

**MAX PLANCK INSTITUTE
FOR FOREIGN AND INTERNATIONAL
CRIMINAL LAW***

RAFAEL DINIZ PUCCI**

**1
BRAZIL ON TRIAL :
MAFIA, ORGANIZED CRIME, GANG, TERRORIST GROUP –
OR, SIMPLY, A PROBLEM CREATED BY A STATE POLICY?**

Contents:

I. The policy of mass imprisonment and the situation of prisons in Brazil	3
II. The factors and the actors	12
II. 1 Actors	12
II. 2 Facts	14
II. 3 Police Violence. The answer from the State – Trade-off efficiency-legitimacy or the complete inefficiency and illegitimacy	15
II. 4 “Policemen”, not the “Police”, were also victims	16
II. 5 Emergency Legislation – “RDMax”	17
III. Discussion on the qualification of PCC – Terrorism or Social Revolution?.....	18
IV. Images – Curfew	20
V. Conclusion	21

* Professor Hans-Jörg Albrecht has encouraged and made possible the conception of this article; for his accurate advices on this work and for welcoming me at the Max Planck Institute in Freiburg i. Breisgau, I offer him my sincere gratitude.

I must also thank Professor José Eduardo Faria, for the period in which I was under his orientation at the University of São Paulo. Further, I thank Professor Jörg Arnold who, with his impressive knowledge about Latin America’s law and culture, has also given me important advices. Finally, I thank Prof. Dr. Janina Czapska, Dr. Damien Cassan, Ms. Johanna Rinceanu, Mr. Alfredo Liñan, Mr. Gerardo Briceño, Ms. Scherer, Ms. Herms, Ms. Lickert, Ms. Biele, Ms. Schreiber, Ms. Gehring and Ms. Heidel. Also, Mr. Christopher Murphy for his prudent analysis and precise suggestions. And, for his competent work, that made possible the publication of this article, Mr. Michael Knecht.

** Rafael Diniz Pucci is graduated in Law at the University of São Paulo (USP), in Brazil. In the period from 2002-2005 he was scholarship holder in the Program PET/Capes-Sesu/MEC. Presently, Pucci is an invited researcher at the Max Planck Institute for Foreign and International Criminal Law – Freiburg i. Breisgau/Germany, where he is writing his doctoral thesis about the “Coverage of Environmental Crimes in the World Risk Society via the Control of Criminal Organizations”.

¹ Reference to MATHIESEN, Thomas, *Prison on Trial*, Waterside Press, Winchester, 2000.

There has always been some truth in the layman's charge that the sociologist's picture of the world is merely a more complicated representation of his own common-sense way of understanding things ... He [the sociologist] must look behind the picture and understand the process of its creation, before trying to paint over it and superimpose his own version of what is happening.

(STANLEY COHEN)²

Abstract: The present article searches an explanation for the acts – in the period from the 12th until 19th of May 2006 – that were attributed to the PCC (First Command of the Capital) in Brazil, and impacted especially on the state of São Paulo. Firstly, it analyses the debate concerning the mass imprisonment model that Brazil has followed in the last fifteen years. Then, it tries to summarize those facts and, further, it attempts to discuss what kind of actor the PCC is – is it a Terrorist Organization, as one Brazilian newspaper labeled it? A Mafia style organisation (as a German newspaper called it)? A Gang (as an Italian newspaper stated) or a Criminal Organization (French, Spanish and Argentinean newspapers)?

² COHEN, Stanley (ed.), *Images of Deviance*, Penguin Books, Harmondworth, 1971, p. 9.

I. The policy of mass imprisonment and the situation of prisons in Brazil

Punishment must be understood as a social phenomenon freed from both its juristic concept and its social ends ... Punishment as such does not exist; only concrete systems of punishment and specific criminal practices exist.

(RUSCHE and KIRCHHEIMER)³

1. According to CHRISTIE, the size of the prison population of a country is a result of its history, political ideas and the will to search for alternative models aside from criminal ones.⁴

2. The Brazilian prison population has steadily grown over the past fifteen years. A recent report of the Department of Penitentiary (DEPEN), from the Brazilian's Justice Ministry, demonstrated that from 1992 until 2004 the prison population has increased from 114.377 to 336.358. This represents - in terms of prison population rate per 100.000 inhabitants of the country - a growth from 74 to 183. As of December 2005, the number of prisoners has reached 361.402, while the official capacity of the prison system was 206.347 places (see List I.1). The prevision of the DEPEN is that, continuing on this pattern, the number of prisoners will reach 476.000 in December 2007.⁵

3. If Brazil's prison population is considered large, when it comes to a specific State of the Federation, the numbers are no less impressive. From those 361.402 prisoners, 138.248, as of December 2005, were in São Paulo - which in 1994 had 55.021 prisoners (see *Graph I.1*).

³ RUSCHE, Georg, KIRCHHEIMER, Otto, *Punishment and Social Structure*, Russell and Russell, New York, 1968, p. 5.

⁴ CHRISTIE, Nils, *Wieviel Kriminalität braucht die Gesellschaft?*, C.H. Beck, München, 2004, p. 79, says: „Die Anzahl der Gefängnisinsassen ist in jeder Gesellschaft auch ein Ergebnis der Geschichte des betreffenden Landes und eine Folge der vorherrschenden politischen Ideen und hängt nicht zuletzt von der Bereitschaft ab, nach anderen als strafrechtlichen Lösungen zu suchen“.

⁵ *Sistema Penitenciário no Brasil. Diagnósticos e Propostas*, Departamento Penitenciário Nacional, Ministério da Justiça, Brasil, 2006, p. 13.

List I.1

BRAZIL – PRISON POPULATION	December 2005		
Population in Penitentiaries:	296.919		
Population in Police Headquarters:	64.483		
Total Prison population (including pre-trial detainees / remand prisoners)	361.402		
Official capacity of prison system:	206.347		
Recent prison population trend (year, prison population total, prison population rate per 100.000)	1992	114.377	(74)
	1995	170.602	(92)
	1997	148.760	(102)
	2001	233.859	(133)
	2004	336.358	(183)
	2005	361.402	(196)
Population of the Country – 2005	184.007.699		

Source: Adapted from Sistema Penitenciário no Brasil. Dados Consolidados, Departamento Penitenciário Nacional, Ministério da Justiça, Brasil, 2006, p. 34 and International Centre for Prison Studies – King’s College – http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/south_america.html

4. The government of São Paulo has definitely chosen the “Zero Tolerance”⁶⁷ approach adopted in New York⁸, sometimes in an even more radi-

⁶ Nowadays, this locution is said to be offensive even by the conservative parties, that prefer to say “Police of life quality”, see WACQUANT, Loïc, Sobre a “janela quebrada” e alguns outros contos sobre segurança vindos da América, in RBCCrim, No. 46, 2004, pp. 228-251, p. 242.

⁷ WACQUANT, Loïc, Toward a dictatorship over the poor?, in Punishment and Society, V. 5(2), p. 198 says that “from Brasília to Caracas to Buenos Aires public officials have raced to adopt measures by Rudolph Giuliani” and “politicians have run head over heels to be photo-

cal way.⁹ As stated on its own website, the reduction in the number of violent crimes is due to the “efforts from [the State of] São Paulo”, which would be “evident when comparing the results from São Paulo with those obtained in New York with ‘Zero Tolerance’.” The reduction on premeditated homicide in São Paulo in the last 8 years (1999 to 2006) was 60%, “practically the same percentage obtained in New York during the period of the government of the mayor Rudolph W. Giuliani (1993 to 2000).”¹⁰

5. A report recently divulged by the same Secretary of São Paulo’s government shows that this reduction can be related to 1) the fact that, with more people in prison, 5000 people that committed homicide are out of circulation – without forgetting that “the debate happens also in the USA, where the accelerated growth on imprisonment rates was followed by reduction on criminality” and 2) the demographical change has provoked a reduction in São Paulo of the number of juveniles, and young people “all over the world are more involved with criminality, as actor or victim.”¹¹

6. The way in which this statement is posed points to a characteristic noticed by WACQUANT, being that the criminalization of poor through this

graphed with William Bratton, latter day prophet of the religion ‘zero tolerance’, which, he says, should not be entitled “Zero Tolerance”, but rather “Selective Intolerance”, since its aim is to clean the streets from the poor people that asks for money (a similar policy was adopted by the former major of São Paulo, José Serra – PSDB – last year).

⁸ On the other side see WACQUANT, Loïc, *Sobre a “janela quebrada” e alguns outros contos sobre segurança vindos da América*, op. cit., p. 229, where he stresses that this “staging” from the politicians in charge of security policies has the aim of reassuring the state’s capacity of action while they defend the impotence of the state in the economic and social fields.

⁹ The former Governor of the State of São Paulo, Geraldo Alckmin (PSDB), said at the beginning of his mandate: “In São Paulo the outlaw has two destinies – prison or coffin” (see Secretário de Segurança segue os passos de Fleury Filho, in newspaper *Folha de São Paulo*, Section Cotidiano, 04th of June 2006).

¹⁰ In <http://www.ssp.sp.gov.br/estatisticas/>, accessed on 06.06.2006, “O esforço paulista pela redução dos homicídios fica evidente quando são comparados os resultados da cidade de São Paulo com os obtidos pelo conhecido ‘Tolerância Zero’ de Nova York. A queda percentual dos homicídios dolosos nos primeiros trimestres dos últimos 8 anos (1999 a 2006) foi de -60%, praticamente o mesmo percentual obtido por Nova York durante a gestão do prefeito Rudolph W. Giuliani (1993 a 2000)”. Apart from that, São Paulo is a state which is governed by a coalition between PSDB (Social-Democrat Party) and PFL (Liberal Party) since 1994. Fernando Henrique Cardoso, Brazilian’s former president before Lula, and one of the leader’s of PSDB, said after the crisis that “Brazil should adopt a program similar to Zero Tolerance from New York.” Coincidence or not, the leadership from PSDB, at the moment of the attacks was in ... New York (see, *Consumismo estraga o país, diz Lembo*, in newspaper *Folha de São Paulo*, Section Cotidiano, 31st of May 2006).

¹¹ CAP – Coordenadoria de Análise e Planejamento da Secretaria de Segurança Pública do Estado de São Paulo, *Estudos Criminológicos*, n. 1, julho 2004, pp. 23-27.

policy consists in transforming a political problem that is caused by economic disparity and social insecurity, into a criminal problem.

7. The social reality of New York, and the social reality of the Latin American countries – that have adopted policies of “Zero Tolerance” – are completely different. WACQUANT, in this sense, shows that “*quartieri periferici*” in Italy, “*favela*” in Brazil, “*problemområde*” in Sweden, “*po-blacione* in Chile”, “*villa miseria* in Argentina”, “*cantegril*” in Uruguay, “*rancho*” in Venezuela”, “*banlieue*” in France, “black ghetto” in the USA, are known in all of those places as being “problem districts”, “no-go areas”, or “wild precincts”, and possess mechanisms and forms related to an “historical matrix of class, state, and place.” Based on this fact, WACQUANT states that “we need to develop more complex and differentiated images of the ‘damned of the city’ [ironical connotation] if we are to properly capture their social state and explain their collective fate in different national states.”¹² Result: with regard to these stigmatized areas there is a social atomization and reduced collective capacity of the poor to actuate against the stigma (trying to avoid this stigma, the person refuses to belong to the community), that makes it easier for the state elites to treat them as criminals.¹³

8. In this sense, BEAUD and PIALOUX, in describing how an “*émeute urbaine*” (a kind of popular insurrection, category that those authors use to describe the social problems of the so-called city Sochaux-Montbéliard, in France) is created, say that the degradation of the area, due to the reduction of the number of jobs for young people in the middle of the 1990’s, provokes a corresponding degradation of social relations in the affected area, especially between young people (who also begin to display a kind of aggressiveness against any kind of authority – police or old people, for instance),¹⁴ reaching a stage of collective self-destruction (with attacks on schools, public transport and other communal places). That happens because policies like “Zero Tolerance” are aimed at the “political legitimation of criminal social control” and its concepts “translates into a process of ex-

¹² Preface to WACQUANT, Loïc, *Os Condenados da Cidade*, Revan, Rio de Janeiro, 2001, p. 1.

¹³ WACQUANT, Loïc, *Parias Urbains. Ghetto – Banlieues – État*, La Découverte, Paris, 2006, p. 5. Also, WACQUANT, Loïc, *Castigar a los parias urbanos*, in *Oficios Terrestres*, Año XI, n. 17, 2005, p. 13.

¹⁴ BEAUD, Stéphane, PIALOUX, Michel, *Violences urbaines, violence sociale. Genèse des nouvelles classes dangereuses*, Fayard, Paris, 2003, pp. 10-11.

clusion.”¹⁵ The result: the individual aimed at the “Zero Tolerance” (the “broken windows” – immigrants, beggars, drug addicts, and other minorities)¹⁶ program is excluded, does not recognize him or herself as a part of the community, and is also not recognized by the community.

9. Another ground on which to refute the application of “Zero Tolerance” programs is that, as many studies have stressed, the reduction of crime in New York in the 1990’s had little relationship to “Zero Tolerance”, “Compstat”,¹⁷ “Order Maintenance Policing Strategies” and the corresponding theory of “Broken Windows”, as noticed by ROSENFELD, FORNANGO and BAUMER¹⁸ when drawing a growth-curve analysis of data from the 95 largest USA cities. Moreover, other policies adopted in USA such as “Operation Ceasefire” and “Ten Point Coalition”, in Boston, and “Project Exile” (with only a small effect), in Richmond (Virginia), does not seem to be the reason behind the reduction of crime. In this sense, WACQUANT points out that 1) the reduction of criminal violence in New York had started three years before Giuliani was elected in 1993;¹⁹ 2) the reduction in levels of criminality was also noticed in cities where the Zero Tolerance was not applied, such as in San Francisco (which had a reduction of 33% of violent criminality between 1995 and 1999, when New York had a reduction of 26%); 3) New York had already applied a similar policy – “Operation Pressure Point” – between 1984-1987, that resulted in a rise of crime rates.

10. WACQUANT says that the factors that contributed to the reduction of the criminality in the USA were, in fact, 1) the economic growth that gave work and incomes to millions of young people; 2) a demographical change with a reduction in the number of young people; 3) changes to the

¹⁵ DIAS NETO, Theodomiro, *Segurança Urbana. O Modelo da Nova Prevenção*, RT, São Paulo, 2005, p. 140.

¹⁶ DIAS NETO, Theodomiro, *Segurança Urbana. O Modelo da Nova Prevenção*, op. cit., p. 141.

¹⁷ The government of São Paulo also has its own version for this, which is called “SIPOM”, that the police uses to “monitorate” the activity of former prisoners (see *Policia usa software contra o PCC*, in newspaper *Estado de São Paulo*, Section *Metrópole/Cidades*, 4th of June 2006).

¹⁸ ROSENFELD, R., FORNANGO, R., BAUMER, E., *Did Ceasefire, Compstat, and Exile Reduce Homicide?*, in v. 4, n. 3, 2005, pp. 419-450.

¹⁹ WACQUANT, Loïc, *Sobre a “janela quebrada” e alguns outros contos sobre segurança vindos da América*, op. cit., p. 237, where he says that, besides this fact, the rate of homicides committed without guns has been reduced since 1979 and only the homicides with guns have witnessed a great reduction since 1990 (but after a great growth between 1985-1990).

drugs economy; 4) the fear of young people about the problems of the 1980's with the war on the streets with drug addiction, criminal reclusion and violent and premature death; 5) the work of civil organizations – such as “Mother Against Drugs” and “Mothers Reclaiming our Children” – and its informal social control; 6) the rates of criminality in the USA at the beginning of the 1990's were unusual and, due to this fact, presented trends towards reduction²⁰; 7) it was not the prevention of a serious crime through the punishment of small misdemeanours that prevailed²¹, but the fact that in 5 years the budget from the New York government to police reached 3 billion dollars (in 2000, that represented a growth of 50%), while in the same period the budget to social assistance dropped over 30%.

11. It also has to be mentioned that not all the facts considered as a crime have been reduced in São Paulo. For instance, the number of kidnapping has grown from 12 to 133 per year from 1996 to 2005, and the number of robbery from 123.400 to 224.300 per year.²²

12. However, inside the police of São Paulo, there are chiefs that use the growth of the PCC (First Command of the Capital, which will be explained in the next pages) as a factor to comprehend the reduction of homicides.²³ It is simple - with the PCC, the decision to kill depends on the order of the leadership, which in turn has reduced the number of homicides.

13. It is clear that the growth in the number of prisoners, far from representing an increase in crime, is much more related to state policy. A policy that could be compared with that of the United States of America of combating the poverty through the criminal system or that of European countries of substituting the Welfare State for a policy of mass imprisonment,²⁴ with the difference that Brazil has never had such a Welfare State.

²⁰ WACQUANT, Loïc, *Sobre a “janela quebrada” e alguns outros contos sobre segurança vindos da América*, op. cit., pp. 239-241.

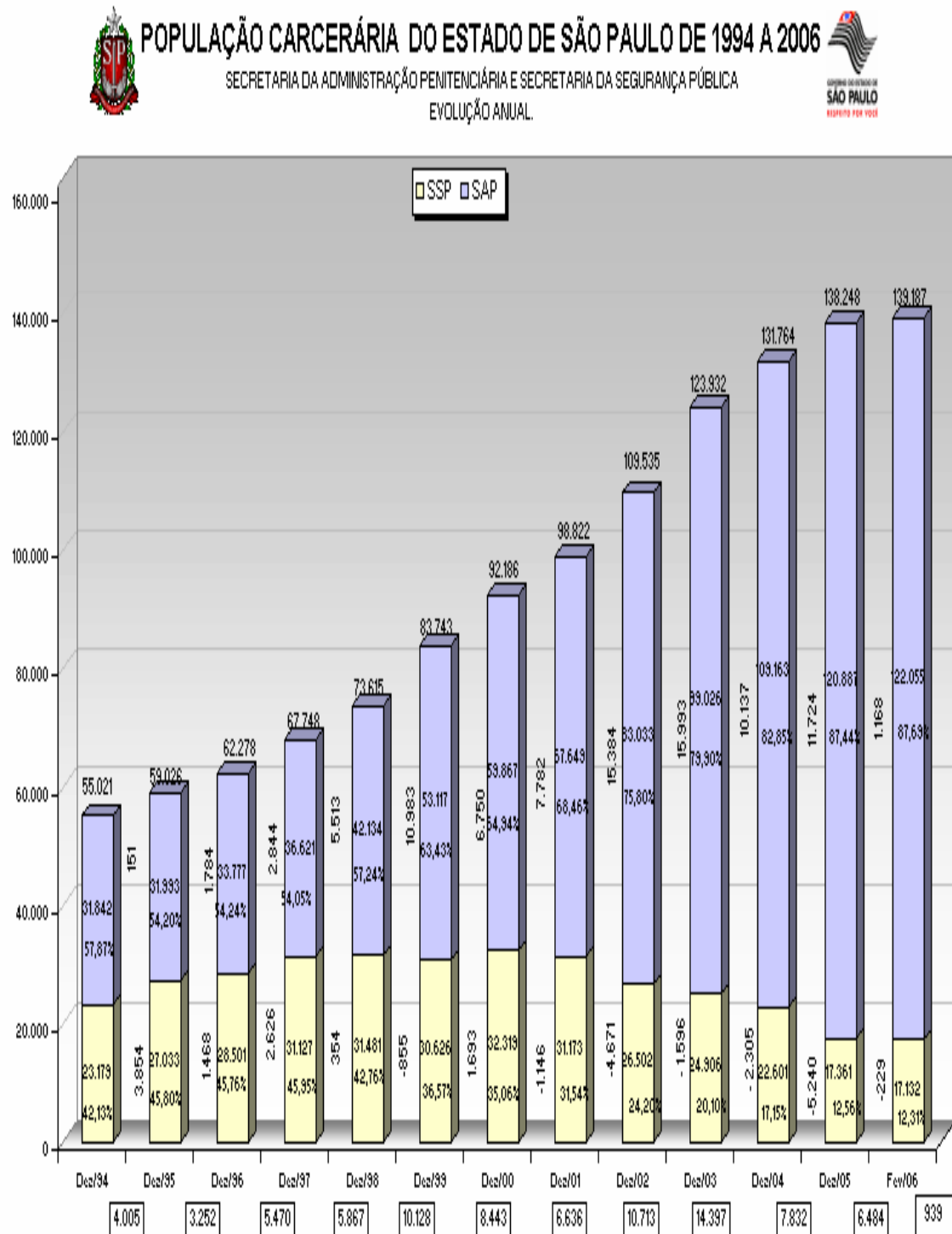
²¹ Mayor Giuliani had two men in charge of the application of the policies: William W. Bratton and Jack Maple; the latter even says that it would be ridiculous to think about this mystic relationship between small incidents and grave crimes (see WACQUANT, Loïc, *Sobre a “janela quebrada” e alguns outros contos sobre segurança vindos da América*, op. cit., p. 247).

²² São Paulo reduziu força policial nos “anos PCC”, in newspaper Folha de São Paulo, Section Cotidiano, 30th of May 2006.

²³ Dízimo rende R\$ 1 mi por mês ao 'banco do crime', in newspaper O Estado de São Paulo, Section Metrópole, 20th of May 2006.

²⁴ WACQUANT, LOÏC, La tentation pénale en Europe, in *Actes de la recherche en sciences sociales*, BOURDIEU, Pierre (ed.), N. 124, Sep. 1998, Paris, pp. 3-7.

Graph I.1



Source: Evolução Anual, Secretaria de Administração Penitenciária e Secretaria de Segurança Pública, <http://www.admpenitenciaria.sp.gov.br/common/dti/estatisticas/populacao.htm>, accessed on 14.06.2006.

List I.II

SÃO PAULO – PRISON POPULATION	December 2005
Population in Penitentiaries:	120.601
Population in Police Headquarters:	17.515
Prison population total (including pre-trial detainees / remand prisoners)	138.116
Official capacity of prison system:	88.992
Population rate per 100.000	About 345
Population of the State	About 40.000.000 ²⁵

Source: Adapted from Sistema Penitenciário no Brasil. Dados Consolidados, Departamento Penitenciário Nacional, Ministério da Justiça, Brasil, 2006, p. 31.

14. As WACQUANT points out, Brazil is using the “Criminal State” (police, criminal courts and penitentiaries) as the only means to combat criminality and, also, poverty and rent distribution.²⁶ WACQUANT has noticed, also, that what he calls “neoliberal penalty” is paradoxical, since the state elites defend the absence of the state on social and economical grounds, but “reaffirms the omnipotence of the Leviathan in the restricted domain of public order maintenance.”²⁷

15. This fact stresses the announced discursive policy of security that nowadays puts together politicians from both Right and Left wing parties²⁸ around “Zero Tolerance” policies.

²⁵ In Revista de Estatísticas Vitais do Estado de São Paulo, ano 6, n. 1, maio-2005, p. 1.

²⁶ See WACQUANT, LOÏC, interview for the newspaper Folha de São Paulo, Section Cotidiano, 15th of May 2006.

²⁷ WACQUANT, Loïc, Toward a dictatorship over the poor?, in Punishment and Society, V. 5(2), p. 198.

²⁸ WACQUANT, Loïc, Sobre a “janela quebrada” e alguns outros contos sobre segurança vindos da América, op. cit., p. 231. In the same line SILVA SÁNCHEZ, Jesús-María, La expansión del Derecho Penal. Aspectos de la política criminal en las sociedades postindustriales, Cuadernos Civitas, Madrid, 2001, p. 51, calls the idea of security from the Left the “ideología de la ley y el orden en versión de izquierda” (ideology of law and order in Left version).

16. In fact, the result of this process, as CHRISTIE describes,²⁹ is that prisons are over-populated and staffed by inadequate numbers of guards. Due to these conditions, a system of hierarchical castes has developed, where the chief, a prisoner, wields a great amount of power inside and outside the prison. In Brazil, to make matters worse, although the number of prisoners has steadily grown, the budget of the state has not accompanied this trend (nor in the public security field, neither in the penitentiary one) - from 2004 to 2005 there was a drop of over 28% in the National Fund for Public Security, while the Penitentiary National Fund had, in the same period, a drop of over R\$ 55,2 millions.

17. To explain this situation, WACQUANT says that countries like Brazil and Argentina have adopted policies of economical de-regulation with a corresponding drop in the Welfare. This is not as a result of insufficient economic growth, as it was in the fordist period from 1945 to 1975, but as the result of economic growth coupled with unequal wealth distributed. This would be a consequence of the transition from the fordist model to the postfordist one. In the first when the economy was growing, jobs were created; in the period of recession, the “Keynesian State” redistributed wealth. In the last model (postfordist) that does not happen, the situation of the poor during times of recession drops over without a compensation in the other stages of the cycle, since the creation of jobs, when it happens, is characterized by occasional and insecure places.³⁰

18. Clearly, the Brazilian state and, in this matter, especially São Paulo (that has the highest rate of imprisonment in the Brazilian context, as will be shown), has adopted a criminal solution to deal with problems that are related to the economy and societal inequalities at large. Such a policy will, as a consequence, foster the emergence of groups like the First Command of the Capital (PCC) and, consequently, their actions.

²⁹ CHRISTIE, Nils, *Wieviel Kriminalität braucht die Gesellschaft?*, op. cit., P. 68.

³⁰ WACQUANT, Loïc, *Castigar a los parias urbanos*, in *Oficios Terrestres*, Año XI, n. 17, 2005, pp. 11-12.

II. The factors and the actors

II. 1 Actors

19. The First Command of the Capital (PCC) was founded on the 31st of August 1993 - at the House of Custody and Treatment of Taubaté, São Paulo - according to its members in order to fight against the oppression found within the prison system, as demonstrated by the massacre of 111 people in the old House of Detention Carandiru (which happened on the 2nd of October 1992).

20. Initially, the chiefs wanted to request better conditions in prison (which nowadays the members from PCC call “Faculty”), expressing the rights rights of the prisoners.³¹ Now the PCC has created a net of assistance which receives money from the relatives of prisoners, from the “taxation” of activities such as the “perueiros” (the drivers of cars which make the transport of workers from the periphery of São Paulo to their work - it was, firstly, an activity situated beyond the margins of the law, but, nowadays, with the inefficacy of the state in providing public transport, is regulated by the government), and also from the trafficking of drugs. The lottery is another financial source and tickets are sold to prisoners and their families.

21. The income is used to finance other crimes. For example, with its funds the PCC financed the robbery of the Brazilian Central Bank in Fortaleza to the value of R\$ 164,8 millions³², of which R\$ 50 millions stayed with PCC. According to the Brazilian’s Federal Police, the PCC participates in at least 20% of all robberies from values and loads of goods throughout the country³³, the income of which, according to some analysis³⁴, gave support to the acts in São Paulo in May (a similar attempt was

³¹ AUGUSTO DE SÁ, Alvino, Só diálogo pode superar onda de violência, in newspaper Folha de São Paulo, Section Cotidiano, 17th of May 2006.

³² Antônio Jussivan Alves dos Santos, the so-called “Alemão”, considered a “cousin” (sympathetic) to PCC, was the leader of the robbery. He contributes to the organization with the incomes from his acts, and PCC gives him protection and guns (see Líder do assalto ao BC é parceiro do PCC em ações criminosas, in newspaper Folha de São Paulo, Section Cotidiano, 12th of June 2006).

³³ Furto ao BC financiou os atentados em São Paulo, in newspaper Folha de São Paulo, Section Cotidiano, 12th of June 2006. According to this report, the Federal Police found this number after 50 especial operations since 2004. They said that the principal targets to the action of the PCC are the transport of values and transport of loads.

³⁴ Furto ao BC financiou os atentados em São Paulo, in newspaper Folha de São Paulo, Section Cotidiano, 12th of June 2006.

also performed, though without success, by them in Paraguay to an agency of the ABN Amro Bank, with financial assistance amounting to R\$ 300.000 coming from the PCC). Another source of income stems from the monthly payments made by each of 140.000 affiliated members (each prisoner must pay R\$ 50 per month, and, upon release, R\$ 500).³⁵ In order to do the money laundering of the income, the PCC started to purchase and operate service stations and clandestine transport.

22. The PCC has a code of rules containing 16 articles, written by one of its founders, Mizael Aparecido da Silva, the “Miza”, killed in 2002 at the Penitentiary 2 of Presidente Venceslau. The document makes reference to the association with Red Command (CV), a criminal group from Rio de Janeiro. Actions of contribution between the members (social and legal assistance, even the payment of lawyers) are also carried out. Thereafter, the PCC spread throughout the system, and dominates about 95% of the prisons in São Paulo. The leaders have also been in penitentiaries from Mato Grosso do Sul, Bahia, Rio de Janeiro, Paraná, Minas Gerais, Santa Catarina e Rio Grande do Sul, and left followers in these locations too.

23. At the end of 2002, Marcos Willians Herbas Camacho (“Marcola”) assumed command of the PCC, prevailing over two former leaders: José Márcio Felício, the “Gelêião”, and César Augusto Roriz, the “Cesinha”. “Cesinha” was killed accused of been the murderer of Marcola’s wife; “Gelêião” lost power for his severity with other prisoners. “Cesinha” and “Gelêião” were the responsible for the agreement formed with Comando Vermelho (CV – Red Command – Rio de Janeiro), while they were arrested in the Penitentiary of Bangu, Rio de Janeiro.

24. Besides that, it has been identified that the PCC uses strategies to enter into the “administrative machinery” of the state. For this purpose, the PCC finances elections of deputies, provokes fraudulent results in public examinations from the state to contract jailers.

³⁵ Loteria do PCC sorteia carros e motos. Jogo já é uma das principais fontes de renda da organização criminosa; números seguem sorteio da Loteria Federal, in newspaper O Estado de São Paulo, Section Metrópole, 20th of May 2006.

25. The fact is that, with the attacks, the PCC has realized its power and can, from now on, use it to negotiate with the state.³⁶ According to José Vicente da Silva, the number of the members of the PCC involved in the attacks has surprised even the chiefs of the PCC.

II. 2 Facts

- 2001 Mega-rebellion, in 29 penitentiaries;
- 2002 12 members of the PCC were killed³⁷ in a police operation called “Castelinho”, without any police casualties. There was indication of torture and abuse of authority;
- 2002 The building from the State Secretary of Human Rights of Rio de Janeiro was attacked with machine-guns, supposedly by a group commanded with agreement between the PCC and the CV (Red Command – Rio de Janeiro)³⁸;
- 2003 Judge Antônio José Machado Dias was killed, supposedly by members from the PCC.

26. Between 12th and 19th May 2006 in São Paulo there were 166 deaths³⁹ related to the conflict (42 policeman, 4 civilians, 9 prisoner and 111 “suspects”), rebellions in 80 prisons (involving 62% of the prisoners from São Paulo) and 373 attacks⁴⁰ (police headquarters, courts, banks, buses).

27. Also, in the State of Paraná, 700 prisoners rebelled alongside a further 180 prisoners in Mato Grosso do Sul.

28. On the 10th of May the government, with the aim of combating the PCC (which was planning a general rebellion for a Sunday, Mother’s

³⁶ Após 1 mês, número de mortes é incerto, in newspaper Folha de São Paulo, Section Cotidiano, 12th of June 2006.

³⁷ Secretário de Segurança segue os passos de Fleury Filho, in newspaper Folha de São Paulo, Section Cotidiano, 04th of June 2006.

³⁸ Aliança PCC-CV é eventual e limitada aos negócios, in newspaper Folha de São Paulo, Section Cotidiano, 28th of May, 2006.

³⁹ The public institutions could not reach a consensus about the number of deaths, but experts from the state would analyse the 492 deaths with fire arms that happened from 12th to 19th of May in the State of São Paulo - three times more than in the normal period (see Após 1 mês, número de mortes é incerto, in newspaper Folha de São Paulo, Section Cotidiano, 12th of June 2006).

⁴⁰ Após 1 mês, número de mortes é incerto, in newspaper Folha de São Paulo, Section Cotidiano, 12th of June 2006.

Day⁴¹) transferred 765 PCC members to Presidente Venceslau (to the maximum security prison) with the aim of “isolating” the leaders.

29. On the 11th of June, prisoners from 40 penitentiaries in São Paulo initiated a “white rebellion”, refusing to clean the building, go to court, receive objects from the post, or even play football and sunny bath, in solidarity with the leaders, who were in the penitentiaries of President Bernardes and President Venceslau in the Disciplinary Differentiated Regime (RDD).⁴²

II. 3 Police Violence: The answer from the state – Trade-off efficiency-legitimacy or the complete inefficiency and illegitimacy⁴³

The collective action of the urban poor generates new understandings and multi-stranded ties that open up room for social autonomy and critique. Among state institutions, primary attention should be granted to the police as the frontline agency that is increasingly entrusted with maintaining, not only public order but, in a very concrete sense that returns it to its original historic mission, the new order of vertiginous social inequality ...

(WACQUANT)⁴⁴

30. In only 12 hours the police killed 33 “suspects”⁴⁵ (many of them in a style characteristic of executions)⁴⁶ of unknown authorship.⁴⁷ Those suspected of the deaths are policemen who responded to the attacks promoted

⁴¹ Policiais associam idultos a ataques, in newspaper Folha de São Paulo, Section Cotidiano, 16th of May 2006.

⁴² Detentos de 40 penitenciárias mantêm decisão, in newspaper Folha de São Paulo, Section Cotidiano, 10th of June 2006.

⁴³ WACQUANT, Loïc, Toward a dictatorship over the poor?, in *Punishment and Society*, V. 5(2), pp. 197-205, p. 197, points that “Brazilian police is not a remedy against violence but a major source of violence in its own right”.

⁴⁴ Preface to WACQUANT, Loïc, *Os condenados da cidade*, Revan, Rio de Janeiro, 2001.

⁴⁵ Em 12 horas Polícia mata 33 suspeitos e prende 24, in newspaper Folha de São Paulo, Section Cotidiano, 17th of May 2006.

⁴⁶ Peritos encontram indícios de execução em corpos de vítimas. Cadáveres que estavam no IML tinham marcas de tiro na nuca e na cabeça, in newspaper O Estado de São Paulo, Section Metrópole, São Paulo, 27th of May 2006.

⁴⁷ Polícia Civil apura ação de PMs em chacinas, in newspaper O Estado de São Paulo, Section Metrópole, São Paulo, 24th of May 2006.

by PCC members against police officers and headquarters. The recently created Public Defensory (legal aid) from the state of São Paulo has identified, besides those 28 officially pronounced dead by the police, another 11 deaths with the same characteristic: shots from up to down – a possible indication that the victims had surrendered, had fallen or were kneeling.⁴⁸

31. According to SOARES, independency, brutality and corruption are the “qualification” of the police in Brazil. In São Paulo, in 2003, there were 1191 homicides characterized by police violence; in 2004 the number was 984, and in 2005, 807. For SOARES, the Brazilian’s police model continues to suffer from the memory of the dictatorship before 1988⁴⁹, with the division of its structure and “militarization of ostensive policing.”⁵⁰ A sign thereof is the fact that the Secretary of Public Security from São Paulo immediately collected the reports from the Medical Legal Institute that was analyzing the causes of the deaths.

32. Most of the cases were justified by the chiefs of the police with the so-called expression “resistance followed by death.”

II. 4 “Policemen”, not the “Police”, were also victims

33. The families of the police officers were also in a state of panic.⁵¹ The general commandant of the Military Police even said that the command did not give notice to the police officers before the attacks (that, according to Claudio Lembo, PFL - Party of Liberal Front -, governor of São Paulo, was known 20 days before) to avoid panic within police ranks.⁵²

34. The fact is that the lower ranking police officers⁵³ are also exposed to more dangerous situations. From 1995 to 2006 the number of police offi-

⁴⁸ Defensoria liga homicídios a ação policial, in newspaper Folha de São Paulo, Section Cotidiano, São Paulo, 10th of June 2006.

⁴⁹ Luiz Eduardo Soares, Estes Criminosos não têm Ideologia, in newspaper O Diário de Notícias, Section Sociedade, Lisboa, 21st May 2006, p. 18.

⁵⁰ PINHEIRO, Paulo Sérgio, Chega de encenação, in newspaper Folha de São Paulo, Section Opinião, 30th of May 2006. This author says that the police from São Paulo, with a rate of killing one civil per day, are the most violent police of any democracy.

⁵¹ Famílias de Policiais estão apavoradas, in newspaper Folha de São Paulo, Section Cotidiano, São Paulo, 15th of May 2006.

⁵² PINHEIRO, Paulo Sérgio, Chega de encenação, in newspaper Folha de São Paulo, Section Opinião, 30th of May 2006.

⁵³ Dealing with the situation of the lower ranking police officer in France and in England, CASSAN, Damien, Une comparaison internationale de l'apprentissage et de la socialisation des policiers en France et en Angleterre. Le Gardien de la paix et le Police constable, Thèse de doc-

cers dropped from 352 per 100.000 inhabitants to 309 per 100.000 inhabitants, because the growth in absolute numbers (from 121.312 to 127.073) has not accompanied the growth of population (that has grown from 34.443.979 to 41.053.671 inhabitants). This requires individual police officers to work alone in a car, and prejudices their holiday entitlements and work breaks.⁵⁴ The medium salary of a police officer, of about R\$ 1.200,00 monthly, is pathetic when compared, for instance, with a police officer from Los Angeles (R\$ 10.000,00 to R\$ 12.000,00 monthly, without counting other benefits).⁵⁵

II. 5 Emergency Legislation – “RDMax”

35. In the context of state response, a particular role is played by the so-called “emergency legislation”. The parliamentary Commission of Constitution and Justice, immediately after the facts, approved a legal project that would enable homicides practiced by criminal organizations to be added to a list of “hideous crime”,⁵⁶ and would put into appreciation a project to create a regime called RDMax (a more rigid regime than the RDD – Differentiated Disciplinary Regime), in which the “highly dangerous” prisoners can stay for about 720 days isolated – with this period of time being able to be further lengthened by a judge.⁵⁷ Other parliamentarians, trying to take advantages of the situation of momentary claims by the population for repression, have also argued for an adoption of more repressive and enlarged criminal legislation, without regarding the risks of this kind of legislation.

torat de sociologie Label européen, USTL-Lille 1, v. I, 2005, pp. 486-487, shows that from early on, policemen are confronted with a situation in which their status is very small and their activities are many times characterized by uncertainty.

See, also, LÉVY, René, ZAUBERMAN, Renée, Police, Minorities, and the French Republican Ideal, in *Criminology*, V. 41, N. 4, 2003, pp. 1065-1100, that criticize a “conception of the role of the police in the State as accountable to the government rather than to citizens.”

⁵⁴ São Paulo reduziu força policial nos “anos PCC”, newspaper *Folha de São Paulo*, Section Cotidiano, 30th of May 2006, which says that the number of policeman in São Paulo, similar to Rio de Janeiro, is smaller than Buenos Aires, where there are 1.172 policemen per 100.000 inhabitants.

⁵⁵ Polícia deve ter salário decente para ser cobrada, in newspaper *Folha de São Paulo*, Section Cotidiano, 18th of May 2006.

⁵⁶ CCJ aprova pena maior para crime organizado, in newspaper *Estado de São Paulo*, Section Metrópole/Cidades, 2nd of June 2006.

⁵⁷ Congresso apressa votação de projetos, in newspaper *Folha de São Paulo*, Section Cotidiano, 17th of May 2006.

III. Discussion on the qualification of PCC – Terrorism or Social Revolution?

36. Since the aforementioned actions, many attempts have been made to qualify them. As Spector and Kitsuse say,⁵⁸ the social problems are created following the interests of their constructors. Discussing about this in the field of “urban violence”, BEAUD and PIALOUX realize that the discourse from the people in charge of institutions like the police, justice and schools always goes in the direction of the people that they want to neutralize and, with this aim, are considered by them as being guilty.⁵⁹

37. The crisis in Brazil could easily be seen as a failure of the state as regards social control (in other words, the state would not be able anymore to face the parallel power). But an authority (Janice Agostinho Barreto Ascari) has herself anticipated this and qualified the acts as a “terrorist attack”, similar to those of 11th September in USA.⁶⁰ In the words of Francisco Carlos Garisto, president of the National Association of Federal Police, “if the same situation was in Iraq, with 70 attacks and 50 deaths⁶¹ in two days, would it not be terrorism? If it was a foreign group, acting with a different name and killing more than 50 innocents, would it not be terrorism? Of course it would.” Or, as another commentator said: “this weekend was our 11th of September and the Criminal Courts are our Twin Towers.”⁶²

38. It is also interesting to see how the international press qualified the situation. The French press (*Le Monde*) called it *organisation criminelle*,

⁵⁸ SPECTOR, Malcolm, KITSUSE, John, *Constructing Social Problems*, Cummings Publishing Company, Menlo Park, Calif, 1977, pp. 7-12.

⁵⁹ BEAUD, Stéphane, PIALOUX, Michel, *Violences urbaines, violence sociale. Genèse des nouvelles classes dangereuses*, Fayard, Paris, 2003, p. 14, « le discours de la violence urbaine, qu’il soit tenu par les politiques, s’attache presque toujours à la recherche et à la désignation des ‘coupables’ – ceux qui ont participé directement aux événements (les ‘casseurs’ ou les ‘voyous’, comme on dit aujourd’hui) – qu’il conviendrait de neutraliser au plus vite ».

⁶⁰ ALBRECHT, Peter-Alexis, *The Forgotten Freedom. September 11 as a Challenge for European Legal Principles*, BWV, Berlin, 2003, p. 17. “Since September 11, it seems that speaking of freedom is a nostalgic undertaking. Freedom and social romance go together”.

⁶¹ TOGNOLI, Cláudio, *Cidade aterrorizada. Ataques podem ser caracterizados como terrorismo*, Site Consultor Jurídico, www.conjur.com.br, acesso em 01.06.06, “Se fosse no Iraque a mesma situação não seria terrorismo, com 70 ataques e meia centena de mortos em dois dias? Se fosse um grupo estrangeiro agindo com um nome diferente, e matando mais de 50 inocentes, não seria terrorismo? Claro que sim. Então a situação em São Paulo é de terrorismo”.

⁶² *Caos geral. Este fim de semana foi o nosso 11 de setembro*, in website Consultor Jurídico, www.conjur.com.br, accessed on the 29th of May 2006.

gangs, *crime organisé, criminalité organisée*⁶³; the Italian press (*Corriere della Serra*) called it *criminalità organizzata, gang criminali*⁶⁴; the Spanish press (*El Pais*) called it *mafia, banda criminal, grupos criminales*⁶⁵; in Argentina it was called *mafia*⁶⁶; the New York Times called it *Gangs*⁶⁷ and the German press (*Der Spiegel*) called it *Gangsterorganisation, Mafia, Gangstertrupps*.⁶⁹

39. H.-J. ALBRECHT says that “numerous problems are posed with attempts to measure organized crime”⁷⁰ and ARNOLD adds that “from a criminological viewpoint neither the concept of ‘organized crime’ nor that of a ‘criminal association’ can be rated as precisely defined terms.”⁷¹ In this extent, CHRISTIE says that concepts such as “mafia” or “organized crime”, for their lack of precision, can define any kind of negative act, especially when the state is debilitated.⁷² But, he asks - what characterizes a “mafia”? Size, hierarchy, national or international coverage? He goes further: to what extent, when illegal activities cease, does a criminal organization turn into a normal enterprise? However, the concept also creates the general impression that the acts are larger than they are in reality.⁷³

⁶³ La diffusion du Mondial au coeur des revendications des insurgés de São Paulo, newspaper Le Monde, 18th of May 2006.

⁶⁴ La Criminalità Organizzata ha assaltato 100 commissariati nello stato di San Paolo dopo il trasferimento dei boss in carcere sicure, in newspaper Corriere della Sera, Section Esteri, <http://www.corriere.it>, 15th May, 2006.

⁶⁵ Al menos 32 muertos en São Paulo en una oleada de ataques de grupos criminales contra la Policía, in newspaper El Pais, Section Internacional, 19th of May 2006.

⁶⁶ El grupo de la mafia que desato la violencia en la ciudad brasileña, in newspaper Clarín, Sectio El Mundo, 20th of May 2006.

⁶⁷ Five days of violence by gangs in São Paulo Leaves 115 Dead Before Subsiding, newspaper New York Times, Section A, Page 12, May 17th 2006.

⁶⁸ Brasilien: Tote bei Anschlagserie in Sao Paolo, in Spiegel Online, 13th of May 2006. Also Mafiaterror in Brasilien: Experten befürchten Anschläge auf Zivilisten, in Spiegel Online, 15th of May 2006.

⁶⁹ Schattenreich der Banden, in Magazine Der Spiegel, 21/2006, pp. 120-122.

⁷⁰ ALBRECHT, H.-J., The Extent of Organized Environmental Crime - A European Perspective, in Environmental Crime in Europe - Rules of Sanctions Eds. F. Comte, L. Krämer. Europa Law Publishing, Amsterdam 2004, 71-101, p. 81.

⁷¹ ARNOLD, Jörg, Criminal Association and Organised Crime, in MILITELLO, Vincenzo et al., Towards an European Criminal Law against Organised Crime, iuscrim, Freiburg i. Brsg., 2000, pp. 47-52, p. 47.

⁷² CHRISTIE, Nils, Wieviel Kriminalität braucht die Gesellschaft?, op. cit., p. 63.

⁷³ CHRISTIE, Nils, Wieviel Kriminalität braucht die Gesellschaft?, op. cit., p. 70.

40. WERNECK VIANNA, in qualifying the acts of the PCC, said that it was a “social revolution”, with “rhetoric and discourse of social protest.”⁷⁴

41. It seems, thus, that far from being a terrorist group, a mafia group, a gang or whatever else, the PCC has acted in a specific way that must be seen in relation to the particularities of Brazil. The importation of solutions from other contexts, such as “Zero Tolerance”, that did not solve the problem even where the conditions were more favorable, does not seem to be the answer for Brazil or other Latin America countries.

IV. Images – Curfew

Although the criminological literature is indeed flourishing in our days, few studies address the issue of crime in terms of its representation in society ... to show how ‘images of crime and the criminal’ are constructed by either scientific or lay views, and how these produce stereotypes, preconceptions or even policies.

(H.-J. ALBRECHT)⁷⁵

42. Although the poor neighbourhoods were more affected by the acts, it was out of them that the fear was spread. Indeed, messages indicating a police curfew were spread through the Internet, especially on “Orkut” (a relationship website), which made all the inhabitants of the rich zones stay at home.⁷⁶

43. Stores, supermarkets and banks were closed in the city where all the things are open 24 hours a day, due to false announcements of bombs that were placed at different points by the PCC. The biggest traffic jam in the history of São Paulo also occurred: 195 km, until the system was broken for

⁷⁴ Para pesquisador, Estado tem de reagir agora, in newspaper Folha de São Paulo, Section Cotidiano, 16th of May 2006. Luiz Werneck Vianna is researcher from IUPERJ, a well-known research Institute in Rio de Janeiro.

⁷⁵ ALBRECHT, H.-J., KOUKOUTSAKI, A., SERASSIS, T. (eds.), *Images of Crime*, Edition Iuscrim, Freiburg i. Br., 2001, p. V.

⁷⁶ According to PINHEIRO, Paulo Sérgio, *Chega de encenação*, in newspaper Folha de São Paulo, Section Opinião, 30th of May 2006, in fact the fear that a part of society (the elite) had, is the fear that for long time the popular communities have had in São Paulo.

a pane.⁷⁷ Sales also dropped over 50% in some days of attacks⁷⁸ and many rich people have searched for a fortified township, considered to be safer to live.⁷⁹

44. As WAQUANT points out, the new Criminal State has another characteristic that is a “moral panics orchestrated by a media machine running out of control.”⁸⁰ This fact could be realized during the events of May, the effects of which were enlarged by media coverage that, in many cases, seemed to qualify the acts as terrorism.

V. Conclusion

It would be an illusion to think that violence will remain spatially and symbolically contained at the margins of society by the police. When it backlashes and hits the core of society, it triggers openly or latently policy process ...

(BODY-GENDROT)⁸¹

45. With an article called “*Eléments de Géographie Pénale*” (Elements of Criminal Geography), CHRISTIE⁸² tries to establish a new branch of criminology that he called “Criminal Geography”.

46. His central argument was that the statistics of prisoners are not determined by the level or the evolution of criminality. On the contrary, those statistics were determined by culture and political decisions. To explain his theory he showed the example from Finland, a country which at the begin-

⁷⁷ Medo de Ataque pára São Paulo, in newspaper Folha de São Paulo, Section Cotidiano, 16th of May 2006.

⁷⁸ Vendas na Segunda Caíram 50% em São Paulo, newspaper Folha de São Paulo, Section Cotidiano, 17th of May 2006.

⁷⁹ PCC eleva a busca por condomínios, in newspaper Folha de São Paulo, Section Cotidiano, 29th of May 2006.

⁸⁰ WACQUANT, Loïc, Toward a dictatorship over the poor?, in *Punishment and Society*, V. 5(2), p. 198. See, also, COHEN, Stanley, *Folk Devils and Moral Panics. The Creation of the Mods and Rockers*, MacGibbon & Kee, Londres, 1972, and GOODE and BEN-YEHUDA, *Moral Panics and the Social Construction of Deviance*, Blackwell, Cambridge & Oxford, 1994.

⁸¹ BODY-GENDROT, Sophie, Urban violence in contemporary Europe, in *European Journal of Crime, Criminal Law and Criminal Justice*, 2005-1, pp. 1-3, p. 3.

⁸² CHRISTIE, Nils, *Eléments de Géographie Pénale*, in *Actes de la recherche en sciences sociales*, BOURDIEU, Pierre (ed.), N. 124, Sep. 1998, Paris, pp. 68-74.

ning of the 1960's was very close to the Union of Soviet Socialist Republics (USSR) in its penitentiary ideas and, gradually, with the initiative of Antila, Patrick Törnudd and K.J. Lang, turned to the ideas of the Scandinavian countries, introducing a policy to reduce reliance on the penal system and a reform of the Penal Code, that lead to an imprisonment rate of only 62 per 100.000 in 1998.⁸³

47. The article is from 1998 and he points out that Latin America could choose between two models: the model from Canada and that from USA.

48. In another book, "*Wieviel Kriminalität braucht die Gesellschaft?*" (How much criminality does society need?, translated to English with the title *A Suitable Amount of Crime*) points that as opposed to the situation in the USA, in Canada welfare for people without economic means is defended by principal politicians. Using the criminal system as an alternative to the social welfare is not seen as a good idea in Canada.⁸⁴

49. Now, in 2006, it is possible to see which model Brazil has chosen (USA), especially São Paulo (that, with its 345 prisoners per 100.000 inhabitants, has in proportion the largest number of prisoners in South America, except in comparison with Suriname⁸⁵ – see Graph II and List II).

50. Unfortunately, the emergence and the acts of the PCC between the 12th and the 19th of May are consequences of this choice, aggravated by the fact that Brazil does not have a bureaucratic rational organized system of criminal justice, capable of guaranteeing constitutional rights; its police system is far from being a protector against violence and the prison system suffers from a huge lack of places and basic conditions, without mentioning the lack of cohesion in the criminal legislation.⁸⁶

⁸³ CHRISTIE, Nils, *Eléments de Géographie Pénale*, op. cit., pp. 68-69.

⁸⁴ CHRISTIE, Nils, *Wieviel Kriminalität braucht die Gesellschaft?*, C.H. Beck, München, 2004, p. 90, where he says: „die Situation der Armen unterscheidet sich in Kanada grundlegend von der in den USA. Das kanadische Wohlfahrtssystem wird von der Spitze des politischen Establishments verteidigt.“

⁸⁵ It should be noticed that the comparison is approximate, since the year when the rate per 100.000 was measured does not correspond exactly for each country. In Argentina the data is from 2002; in Bolivia 2005; in Chile from 2003; Colombia, 2004; Ecuador, 2005; Guyana, 2005; French Guiana, 2005; Paraguay, 2003; Peru, 2005; Uruguay, 2003; Suriname, 1999 and Venezuela 2005.

⁸⁶ See, in this matter, FARIA, José Eduardo, *O Direito na Economia Globalizada*, Malheiros, São Paulo, 2003, especially chapters 3 and 4.

List II

Country (Rate per 100.000)	Argentina (148)	Bolívia (83)	Brazil (196)	Chile (241)	Colômbia (152)	Ecuador (93)
French Guiana (306)	Guiana (199)	Paraguai (86)	Peru (120)	Suriname (437)	Uruguay (209)	Venezuela (74)

Source: Adapted from International Centre for Prison Studies – King’s College,
http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/south_america.html

Graph II



Source: International Centre for Prison Studies – King’s College
http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/south_america.html