Enrage oneself is not to surrender to violent instincts, but rather to put one’s public image at stake. Anger denotes the energy required to restore an external image of oneself that has been seduced by aggression. This is why the absence of anger is strongly condemned: ‘one is then seen as unfeeling toward offense, and experiencing no distress from it, and from the moment one is unable to become enraged, is incapable of defending oneself. Indeed, when one is slandered and endures it, and when one’s own kin are insulted and we face it with indifference, this is, in the eyes of all, to possess the soul of a slave.’ [...] By refusing to enrage, one loses the dignity and honor of being a man – or, more precisely, for Aristotle: the very status of being free and a citizen. Indifference to offense serves to justify it.¹⁴⁴

Is revenge not, therefore, an act that seeks to restore equality between the parties –the offender and the victim? Moreover, for revenge to take place, there must be recognition: for an imbalance to exist, there must first have been equality. In this sense, anger is systematically understood as the force that reaffirms, in response to an act of cruelty, the social dignity of the offended party. Conversely, to become enraged over everything and nothing is equally condemnable by Aristotle; yet, an excess of anger seems preferable to its complete absence. To go beyond all measures, to seek revenge for everything and for nothing, is to lose sight of the nobility of vindication. In the same way, Nietzsche, in describing *vendetta* – a duel between equal adversaries – establishes a distinction between adversary and enemy. Against the former, revenge is possible; against the latter, only defense is justified.¹⁴⁵

Indeed, the defining characteristic of revenge is the pursuit of the self. As a means of restoring balance to a relationship disrupted by an offense, revenge is not sought out of cruelty or pleasure. Rather, beyond the restoration of one's public image, it aims at reclaiming one's own self-image – recovering self-confidence and mending the wounded integrity, without which the inevitable consequence would be only one: mutilating self-contempt. The very process of identity formation and self-esteem, always structured through an active relationship with the other, demands it. In this sense, revenge, when considered in its strictly ethical dimension, activates this structuring of the self in the face of the tragic nature of an unfortunate encounter. It is based on this pursuit operation of balance, for it restores, restitutes, and equalizes relationships. Revenge is devoted to reestablishing a social image of the self – a self whose integrity has been shattered, unsettled by aggression. As Gros states, the ethical lesson of revenge is clear: “[...] to take revenge is to publicly assert one's power and, through that manifestation, to reclaim a self-esteem that has been disturbed”.

Revenge is, therefore, the exercise of a reciprocal action (*antipoiēsis*). As such, “revenge entails an *antipoiēsis*, that is, an assertion of one's

power and an attribution of value in relation to the one who has called it into question. Indeed, what a crime, an injury, an offense, or a wrongful act shatter is confidence in one's integrity – an integrity that is dynamic and vital. Becoming the object of violence, whether physical or verbal, erodes one's confidence in oneself, in one's ability to act and to live in accordance with one's own essence. It becomes absolutely necessary to react not merely to dispel self-doubt, but to prevent self-contempt. For without revenge, without a response, the contempt demonstrated by the offender in attacking us appears justified and ultimately turns into self-contempt. One does not seek revenge out of morbid cruelty, suspicious pleasure, or unrestrained rage, but rather to reclaim self-esteem and to guard against the degradation of one's own sense of worth^{2,146}

At this point, avenging anger, in its ethical nobility, is the first step toward that reconquest. This is because Aristotle took care to distinguish fundamentally between anger (*orgê*) and hatred (*ekhtra*). He states that time can heal anger (*iaton khronoi*), but hatred is incurable; anger arises from offenses that affect us personally (*tôn pros auton*), whereas hatred can be felt even without any personal reason (*aneu tou pros hauton*). According to Gros, “[...] what differentiates anger from hatred is, therefore, the way in which the self (*hauton*) reconstructs itself, imposing an objection to the other. In anger, the self restructures and redefines itself in response to another self that had wounded it, against which it now asserts its power. Hatred, on the other hand, is pure appetite for destruction. It relates to masses and collectives. It is pure negation, whereas anger aims at positive recompositions of the self. Aristotle further adds: ‘anger is a desire to cause pain (*lupês*); hatred is a desire to cause harm (*kakou*). Who is enraged wants to witness this pain; to hatred, this is of no importance.’ [...] A man who seeks revenge needs the one against whom he wants revenge to understand where its suffering comes from, without which the act would be futile. For this suffering is not an end in itself but carries within it an affirmation of

value – one that demands to be realized in a public space, where it can exist in the eyes of all”¹⁴⁷

In this sense, while impunity justifies and leads to contempt, anger fuels revenge, which transforms contempt into a challenge – the challenge of reclaiming oneself. Thus, “to take revenge is not to oppose violence with violence. If it is true that the opposite of violence is not peace, but rivalry. Because peace is always an armed peace. To take revenge is not to return blow for blow, in a blind and obstinate demand for arithmetic balance. It is not about exacerbating violence but regulating adversity”. The purpose of revenge, therefore, does not lie in humiliating the aggressor or in responding to violence with violence, but in elevating him to the status of an adversary in order to recover one’s own dignity. Thus, “[...] it is still an ethical metamorphosis that must be considered. Revenge shifts the meaning of the crime: it transforms the contemptuous aggression into a challenge, the penalty demanded by indignant anger into a means of regaining self-confidence, a social image of the self-long referred to as ‘honor’. By punishing, the aim is not to humiliate the other, nor to bring him down to the level to which he had reduced us. So little is the other humiliated that, from offender, he is elevated to the dignity of an adversary. It is not a matter of repaying offense with offense, contempt with contempt, humiliation with humiliation”. Revenge is about reclaiming the self at the very point where it was weakened. The offender thus becomes a rival. And by transforming offense into a challenge, humiliation dissipates, leaving only the flash of retribution. Nothing is less negative than this appetite for justice carried on the wings of anger. What the concept of revenge as rethought by Nietzsche and Aristotle seeks is, ultimately, an ethical substance: self-confidence, self-esteem, and dignity.¹⁴⁸

Mattie Ross’s actions seem to be guided by these symbolic horizons. From the beginning, she rejects humiliation, mockery, and the torture of her father’s murderer. She does not wish to spit in his face or rub pepper

into the open wounds on the soles of his feet at the hands of his vigilante. It is not blind, deadly private revenge that she seeks. Her desire is to restore, within her community, an image of herself that was shattered by Chaney's violent act. What she longs for is to take him to Fort Smith so that the public rituals of punishment may take their course. She still has the time and presence of mind to exchange a few more words with Lucky Ned, recounting unwanted deaths that occurred during the expedition. She even has the sensitivity to offer him the assistance of her "good lawyer". However, her efforts toward just vindictive and relational justice fail. Lucky Ned decides to leave with his gang, leaving Mattie in Chaney's custody, instructing him to wait until nightfall before rejoining the group, as there are not enough horses. Neither of them accepts this arrangement passively. Chaney shows fear of being captured. Mattie, in turn, expresses her fear of being also killed by her father's murderer: "I am not staying here by myself with Tom Chaney." "That is the way I will have it" – Lucky Ned replies curtly. The girl pleads once more: "He will kill me. You have heard him say it. He has killed my father and now you will let him kill me." Ned retorts: "He will do no such thing." Then he orders: "Tom, you know the crossing at Cypress Forks, near the log meetinghouse? When you are mounted you will take the girl there and leave her. Do you understand that, Tom? If any harm comes to this child you do not get paid." Once again, they are alone, face to face, with no mediation. A dialogue begins, in which Mattie once more proposes a negotiated solution, a settlement constructed by the conflicting parties.

But Tom Chaney is truly a violent man. No rule, no agreement restrains him. He throws Mattie to the ground and lunges at her, knife in hand. At the last moment, officer LaBoeuf appears and strikes Chaney on the head, knocking him unconscious. Surprised and relieved, the girl asks: "Mr. LaBoeuf, how is it you are here?" "I heard the shotsh and went down to the river." Cogburn outlined a plan. "But that izh a pit there" mind your footing. Hizh part, I fear, izh rash. He returnzh for

Lucky Ned”, the Texan officer explains. While Cogburn ambushes Ned’s gang on the road, LaBoeuf and Mattie watch from the mountaintop. The situation is dire – four outlaws against the fearless Marshal. A gunfight on horseback ensues. Cogburn shoots them all but is also hit, falling to the ground with his horse. Severely wounded, Ned approaches to finish off the old vigilante. From above, LaBoeuf fires a precise shot with his Sharps rifle, a weapon prized for its accuracy, striking Ned. At that exact moment, Tom Chaney regains consciousness and retaliates, hitting the Texan officer on the head. Acting in self-defense, Mattie struggles with Chaney for control of the rifle, manages to seize it, and finally shoots her father’s murderer in the chest, killing him. The force of the high-caliber gunshot propels the girl backwards, throwing her into the very pit LaBoeuf had warned her about.

The pit is deep and dark, and the girl plummets until she becomes entangled in roots and branches within it. Thus, the pursuit of just vindicative and relational justice gives way to blood revenge. If “a bloodstain does not age”, the absence of a sacrificial rite inevitably leads to a bloody confrontation. The lack of one leads to an encounter with the other. “Nothing in this life is free”, Mattie Ross has proclaimed since the beginning of the story. When rituals and procedures of reparation, sacrifices to contain internal violence, are frustrated or disregarded, blood revenge rises again, fearless, unyielding, and untamed. No one deceives violence except by offering it something it can devour. But violence, too, exacts a price, if nothing in life is truly free. After carrying out her blood revenge, Mattie is thrown into the depths of the dark pit, caught in roots and branches. She disturbs a nest of venomous snakes. Desperately, she struggles to break free, but to no avail. The snakes slither over her body. At that moment, the old Cogburn appears, lowering himself into the pit, supported by a rope tied to his horse. Yet, Mattie is bitten on the hand. Cogburn cuts and enlarges the wound with a knife, attempting to suck out the venom. From above, LaBoeuf pulls the rope, lifting them out of

the crater. A snake bit her. The poison of blood revenge – the other side of just vindicative – was inside her veins and has infected her own blood. The destructive and deadly revenge has taken its toll. Indeed, Mattie was right from the start: “nothing in this life is free”. She, too, has paid the price, in one way or another. The venom courses through her veins. She grows weak and dizzy. The nearest doctor is far away. The journey ahead is long and grueling. She may not survive. Cogburn takes off at full gallop with the girl in his arms, both riding the horse “Little Blackie”. The sun sets, and they ride on into the night. “Little Blackie” is exhausted. Fevered delusions cloud Mattie’s mind. She cannot remember that she killed Chaney. She believes the outlaw is escaping. “Little Blackie” collapses, exhausted. Without hesitation, Cogburn sacrifices the horse, to Mattie’s despair and sorrow. The old man carries the girl in his arms, pushing himself to the limits of his strength, until he reaches the doctor’s cabin.

A quarter of a century later, from the train window, Mrs. Mattie recalls every moment of her saga of revenge. The snakebite caused her to lose part of her left arm. The poison of blood revenge claimed, as always, its due: her beloved horse “Little Blackie” and an amputated arm. The process of just vindicative, interrupted by circumstances, blocked by the unexpected turns of factual situations, led Mattie into a crossroads, where the path of blind revenge was ultimately taken. The reparation was made through the crooked path of blood revenge, which did not allow for a full restoration, one capable of enabling forgetfulness. The painful memory remained vivid until the end.

3

**THE *PUNITIVE*
IMAGINARY IN
THE ADVENTURES
OF MODERNITY:
CRIMINOLOGICAL
THOUGHT BETWEEN
REGULATION
(SOVEREIGN POWER)
AND EMANCIPATION
(LIFE WORTH LIVING)**

INTRODUCTION

According to Marshall Berman (2003, p. 10), *modernity* should be understood as “a type of vital experience – an experience of time and space, of oneself and others, of the possibilities and dangers of life – shared by men and women today”. The author states that “to be modern is to find oneself in an environment that promises adventure, power, joy, growth, self-transformation, and transformation of the things around us – but at the same time threatens to destroy everything we have, everything we know, everything we are”. Therefore, “it is to be part of a universe in which, as Marx put it, ‘all that is solid melts into air’”.

In this very sense, Berman (2003, p. 10 and following) points out that the whirlwind of modern life has been fueled by numerous sources: “major discoveries in the physical sciences, which have altered our idea of the universe and our place in it; the industrialization of production, which transforms scientific knowledge into technology, creates new human environments while destroying old ones, accelerates the very pace of life, and generates new forms of corporate power and class struggle; a massive population explosion, displacing millions of people from their ancestral habitats and pushing them onto the paths of the world in search of new lives; rapid and often catastrophic urban growth; dynamic mass communication systems that bundle and bind together the most diverse individuals and societies; increasingly powerful national states, bureaucratically structured and managed, striving relentlessly to expand

their power; mass social and national movements challenging their political and economic rulers, fighting to gain some control over their lives; and, ultimately, a global capitalist market, drastically fluctuating and perpetually expanding, directing and manipulating people and institutions alike". Thus, the American author divides the "history of modernity" into three phases: the *first phase*, spanning from the early 16th century to the late 18th century; the *second phase*, ushered in by the great revolutionary wave of 1789-90; and, in the 20th century, the *third and final phase*, in which the modernization process expands to the point of encompassing virtually the entire world.

Indeed, criminological thought is embedded in this whirlwind of events that define and inaugurate the "adventures of modernity". These new vital experiences of space and time, thought, and modern ways of life which radically dismantle the structure of the feudal social world, profoundly shape the imaginary foundations of a new body of knowledge about crime, the criminal, and punishment, now ostensibly guided by reason and science.

All these numerous and radical transformations that shape the constitution of the modern world indeed give rise to new forms of political organization and new patterns of sociability, built upon the foundations of individualism and the capitalist mode of production. In light of this, the modern political imaginary clearly takes on contours that are quite distinct from those offered by classical thought.

From a hierarchical and verticalized society, anchored in rigid moral and religious standards, there is a transition to a world founded on relative values. From a stable and stagnant economy, market exchange relations and production for trade emerge. On an individual level, from a society previously defined by rigid statutory distinctions, based on class or estate, an abstract individuality emerges, shaped by the selfish principles of pursuing pleasure and avoiding pain (Capella, 1997; Beaud, 1987; Barcellona, 1989; Bobbio, 1999).

In this context, the gradual decomposition of the feudal order — characterized by the decentralization of political power and the fragmentation and pluralism of its legal structure, gives way to the consolidation of a new form of political organization and domination. The centralized and bureaucratic state, in its absolutist form, gradually emerges from the 14th century onward as the institutional framework necessary for the pluralistic, individualistic, and competitive world of the nascent liberal-bourgeois society. Conversely, anti-absolutist struggles and the need to break away from a type of rationality deeply tied to religious faith become the defining features of this new social order. While modern science seeks to produce a new interpretation of the world without reliance on the dogmas of Christian faith, liberalism emerges as the political expression of a world built upon the plurality and relativity of conceptions of the good and of a life worth living (Santos, 2001; Bobbio, 1990; 1992, 1997a; 1997b; 1997c; Gauer, 2002).

Amid these intricate modern adventures, a new body of knowledge on crime and the criminal emerges as a consequence of this mode of understanding the political and social world. The bourgeois society draws upon an original, politically oriented theoretical arsenal to establish the standards for defining the delinquent individual and the deviant behavior. Thus, the main objective of this text is to trace the genealogy of penal control in modern society. It seeks to frame as a central horizon of analysis the need to situate the gradual constitution of punitive symbolic representations within the dynamics of political and social conflicts, in order to grasp both the stated and the latent or actual functions of punitive discourses and their concrete practices. The aim is, thus, to understand the realm of *punitive imaginary*¹⁴⁹ in modernity in light of the intrinsic relationships and tensions between the mechanisms legitimizing the established order and the emancipatory aspirations or instituting forces (Castoriadis, 1982).

From this interpretative framework, the study seeks to address the following central question: for what reasons and in what ways does

criminology — as a science that emerges within capitalist modernity — primarily establish a set of punitive discourses and practices aimed at ensuring the instituted social order, with the political objective of banishing conflict, the instituting forces from the social and historical sphere, and ultimately eliminating the very modern idea of human dignity?

In this regard, as Pavarini proposes: “under the term criminology, one can encompass a plurality of discourses, a heterogeneity of objects and methods that are not mutually homogenizable but are oriented (...) towards solving a common problem: how to guarantee social order”. Therefore, the author warns that behind every criminological reflection, there is always a concern with social disorder and the threat to the established order (Pavarini, 1999, p. 18).

Ultimately, the aim is to discern the internal contradictions inherent in the socio-cultural project of modernity, particularly within its punitive symbolic representations. These contradictions manifest in the political and legal affirmation of values and principles such as equality and human dignity, while simultaneously clashing with the regulatory synergies involved in imposing a hegemonic definition of capitalist social reality and the punitive strategies designed to preserve it.

This investigative path aims to be based on the theoretical frameworks of *critical criminology* and the *genealogy of power* developed by Michel Foucault. This theoretical framework significantly broadens the horizons of meaning for understanding the functions of the penal system in capitalist societies, signaling in an extraordinary way the relations between criminology, the struggle for power, and the demands for order inherent to bourgeois modernity (Batista, 2011, p. 19).

In strict terms, the role played by the criminal justice system in capitalist societies has long been uncovered by a “sociology of punitive society” that, breaking with etiological views on criminals and society, realized that the explanation of violence and penal control must penetrate the rationality that governs social order. As emphasized by Figueiredo

Dias and Costa Andrade (1997, p. 246), it is impossible “to think about deviant behavior without reference to an objective and heteronomous normative order that ‘reduces the complexity’ arising from the openness of men to the world and life, making interaction possible. On the other hand, and inversely, the existence of a social order – as the imposition of a given definition of social reality – necessarily implies strategies of legitimization, defense, and, therefore, punishment”¹⁵⁰.

Especially from the interactionist perspective (symbolic interactionism or *labeling approach*), it was possible to overcome positivist views of deviant behavior and society, and “highlight the fact that neither human nature nor society can be regarded as stagnant data or immutable structures. This applies to personal identity, which must be understood as the dynamic outcome of the process of involvement, communication, and social interaction” (Dias & Andrade, 1997, p. 345).

Such a theoretical stance radically buried individualistic and social etiological theories, which, in their genesis and structure, “continue to pay homage to the fundamental representations of positivism: the acceptance of the social order as a given; the belief that crime can be substantiated as something intrinsically bad and that the criminal is necessarily *different* from the ordinary citizen; the postulate that crime always results from factors that leave no other behavior alternative” (Dias & Andrade, 1997, p. 244).

Thus, crime emerges as a component deeply related to the socialization process of individuals - inevitably complex, conflicting, and contradictory. “Deviant behavior,” in turn, is not limited to punishable behavior, that is, behavior defined by law as a crime, but rather behavior that individuals, in the dynamics of interaction processes, define as such. Thus, the quality of “punishable” does not mean the intrinsic nature of a behavior, its essence as reprehensible behavior, but rather the result of a definition and selection through instances of social control (Hassemer & Muñoz Conde, 1987, p. 57 and following).

The unveiling of the relationships between various criminological discourses and the social production of the denial of conflict and intersubjective recognition (human dignity) requires a profound upheaval of the still-hegemonic linguistic framework. This is the guiding principle of the present investigation, as it perceives the modern punitive imaginary as an instrument of reproduction of the bourgeois order and social defense. It seeks to interpret social conflict from a pathological perspective and, therefore, denies the very modern idea of human dignity, understood as the outcome of complex interaction processes, while privileging a particular conception and definition of social reality that primarily serves the interests of the hegemonic sectors of society.

1. ON THE GENEALOGY OF MODERN *PUNITIVE IMAGINARY* (OR *PENAL FIELD*): THE *CRIMINOLOGICAL THOUGHT*, THE SCENES AND THE RITUALS OF A "METICULOUSLY REPEATED VIOLENCE"

Taking seriously the warnings of Figueiredo Dias and Costa Andrade mentioned above, the attempts to engender an understanding of violence and the role of penal control in a given historical, political and economic context must, first and foremost, try to penetrate and reveal the rationalities that govern social order.

Thus, the development of a genealogy of the punitive imaginary (criminological thought) has as its main objective "to mark the singularity of events", but even "to spy on them where they were least expected and in that which is considered to have no history", in order to finally "seize their return not to trace the slow curve of an evolution, but to rediscover the different scenes where they played distinct roles; and even to define the point of their gap, the moment in which they did not happen". In

this sense, Foucault (1996, p. 15-16) emphasizes that “genealogy is not opposed to history as the philosopher’s lofty and profound vision is to the scientist’s mole-like gaze; it is opposed, conversely, to the metahistorical unfolding of ideal meanings and indefinite teleologies. It is opposed to the research of the ‘origin’”.

Therefore, it is less a matter of questioning the “origin” of the modern criminal justice system and more of breaking the “ideal meanings” and the “indefinite teleologies” of its *metahistorical* unfolding, established by the dominant scientific (criminological) discourses. Strictly speaking, it is above all a matter of reviewing the history of penal ideas, always constructed from “a fulcrum outside of time” which “aims to judge everything according to an apocalyptic objectivity”, supported by the assumption of eternal, immutable truths, and supported by a “consciousness always identical to itself”. For this reason, “genealogy reestablishes the various systems of submission: not the anticipatory power of a meaning, but the casual play of dominations” (Foucault, 1996, p. 23), as opposed to a supposedly neutral, objective and universal historical knowledge. In the light of this, according to Foucault (1996, p. 23-25) it is possible to perceive that “neither the relationship of domination is a ‘relationship’ any longer, nor is the place where it is exercised a ‘place’. And it is precisely for this reason that at each moment in history domination is fixed in a ritual; it imposes obligations and rights; it constitutes careful procedures”.

With this, the penal system can be more clearly perceived as “a universe of rules that is not intended to soften but to satisfy violence”, where “the rule is the calculated pleasure of obstinacy, it is the promised blood. It allows for the constant reactivation of the game of domination; it stages a meticulously repeated violence” (Foucault, 1996, p. 25).

In the specific context of the punitive imaginary, the historical perspective of penal ideas persistently rejects genealogy in favor of a universalist and abstract history. Such history is covered with “ideal

significations” and “indeterminate teleologies”, always more inclined to serve the official justification of the satisfaction of violence and the delight of calculated pleasure of obstinacy, the institutionally promised blood, rather than to acknowledge history as the emergence of competing interpretations, as an uninterrupted interplay between instituted positions and instituting forces, as proposed by the philosophical acumen of Castoriadis (1982).

However, the construction of this new scientific, genealogical approach has been acutely postulated in Brazilian criminology by scholars such as Salo de Carvalho (2004), Vera Andrade (1998), Vera Malaguti Batista (2011), Nilo Batista (2001), Raúl Zaffaroni (1988), and Juarez Cirino dos Santos (2007). They emphasize the need to overcome any and every closed system of thought that eliminates the space for transdisciplinary critique, as well as the absolutist theoretical models that impose a severance of knowledges intended for a reassessment and revision of the hegemonic history of penal ideas.

Examining the rituals of power exercised by the penal system — its meticulous procedures and the universe of established rules, which serve more to satisfy violence than to domesticate it —, is essential to determining the extent to which punitive discourses and practices can be reconciled with the symbolic horizons of human dignity (understood as equal intersubjective recognition). Is there, then, any possibility that the criminal justice system can operate within the limits required for the protection of human dignity? Furthermore, to what extent does the entrenchment of this principle, as an imaginary source for the discourses and practices of penal institutions, constitute an insurmountable contradiction? This is the fundamental issue under investigation. If the rules of the penal system “stage a meticulously repeated violence”, it is crucial to consider what actual contribution the punitive imaginary makes to the struggle for the realization of the dignity of concrete historical individuals.

2. THE IMPLEMENTATION OF THE *PUNITIVE IMAGINARY* OF MODERNITY: THE CLASSICAL SCHOOL AND THE TENSIONS BETWEEN THE EMANCIPATION FROM MEDIEVAL TRADITION AND THE REGULATION OF THE EMERGING CAPITALIST RELATIONSHIPS

Anchored in a formalist perspective of Law and society, it becomes evident that the ideology of the modern *legal-criminal field*¹⁵¹ emerges intrinsically marked by a fatal and insurmountable tension between the emancipatory dimension of the human condition — embodied in the ideals of equality and human dignity, deeply rooted in the characteristic individuality of modernity — and the regulatory synergies projected by institutions and practices designed to ensure the unity of a plural society, composed of increasingly distant, detached, and fragmented individual consciences (Dumont, 2000).

Law and the administration of justice would thus play the role of catalysts for collective consciousness, which is artificially constructed with the aid and dependence of norms and sanctions institutionalized by the State. Punishments and prohibitions would serve to inscribe, in individual consciences, the remembrance of the law, that is, the constant and suffocating reminder of a universal collective consciousness.¹⁵²

From a formalist perspective, the penal system would, ultimately, bear this more drastic and severe remembrance, capable of immediately restoring credibility to the legal order and collective life. As a technique of social control, which operates through the centralization of state violence, the modern legal-criminal field would have as its essential function to elevate the positivization of a given rationality, that is, a *competent discourse*, a discourse of knowledge and power, capable of justifying it.¹⁵³ Such language, crafted as an articulation of a *field of rationality*, would allow the social actors involved

to engage in communication that is recognized, permitted, and institutionally authorized.

In the ventures of modernity, the monopoly on the legitimate use of physical violence claimed by the State, according to Max Weber's classic notion, resulted in the absolute specialization of legal language, as it was entrusted solely to the Judiciary to pronounce the law on the conflicts brought before it. The rational-legal domination, articulated normatively and bureaucratically, capable of promoting security, certainty, and predictability for political decisions and modern social life, in a true "disenchantment of the world", built a bureaucratic body and a rationality whose primary function would be to control and limit political power through legal regulation (WEBER, 1992).¹⁵⁴

The state's monopoly on the exercise of penal control, limited to the bounds of legality and confined to institutional mechanisms of enforcement, would make the Judiciary an organ capable of strengthening the social bond by balancing the unconditional application of punishments, sanctions, and interdictions with respect for individual identity and autonomy. Therefore, in the very genesis of the modern criminal justice system, the tensions between emancipation and regulation, between the affirmation of personal identities and the promotion of social unity through the institutionalization of interdictions and prohibitions, or, in other words, between instituting law(s) (and society) and instituted law(s) (and society), would be embedded.

In this process, the costly transition from a traditional hierarchical society to an egalitarian and pluralistic society is part of a broad scenario of profound economic, political, and sociocultural transformations. These ruptures mark the beginning of the paradigm of modernity, which, according to Santos (2001), emerged from the 16th and 17th centuries as an ambitious and revolutionary sociocultural project rooted in a dynamic tension between social regulation and human emancipation. Although ambitious and revolutionary, this project presents numerous

internal contradictions. While it allows for the opening of a vast field of social and cultural innovations, the complexity of its constituent elements makes it virtually impossible to avoid instances where the fulfillment of its promises is, in some cases, excessive, and in others, insufficient.

Santos (2001, p. 15) points out that “both excesses and deficits are inscribed in the paradigmatic matrix. The paradigm of modernity seeks a harmonious and reciprocal development of the pillars of regulation and emancipation, and it also seeks this development to invariably result in the complete rationalization of collective and individual life”¹⁵⁵

While the State appears as an unequivocal dimension of the pillar of regulation, aiming to establish unity in a world marked by plurality and relativity of conceptions of the good and just life, the recognition of men as a subject of rights and Human Rights emerge as a fundamental requirement of the pillar of emancipation. This forces the project of modernity to be confronted, from the outset, with the need to balance the monumental power of the centralized State with the atomized subjectivity of free and equal individuals before the law (Santos, 1999; Andrade, 2003).

Indeed, bourgeois political struggles established the defense of the individual against abuse of power, which was previously devoid of precise legal limits, as their goal. The State is, therefore, seen as a necessary evil, requiring minimal interference in the development of individual freedom and autonomy. In this context, freedom is understood not as a shared good for the political community aimed at the fulfillment of the human being, but as a mere possibility for the expansion of individuality and the satisfaction of private interests.

In the criminal field, this political narrative projects profound consequences. The overcoming of *disputatio* (private arbitration) by *inquisitio* (absolutist inquisitorial power) represented a first step toward the confiscation of conflict by sovereign power and the gradual configuration of a new standard of (penal) legality that would inevitably reflect the

emerging foundational values represented by the new mode of production (mercantile capitalism), the bourgeois society, the liberal-individualist ideology, and the modern sovereign State. The centralization of normative production, expressed in the formal rationality of the monistic legal paradigm, corresponded to the desires of bourgeois sectors in the struggle against the resistance of the dominant reactionary segments of the land-owning aristocracy. Within the field of criminal justice system, the objective was to recalibrate punitive mechanisms and strategies, which were now to be directed at the impoverished segments migrating to cities, displaced from the ruins of the feudal social order (Foucault, 1999; Althusser, 1977).

The modern dynamics of the penal field is built upon the pillars of liberal political theory, Enlightenment philosophical conceptions, rationalist postulates, and the individualistic values of the emerging market society. Rationalist natural law and the notion that both social order and the State derive from a political contract establish new guidelines and foundations for the exercise of punitive power. The criminal justice system, previously used by the aristocratic nobility and the clergy to maintain privileges and preserve a hierarchical and stratified social structure, comes to be seen as the ultimate safeguard against degeneration into the state of nature and as a tool for the preservation of rights generated by possessive individualism.

In abstract terms, as the legitimate exercise of force carried out within defined legal limits, the modern penal field no longer aims to serve the Absolute State as a State of privileges, acting irrationally in contradiction with natural rights; instead, it seeks to provide the values of security, certainty, and predictability required by the insurgent social segments. Furthermore, the penal field, based on the assertion of formal equality among men, refuses to consider social class as a distinguishing element for the imposition of penalties (Freitas, 2001).

Situated within the ambiguous and contradictory dynamics of the paradigm of modernity, the penal field will also reflect the marks of the crisis between regulation and emancipation. If on one hand it

corresponds to the exercise of state punitive power, on the other it seeks to be covered by limits that safeguard the individual, embodied in the constitutional principles of the Rule of Law and liberal Criminal (and Criminal Procedural) Law, as well as in a fundamental principle based on the requirement of generalization and equality in the functioning of the criminal justice system where this power is institutionalized.

According to Vera Andrade (2003, p. 26), in the field of Criminal Justice, “[...] the guarantee of Human Rights thus takes on a reversed meaning: it is not about fulfilling them or resolving the conflicts related to them, but about preventing their violation where institutionalized punitive violence intervenes: the duality of regulation/emancipation translates into the demand for a criminal control with individual legal certainty (...) The greatest contribution it can make to the pillar of emancipation is, therefore, that of guaranteeing rights”.

The theoretical constructions of Feuerbach and Beccaria are, without a doubt, the most representative models of the proposal for a Criminal Law based on liberal principles, inaugurating a new ideological universe synthesized by the movement of the Classical School. Built upon contractualist assumptions, Beccaria’s work *On Crimes and Punishments* (1764/1998) establishes the essential contours for an attempt to rationalize state punishment and a definitive break from the painful practices existing under the *Ancien Régime*. The marquis passionately embraces Enlightenment culture and places the issue of the limits and justification of the power to punish, in contrast to individual rights, as the central focus of his conceptual elaboration. It is, therefore, an endeavor that seeks to signal and delineate the notion of a State limited in its power, encapsulated in the formula of the Liberal State of Law on its way to full consolidation.

Thus, Beccaria introduces the main foundations of the modern punitive imaginary, warning of the need for a rational, proportional to the offense, necessary, and humanized punitive power, so that each

punishment is not the expression of unlimited, brutal violence. Starting from the axiom that “laws are the conditions under which independent and isolated men come together in society, tired of living in a constant state of war and of enjoying a useless freedom due to the uncertainty of its preservation”, the author derives the right to punish from the “necessity of defending the deposit of the common good from private usurpations”, concluding that “any act of authority that does not derive from absolute necessity is tyrannical” (Beccaria, 1998, p. 41-42).

In addition to necessity, the author establishes the core principles of proportionality, asserting that “there must be a proportion between crimes and punishments”, of harmfulness, emphasizing that “the true measure of crimes is the *harm caused to society*”, of humanity, by radically rejecting torture and the death penalty, and of equality, by stating that “[...] to those who say that the punishment applied to the noble and to the commoner is not truly the same due to the difference in education and the infamy that is cast upon a distinguished family, I will respond that punishments are not measured by the sensitivity of the guilty man, but by the public harm, which is greater when caused by the more privileged; that the equality of punishments can only be extrinsic” (Beccaria, 1998, p. 42).

Moreover, the universality of treatment would be guaranteed by the model of abstract typification of conduct, which, through the strict and clear legal definition (principle of legality), would ensure legal security and certainty: “only laws can decree punishments and crimes, and this authority can reside only in the legislator, who represents the entire society united by a social contract” (Beccaria, 1998, p. 42-102).

By adopting rationalism as a methodological approach, the Classical School contributed to shaping a legal science built upon the pillars of authority and reason, culminating in the codification movement and the postulates of the so-called School of Exegesis. Thus, a rigidly state-centered conception of law was consolidated, which, under the aegis of

respect for the principle of authority (of the State), sought to crystallize the attributes of unity, centralization, systematization, coherence, simplification, and rationality in legal knowledge. In this context, the dogmas of the completeness of the legal order, the omnipotence of the legislator, and the *non liquet* doctrine reflect the obsession with security, certainty, and predictability that only a hermetic and self-sufficient legal order, devoid of gaps and antinomy, could provide (Bobbio, 1995; Carvalho, 2005).

However, still under the broad influence of rationalist natural law, Beccaria (1998) and later Carrara understood criminal punishment, respectively, as either the restoration of the social contract violated by the offender's act or as the violation of rational or divine natural laws. In fact, the stance of the Classical School reflects the previously mentioned duality of regulation and emancipation, as it represents both an attempt to completely reform the Criminal Justice of the *Ancien Régime*, strongly opposing its practices while simultaneously defining and shaping a criminal justice administration aligned with the liberal-individualist tradition (Andrade, 2003, p. 49 and following).

If on the one hand, at the ideological level, Criminal Justice embodies the aspirations for social emancipation, as it denounces the barbarity of a penal system that is heterogeneous, chaotic, obscure, and structured around the possibility of an arbitrary and unequal application of the law based on the social status of the accused – thus fostering corporal punishment and the death penalty; on the other hand, it seeks to promote and delineate the new regulatory forces of a punitive power that ensures legal certainty and respect for the rights and individual freedoms of citizens (Andrade, 2003, p. 51 and following).

In this sense, the legitimacy of the right to punish rests irrevocably on the hypothetical social contract established among individuals abstractly considered free and equal. As a consequence of this contract and Montesquieu's principle of the separation of powers, Beccaria derives

the principle of legality (*nullum crimen nulla poena sine lege*), which according to the principle of demonstrative syllogism would ensure equality and the universal application of criminal treatment, as well as legal security and certainty.

However, the abstract individualism of liberal theory, by perceiving equality as something previously taken for granted, ultimately conceals the real conditions of inequality. This is because, insofar as equality is idealized as a constitutive element of political and social order, it is articulated as an ideological construct that obscures the particular and concrete social context. Moreover, the abstract, generic, and institutionalized model of typification seeks to harmonize and homogenize the antagonistic interests within the political community, as well as to discipline and neutralize conflicts by abstracting them from the dynamics of social power relations (Ferraz Jr., 1998).

For this reason, the classical reformist movement, most notably represented by Beccaria's work, while emerging from clearly idealistic premises, played a significant ideological role in concealing reality and its antagonisms. Since the classical works of Rusche and Kirchheimer (1939/1999) and, later, through the undeniable contributions of Foucault, as well as Melossi and Pavarani and the entire critical criminological production, it has become evident that the movement's own self-perception contributed to a profound mystification of the functions performed by the modern penal system within capitalist societies. This is because the reformers laid the groundwork for viewing the emergence of the modern criminal justice system as the product of a progressive evolution from "barbarism" to "humanism", guided by reason and by men. However, the modern criminal justice system is, in fact, rooted in disciplinary necessities, more specifically in the reconstitution of the remnants of the hierarchical feudal society (Pavarani, 2003).

Foucault is emblematic in describing the genesis of the modern criminal justice system, not as a mere consequence of a necessary

evolutionary stage of legal humanization and the exercise of punitive power guided by rationalist and Enlightenment ideals, but rather as a projection of profound social transformations, particularly concerning illegality itself and, more notably, as a “technical mutation.” The author demonstrates that punishment inflicted on the body, expressed through the theatrical and public spectacle of torture, had its own internal logic. Far from being merely an expression of the absence of “civilization,” corporal punishments followed a specific mechanics of power. The lack of limits corresponded to the need to affirm the monarch’s superpower. In the Absolutist State, crime was understood as a violent offense not only against the immediate victim but, above all, against the power of the prince. Thus, “crime, beyond its immediate victim, attacks the sovereign – it attacks him personally, for the law is the will of the sovereign; it attacks him physically, for the force of the law is the force of the prince” (Foucault, 1997, p. 45).

In fact, if every offense logically entails a *crimen majestatis* and if even the most minor criminal is, in potential, a regicide, punishment serves the political function of “making the sovereign’s wrath visibly manifest to all upon the body of the offender. The spectacle of torture did not restore justice; it reactivated power” (Foucault, 1997, p. 46-50).

Thus, its spectacular and theatrical manifestation constituted an intrinsic characteristic of the punitive technology itself, which aimed to denote the assertion of the sovereign against his direct and immediate enemy who violated his political sovereignty. Therefore, the perception of crime as an act of war placed the maintenance of order and social peace, as well as the prevention of its degeneration through the anarchy of private vengeance, as primary objectives of criminal law (Rusche & Kirchheimer, 1999, p. 22).

With the emergence and consolidation of the market society, the imbalance of punishments, associated with the rise of numerous illegal activities (smuggling, accumulation of goods for speculative purposes,

etc.), which, tolerated in practice, allowed for the accumulation of wealth and worked against the monarchical power, drove the need for a shift in the exercise of punitive social control. As these imbalances come to represent a high political and economic cost, the new Criminal justice, and the disciplinary model that imprisonment was supposed to represent, aims to correspond to a new power dynamic quite different from that exercised by monarchical power. Power in capitalist society should be exercised at the lowest possible cost, and its effects should be intense and widespread: transmitted to all parts of the social body. In this regard, according to Foucault (1997a, p. 82), “[...] the reform of criminal law must be understood as a strategy for the repositioning of the power to punish, according to the modalities that make it more regular, more effective, more constant, and more finely detailed in its effects: ultimately, increasing the effects while decreasing the economic cost (i.e., dissociating it from the system of property, purchases and sales, the venality of both offices and the very decisions themselves) and its political cost (dissociating it from the arbitrariness of monarchical power)”.

Therefore, it is evident that this is not an actual victory of emancipation over the vigorous and cruel regulation of absolute monarchical power, as experienced in *Ancien Régime*, but rather a reconfiguration of regulatory synergies linked to the demands for disciplining the laboring masses essential to the advancement of rising capitalism. It is thus seen that the “humanization” of the penal field was less a result of Enlightenment ideals of liberty, equality, and fraternity, and more a consequence of the disciplinary needs for normalizing and domesticating the working masses.

The intensification of the class struggle during this period established the need for the development of new punitive strategies for the subordinate social sectors and the preservation of the constantly erupting new order. In this context, the repressive system, in response to the growing impoverishment of the peasant masses and the emerging urbanization, increases the formulation of severe laws aimed at containing potential

uprisings from insurgent segments. Thus, the increasingly evident need arises to seek new methods that make the administration of criminal law more effective (Rusche & Kirchheimer, 1999).

Thus, the need arises to abolish decentralization and the unlimited exercise of the power to punish that existed in the medieval period. A minimum of “legal certainty” is, therefore, required in defining crimes and applying sanctions. The unconditional rigor of the despotic structure must give way to a strict limitation and proportionality of the power to punish, making it, politically and economically, more effective. As Foucault (1997, p. 76) emphasizes, it was necessary, systematically and strategically, “to make punishment and the repression of illegalities a regular function, coextensive with society; not to punish less, but to punish better; to punish perhaps with a less severe harshness, but in order to punish with more universality and necessity; to insert the power to punish more deeply into the social body”.

Within the frameworks of the social system, the 18th century witnesses, according to the French philosopher, a shift in the politics of illegalities, a factor that would converge towards the reformist movement of the punitive system. Indeed, there is a transition from crimes of blood to crimes of fraud, confirming a decrease in attacks against life and physical integrity and an increase in offenses against property. Foucault further states that “[...] with the new forms of capital accumulation, production relations, and the legal status of property, all the popular practices that were classified, either in a silent, every day, tolerated form, or in a violent form, in the illegality of rights, are forcibly redirected to the illegality of goods. Robbery tends to become the primary escape from legality, in this movement from a society of juridical-political appropriation to a society of appropriation of the means and products of labor”.

The arising of the capitalist economy transforms the very structure of illegalities, which, in this phase, is more intensely directed towards the illegality of goods. From this perspective, as Foucault asserts, the

separation between the illegality of goods and the illegality of rights can be seen. A division that, in fact, corresponds to a class opposition, insofar as the subordinate classes only had access to the illegality of goods, that is, to the violent transfer of property, while the bourgeoisie had access to the illegality of rights. In other words, the possibility was reserved for them to break their own regulations and laws, fostering the operation of a vast sector of economic circulation that developed outside the boundaries of legality. Thus, while the illegality of rights, perpetrated by the bourgeois class, exhibits great tolerance, on the other hand, there is an imposition of the need for constant surveillance over property crimes. In this sense, the preservation of this structure points to the fact that “a penal system must be conceived as an instrument to *differentially manage illegalities*, not to suppress them all” (Foucault, 1997, p. 80).

In fact, the penal field inevitably assumes the role of individualization and surveillance of marginalized segments, which the prison model aimed to discipline through the imposition of prison labor. It was essential to maintain a mass of individuals who were always ready for recruitment in industrial production. In this context, the tension between emancipation and regulation is expressed through the need to reaffirm punitive strategies capable of meeting the new social demands arising from capitalist development. The maximum and only contribution that liberal criminal theory could offer to the pillar of emancipation was, therefore, the concept of *garantismo*. Thus, the goal was not merely to combat and surpass the cruelty and barbarity of a chaotic and arbitrary afflictive model, present in the medieval period, but to recreate punitive mechanisms that would allow a new form of cruelty and barbarity — the violence of the prison system — to be abstractly covered by certain minimum limits ensuring legal security and respect for the individual rights of citizens.

The ideological unity of the Classical School is sharply summarized by Vera Andrade (2003, p. 47), who perceives in this stance an “[...]”

unmistakable liberal and humanitarian political significance, as the common and central issue that governs its foundational moments and permeates its development is the issue of the limits – and justification – of the power to punish in relation to individual liberty”.

Thus, according to the author (2003, p. 47 and following), starting from the premise of the need to protect individual rights from corruption and the excesses of the prevailing institutions, “[...] it will undertake a vigorous rationalization of the punitive power precisely in the name of the need to safeguard the individual against any arbitrary state intervention. This is why the term *garantismo* may, perhaps, be the one that best reflects her rationalizing project”.

In the same direction, David Garland (2005, p. 75) rigorously describes the process of constituting the modern penal field, which is intertwined with the very emergence and consolidation of the modern State, in which the pursuit of crime ceases to be a private task and becomes a governmental responsibility, carried out in the name of the people. Therefore, the historical processes of differentiation, statization, bureaucratization, and professionalization are key characteristics of what we could call the ‘modernization’ of crime control and criminal justice. Thus, the history of modern criminal justice – like the history of the State itself – is a history of the struggle between conflicting powers, from which emerged a Leviathan State capable of suffocating disorder and delinquency.

Meanwhile, the inequalities embedded in society would be sufficient to expose the idealistic inversion of the classical proposal, as they would reveal the use of the criminal justice system also as a class instrument, since the effective exercise of guarantees would be confined to the realm of the property-owning segments. Liberal-individualist emancipation is clearly limited to a very narrow universe of individuals, while the new regulation remains brutally insidious towards the masses of emerging industrial cities.

3. THE POSITIVIST SCHOOL AND THE PUNITIVE PARADIGM OF WELFARE STATE – THE “PENAL WELFARISM”

In the course of the contradictions between emancipation and regulation that strike at the core of the modern penal field, the 19th century would witness a new chapter in this dynamic tension, since, with the rise of industrial society and organized capitalism, a transition occurs within the realm of penal knowledge, from the classical framework — initiated by Beccaria’s work and developed by authors inspired by the liberal attitude of the Enlightenment, such as Bentham, Feuerbach, Carrara, and Franz Von Liszt —, to the positivist (criminological) model, primarily inspired by the works of Cesare Lombroso, Raffaele Garofalo, and Enrico Ferri.

In liberalism, there is undeniably an unmistakable concern with the limitations of punitive power, which under absolutism haunted the bourgeois segments still stripped of political power. The classical penal framework clearly expressed this unease through the establishment of the pillars of legality, proportionality, humanism, subjective (moral) responsibility based on free will, and legal certainty and security. Later, at the dawn of the 20th century and especially after World War I, the greater state intervention legitimized a higher degree of interference of punitive social control aimed at promoting the moral reform of the convict. The development of Welfare States in Europe and, more timidly, in the U.S., spread the formation of a new penal knowledge marked by strong social ideologies. The increased state intervention in the management of social policies, aiming at the integration and improvement of the proletariat’s standard of living, did not prevent an exacerbation of punitive social control. The new emancipatory influx, correlated with the achievements and assertions of social, cultural, and economic rights, was met with a new regulatory backlash, characterized by the ideologies of “social defense”.

The Positive School ideologically synthesizes this period of changes in state functions. As Andrade (2008) aptly points out, its emergence “therefore responds to an internal redefinition of the strategy of punitive power, only admissible in the transition from the Liberal State of Law to the Social or Interventionist State of Law.” This model of knowledge rejects what it considers the excessive individualism present in classicism, that is, the defense of the fundamental rights of the citizen, thus seeking to restore the “social” element and the rights of the community affected by crime. So much that Enrico Ferri, one of its most prominent representatives, breaking with the first generation of human rights, advocated the old notion that the conditions of life inside prison should necessarily be below the minimum level outside of prison.

Garland (2005) finely analyzes this transitional period of the “penalty” of the Liberal State as what he named “penal welfarism”. According to the author, from its genesis, the penal paradigm of the Social State was based on two unquestionable axioms derived from the progressive political culture of the period. The first of these axioms considered it evident that “social reform, along with economic affluence, would eventually reduce the frequency of crime”. The second axiom, also a product of this specific historical moment, was that “the State is responsible for the care of delinquents as much as for their punishment and control”. Thus, the State should be an agent of both reform and repression, of care and control, of welfare and punishment. Criminal justice in the emerging welfare State was no longer – or at least not exclusively – a relationship between Leviathan and a rebellious subject. Instead, state criminal justice became part of the welfare State, and the delinquent subject – particularly if young, excluded, or female – came to be seen as both a needy subject and a guilty one, a client as well as a delinquent.

Such a model of correctional criminology could, at first glance, be described in its values and principles as modern. What made it modern was precisely its unquestioning commitment to social engineering, its

confidence in the State's capacity and the possibilities of science, as well as its firm conviction that social conditions and delinquent individuals could be reformed through the interventions of government agencies. In this sense, with its implicit faith in scientific reason and the perfectibility of human beings, this new correctionalist movement was a legitimate offspring of Enlightenment thought and, in many ways, represented the most refined expression of the rationalist and utilitarian ambitions of this tradition (Garland, 2005).

Within the legal-dogmatic scope, the paradigmatic shift is also precisely observed by Salo de Carvalho (2004, p. 184-187), who emphasizes that, when called upon to perform preventive functions, penal control was urged to expand its spectrum of application, adapting to numerous demands that had previously not existed. As a result, the function of the penal system in the Social State is divided according to the type of offense committed against the social contract:

- a) in relation to classic criminality (harm to individual rights), the original normative structure is maintained; however, it abandons the retributive and/or intimidatory rationalist foundations in favor of a policy of moral intervention, aimed at the rehabilitation and transformation of the delinquent;
- b) "as for crimes against the community (harm to social rights), a new legislative model is chosen, one that is suitable, from its very self-image, to meet the new expectations of industrial society". This model erodes the foundational bases of classical penal knowledge, as it leads to violations of the principles of legality in both its broad and narrow senses (exhaustive use of empty penal norms and the prevalence of vague, and porous criminal types filled with normative elements), as well as the principles of harm (criminalization of self-harm and victimless crimes), and culpability (creation of norms of abstract danger and the expansion of forms of objective criminal liability).

Clearly, the conflicts between regulation and emancipation within the penal field signal the intrinsic relationships between the repressive mechanisms of the State and the established economic and social order. The penal field does not maintain the self-proclaimed autonomy in relation to other social fields (economy, politics, etc.). On the contrary, it inevitably reflects the dynamics of struggles and contradictions within society in the pursuit of a life worth living. This dynamics effectively expresses the ongoing interplay between instituting law(s) (and society) and instituted law(s) (and society). In the genealogy of the penal field, it is clear that with every step toward emancipation, there is a regulatory obstacle that insists on hindering its development. The sovereign power of punishment is constantly asserted over the capture of lives worth living, over the inclusive exclusion that founds its own reason for being.

It is therefore evident that, in capitalist societies and States, the (secret) mission of criminal law was permanently associated with the demands of reproducing established social relations, in their incessant tension with the instituting relations. The epistemological stances of the Classical and Positive Schools arose, each associated with specific social and economic contexts, aiming to define the limits and conditions for the (re)production of the penal field in the affirmation and solidification of social relations arising from capitalism and its transformations.

As Quinney (1980), a prominent figure in critical criminology, unequivocally stated: the criminal justice system within capitalist societies had become a mere “coercive instrument of the State, used by the State and its ruling class to maintain the existing social and economic order”. In Quinney’s (1980, p. 236-246) expressive synthesis: “criminal law is used by the State and the ruling class to ensure the survival of the capitalist system. And, as the capitalist system is subsequently threatened by its own contradictions, criminal law is increasingly used in an attempt to maintain domestic order. The lower class, the class that must remain oppressed for the triumph of the dominant economic class,

will continue to be the object of criminal law as long as the ruling class seeks to perpetuate itself. Removing oppression, eliminating the need for a later revolt, would necessarily mean the end of the ruling class and its capitalist economy”.

Thus, *penal* welfarism represented merely a new system of thought, characterized by a specific regime of truth, as well as a set of strategies aimed at shaping social order, forged by the demands of the development and reproduction of organized capitalism. The conquest and positivization of social, cultural, and economic rights did not necessarily result in the establishment of a minimal criminal law, organically limited in its power and function.

Notwithstanding abolitionist theories also emerged in contexts strongly characterized by the existence of active and consolidated welfare States (Netherlands, Norway, Finland), it is evident that in the countries considered representative nuclei of the *Welfare State* model (England, France, Italy, later Spain, and, in another context, the USA), the paradigm represented by *penal welfarism* indeed distanced itself significantly from the minimalist and restrictive proposals for state punitive intervention. According to one of the most prominent analysts of the configuration and crisis of the *Welfare State*, this State model was accompanied by the formation of a distinct legal order: *social law*.

According to Ewald (2000, p. 185): “the Welfare State’s program creates a legal order that contains no principle that guarantees – regardless of the weight attributed to such a guarantee – protection against the totalitarian temptation”. However, this does not imply that such a legal system directly engenders totalitarianism, nor that it essentially requires it, but rather that, unlike the liberal order where the law acted as a limit against power and its excesses, social law is structured in such a way that it can no longer serve this function. Furthermore, another evident phenomenon of social law is the astounding process of legal and legislative inflation, which collapses the principle of legality and

inundates the liberal legal-normative rationality with endless paradoxes and contradictions.

Therefore, this process of the uncontrolled growth of complex, porous, and contradictory normative subsystems drastically erodes the essential premises of modern criminal law – especially the notion that the normative system asserts itself as an essential instrument for limiting state power. In this sense, the institutional framework of the Welfare State results in a set of increasingly Kafkaesque procedures and micro-legalities, implying, on one hand, the growing unlimitedness of state intervention in various spheres of social life, and on the other, the very annulment of law as a mechanism for social mediation and regulation.

As Ewald (2000, p. 186) states, “[...] it is evident that as rights multiply, obligations multiply in the same proportion; as credits increase, so do debts and debtors, in a process whose continuation inevitably leads to a situation where there are only debtors, only duties, and therefore, no rights. This is, in fact, the logic of law, which its inflation can only lead to its own annulment [...] The inflation of law carries within it its own death”.

The inevitable conclusion reached by the French author is that the machinery of the Social State demonstrates, with remarkable ease, that law can coexist with totalitarianism. The classical opposition between law – the guarantee of liberties – and totalitarianism becomes irrelevant. What social law clearly reveals is the entry into a paradigm where the existence of legality does not necessarily imply the recognition of rights. This is because, according to Ewald (2000, p. 186-187): “we find ourselves in the era of legalities without rights. While the rule of law was defined by the equation law = legality, social law, like the existence of socialist rights, forces us to consider the existence of legalities without rights and to ask ourselves what makes a legality constitute, or not, a right”.

On the other hand, this also implies a profound advance in the moralization of law, the always unproductive (con)fusion between law and morality, that is, the fact that the State may assert itself as the sole,

exclusive, and coercive driver of an unquestionable and always *a priori* definition of the “common good”. As Ewald (2000, p. 187) points out, in the liberal paradigm “[...] it is the very existence of society that forces a distinction between law and morality, to establish the boundary of law so rigorously. If law is limited, it is not due to deficiency, but rather as a matter of necessity. Rather, in order to perform its function, to enable the coexistence of freedoms, law must remain limited; it must not degenerate into morality”. In the Social State, due to its lack of limits, Ewald (2000, p. 196) states: “[...] the politics of law ends up being confused with a technique of managing state coercion. This means that it is no longer to law that one must turn to define its own limit and the conditions for a guarantee against the excesses of state coercion”. Thus, Ewald (2000, p. 196) adds: “[...] it becomes evident that, in the name of social law, a legality without law can develop, or even that social law no longer contains, in itself, anything that could prevent the inflation of legality, of which it is pregnant, from remaining law”.

The “social criminal law”, therefore, in its spectacular manifestation as a technique of punitive social control, stands as a decisive instrument for the moralizing legitimization of the social order required by organized capitalism. The excesses of state punitive coercion are always justified in the name of constructing the “good order”, “social justice”, peace, and security, which are deemed necessary for building the welfare regime, the collective risk protection network, with its ever-present spectrum of legalities without rights, and tendentially marked by the absence of any principle that effectively guarantees limits to the totalitarian temptation.

In penal terms, this represented, with elementary evidence, the fierce establishment of discretionary penal power, embodied in indefinite sentences, aimed at the treatment and moral reform of the delinquent, as well as in other preventive public security measures. This power, impressive in its scope and uncontrollable by its nature, was systematically used in a discriminatory and repressive manner, based on the needs of

controlling penal institutions and the political interests of the dominant classes (Garland, 2005, p. 11).

In light of these transformations, contemporaneously, in the context of the new phase of global capitalist expansion and the consequent crisis of the *Welfare State* model, driven by the phenomenon of hegemonic globalization and its ideological support – neoliberalism – there is an unprecedented and acute tension between emancipation and regulation, which projects profound consequences in the penal field. The magnitude of the neoliberal proposal, coinciding with the violent crisis of European social welfare regimes, fosters a legislative avalanche in the repressive sphere, reducing the promotion of the three dimensions of fundamental rights and unleashing an insatiable punitive lust.

4

**THE *PUNITIVE*
IMAGINARY IN
CONTEMPORANEITY:
THE HATRED OF
DEMOCRACY AND
CRIMINAL RISK
MANAGEMENT BASED
ON SECURITY**

INTRODUCTION

In the ever-burning verses of Carlos Drummond de Andrade, we see the poet's warning about the paradoxes of the anxieties created by *fear*. With his unparalleled sensitivity and genius, he writes: "In truth, we are afraid. We were born in darkness. Our existences are few: Postman, dictator, soldier. Our destiny, incomplete. And we were educated for fear. We smell flowers of fear. We wear garments of fear. Out of fear, we wade through red rivers. We are only men, and nature has betrayed us. There are trees, factories, rampant diseases, famines. [...] I became afraid of you, my dark-skinned companion. Of us, of you; and of everything. I am afraid of honor. [...] Come, harmony of fear, come, oh terror of the roads, fright in the night, dread of polluted waters. Crutches of man alone. Help us, slow powers of laudanum. Even the fearful song breaks, falters, and falls silent. We shall build houses of fear, hard bricks of fear, fearful stems, spouts, streets made only of fear and stillness. [...] Fear, with its physics, produces so much: jailers, buildings, writers, this poem; other lives".¹⁵⁶

In the immortal passage, the poet skillfully anticipates the tensions and contradictions of the contemporary *risk society*. He also, on the other hand, foresees the main themes that form the backdrop of the present reflections. We start from the premise that the global risk society, as developed by the suggestive and irrefutable analyses of Ulrich Beck and Niklas Luhmann, precipitates the emergence of a society of fear that is both real and undeniable, as well as illusory and imagined; that is,

an inexorable product of a certain sensitivity psychologically produced by the threats of catastrophic risks of global dimensions (ecological, sanitary, military risks, etc.) and generalized insecurity.

Undoubtedly, such paradigmatic shifts project profound consequences in the realm of penal control. This research aims to analyze these changes through the following central question: to what extent do the risk society, the permanent state of exception, and the culture of fear impact the punitive symbolic representations in contemporaneity, imbuing penal measures with characteristics of a mere sacrificial spectacle?

The proper understanding of this phenomenon, in light of philosophical hermeneutics, is based on the hypothesis that the emergence of risk as a new source of political mobilization in society tends to project a social scenario in which the frantic pursuit of control and security becomes the main institutionalized response, legitimized in exclusively procedural terms. This hypothesis leads us to an inevitable conclusion: the increasingly pressing need to manage and control risk has been driving a broad, disordered, and unchecked expansion of penal control, which, articulated through an imperial legal network, presents itself as the generalized way of understanding and addressing social conflicts, thereby undermining the foundations of a truly democratic political legitimacy for the law.

This is because, as Chauvi reminds us, democracy precisely presupposes a truly historical society. And a historical society, the author argues, is not simply a society that exists in time but one that is *constituted as time*, that is: “a society that never ceases to reconstitute itself because its genesis and form are an incessantly posed question”. In fact, “only a society that experiences conflicts and embraces the internal production of its differences, a society for which power is always on the agenda because its contradictions prevent it from settling into a fixed, identical image, is a historical society”.¹⁵⁷

The salutary reference to democratic horizons and their intrinsic relationship with temporality allows us to foresee that the movements

of overcriminalization and the internal transformation of penal control, extensively discussed in this study, aim precisely to inscribe the denial and castration of temporality within the institution of the social. This attempt to deny uncertainty and questioning, and therefore temporality itself, is evident in the attempt to use the penal system as a mechanism for reaffirming the identity of society with itself, the hegemony of dominant groups, and the tranquility of ‘progress,’ through a set of punitive symbolic representations. This fact leads us to a complete absence of trust in the future, in democratic promises, carving society into an amorphous temporality that François Ost, not without reason, refers to as the “time of the tyrant”¹⁵⁸

Thus, we aim to analyze the roots of this process of social production of fear and offer a diagnosis of the paradoxes of democracy in the risk society, by assessing the authoritarian dimensions of this epistemological shift that affects contemporary (criminal) law. Furthermore, it is essential to understand the extent to which the penal system is an effective mechanism, as an institutionalized tool of punitive social control, capable of providing an effective and democratic management of contemporary risks within the framework of a truly historical society, open to the uncertainties of human rights promises.

1. THE RISK SOCIETY AND THE CULTURE OF FEAR: URGENCY, PERMANENT EXCEPTION, AND CRIMINAL RISKS MANAGEMENT BASED ON SECURITY

The fluctuations of democracy as a legitimate form of conflict resolution are part of a broad spectrum of transitions and ruptures that have occurred in contemporaneity. The crucial point of this question lies in the widely discussed and debated crisis of the Welfare State and the

emergence and consolidation of the risk society and the State of Urgency. According to Ulrich Beck's definition, "*risk is the modern approach to forecasting and controlling the future consequences of human action, the various unwanted consequences of radicalized modernization. It is an (institutionalized) attempt to colonize the future, a cognitive map*".¹⁵⁹ This cognitive map would result from the deepening and intensification of the process of functional differentiation in order to meticulously manage its own consequences.

According to Niklas Luhmann,¹⁶⁰ the very history of the concept of risk, which dates back to medieval documents where the term was already commonly used, demonstrates that its utilization "*responds to the need to conceptualize a specific situation that cannot be expressed with the precision required by the words available at that time*".

Thus, the calculation of risk has always been present in various social systems. In the feudal system, Luhmann¹⁶¹ observes that when the Christian religion institutionalized confession, it aimed to lead the sinner to a state of repentance. Repentance, therefore, functioned as a tool for measuring and calculating risk. From a secular standpoint, the calculation of risk similarly expresses a program for minimizing repentance. Future actions had to be rigorously measured, always aiming for the least possible repentance. Indeed, the control of time assumes crucial importance, as these actions need to be necessarily anticipated and frozen in an alien and uncertain temporality.

Strictly speaking, the concept of risk does not seek to express a mere cost calculation based on a reliable prognosis. Nor does it allude to the classical ethical super-norm of modesty and justice concerning all desirable goods. It is also not about ahistorical models of rationality, through which a society frozen in time seeks to affirm its survival in terms of advantages and disadvantages, perfections and corruptions, or between a happy or wretched life. In Luhmann's precise words,¹⁶² "*what underlies this idea is that there are too many reasons why something,*

however improbable, may change its course to be considered in a rational calculation”.

Above all, it is essential to recognize that “*the claims of rationality increasingly find themselves in a precarious relationship with time*”. Thus, the term “risk” is always directly associated with decisions that are intrinsically linked to *time* – particularly a future that cannot be sufficiently known, a future that is neither wanted nor desired to be produced through strictly personal decisions.¹⁶³

The rational tradition, in turn, dictates that harm should be avoided whenever possible. This approach seeks to impose limitations on the range of possible actions, allowing only those “risky actions” whose potential harms, according to probability calculations, remain preventable. Thus, the concept of risk, through rationalist thought, projects a conceptual counterpoint – namely, the notion of *security*. Once again, in Luhmannian terms, we could assert that risk consists of the unity of distinction between risk and security, that is, security is only conceivable and desirable under certain conditions of risk (or insecurity).¹⁶⁴

In the erosive terrain of sociology, however, security is nothing more than a social fiction, a discursive construct. At this point, Luhmann’s analysis is crucial in convincing us that security is merely, and solely, a “category that serves as a release valve for social demands, which, depending on the level of expectation, finds its way into risk calculations”.¹⁶⁵ The scheduling of flight departures at airports, for example, represents only a step towards risk calculation amid countless shifting expectations and cannot prevent the countless interlacing and congestion. The certainty that we will depart at the scheduled time is merely a hypothesis – a small step in the calculation of delay risks.

In this sense, the issue of prevention becomes crucial once we acknowledge risk as an inherent phenomenon of any social system. Prevention consists of preparing for future harm by either reducing the likelihood of its occurrence or mitigating its severity. However,

prevention can never entirely eliminate the possibility of harm. Moreover, reducing or eliminating the probability of a specific risk does not preclude the sudden emergence of additional risks that may undermine our preventive efforts. An individual may avoid fatty foods and exercise regularly to stay healthy, only to fall victim to a car accident or an airplane crash. Thus, the issue of risk acceptance and evaluation becomes inevitable.¹⁶⁶

Within the scope of institutions and political practices of modernity, the issue of risk has always been present, shaping the functions assumed by the State as an organization responsible for determining, through freely established procedures, the assessment of such risks and the definition of preventive strategies aimed at mitigating them.

François Ost¹⁶⁷ reminds us that, at the dawn of modernity, the State has always identified itself as a protective State. In the 19th century, this protection took on a minimalist form, ensuring mere survival, with the liberal State leaving the management of material conditions of existence to the private sphere. In the 20th century, the State's functions expanded as it took responsibility not only for mere survival but also for guaranteeing a certain quality of life – thus emerging the Welfare State or Social State. This model aims to control major social risks by imposing widespread security to fulfill the promises of freedom and equality for all.

However, this model has now entered into crisis: the welfare society is disintegrating, science and law are affected by doubt, the market and privatization prevail, while fear resurfaces. The “risk society” thus replaces the Social State, shifting the discourse from solidarity to security. This new form of globalized society, marked by the volatility and acceleration of economic and informational exchanges, creates a systemic network of unprecedented, unlimited, and uncontrollable risks, often on a global scale.¹⁶⁸

Historically, as described by François Ost,¹⁶⁹ three stages mark the transformations in the forms of risk and the corresponding prudence. In the first stage, within the 19th-century liberal society, risk takes the form

of an accident — an external and unforeseen event, a matter of chance, a stroke of fate — simultaneously individual and sudden. In response to this risk-accident, reactions are either curative and retroactive (compensation for harm *a posteriori*) or prudently prospective (through individual insurance and social security mechanisms).

The second phase in the history of risk marks the emergence of the notion of prevention. It is understood as a collective, rational, and voluntarist approach aimed at reducing both the probability of occurrence and the severity of a given risk – now considered an objectifiable and measurable risk. At the moment when the foundations of the Social State and the welfare society were laid in the 20th century, the scientific and technological utopia of a self-mastering society became increasingly evident in all aspects: the ‘prevention of diseases’ (following Pasteur’s discoveries), the ‘prevention of crimes’ (with positivist etiological criminology and social defense policies), and the ‘prevention of poverty and social insecurity’ (through social security mechanisms). To this mastery of risk was added the legal domain: as individuals came to be recognized as having a generalized right to security. Risk took on the form of a statistical event, objectified through probability calculations and rendered socially manageable by mutualizing responsibility for harms. Thus, the ultimate goal was to achieve complete mastery over risks in order to guarantee social well-being.¹⁷⁰

Today, however, in the third phase of the history of risk, we encounter the idea of enormous (‘catastrophic’) risk — irreversible, scarcely or unpredictably foreseeable —that frustrates our capacity for prevention and control. As suggested by Luhmann and Beck, risk is a derivative product, a perverse or secondary effect (in the sense of collateral or undesirable side effects of medications) of our own actions and decisions. The risk society is a society that places itself in danger: we only need to consider sanitary risks (contaminated blood), food risks (mad cow disease), and technological risks (ozone layer, climate change).

In this context, we are witnessing an overwhelming expansion of crime control as a mechanism for managing risks and reaffirming the security deemed lost. This globalized punitive hypertrophy meets the demands imposed by this new phase of historical development. Both the emergence of new rights and interests deserving protection, now characterized by their diffuse and supra-individual nature (such as the environment, genetic manipulation, virtual or cyber space, financial system, guns, drugs, transnational crimes, crimes against humanity), and the absence of durably shared ethical-political values seem to place in the criminal system the hope for curing the symptoms of the risk society and the ensuing State of Urgency.

Thus, legislative inflation in the penal field aligns with the framework of the so-called State of Urgency and the culture of fear. In fact, “facing the erosion of the idea of progress and the difficulty of thinking about the future in terms of promise, it is the present that bears the full weight of expectation normally placed on the future, and it is in the immediate injunction of the moment — hence, in urgency — that action is called to manifest itself”.¹⁷¹

The effects of urgency are extremely dramatic. On the one hand, we have the devaluation of both the past (definitively gone) and the future (too uncertain and distant to be relevant). A second effect is the disqualification caused by expectation, duration, and transitions. Indeed, urgency seems to be committed to the path of permanent provisionality, as if, somehow in a self-perpetuating cycle, each of its interventions demands the next.¹⁷²

In the realm of law (and penal control), urgency seems to manifest in various forms. The transient appears to have become the norm, and urgency has become permanent. As a result, the entire law is set in motion. By short-circuiting forms, deadlines, and processes, urgency, supported by the state of necessity (a necessity that creates), transforms into a generalized exception. This results in a new type of risk: legal insecurity.

Not social-economic insecurity (external danger), but an endogenous risk, a secondary and undesirable product of legal engineering whose pace has accelerated. Thus, urgency speeds up legislative production, leading to a normative chaos and the deterioration of the principle of legality, and concentrates legal time on the immediate, on administrative imposition without legal mediation. Urgency also leads to a significant simplification of procedures, shortening deadlines, and circumventing forms.¹⁷³

Regarding criminal law, which is in its own way the guardian of all other rights, two phenomena deserve attention: on one hand, the movement of overcriminalization (Penal State); on the other, the internal paradigm shift, with the abandonment of the goals of treatment and rehabilitation of the convict in favor of a criminal risk management based on security.

This movement of overcriminalization of social reality thus reflects the demands for security in a world characterized by the production of unusual, incalculable, unpredictable, and irreparable global risks. In the so-called “global risk society”, such threats and harms emerge as a new form of political mobilization of society, and all strategies aimed at their control and the “reconstruction of social balance”, even if based on exception and force, serve to cement the legitimacy of the exercise of power.¹⁷⁴

The new societal paradigm gives rise to the phenomenon of the “institutionalization of insecurity”. The global risk society is undeniably a society of objective insecurity, as the intense social complexity leads to a vertiginous increase in expectations that intertwine and depend on the positive actions of others.

Alongside real and objective risks, there also exists the constant and frantic production of a social sense of insecurity. Together with objective insecurity, we live in a society of ‘perceived insecurity’, embodied in the creation of a feeling that reflects a general sense of insecurity, that is, the emergence of a particularly acute way of experiencing risks: fear. In a society marked by acceleration and uncertainty, obscurity, and urgency, a profound personal disorientation is produced. Above all, it is a perplexity

in the face of the absence of enduring ethical references or generalizable principles, which leads the penal field to assert itself as a new value agenda in the absence of other references. Moreover, the fundamental role played by the mass media in the production and dissemination of fear tends to consolidate a very high ‘risk sensitivity’, in addition to propagating phenomena such as the essentialization, demonization, and the construction of monstrosity of the other.¹⁷⁵

The culture of fear is a fundamental characteristic of contemporaneity, constituting an important ingredient in defining political agendas and building consensus around collective decisions. Fear, as Zygmunt Bauman states,¹⁷⁶ is a feeling familiar to all living creatures. Humans share this experience with animals. Both, when faced with a threat, oscillate between the alternatives of flight and aggression.

However, Bauman’s analysis focuses on and uncovers collective fears, capable of demonstrating how fragile civilization’s bonds are, the symbolic cloaks that prevent the eruption of chaos. One of the conditions of their destructive power is precisely their degree of dispersion. Fear is far more ‘frightening when diffuse, dispersed, indistinct, disconnected, unmoored, floating, with no clear address or reason; when it haunts us without a visible explanation, when the threat we should fear can be glimpsed everywhere, but nowhere can it be seen. ‘Fear’ is the name we give to our *uncertainty*: our *ignorance* of the threat and of what should be done – of what can and cannot be done – to stop it or confront it, if stopping it is beyond our reach.”¹⁷⁷

In political and ideological terms, the diffusion of fear has always been a strategy used by hegemonic classes to trigger planned mechanisms of neutralization, discipline, and brutalization of the so-called “dangerous” classes, typically the impoverished masses.¹⁷⁸ As such, the emergence and consolidation of the contemporary penal State undeniably reflect the paradoxes and limits of a social imaginary overwhelmed by risk, insecurity, and fear – images revered at the altar of globalized capitalism.

2. THE SHATTERED WELFARE AND THE CONSTRUCTION OF A PENALIZED REPUBLIC: OVERCRIMINALIZATION MOVEMENTS AS NEW STRATEGIES FOR THE CRIMINALIZATION OF POVERTY

In contemporary capitalist societies, the ideological hegemony of neoliberalism has promoted, as a logical corollary of its perverse economic dimension, *neoliberalism* as its inevitable political expression. By dismantling the welfare foundations of the State, this model not only exacerbates the social *deficit* in the unjust and ever-shifting democracies of late and peripheral capitalism but also extends its devastation to the stable democratic models of central countries.¹⁷⁹

In this context, there is an increasing revelation of extreme situations, evidenced by the sharp widening of the gap between the rich and the poor, which sustains the coexistence of two contradictory and irreconcilable models of society: on the one hand, the economic opulence of the dominant sectors; on the other, the growing social misery. The former oversees international capitalism and the peripheral bourgeoisie integrated into it, while the latter condemns 59.3% of the Latin American population to live below the poverty line, according to a report by the United Nations Development Programme (UNDP).

This scenario, by triggering a profound crisis in production and sociability relations, obliterates the possibility of consolidating democratic states. The (re)affirmation of the values of equality, freedom, and solidarity — both as ethical-political foundations of justice and as strategic mechanisms for the (re)distribution of income and resources — is violently sacrificed and dismantled “in favor of a Darwinian reinforcement of the market, thus ensuring that the ‘virtuous’ drive for profit among the bourgeoisie remains unimpeded by extra-economic interferences that might hinder its growth potential”.¹⁸⁰

Therefore, we witness a kind of latent social war, as the radicalization of social inequalities leads to antagonisms, ruptures, hatred, and extreme conflicts. As Octávio Ianni observes,¹⁸¹ “the unequal distribution of social wealth, from the strictly economic to the cultural sphere, constitutes one of the foundations of unrest and demands of the social movements and protests, despair and violence”. And so, “suddenly, some members of the ruling elites and dominant classes begin, with great difficulty, to recognize a certain connection between violence and deprivation, wealth and poverty, prosperity and terrorism”.

The management of security, antagonisms, divisions, and collective fears becomes the exclusive task of the repressive system. Undeniably, the shocking levels of poverty and marginalization present in today’s societies – both at the center and on the periphery of the planet – impose the strengthening of control over segments that could potentially subvert the stability of the established order. This occurs because the destruction of wage labor, driven by the neoliberal “economic horror”, tends to foster a rapid increase in violence, deviance, incivility, anomie, terrorism, and social disintegration.

In this context, the hypertrophy of the criminal system follows the principles of the current economic logic, directing its punitive apparatus toward the neutralization of the “dangerous classes” through “risk prevention” techniques, which are mainly structured in the forms of surveillance, urban segregation, and carceral containment.¹⁸²

This occurs precisely because, as Ianni highlights,¹⁸³ violence emerges as a powerful productive force, as it ensures and reproduces the practices and institutions necessary for the development of the economy and capitalist exploitation. In the author’s precise words: “[...] once again, what is at stake is the way in which the realization, organization, operation, and development of private property take place in bourgeois, capitalist society. In principle, everyone is a property owner – both the owners of capital and those who possess labor power: entrepreneurs and

wage earners. However, among those who sell their labor power, many do not find buyers; they are condemned to inaction; in many cases, they are sentenced to idleness. It is in this sense that institutionalized violence — expressed in mechanisms of supply and demand in the market, rigorous and almost military discipline in workplaces, continuous police surveillance of the unemployed, and police brutality against workers who are black, native, white, Arab, Asian, or of other backgrounds, depending on the country — reveals itself as a powerful productive force. Yes, alongside capital, technology, labor power, the division of social labor, the market, and planning, institutionalized violence — the State as the organized and concentrated violence of society — reveals itself as a powerful productive force¹⁸⁴.

Moreover, the new expansion of capitalism on a global scale fosters all kinds of ruptures and violence, shaking institutions, ways of life, and worldviews. The ‘violence factory’ germinates, is born, and flourishes within the very ‘social factory’. Violence emerges from the core of the social tissue, from forms of sociability and the interplay of social forces, which generate their own mechanisms of domination and exploitation, and, therefore, also of violence.¹⁸⁵

In this regard, Christie¹⁸⁶ observes that “a basic principle of social control is that those who have much and those who have nothing are the two most difficult extremes to govern. Those who have much also have great power, while those who have nothing also have nothing to lose”. Thus, due to their position of social vulnerability, the subordinate classes are more frequently subjected to the fury of both real and symbolic violence of the penal system.

Similarly, De Giorgi¹⁸⁷ points out that, when examining the punitive technologies that emerged at the turn of the 20th to the 21st century, we can easily speak of a second great incarceration, akin to the “great internment” experienced between the 17th and 18th centuries. This phenomenon manifests itself in the form of *urban internment*, taking the

shape of *ghettos* – or *favelas* in the Brazilian context; of *penal internment*, in the form of *prisons*; and of *global internment*, materialized in the countless “*waiting zones*” scattered across the Empire’s internal frontiers. However, De Giorgi warns that, unlike the first great internment, its contemporary reconfiguration does not seem to cultivate any utopian disciplinary ideal. In fact, the author asserts that “[...] the new internment appears, above all, as an attempt to define a space of containment, to delineate a material or immaterial perimeter around populations deemed “surplus”, whether at a global or metropolitan level, in relation to the prevailing system of production”.¹⁸⁸

Clearly and indisputably, beyond partisan political and ideological affiliations, we are currently witnessing the progressive replacement of the Social State by the Penal State. Loïc Wacquant¹⁸⁹ observed, in the American case, a significant shift from a (semi) welfare State toward a penal and police state. Over the past decades, this has given rise to a hybrid form of state — the “Centaur State” — led by a liberal head mounted on an authoritarian body. This liberal-despotic state model “applies the doctrine of *laissez-faire*, *laissez-passer*’ upstream in relation to social inequalities but becomes brutally paternalistic downstream when it comes to managing their consequences”.¹⁹⁰

It is important to clarify that the Social State, as explained by Rosanvallon,¹⁹¹ consisted of an extension and deepening of the classical (liberal) protective State, which accompanied the very shift in which society ceased to be conceived through the model of the body and instead came to be understood through the model of the market. The aim was to replace the uncertainty of religious providence with the certainty of state providence, grounded in risk management based on statistical probability. This State thus sought to go far beyond its classical obligations, engaging in redistributive actions, intervention and regulation of social activities, and accountability for certain collective services.

This state paradigm of the modernist project was, therefore, guided by the growing attempt to fully integrate the population into citizenship, not only

through formal rights but through substantial incorporation into society. Modern society sought, at all costs, to maintain itself as an inclusive society. Recent modernity, on the other hand, is characterized by its exclusionary nature, causing radical changes in forms of criminality and social control. According to Young, the processes of disintegration both of the community sphere, due to the rise of individualism, and of the labor sphere, due to the drastic ruptures caused by the globalized market, form a “dialectic of exclusion”, which, according to the British criminologist, is characterized by “[...] an amplification of deviance that progressively accentuates marginality, in a pyrrhic process involving both the wider society and, crucially, its own actors, who, at best, find themselves trapped in a series of dead-end jobs, or, at worst, in a subclass of idleness and despair”.¹⁹²

As Bauman warns, “few of us today remember that the welfare state was originally conceived as a tool used by the state to rehabilitate the temporarily unfit and encourage those who were fit to engage more, protecting them from the fear of losing their fitness during the process”.¹⁹³

The provisions of welfare security represented a safety net; this extended to the entire community in order to protect its members from the hardships of survival and “the temporary jolts and whims of the vicissitudes of fortune”, predictable in the context of a competitive capitalist society. Thus, the “welfare state was not conceived as charity, but as a citizen’s right, and not as the provision of individual donations, but as a form of collective insurance”.¹⁹⁴

For this reason, the modern penal field, during the period of the Welfare State, proposes “a discourse that links criminality and deviance with normal citizenship”. If on one hand, the long march of citizenship is an inevitable and irreversible path, with the role of the State being to intervene in order to achieve social justice and social order, envisioned not only as just but, obviously, oriented toward the interest of all; on the other hand, deviance is seen as acts of a minority, determined by psychological and individual circumstances, with the ‘deviant other’

understood as constituted by an absence in terms of values that are absolute and incontestable and, therefore, subject to the goal of assimilation or inclusion, through both penal and therapeutic discourses of integration. In fact, as Young affirms, “[...] it is a society that does not abhor ‘the other,’ nor sees them as an external enemy, but much more as someone who must be socialized, rehabilitated, and cured until it become ‘us.’ The modernist gaze does not see the other as a foreigner, but as something or someone who lacks the attributes of the observer. They lack civilization, or socialization, or sensibilities”.¹⁹⁵

However, currently, the increasing loosening of labor relations and the minimization of state interference in the economy are promoting a sharp decomposition of social protection networks, which are inexorable expressions of the very volatility of global capital flows. In light of the gradual removal of the need for work due to incessant technological revolutions and the realization that an increasingly large sector of the population will never reenter the workforce and, therefore, holds no interest for those who control the economy, almost all “social security provisions, once an exercise of citizens’ rights, have been into transformed into the stigma of the incapable and the imprudent”.¹⁹⁶

Consequently, collective insurance against risks is eliminated, and the tasks of managing collectively produced risks become privatized. In this context, what has increasingly been identified as criminality in recent years is precisely the very product of consumer society. At the moment when the seductive message of consumption is widely disseminated, the gap between those who desire and those who can fulfill their desires significantly widens. Thus, “the seduction of the market is simultaneously the great equalizer and the great divider”, because, while the message is directed to all, it conceals the fact that there are far more who can hear it than those who can act in accordance with it.¹⁹⁷

In Bauman’s precise assertion, “[...] abundant consumption is told and shown to them as the mark of success and the path that leads directly to

public applause and fame. They also learn that possessing and consuming certain objects, and adopting certain lifestyles, is the necessary condition for happiness, perhaps even for human dignity”.¹⁹⁸

If, in contemporary society, human dignity and recognition depend more on the ability to participate in the “consumer society” than on moral autonomy and the dialectic of recognition (otherness), its foundation emerges strong and clear: there are no longer role models to follow, “except those of *seizing more*”, and there are no norms, except the imperative to be able to play the game well with the cards one is dealt.

The result is that the unfit must be kept out of the game, as they are the refuse of the established order, serving even as a terrible example for those on the inside. Thus, according to Bauman: “given the nature of the game now being played, the hardships and torments of those excluded from it, once seen as a collectively caused failure that needed to be addressed with collective means, can only be redefined as an individual crime. The ‘dangerous classes’ are thus redefined as a class of criminals. And, therefore, prisons now, completely and truly, take the place of the dwindling welfare institutions”.¹⁹⁹

In this inhospitable terrain, the control of marginalized populations fosters a real crime control industry, which siphons substantial sums of state resources for the repressive sector. This industry aims to address the (unequal) distribution of wealth and labor, as it provides employment and has become one of the most profitable activities, particularly in the U.S. market. In addition to the abundant raw material, that is, the growing hordes of idle individuals who will make up its ranks, there are no, as Christie²⁰⁰ ironically points out, “the usual environmental pollution problems. On the contrary, the role assigned to this industry is to clean up, to remove the undesirable elements from the social system”.

The backdrop of this new globalized punitive stance, essential to the aspirations of a borderless global economy, can be summarized by the fact that in response to the terrible and overwhelming growth of

social exclusion, “the State will not respond by strengthening its social commitment, but by hardening its penal intervention. To the violence of economic exclusion, it will oppose the violence of carceral exclusion”. This occurs precisely when there is a growing social disintegration, demanding that the violently intensified social contrasts be compressed by the subjugating violence of state despotism. In other words, “the deliberate atrophy of the social State corresponds to the dystopian hypertrophy of the penal State: the misery and extinction of one directly and necessarily counterbalance the grandeur and insolent prosperity of the other”.²⁰¹

The visible (social) expropriation of the State incites a Hobbesian extension of punitive power, demonstrating the prevalence, in the victory of the pillar of regulation, of the principles of the State and the market at the expense of the principle of the community. Today, the focus is primarily on security rather than solidarity. In the penal field, the supremacy of regulation over emancipation in the erosive ground of criminology implies the overcoming of neoclassical criminology by administrative or actuarial criminology, by *criminology of everyday life* (Garland), or even by “criminology of war”. As Young warns, “[...] such administrative criminology is concerned with managing rather than reforming. Its ‘realism’ lies in not attempting to eliminate crime (which it knows is impossible), but to minimize risks. It has abandoned the modernist goals of change through social engineering and judicial intervention and seeks only to separate the criminal from the decent citizen, the troublemaker from the peaceful consumer, and minimize the harm that the addict or alcoholic may cause to themselves, rather than proposing any cure or transformation”.²⁰²

In this context, it is clear that the discourse of security and the expansion of the penal field still responds to the current framing of the so-called State of Urgency, or State of Exception, and the risk society. For Young, the explosive combination of material and ontological

insecurity, products of precarious labor markets and cultural relativism, “legitimizes both privilege and deference: it allows us to maintain and accept positions of superiority or inferiority”. The next easily attainable step is to “hold a group, whether inside or outside society, accountable for the systemic problems faced by it”. Thus, essentialism, the appeal to difference, based on fixed and timeless essences, is affirmed as a prerequisite for demonization, providing a foundation for projecting the lowest and most uncomfortable parts of the self onto the other. At the top, the creation of monsters, “creatures that are essentially different from us” and, therefore, beyond redemption, as “having been forged as monsters, they cannot change. No period of condemnation can redeem their depravity”.²⁰³

3. SEARCHING FOR THE LOST SECURITY: FROM THE ABANDONMENT OF THE REHABILITATIVE PARADIGM TO PUNISHMENT AS A (MERE) SACRIFICIAL SPECTACLE

In addition to the movement of overcriminalization (Penal State) and, even as a consequence of this, there is also a new backward of the democratic symbolic horizons of human rights in the field of social conflicts management. This regression is characterized by an internal shift in paradigm, with the abandonment of the objectives of rehabilitation of the convicted and the development of alternatives to imprisonment in favor of a criminal risk management based on security and, in this way, the use of punishment as a mere sacrificial spectacle, intended to reactivate, through emotion and pain, the shattered social bonds.

It seems now clear that, in modern society, the price to be paid for individual freedom and autonomy has undoubtedly been the increasing insecurity and constant vulnerability, since the moment humanity freed

itself from the tightly bound constraints of tradition. The transition from a society of fate to a society of freedom relegates the difficulty of existence, and from this, transforms freedom into an extremely heavy burden. As a result, responsibility becomes unbearable as the awareness of one's own smallness accompanies the awareness of an increasingly overwhelming responsibility.²⁰⁴

This "overwhelming responsibility" stems from the vast proportions of the risks produced as a result of our own choices and decisions. The advancement of science subjects individuals to a disproportionate responsibility. Thus, in today's societies, real and perceived victimization seems to be one of its distinguishing features. When everyone feels like a victim, criminal law becomes the only means of resolving conflicts. In this realm, the bonds of solidarity and the ethics of responsibility fade away; the threat of sanction becomes the substitute for the ethical-political values that establish the social bond, offering individuals the only, extreme, and desperate reference points necessary for their identity and autonomy. In Ost's insightful analysis, "immediately, criminal law emerges as the ultimate expression of common morality, the last source of meaning in a world whose shifting and floating references deepen anxiety and provoke discomfort, at least as much as they liberate. In the eyes of individuals who have become fearful, the reaffirmed and sanctioned prohibition seems to tighten social bonds and restore a bit of the lost security."²⁰⁵

The only image capable of offering individuals any sense of comfort, tranquility, and confidence in the established symbolic network, however illusory and transient, since easily dissolved, seems to be the caricatured and authoritarian figure of Hobbes' Leviathan. If the interaction partner is always a potential enemy, capable of undermining my life and property, the necessary and comforting refuge can only be, effectively, the robust arms of the despotic State.

Indeed, as Ost emphasizes: "this overburdening of criminal justice, transformed into a forum for recognizing victims, and this heightened

appeal to sanction, the reverse signal of the common norm, thus provides an answer to the question of whether, in order to exist and identify itself, a society must rely on founding references and test its limits. This could explain the movement of recriminalization of social life, whose signs are abundant: multiplication of incriminations, increase in repressive penalties, lengthening of the average duration of sentences, restriction of parole regimes, home detention curfew: criminal control extends itself and repression hardens”.²⁰⁶

Therefore, as risk becomes one of the main forces of political mobilization, the value attributed to security, precisely the (conceptual) counterpart of risk, takes precedence as the primary source of legitimacy for the entire repressive system. The current trend in contemporary and globalized criminal policies moves toward, according to Bauman, “[...] reducing what remains of political initiative in the increasingly fragile hands of the nation-state to the question of law and order – a question that inevitably is manifested, in practice, by an orderly — secure — existence for some, while for others, it means the full, fearsome, and threatening force of the law”.²⁰⁷

If today’s communities are synonymous with isolation, separation, protective walls, and guarded gates, akin to the nuclear shelter, the hegemonic classes increasingly seek to live under the regime of secession, under the aegis of the right to maintain distance and live away from intruders. In this sense, security becomes the driving force behind transient communities, surrounded and monitored communities. Thus, the penal field takes on all the burdens of (illusory) security production, the delight of revenge, and the promised blood.

The penal system seizes upon the dissolution of tensions, divisions, and social, economic, political, cultural, ethnic, religious, and moral antagonisms, which are deepened and aggravated by material and ontological insecurities. This system, therefore, rises as the only viable mechanism for maintaining the security of the dominant segments.

Its action, to this extent, is not focused on promoting the necessary protection of violations of rights of absolute relevance to all members of society, with due devotion to the fundamental rights and guarantees of the citizen, but rather on brutally reproducing the preservation of an unequal and authoritarian social order.

Thus, alongside the movement of overcriminalization and as a corollary of this, we witness the internal transformation, in terms of security, that today affects criminal law. Within the scope of the Social State, repression essentially pursued preventive purposes. At a time when there was still confidence in the future, the goal was to implement penalties that would both deter potential delinquents and ensure the rehabilitation of those exhibiting deviant behaviors whose guilt had been established. It was, therefore, less about punishing past wrongs (retributive logic) than about preventing a harmful future.

In line with a preventive Social State, social policies capable of preventing crime before it occurs are multiplying. Generally, the focus on socialization, participation, and rehabilitation takes precedence, at least in terms of intentions, over social control and repression. However, with the crisis of the Social State and the emergence of the Penal State (penance), these ideals have been progressively abandoned. Concerns with security now dominate the stage: there is a desire for immediate security, but not a reduction in criminality in the long term. The vocabulary of distrust (criminal risk management) replaces the hopes placed, until recently, in the treatment and rehabilitation of convicts. The logic of the project, typical of the penal policies of the Social State, gives way to urgent interventions, short-term programs designed to produce quick, visible results, and, if possible, media profitable.²⁰⁸

This fact arises precisely from the high costs and the arduous work involved in dedicating attention to the maladapted, that is, to the reject of consumer society, a trust worthy of consideration. In the face of a crisis-stricken social State and a world marked by global risks, any investment

in individuals, seen by society as dysfunctional, unfit, ultimately as monsters and enemies, would be unequivocally rejected.

For this reason, as Bauman asserts:²⁰⁹ “spatial confinement, incarceration under various degrees of severity and strictness, has been throughout all eras the primary method of dealing with the inassimilable and problematic sectors of the population, difficult to control”.

The history of the medieval period shows us that heretics, witches, Jews, prostitutes, lepers, and homosexuals were persecuted, confined, and executed for not passively assimilating the values of Christian tradition or maintaining an ambiguous relationship with them. Based on the common denominator of the rigorous control of the sexuality of the faithful, supported by the relationship between heresy-leprosy-sex, the Ecclesiastical Institution fostered persecutory intolerance through the construction of stereotypes that personalized fears of the clerical authoritarian order.²¹⁰

It is interesting to note that later, during the industrial period, Bentham's Panopticon represented, as Foucault's genius perceived, the ideological punitive project par excellence. Its mission was to produce an omnipresent disciplinary power that shapes the docility of bodies. This means that power (to punish) should create “docile bodies” that would allow for the extraction of their maximum economic utility. In globalized capitalism, on the other hand, in the face of the dispensability of human bodies for wealth production, (penal) power functions as a mechanism that (de)limits the boundaries of social stratification.

As Nilo Batista reminds us,²¹¹ the moment transnational financial capital abandons the disciplining of bodies, now merely and solely indispensable for the reproduction of consumption, the maxim governing the logic of punishment in the global society would be: the imposition of alternative sentences for potential consumers and confinement for “failed consumers”.

Indeed, “incarceration serves more to regulate misery, perhaps even to perpetuate it, and to store the reject of the market”²¹². Therefore, marginalized populations, excluded from the cyberspace of postmodernity,

will have access to the only spaces reserved for them in the globalized world: the spaces of confinement. There is an alternative to be chosen between two (catastrophic) options: ghettos as social prisons or prisons as judicial ghettos.²¹³

In the United States, the ideological model of the neoliberal world, the prison population has reached alarming levels, with one in every three black individuals between the ages of 18 and 35 under the guardianship of the criminal justice system. It is therefore easy to see that the primary target of the new punitive wave is, necessarily, the unwanted, the superfluous, as Forrester describes. Prisons have essentially transformed into “factories of immobility”, built as alternatives to the lack of employment; thus, they clearly reveal that within the state, the war on poverty inevitably becomes a war against the poor.²¹⁴

This new punitive ideology, represented by the “criminology of intolerance” and “actuarial criminal policy”, thus encapsulates the ideological hegemony of neoliberalism, with its entire arsenal of political neoconservatism and economism. In contrast to the assumptions of modern penal theory, which regarded the individual and subjective moral responsibility (the principle of culpability) as indispensable premises for the functions of punishment, the actuarial punitive discourse, built on the premises of risk and postmodern theories, operates based on the principle of social utility and works not in terms of culpability but solely in terms of risk.

In fact, Riveira Beiras and Nicolás Lazo note that “[...] *the objective of actuarial justice is the management of population groups previously classified and identified as permanently or temporarily dangerous and risky. The identification and management of these groups is carried out through surveillance and control techniques, using classification statistics and grouping based on their destabilizing potential*”.²¹⁵

In this punitive ideology, the focus is more on an individual's belonging to a specific social group previously classified as high-risk

than on concrete acts or behaviors constituting crimes. Criminalization thus serves merely as a tactic to manage groups constituting risks or obstacles. Conceived in the United States and materialized through punitive strategies such as the Law and Order, Zero Tolerance, Broken Windows, Three strikes and you are out and Model Justice approaches, this new paradigm quickly spread across Europe, coinciding with the period of questioning and obsolescence of the Social States of the Old Continent.

In the Anglo-Saxon context, this conservative turnaround emerged with the rise of Margaret Thatcher to power in the United Kingdom in 1979, and Ronald Reagan in the United States in 1981. At that time, severe blows were inflicted on the principles of *welfarism* and the Interventionist State, with strong criticism directed at fiscal policies and, especially, criminal policies, which were accused of being lenient, costly, and inefficient. Likewise, there was fierce opposition to what was perceived as a breakdown of law and order.²¹⁶

In the European context, Riveira Beiras and Lazo²¹⁷ describe the vigorous process of decomposition of *welfarist* ideals and the neoconservative shift that spills over into the punitive sphere. In Italy, the “culture of emergency”, also identified by Ferrajoli,²¹⁸ obliterates the foundations of the guarantees-based criminal model, which has been affected by a process of contamination by administrative law – which was perceived as “a more effective and efficient means than criminal law for managing high-risk populations. The consequence is the existence of quasi-criminals or quasi-crimes as a hybrid result of infractions and administrative and/or criminal sanctions”.

This trend is also observed in Brazilian legislation, more specifically in the new drug law, which, in Article 28, assigns to drug use the same nebulous and ambiguous treatment between criminal law and administrative law. It effectively turns both regular or occasional users into “quasi-offenders” and their actions into “quasi-offenses”. As a

result, traditionally criminal punishment (imprisonment and detention) is replaced by compulsory administrative measures that openly violate fundamental individual rights.

Still within the European context, both Spain and other countries of the European Community have embraced the criminology of intolerance and actuarial criminal policy in the scope of regulation of immigration. Indeed, as Riveira Beiras and Lazo state: *“their political-legislative philosophy considers the immigrant population a deviant social group whose behavior must be preemptively controlled and whose flows must be restricted. Immigrants are portrayed as inherently risky, not as individuals per se, but as members of a collective at risk: immigrants. It could be said that an immigrant, by the mere fact of being one, is turned into a criminal, regardless of whether they commit a crime or not”*.²¹⁹

The category of risk always implies social class, ethno-cultural origin, skin color, language, among other factors, depending on the country. However, it invariably refers to those who are considered *“the inhabitants of the territories of exclusion”*. In Spain, France, and Italy, for instance, beyond immigration policies, this punitive model is reflected in laws imposing curfews for young people, “anti-botellón” (anti-binge drinking) laws, and the introduction of video surveillance cameras in the streets of major cities. In Spain, the Canarian municipality of Agüimes — later followed by Madrid and the Autonomous Communities of Valencia, Extremadura, and Andalusia — enacted “anti-botellón” laws aimed at prohibiting young adults from drinking in public spaces. Agüimes was also the first municipality to establish a “curfew” preventing minors under 16 from remaining in the streets after 11 p.m. Similarly, in the French municipalities of Orléans, Cannes, Nice, and Antibes, curfews for young people were implemented as a means to “prevent the perverse use of freedom, which leads to drugs and violence”. In this sense, criminal repression and the restriction of liberty emerge and take effect without the existence of any actual crime, extending far beyond it. These are the new caricatures of European Social

States, with their overtly fascist characteristics, in which the poor (whether young or not) and immigrants are portrayed as the new dangerous classes, while criminal law serves as a technique for management and “generalized management of the poor”.²²⁰

Regarding the French case, Garapon observes that the decline of the Welfare State model and the eclipse of politics and the democratic public sphere lead to a sort of “return of the sacrificial mechanism”, in which “criminal law presents itself as an ever-available meaning, as the last resort when ideology has abandoned the social sphere”. The constant “identification with the victim” and the “demonization of the other” lay the foundation for a “consensus through effusion” in the extent that according to Garapon: “the feeling that momentarily unites people in the face of horror is strong enough to bring together highly heterogeneous individuals, yet insufficient to establish a political community. Its sole purpose is to animate an emotional community under the single slogan of defending life against death”.²²¹

Thus, criminal law redefines, through the sacrificial spectacle of punishment and the “smell of the prison, the meaning of the social in contemporaneity, offering itself as the ever-present meaning when other modes of regulation are questioned or when political courage falters. The sacrificial is the ever-reactivable sense of justice”, so that “these numerous demands illustrate the paradox of the democratic society that transfers its unsatisfied needs for meaning onto justice”.²²²

By deactivating democratic principles, seen as the quintessential form of the imagined institution of the egalitarian political community, criminal law enshrines the logic of compassion and a “jurisdiction of emotions”, where the “extreme excitement of emotion reinforces social solidarity. However, this is a primary, even primitive, archaic, and emotional consensus”. On the stage of “intimate justice”, which reveals compassion for the victim, “consensus is formed around their suffering, not around common values”. However, “this sentiment hinders the

understanding of punishment, which appears merely as pure suffering and, in turn, calls for an extremist and poorly symbolized reaction”²²³

Thus, the French author’s conclusion visualizes the bland appearance of contemporary democracies, which, terrified by “political horror”, turn to “penal preference”. According to Garapon, “[...] the identification with the victim and the demonization of the other mutually reinforce each other. The two phenomena correspond to what we can call ‘a depoliticization of the subject’: the political foundation of the person is effectively lost sight of, and they are reduced to a psychological individual, that is, to affects and suffering. The meaning of transgression is linked more to a disturbed psyche than to a pathology of freedom. This is evidenced by how all democracies have medicated drug addiction. Democracy naturalizes society, psychologizes the modern subject, that is, depoliticizes them, distorts the law, privatizes violence, deconstitutionalizes justice, and marginalizes the political claim to interpret violence.”²²⁴

The engine of the criminology of intolerance and actuarial criminal policy, punitive facets of the contemporary penal paradigm, of the model of permanent exception emerging from the crisis of the *Welfare State*, is the social production of fear and insecurity. In this sense, the social construction (of reality) of undesirable elements, through discourses violently propagated by the mass media, serves the function of (re) legitimizing the growing wave of punitive hypertrophy.

Such a stance clearly constitutes the dynamics of the crime control industry, which currently reaches immeasurable levels of profitability, particularly in the United States. The very privatization of prisional institutions, the development of large service companies listed on the stock exchange (including surveillance, architecture, and construction firms responsible for building new prisons and providing services to these establishments, such as healthcare, food, cleaning, etc.), signal that on the other side of America – but not only there – “prisons mean money, a lot of money”²²⁵

Thus, at the peak of the pillar of regulation in the penal field, it undergoes complete submission to the principles of the State (Hobbes) and the market (Locke), for from corporal punishment, through disciplinary punishment, we now reach *profitable punishment*, as the only source for (re)creating lasting social bonds, which, conversely, should be established through reciprocal relations of solidarity (the principle of the community).

In this complex scenario, the policies of “zero tolerance” and “law and order”, swiftly adopted as models of social control under the imperial legal order, aim, as Wacquant warns,²²⁶ “to carry out a ‘class cleaning’ of public space, pushing threatening (or perceived as such) poor people off the streets, parks, trains, etc.” As a result, prisons cease to serve, as Bauman highlights, the function of *factories of discipline* and are now effectively planned as *factories of exclusion*. For the mass of excluded individuals, produced by the weakening of work and living conditions and sent to the confinement spaces of the prisional system, “what matters is that they stay there”. The author further emphasizes that the topic of ‘rehabilitation’ stands out much less due to its controversy, that is, the acknowledgment by penal sociology that prison, rather than rehabilitating, promotes *prisonization*, i.e., it encourages prisoners to absorb and adopt the habits and customs typical of the (perverse) prison environment and only that environment, than by its increasing irrelevance. This is because today confinement simply emerges as an alternative to employment, a mechanism used to neutralize a significant portion of the population that is no longer needed for production and for whom there is no work ‘to reintegrate into’.²²⁷

Indeed, punitive measures in general, due to their ease and the publicity with which they are staged, significantly increase the popularity of governments, providing them with images of being attentive, severe, capable, decisive, and, above all, of ‘doing something’ for the security of the governed and for their own security – and they do so in a highly dramatic, tangible, visible, and convincing way. In this sense,

“the spectacularity – versatility, severity, and disposition – of punitive operations matters more than their effectiveness, which, in any case, given the general indifference and the short duration of public memory, is rarely tested”.²²⁸

Therefore, the ideal of security or criminal risk management ultimately promotes an (internal) reconfiguration of the penal paradigm. The trust in the future, inherent in the purpose of rehabilitating the convict, is replaced by the urgency of the present decisively focused. Punishment, in this framework, is guided by policies of incarceration, annihilation, essentialization, and the creation of necessary monsters for the demarcation between virtue and sin, good and bad, purity and impurity in post-modern society. Thus, there is no room for forgiveness, promise, or re-examination, but only for the authoritarian memory of a time devoid of perspective, the “time of the tyrant”, as Ost would say.²²⁹

4. FINAL CONSIDERATIONS

The authoritarian dimension of the paradigmatic shift in criminal law within the global risk society is undeniable. It is, above all, an attempt to reject at all costs the open and uncertain temporality of democratic society. By adopting repression as the sole form of social institution, current penal policies ultimately reproduce precisely the violence they sought to combat. In this way, the penal system tends to function fictively as a catalyst and builder of a social memory devoid of democratic meaning, as it is detached from its historical and social temporality. It is as if repression could ensure the preservation of society through the blunt suppression of its antagonisms, fears, and risks.

Thus, both the expansion of criminal law and its internal paradigm shift follow the vague lines drawn by the risk society and the State of

Urgency, which are the driving forces behind the surges in the social production of fear. In this way, the paradoxes of democracy become an inevitable consequence. If, on the one hand, criminal law aims to present itself as the guardian of these community values, on the other, it fulfills a (hidden) perverse mission of managing the reject of the (post-modern) consumer society and reproducing structural violence by abandoning trust in the future and embracing mass incarceration, confinement, and the neutralization of transgressors as the only purposes of punishment. From being a tool capable of protecting society from attacks on human rights, criminal law becomes the means by which post-modern elites seek to ensure “the time of the tyrant”.

However, as Drummond immortalizes in the verses that open this book, it is a paradox that the same fear that creates “jailers, buildings and writers, and this poem”, as adduced by the poet, also creates in return “other lives”, maybe from an open and unceasing time of non-violence. Even when immersed in fear, it is still possible to glimpse some room for freedom, even for love. It is also possible to love in fear, as the poet’s song alerts us: “it was out of fear of airplanes that I first held your hands”.

POSTFACE

“For a criminology of freedom and non-violence: a tribute to Thiago Fabres de Carvalho”*

Daniel Achutti**
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It is well known that the field of law is conservative and, therefore, resistant to change. This characteristic is not exclusive to our country but rather a hallmark of modern Western legal systems, a subject of study for numerous scholars in legal and social sciences (Bourdieu, 2007; Garapon, 1996, 2001). (...)

This is one of the reasons why it is not common to find critical researchers in the field of law, but the authors of this book are, without a doubt, exceptions

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to this rule. They are a force against inertia, against traditional thinking that refuses to see its limits and think of possible alternatives beyond the most obvious ones, beyond what is familiar to them.²³⁰

This was how Daniel Achutti and Rafaella Pallamolla began the preface of the book by Thiago Fabres de Carvalho, Natieli Giorisatto de Angelo, and Raphael Boldt,²³¹ in order to contextualize the work in which the authors explored the intersections between critical criminology and restorative justice in Brazilian peripheral capitalism.

The preface was submitted on August 5, 2019, and the book was printed a few months later. A topic of particular relevance in the national restorative justice scene, where penal system continues to operate as if nothing is wrong, the book's release was a reason for celebration.

In February of 2020, on Ash Wednesday, Thiago suddenly passed away. Even now, we find it hard to fully accept this; and while the dystopia of the COVID-19 pandemic has made everything more nebulous and confusing, it does not prevent the relentless march of a reality that stubbornly refuses to cease unfolding.

Alexandre Wunderlich and Felipe Moreira de Oliveira have often recounted the moment when they first met Thiago: at a seminar hosted by IBCCRIM (Brazilian Institute of Criminal Sciences) in the late 1990s, they heard someone mentioning the wish to go to Rio Grande do Sul to study. They then spoke with Thiago, giving him their phone numbers and offering, out of courtesy, any assistance should he decide to go. Such courtesy was common in moments like that, especially when it comes from Alexandre and Felipe, who never imagined that, less than a year later, he would actually go. Both of them, by the way, have always shared the same remark about it: "*Would you believe? He actually came!*"

We often like to recall the ease with which Thiago's criminology classes flowed at PUCRS, back in the distant year of 2004, when he was

beginning his doctoral studies at Unisinos, under the guidance of his lifelong mentor, Prof. Dr. Lenio Streck.

Thiago would go back and forth with the lessons of Martine Xiberras and her *As Teorias da exclusão*, and he also enjoyed playing with time, especially the time of law, as presented by François Ost, as well as the readings and long debates from the farthest reaches of the legal world of Norbert Rouland. With Antoine Garapon, the debate about the possibility of punishment in a democracy became a source for new questions and, perhaps, one of the foundations for the pursuit of a criminology of non-violence. With Pierre Clastres, Thiago questioned to what extent society should not turn *against* the State – especially its punitive arm – and frequently used Greek mythology, often citing the lessons of Jean-Pierre Vernant, to try to better understand precisely what distinguishes Brazil and makes it so unique and, for that reason, so difficult to comprehend.

But it was the national authors who captivated his attention the most: Lenio Streck, Nilo Batista, Vera Malaguti Batista, Vera Regina Pereira de Andrade, Juarez Cirino dos Santos, Maria Lucia Karam, Jessé Souza, Geraldo Prado, Luiz Eduardo Soares, among many others, were constant presences in his work, conferences, and always fruitful bar conversations. These presences, by the way, were accompanied by fine art: his captivating observations of *Abril Despedaçado* and the way he sought to understand the phenomenon of violence in Brazil through the compositions of Legião Urbana, Cazuza, Chico Buarque, and many others, were also a striking trait of his worldview and the way he interpreted social phenomena related to criminal sciences.

While the ease of these gatherings revealed a young man who was a friend to all, it also unveiled a sophisticated thinker whose depth of argument sometimes eluded the less attentive. His theoretical consistency, combined with a rare sensitivity, allowed the emergence of an authentic and distinctive thinking process – one deeply committed to the constant pursuit of a world less painful, less punitive, and more welcoming.

Author of nearly 30 scientific articles and five books, he was present at the inaugural event of the Brazilian Group of Critical Criminology in 2014 at La Salle University (Canoas, RS), where it was decided that Vitória, his hometown, would host the meeting the following year. In partnership with his affiliated institution at the time, the Faculty of Law of Vitória (FDV), it was agreed that the works presented would be submitted for evaluation and publication jointly by the two Law postgraduate programs, through their respective journals: in *REDES – Revista Eletrônica de Direito e Sociedade* (vol. 3, n. 1, 2015)²³², and in *Revista de Direitos e Garantias Fundamentais* (vol. 15, n. 1, 2014)²³³.

In co-authorship with his longtime partner, who also recently passed away, André Filipe Pereira Reid dos Santos, the edition of the *Revista de Direitos e Garantias Fundamentais* was presented as follows:

When we were invited to participate in the Encontro de Criminologia Crítica, held in May 2014 in Canoas/RS, we had no idea of the historical significance of that event, which would establish a working group so closely connected despite our geographical distances. There in Canoas, we became certain that critical criminology was greater than ourselves and that we should no longer face alone the daily challenges of conducting critical and reflective research on the reality of the Brazilian penal system and criminal policies. From there on, we felt stronger, capable of connecting our researches and influencing Brazil's social reality.²³⁴

In a single paragraph, Thiago and André captured the atmosphere and spirit of that meeting: more than ever, it was necessary to unite the diverse researchers of Brazilian critical criminology. In the following years, the Brazilian Group of Critical Criminology held several meetings across different states in the country and, despite the intriguing *denialism*

of some, established a significant research front that, undeniably, has remained incomplete since that Ash Wednesday.

Critical criminology is a constant theme in Thiago's intellectual production: from his *Criminologia, (In)visibilidade, reconhecimento: o controle penal da subcidadania no Brasil*,²³⁵ to his last work published during his lifetime, *Política Criminal e Estado de Exceção no Brasil: o direito penal do inimigo no capitalismo periférico*,²³⁶ co-edited with none other than Vera Malaguti Batista. As a defining feature of his works, it held a privileged place in his research approach, based on the perspective that it was necessary to bring the (critical) criminological debate closer to the harsh Brazilian reality.

A reality, moreover, marked by violence (both urban and state) and the daily disregard for fundamental rights, permeated by crucial issues like racism, patriarchy, social inequalities, mass incarceration, police lethality, etc., that reveal the complexity of understanding Brazil. A complexity that, amid the COVID-19 pandemic, has only deepened, further worsening the lives of the same invisibilized people as always. The characteristic sub-citizenship of our marginalized reality, so thoroughly analyzed (and criticized) by Thiago, is one of the driving forces behind the suffering endured by a significant portion of the population – a suffering increasingly severe, prolonged, and intense.

In this sense, it can be said that the current public security policies expose the most striking features of this *sub-citizenship within Brazil's penal control*: deaths that are not only *normalized* but, above all, *desired* – of non-docile bodies that refuse to resign to the condition of sub-citizens in a country that has always been a producer of inequalities, violence, and humiliation.

By reassessing critical criminology through an analysis of the discourses of the Witzel (RJ), Doria (SP), and Bolsonaro (Brazil) administrations regarding police lethality in public security policies, Thiago, in co-authorship with André Filipe Pereira Reid dos Santos (FDV) and Lucas

Melo Borges de Souza (FDV), presented a significant study that should be read by all those concerned with the future of our already fragile democracy. The text was published just a few months after his passing and provided both quantitative and qualitative insights into police violence in Rio de Janeiro and São Paulo in the post-redemocratization period. Its objective was to examine “the relationship between discursive synergy and the symbolic, political, and practical effects on police lethality, in a context where, despite disputes in the traditional political arena, the state administrations of the Witzel and Doria governments, along with the federal administration of the Bolsonaro government, reproduce the same logic of endorsing police violence as a tool for public security”²³⁷

Drawing on an extensive literature review, which includes authors such as Sérgio Adorno, Roberto Kant de Lima, Michel Foucault, Paulo Sérgio Pinheiro, Luiz Eduardo Soares, among many others, the study relied on valuable databases, including those of the Institute of Applied Economic Research (IPEA), the Public Security Institute of the State of Rio de Janeiro (ISP/RJ), and the Secretariat of Public Security of the State of São Paulo (SSP/SP). It also incorporated journalistic reports, publications from the Brazilian Forum on Public Security, and data compiled by the *Atlas da Violência* to demonstrate the persistence of a *culture of extermination* within the institutions responsible for formal social control in Brazil.

The authors presented data on police lethality in Rio de Janeiro and São Paulo since redemocratization (decades of 1990, 2000, and 2010), and subsequently exposed the “relationship between discursive synergy and symbolic, and political effects on police lethality under Bolsonaro’s federal administration and the state administrations of Governors Witzel and Doria”, despite the constant mutual demonstrations (between the mentioned state governors and the previous president of the republic) of being political adversaries.²³⁸ Finally, they state that both the federal administration and the state governments of Rio de

Janeiro and São Paulo “have operated from the paradigm of public security as a *matter of police*”. They argue that there is nothing new in the post-redemocratization period, and that the novelty does not lie in the handling and promotion of “a criminal policy made with blood”, with the reaffirmation of state military police as institutions that disregard human rights, but rather “in the symbolic, political, and practical effects caused by the election of police lethality as a fundamental tool of public security in the current context”.²³⁹

In a text published in the early 2000s, Elena Larrauri,²⁴⁰ while analyzing David Garland’s work *The Culture of Control*, drew attention to the factors that would have contributed to the replacement of a punitive model focused on the rehabilitation of the convict for one aimed at their incapacitation. Among them, the author highlighted the following: (a) the increase in the punitive atmosphere within the population; (b) the return of the victim demanding rights; (c) the privileging of the protection of society and the victim over the protection of the *reus* in relation to the state; (d) the reaffirmation of imprisonment as a means to contain those who commit crimes (amplified by the discourse of impunity); (e) the delegation of crime control tasks to the community or the victim and the private sector; and (f) the politicization and electoral use of issues related to crime and the penal system (punitive and conservative discourses).

According to Larrauri,²⁴¹ following Anthony Bottoms, the replacement of the model inaugurated an era marked by ‘punitive populism’, in which policymakers are guided by three premises: (1) harsher penalties can reduce crime; (2) penalties contribute to reinforcing the moral consensus in society; and (3) the use of penalties brings electoral benefits. John Pratt²⁴² notes that penal populism reflects the idea that criminals and convicts somehow *benefit* from violating the laws, to the detriment of crime victims and law-abiding citizens (a discourse very similar to that held in Brazil by those self-identifying as “good citizens”).

It is not difficult to notice in the everyday discourses that drive the mass media, public security, and the consumer public of the penal system, that an extremely authoritarian culture prevails in our country, materializing within justice institutions. In this regard, Thiago's works allow us to perceive how, in Brazil, this punitive populism, which was previously limited to increasing the rigour of criminal procedures and punishments, has crossed the boundaries of criminal law to reach a new level that shamelessly flirts with illegality and openly assumes a bloodthirsty and genocidal vocation: from *media-driven penal populism*, we have shift to a kind of *penal policy of extermination*.

In Thiago's teachings, the penal control of sub-citizenship is based on the assumption that certain individuals do not even have the right to their own lives. Any harmful act, especially those committed by state agents, is fully justified – it is “*aim for the head and shoot*”, to remember (and never forget) the regrettable words of Wilson Witzel when announcing that one of his government's public security plans was to specialize elite snipers to *eliminate* any suspected person carrying rifles, without the risks of being criminally or administratively held accountable.²⁴³ If even people carrying an umbrella – or a drill – have had their lives taken by the State, allegedly due to a misreading of the situation by the police,²⁴⁴ it can be concluded that, in fact, this policy is not a novelty, but when explicitly defended by the authorities, it shifts the apparent exception into the rule, as anticipated by Thiago's studies.

Thiago, a professor in two important Law postgraduate programs – initially at the Faculty of Law of Vitória (FDV) and later at the Federal University of Espírito Santo (UFES) – is the authentic representative of a Critical School that, in Vitória, has shaped numerous intellectuals, most of whom were his academic partners and friends, such as André Reid, Carla Joana Magnago, Nelson Camatta Moreira, Clécio Lemos, and Raphael Boldt.

Thiago leaves us a legacy of commitment to social justice, criticism of violence, and, above all, a great deal of affection. These lessons are present in his books and articles and in the living memory of his colleagues, and former students. While it is difficult to *classify* Thiago according to a single line of thought or theoretical perspective, it is easy to see where he wanted to go: he simply sought a better world, with less inequality and violence, more freedom, and, of course, more time to surf with his son Davi.

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concise — which evokes what shall henceforth be regarded as the defining moment of the community (a revolution, a declaration of independence) or its connection to a foundational and immemorial past. Thus, from the Bill of Rights (1689) to the United States Declaration of Independence (1776) and the Declaration of the Rights of Man and of the Citizen (1789), all emphasize the importance of a “founding narrative.” The latter, in turn, proclaims: “The representatives of the French people, constituted in a National Assembly, considering that ignorance, forgetfulness, or contempt for man rights are the sole causes of public misfortunes and the corruption of governments...”. Likewise, the Universal Declaration of Human Rights (1948) states: “Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind...”. The Brazilian Constitution of 1988 is no exception to this construction, as its Preamble consolidates the “founding narrative” of a new society, seeking to (re)establish, based on democratic values, a society previously marked by a period of severe authoritarianism and systematic human rights violations proclaiming: “We, the representatives of the Brazilian people, assembled in the National Constituent Assembly to institute a Democratic Rule of Law, aimed to ensure the exercise of social and individual rights, freedom, security, well-being, development, equality, and justice as supreme values of a fraternal, pluralistic, and prejudice-free society, founded on social harmony and committed at both the national and international levels to the peaceful resolution of disputes, hereby enact, under the protection of God, the following Constitution of the Federative Republic of Brazil.”

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- 149 The notion of punitive imaginary (or symbolic representations of criminal justice) herein developed seeks to reflect the fact that law is not merely content with defending established positions but also performs instituting functions, “what implies the imaginary creation of new socio-historical meanings and the deconstruction of established meanings that oppose them”. Thus, the legal imaginary (whether punitive or related to criminal justice) is articulated as a spectrum of symbolic representations in constant tension with the official forms of established or positive law. In this sense, it rests both on the instituted forms of established law and on a legal imaginary – an instituting law, i.e., a kind of infra-law: “generator of the most diverse forms of customs, habits, practices and discourses that never cease to act, from within, on the official models of established law”. Consequently, the meaning horizons attributed to punishment and punitive rituals always arise from this dialectical tension between instituted forms, structured as dominant justification discourses, and instituting forces – precisely, the set of instituting discourses and practices that never cease to question, challenge, and even disrupt the established discourses, structures, and practices (Ost, 2004; Arnaud, 1981).

- 150 Dias, J. de F.; Andrade, M. da C. (1997). *Criminologia: o homem delinquente e a sociedade criminógena*. Coimbra: Coimbra, p. 246. The rupture with the etiological perspective occurs mainly within the framework of critical criminological knowledge, which, by inaugurating a “sociology of punitive society”, introduces new terminology and new concepts for the analysis of the phenomenon of penal social control. Within this theoretical model, the paradigm of social reaction stands as a true “scientific revolution” in the scope of criminological knowledge. Its central thesis posits that crime and the criminal, unlike pre-constituted ontological realities subject to social and penal reaction, are qualities (labels) assigned to certain behaviors and individuals through complex processes of social interaction, that is, processes of definition and selection. See also: Young, J. *Thinking Seriously About Crime: some models of criminology*. Available at: www.malcolmread.co.uk/JockYoung. Accessed in: July 10, 2004. Andrade, V. (1996). Do paradigma etiológico ao paradigma da reação social: mudança e permanência de paradigmas na ciência e no senso comum. *Revista Brasileira de Ciências Criminais* (14), São Paulo, p. 279-281. Molina, A. G-P. de (1997). *Criminologia: introdução a seus fundamentos teóricos*. São Paulo: RT, chapters two and three. And also: Castro, L. A. de (1983). *Criminologia da Reação Social*. Rio de Janeiro: Forense.
- 151 The notion of legal (criminal) field, or criminal justice system, as developed throughout this study is of fundamental relevance for a broader understanding of the dynamics of penal control, since it denotes something far more extensive than merely the set of criminal laws enacted by the State to establish a decision-making framework for the exercise of its punitive power (criminal law). In fact, the legal field consists of the articulation of institutions and practices through which the law is produced, interpreted, and incorporated into decision-making within society. It is a space of struggle for the monopoly on defining the law and, consequently, for articulating hegemonic meanings that establish the legitimate, rightful vision of social life. Therefore, it encompasses all the actors who make, interpret, and apply the law, transmit legal knowledge, and socialize the participants in the game of the field (e.g., the legislative, judicial, and executive branches, the police, the media, and other agencies involved in the application and enforcement of punitive measures, etc.). All players in a legal field have a specific set of dispositions that guide their actions, which represents the habitus of this field, i.e., a set of shared predispositions that shape a routinized, banalized, and trivialized way of understanding, judging, and acting regarding legal issues. In this context, alongside its real power of control, domination, and normalization of individuals, the legal field is the quintessential form of symbolic power, that is, power that manifests itself in a hidden or disguised manner, primarily due to its ability to generate a discourse that names things, a discourse that is active and capable, by its own virtue, of producing concrete effects. Especially through the

strength of its “rhetoric of impersonality and neutrality”; the law achieves effects of both neutralization and autonomy, as well as the universalization of its “truths” (See Bourdieu, 1987). See also Dezalay & Trubeck (1998); Streck (2005).

- 152 This is the greatly simplified version of what Durkheim identifies as the constitutive elements of social interaction in modern life, forged from a new form of social solidarity artificially constructed: the organic solidarity. See Durkheim, E. (1999). *Da divisão do trabalho social*. São Paulo: Martins Fontes. In the field of ideology of penal control, Cirino dos Santos emphasizes that “formalist theories prioritize the legal form of the legal norm: they define Law as the expression/condition of any social order and, therefore, the legal form as a supra-historical category, independent of the content of that legal form (dogmatism). The most authoritative representative of this position is Durkheim (1964), who conceives law and punishment as expressions of the collective consciousness of society – or functional prerequisites of social order: Law is idealized as the ‘public power’ of society, and crime represents a violation of the collective consciousness, associated with selfishness and anomie, as the absence of normative social control”. Santos, J. C. (2006). *A Criminologia Radical*. 2. ed. Curitiba/Rio de Janeiro: ICPC/Lumen Juris, p. 91.
- 153 According to Marilena Chaui, the competent discourse is the instituted discourse. It is the one in which language undergoes a restriction that could be summarized as follows: not just anyone can say anything to anyone else, anywhere, and under any circumstances. Therefore, it aligns, as expressed by the author from São Paulo, with the language that is institutionally permitted and authorized. As a discourse of knowledge, it asserts itself as the discourse of the specialist, spoken from a specific point within the organizational hierarchy. Therefore, “it is a discourse that is not inspired by ideas and values, but by the supposed reality of facts and the supposed efficacy of means of action. (...) it is the instituted discourse or institutionalized science, not an instituting and inaugural knowledge, and, as established knowledge, it serves the role of concealing, under the guise of scientificity, the real existence of domination”. See Chaui, M. (1993). *Cultura e Democracia: o discurso competente e outras falas*. São Paulo: Cortez, p. 03-13. Moreover, as adduced by Lyra Filho, the competent discourse, in which science is corrupted to serve domination, maintains an inextricable connection with convenient discourse, through which the privileged classes replace reality with the image most favorable to them and seek to impose it on others, using all available resources (mass media, education agencies, special instruments of social control in which they participate, and, of course, notably, the laws themselves). See Lyra Filho, R. (1996). *O que é Direito*. São Paulo: Brasiliense, p. 18-19.
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general and abstract legality capable of ensuring it; b) the political factor, in light of the demands for order and protection of the individual at various levels (physical, political, and economic security); and finally, c) the technical factor, since bureaucracy would, according to Weber, promote an economy of the objective and personal costs of decisions, due to its “precision, speed, unambiguity, formality, continuity, description, uniformity” (See Weber, Max (1992), p. 150 and following, 175 and following, and 1056 and following. See Barzotto, 2002).

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