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Illegalisms and discipline in a Brazilian prison: An analysis of the social uses of law in prison based on cases of cell phone seizures

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Abstract

The article summarizes research with an empirical sample of all cases of severe disciplinary misconduct for possessing a cell phone in a prison of Curitiba in 2017. The question posed for analysis is which parameters would determine the imputation of disciplinary responsibility for cell phones seized from this or that prisoner. From the study of the processes and participant observation, it becomes evident how, in the great majority of cases, the prisoners who take responsibility for the seized items do so because they do not have family in the region, because they have a high remnant penalty or to get some form of payment, not being the real owners of the devices. The application of the disciplinary sanction, with knowledge of the falsity of the confession, indicates that prison administration operates as a manager of illegalisms and not from the legal/illegal binomial.

Key words

Prison discipline; cell phone seizures; illegalism; sociology of prison

Resumen

El artículo resume una investigación con una muestra empírica de todos los casos de falta disciplinaria grave por posesión de teléfono móvil en una cárcel de Curitiba en 2017. La cuestión planteada para el análisis es qué parámetros determinarían la imputación de responsabilidad disciplinaria por los teléfonos móviles incautados a tal o cual preso. A partir del estudio de los procesos y de la observación participante, se evidencia cómo, en la gran mayoría de los casos, los presos que se responsabilizan por los artículos incautados lo hacen por no tener familia en la región, por tener una pena remanente elevada o para obtener alguna forma de pago, no siendo los verdaderos propietarios de los aparatos. La aplicación de la sanción disciplinaria, con conocimiento de la falsedad de la confesión, indica que la administración penitenciaria opera como gestora de ilegalismos y no desde el binomio legal/ilegal.

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Palabras clave

Disciplina penitenciaria; incautación de teléfonos móviles; ilegalismo; sociología de la prisión

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1. Introduction

Published on March 28, 2007, Brazilian Law 11.466/2007 defined the possession, use, or provision of a "telephone, radio or similar device that allows communication with other prisoners or with the outside environment" as serious disciplinary misconduct under the Brazilian Law of Corrections (L. 7.210/1984). The law's official justification mentioned the need to prevent the organization of criminal acts from inside prisons.

In 2017, I worked as a public defender[1] in disciplinary administrative proceedings in a prison unit called Curitiba Jail (*Casa de Custódia de Curitiba*), located in the city of Curitiba, Paraná state, in southern Brazil. In addition to my professional experience, I developed a research hypothesis about the determining parameters for imputing disciplinary responsibility for cell phones or similar seized from this or that prisoner.

This paper provides, therefore, an empirical analysis of the totality of the cases related to severe misconduct corresponding to the seizure of cell phones or accessories during 2017 in that prison unit, taken as an exemplary case for discussion on the social uses of law in prison. The paper concludes that essential extralegal parameters and dynamics determine the imputation of disciplinary responsibility to prisoners who were not the real guilty ones but assume this condition in respect of norms and dynamics created by the prison population itself or that regulate the interactions between the prison population and the prison staff.

Thus, instead of repressing the organization of new crimes outside the prison from within the walls, the ban on cell phones was absorbed by prison management practices, interpreted here from the Foucauldian concept of illegalism and the founding hypotheses of prison sociology on the subject of the construction of internal order.

2. Methodological notes

Regarding the research method, I opted for document analysis of public cases combined with a non-disclosed participant observation as a researcher, but from a position held within the unit as a justice system professional. It is important to note that we are following the premise that all qualitative research should not establish a well-defined concept at the outset and formulate hypotheses to be tested but instead develop and refine concepts and hypotheses in the research process (Angrosino 2009, 9), which effectively took up the whole of the year of 2017.

There are various ways of conducting prison research, even as a justice system professional (Martin 2000, 216), albeit not the most common. Collecting data in these circumstances imposes a series of ethical and methodological precautions that should be noted. Presenting oneself inside the prison as a professional rather than a researcher helps to facilitate some aspects related to access to such a closed field (Adorno 1991, Moraes 2013, Vianello 2020, 55). Developing a cooperative relationship with the prison administration is also an essential step towards achieving the objectives of any work in this field (Martin 2000, 218–9, Apa *et al.* 2012, 468–9), not least because authorization is essential to enable access. In this case, such authorization was not necessary because the

[1] In Brazil, the Public Defender's Office is an institution provided for by the Constitution with duties linked to legal aid for the poor and monitoring the prison system. Public defenders are civil servants and cannot practice as lawyers on a regular basis.

observation took place as a professional of the justice system, whose presence is functional and necessary at hearings and meetings for the trial of disciplinary infractions under penalty of nullity, according to the prevailing jurisprudential interpretation at the time.

The regular presence in prison as a public defender helps to reduce routine changes, which are defensive reactions to any member outside the field (Cicourel 1980, p. 93). However, this condition creates ethical limits to using some instruments, such as interviews. It is essential to clarify that the methodological tools used were mainly documentary analysis of public judicial proceedings, including the content of the testimonies given by prisoners in the context of the respective administrative disciplinary proceedings. Statements made orally during the hearings by prisoners and prison staff were also analyzed.

Participant observation can be seen more as a data collection strategy than as a research method per se (Haguette 1987/2000, 70), with great flexibility as to whether the observer's role is covert or overt. In this sense, non-disclosed or clandestine observation can be considered "a logic of accessibility that guides the strategy" (Jaccoud and Mayer 2008, 265), which is important in studies on total institutions or closed groups.

In these cases, the observer has an active role as a modifier of the context and, simultaneously, as a recipient of influences from the observed context (Haguette 2000, 73). The researcher collects data "through their participation in the daily life of the group or organization they are studying" (Becker 1992/1999, 47). Rather than trying to demonstrate relationships between abstractly defined variables, the researcher tries to understand the interactions and behavior of social actors in situations that are part of their routine.

The research activity was sometimes confused with the practice of being a public defender. However, there was much more dissimulation in the prison field. As will be seen in the next topic, the impossible confessions of prisoners and the indifference to the application of disciplinary sanctions to any of them were explicit dynamics. However, if there were to be a formal approach such as academic research, there would undoubtedly be resistance to recording and explaining these dynamics.

The interview has been one of the essential qualitative instruments in sociological research on prisons in Brazil (Moraes 2013, Dias 2013, Braga 2014, Simões *et al.* 2017, Angotti 2017). However, unlike incognito participant observation (Chauvin and Jounin 2015), there are ethical problems in interviewing someone without the interviewee knowing about it, as well as the apparent difficulty in gathering information about illegal acts, even if the condition of confidentiality is informed, from someone identified as a justice system professional.

There could be no claim to representativeness about the actual rate of cell phones circulating among the three galleries of the Curitiba Jail. There were very few cases, considering an entire year. There is a vast dark number within the disciplinary system, consistent with the most critical studies on constructing internal order in prisons. In any case, the data is relevant enough to contribute to a critical understanding of the dynamics that determine whether or not transgressions are reported, constructing an actual theater that brings to the stage the fallacy of the disciplinary system amid so many other fallacies

characteristic of prison discourse, but which as a whole determine a successful differentiated administration of illegalisms.

3. Illegalisms and the construction of internal order in prisons

The concept of illegalism allows the legal/illegal dichotomy to be overcome by analyzing the differentiated reaction to a given transgression. This differentiation is related to the respective modes of domination exercised in the field. The concept encompasses the "set of activities of differentiation, categorization, hierarchy and social management of conduct defined as unruly" (Lascoumes 1996, 78–79). Differential management of illegalism reveals disciplinary power as a positive mechanism for producing subjects rather than a mere reaction to deviance through the hierarchization and differentiation of infractions. The concept appears in Foucault's reflections even before the publication of Discipline and Punish, in various interviews and in the course The Punitive Society, given between 1972 and 1973. In the course, Foucault defended the thesis that certain forms of popular illegalism, such as antifeudal fraud, were exciting and functional to the bourgeoisie during the Ancien Régime. However, after the seizure of power at the end of the 18th century, they became forbidden and harshly controlled (Foucault 2015, 130).

According to Harcourt (2015, 256–258), the notion of popular illegalisms, which is fundamental to a conception of positive/productive disciplinary power, can be interpreted as a response to Marxist readings that conceive of the construction of the penal system as a mere reaction to popular movements and lower classes. Foucault later stated, in *Discipline and Punish*, that imprisonment and punishments

> are not intended to suppress infractions; but rather to distinguish them, to distribute them, to use them; which aim not so much to make docile those who are ready to break the law, but which tend to organize the breaking of laws into a general tactic of subjection. Punishment would then be a way of managing illegalisms, of crossing out limits of tolerance, of giving ground to some, of putting pressure on others, of excluding one party, of making another useful, of neutralizing these, of taking advantage of those. In short, punishment would not simply 'repress' illegalisms*; it would 'differentiate' them, make their general 'economy' (...). Legal punishments must be placed in a global strategy of illegalisms. (Foucault 1975/2002, 226–227)

In summary, therefore, the notion of illegalism "is the idea that the law is not intended to be strictly applied, but to manage the margins of legality, being an instrument of governance" (Harcourt 2015, 261). The point of contact with the theme is the idea of a game between popular illegalism and the law, that is, the hypothesis that respect for legality itself "was nothing more than a strategy in the game of illegalism" (Foucault 2015, 133). More clearly:

> it is not possible to understand the functioning of a penal system, of a system of laws and interdicts, if we don't ask ourselves about the positive functioning of illegalisms. It is a prejudice of intellectuals to believe that there are first interdicts and then transgressions, [or] to believe that there is the desire for incest and then the interdict of incest; in fact, if we have to understand and analyze an interdict in relation to what it prohibits, we also have to analyze it in relation to those who prohibit and those on whom the prohibition falls. (Foucault 2015, 134)

One of the most important questions of prison sociology has always been how large numbers of people detained against their will do not remain in a state of continuous

hostility and conflict (Matthews 1999, 52), building, albeit in an inherently unstable way, order and cohesion within prisons.

One of the first and best-known pieces of research was published in 1940 and, with the concept of prisonization, worked with the thesis that there was a continuity between the prison subculture and that of the social groups that made up the prison population from the outside (Clemmer 1940).

Clemmer's work is thus part of the importation perspective, according to which prison is a kind of microcosm of society and a continuation of criminal practices on the streets (Morgan and Liebling 2007, 1127, Vianello 2020, 69). During the second half of the 20th century, it was compared to the indigenous approach or deprivation perspective, according to which prisons have their own culture, separate from free society.

After World War II, the sociology of prisons took on structural-functionalist contours, with some of the most essential research in the area and its corresponding hypotheses coming from this perspective. Sociology with empirical research was certainly never Foucault's field. However, his concept of illegalism is pertinent and coherent to production in the area, especially in conceiving the disciplinary system as a system of differentiated management of illegalisms.

Central to this is the idea that the maintenance of order in prisons does not occur unilaterally or by an act of authority but through the cooperation of those involved. For Sykes, for example, behavior patterns marked by petty corruptions demarcate the interactions between staff and the prison population. This relationship is always fragile and unstable, to the extent that "the dominant position of the staff is more fiction than reality, if we think of domination as something more than superficial forms and symbols of power" (Sykes 1954, 45).

Order is, therefore, a product of negotiation (Morgan and Liebling 2007, 1126). Although the role played by prison guards is critical in this regard, "prison equilibrium is the result of a complex interaction between various actors in the penal system" (Moraes 2013, 131). In Brazil, the conclusions are similar, as can be seen from Coelho's (1987) seminal research in a prison unit in Rio de Janeiro at the end of the 1980s and current work on the relationship between the dynamics of criminal networks organized outside of prison and the prison order (Adorno and Salla 2007, Dias 2013).

4. Social uses of the law: on the administrative discretion of the prison administration

In the legal field, not only in Brazil but in general the disciplinary system and the administrative discretion of the prison authority are problematic issues that suffer from a huge theoretical gap (Pavarini and Giamberardino 2012, 175). The so-called penitentiary administrative law cannot provide greater control of the procedures and acts carried out in prisons by the authorities.

The concept of legal-penitentiary relationship in administrative law refers to the legal link between the convicted person and the Public Administration, which begins when they enter the establishment and ends when they leave. For a long time, this relationship was seen as merely administrative and even as a relationship of subjugation. Nonetheless, as public law, it must comply with the recognition of the enforcement space

as a jurisdictionalized space, which means nothing more than the complete application of the principle of legality to the prison system.

On the one hand, there is no doubt that the principle of legality governs corrections. On the other hand, the sociology of law emphasizes that everyday life in prison is full of decisions of convenience and opportunity taken by the administrative authority, whose primary purpose is not individualized and reeducational treatment but the preservation of internal order. (Padovani 1981, 287) In the subject under analysis in this paper, specifically related to the state's stance on situations involving the seizure of cell phones, it is clear that the only objective is to punish anyone for the prohibited items seized, without any major concern for the veracity or circumstances of obtaining a confession.

In this context, it is impossible to ignore the constant tension between disciplinary needs and what is known as rehabilitative prison treatment. Not that rehabilitation goals are always alien to the prison administration, but they will never be a priority, serving at most as an accessory criterion to be valued in exercising its discretion to maintain order.

The concept of discipline, linked to obedience, tends to distance itself from the legal sphere as there is no contractual basis in the disciplinary realm to presuppose, even if only formally, a status of equality. On the contrary, hierarchy, not formal equality, characterizes the relationship of subjection that identifies discipline.

At the beginning of the 20th century, the theory of special supremacy or special relations of power (Mayer 1924, Offidani 1953, Rivera Beiras 1997, 334) provided theoretical support for the so-called free spaces of law. While sovereign state power would constitute a power of general supremacy towards citizens, there would be the exercise of a power of special supremacy over the subject within prison relations. Therefore, it would not be a relationship of right/obligation but of power/duty: on the one hand, the power to subject; on the other, the obligation to obey.

A space free of law is not a space that is not regulated by law, but a space that is not legally valued, encompassing behavior that is "legally relevant and legally regulated, but which cannot be properly valued as either lawful or unlawful" (Kaufmann 2009, 338). This theory led to non-compliance with fundamental rights, as it considered the enforcement of sentences to be a public service provided by the prison administration and in which the principles of administrative law would not even apply (Miranda Rodrigues 2002, 81). In such a perspective, even if they are rhetorically recognized, fundamental rights are permanently dissolved in the relationship of subjection, making the prisoner a "second-class" citizen (Rivera Beiras 1997).

Thus, relationships of domination can never be completely regulated by law, as there will always be a resistant and refractory core that will remain free of law, especially in the prison field.

The theory of special supremacy lost ground with the affirmation of the Rule of Law (Miranda Rodrigues 2002, 80), which adopted as its parameters the limitation of power vis-à-vis citizens and the transformation of "power relations" into legal relations of rights and duties.

In the United States, the hands-off theory was another way of legally legitimizing the non-recognition of rights for prisoners. It rejected the intervention of the Judiciary in

protecting relationships that exclusively concerned the Public Administration, thus legitimizing a policy of distancing and non-interference by judges in corrections. There are two common grounds for the hands-off doctrine (Vogelman 1971, 53): the principle of the separation of powers and the fear that judicial intervention would harm the immediate goals of the prison administration, namely the maintenance of internal order and security. For example, the decision of the Virginia Court in the mid-nineteenth century described the convict as a "slave of the state" (Hawkins 1976, 136).

The possibility of judicial review of the prison situation grew from a few landmark decisions, such as *Coffin v. Reichard* (1944), which established the principle that the "prisoner retains all the rights of a normal citizen except those expressly, or by necessary implication, excluded by law," to successive judgments which, from the 1960s onwards, and especially with *Monroe v. Pape* (1961), began to allow judicial review of the illegality of prison conditions. This change established the need to balance the interests of the prisoner against those of the establishment, but with a vital gain: under no circumstances, even in the event of riots or exceptional disturbances to internal order, would the prison administration be justified in neglecting the fundamental rights of prisoners not affected by the sentence, such as the right to food. More recently, the Supreme Court's decision in *Brown v. Plata* (2012) has become a landmark of so-called humanitarian jurisprudence in the face of the context of mass incarceration in the US since the 1970s. Judicial intervention was therefore crucial in slowing down the growth in the number of prisoners (Simon 2012.

The principle of individualizing the disciplinary sanction is provided for in Brazilian law, which prohibits collective sanctions (art. 45, §3, Law of Corrections). The provision is equivalent to requiring proof of the accused's authorship of the respective disciplinary offense, fulfilling the same function as the principle of culpability, since "it will not be feasible to impute an infraction without prior verification of the subjective link with the author" (Cesano 2007, 201).

However, the prison authority's implicit allowance for the prison population to negotiate and assume responsibility for seized prohibited items, as a commodity and as a fundamental element in their dynamics, reconfirms the presence of spaces free of the law opened up by those who, at their discretion, can also deny them. In other words, the prison authority's demand for a perpetrator, even if he is not known to be the effective owner of the cell phone, becomes a decisive component in constructing and maintaining the prison unit's internal order.

5. Prison inmates' misconduct regarding possessing or using cell phones occurred in 2017 at the Curitiba Jail

The Curitiba Jail (*Casa de Custódia de Curitiba*) was inaugurated in August 2002 and has a capacity of 420 people. On the last day of the year the research was carried out, 621 male prisoners were present. Under Decree No. 5502/2012-PR, issued by the Paraná state government, it is intended "exclusively for the incarceration of men who have committed crimes against women." Therefore, it is known as a facility for prisoners whose lives may be at risk if placed together with the general prison population. In practice, three galleries hold those convicted of sexual crimes, and others classified as "opposition," a native term that designates those who are opposed to the hegemony of

the São Paulo criminal organization, strongly present in the state of Paraná, known as the First Command of the Capital ("PCC").

Other works on the subject support the thesis that the prison population in this type of facility is more vulnerable to violence and subjection in the interactions between the prisoners themselves and, above all, to abuses by the administrative authority, to the extent that this criminal organization has produced a kind of monopoly on violence in the facilities they control (Dias 2013). Curitiba Jail would be within the exclusion zones:

> The social order built through the imposition of peace by the PCC has as its reverse side zones of exclusion, where the outcasts who do not fit into the unit that was formed from the consolidation of its power are found, (...) [having at least three effects]: permanence in overcrowded cells, restrictions on regime progression - since the absolute majority of semi-open regime prison units are under the control of the PCC - and, above all, exposure to more intense institutional violence. (Dias 2013, 437-438)

The physical space is divided between the administrative sector, which includes the rooms for the director, vice-director, psychologist, and social assistant, and the sector, which is forbidden to enter without authorization, as it gives access to the head of security and the three galleries. There is a restriction on cell phone use only in the latter, where proceedings are held to hear prisoners charged with a disciplinary offense. The meetings of the Disciplinary Board take place in the administrative sector, without the participation of prisoners, but only of the defense.

A state rule establishes the procedure to be followed in disciplinary infractions. The first - and decisive - act is to draw up a disciplinary report when a specific infraction occurs, done by the staff member who has first contact with the situation. The report is sent to the prison's management, which forwards it to the Disciplinary Board. After hearing the prisoner and any witnesses, the situation is brought to trial in a session of the Council, a collegiate body made up of four technical staff and the director, as well as the secretary, the defense, and the head of the security sector, who is necessarily heard before the oral defense is held.

During 2017, sixteen disciplinary reports were issued involving the seizure of cell phone handsets or one of their accessory components:

TABLE 1

Case n.	**Electronic process - State of Paranà**	**Date**
1	0007550-47.2013.8.16.0009	9/2
2	0006842-71.2010.8.16.0083	9/2
3	0003798-04.2012.8.16.0009	9/2
4	0002186-60.2014.8.16.0009	9/2
5	0001335-84.2015.8.16.0009	28/4
6	0000437-42.2013.8.16.0009	22/6
7	0000468-23.2017.8.16.0009	6/7
8	0001988-59.2014.8.16.0094	31/7

9	0015336-59.2016.8.16.0035	5/8
10	0002191-82.2014.8.16.0009	2/8
11	0002753-28.2013.8.16.0009	2/8
12	0015539-58.2014.8.16.0013	2/8
13	0011864-37.2015.8.16.0083	2/8
14	0004631-56.2011.8.16.0009	29/11
15	0026016-82.2015.8.16.0021	29/11
16	0000533-86.2015.8.16.0009	29/11

Table 1. List of cases of seizure of cell phones or accessory components.
(* http://www.projudi.tjpr.jus.br.)

In each case, a prisoner was held responsible and sanctioned administratively. The judge dismissed the severe misconduct in approximately half of the cases, avoiding consequences while fulfilling the sentence. However, judicial review takes place after the administrative effects of sanctions such as solitary confinement and suspension of rights have been exhausted.

There are notable elements to understanding the management of illegalisms in that prison. Firstly, the number of sixteen devices or components seized can be considered low, considering the one-year period and that the seizures were concentrated on just eight different dates, always during cell searches. Cell phone entry is often attributed to being thrown from outside the unit in a heavily wooded area. There is no formal record of corruption by staff, although this is a very plausible possibility.

Secondly, the hypothesis of a large dark number stems from the fact that there is no effective policy of permanent inspection regarding the presence of cell phones circulating in the galleries, with most of the seizures being concentrated in general search procedures rather than in inspection practices that are part of the daily routine.

The management of the legal prohibition as a strategy, therefore, or the legal norm as a resource to be activated or not activated, depending on the convenience of the specific case, can be found both in the tacit consent to the presence and circulation of prohibited items and in the very concrete discretion present in the act of drawing up or not drawing up a disciplinary report. This discretion is not covered by the legal rules insofar as the drawing up of the act, in theory, is a mandatory act, and failure to do so could constitute a crime against public administration. However, if we are dealing with illegal acts, only some of which will be elevated to the formal status of disciplinary misconduct, abstaining from acts of office in the face of infractions is a much more complex practice and is part of the web of interactions based on cooperation, essential elements for building internal order.

It is through the analysis of the speeches of prisoners and staff, taken mainly from the records of the disciplinary administrative procedure but also from the interactions and manifestations in the trial sessions that we can understand the research question posed at the beginning: What would be the criteria and parameters for imputing responsibility for the practice of the disciplinary infraction when recorded?

In case no. 1, always following the numbering of the column on the left in the table above, there is a case of impossible confession: the prisoner stated in the prison that the 7 (seven) cell phones seized belonged to him. He denied that they were his property in court, and the fault was dismissed.

A similar situation to case no. 13, in which the prisoner confessed to owning 3 (three) cell phones in the administrative procedure. In front of the judge, he confessed because he had been threatened. In case no. 2, the prisoner also assumed responsibility for the objects, even before the judge. However, the fault was also dismissed due to the confession's lack of credibility and feasibility. But the administrative sanctions were applied to the maximum degree, and their effects were exhausted even before the judicial review.

In case no. 6, in his statement given in prison, the prisoner said:

> many things happen inside this place, and nobody knows how it happens and the word of the employees has legal authority, we are branded as liars and to avoid problems for parents who are about to leave in a year or two, just as I have a few years to go and to avoid problems for my colleagues I assumed responsibility for the objects.

He is, therefore, referring to the assumption of responsibility for the objects seized to prevent parents - who are expecting their children to visit them - or "who are about to leave" from being affected.

In case no. 8, the prisoner stated in the administrative disciplinary process that "he does not have the money to buy a cell phone, but he was storing the phones, and that is why he took possession of them," showing that the action is valued as a commodity or service that can be provided as payment of debts, consideration for previous favors or direct remuneration. In court, in the same case, he added another piece of information:

> I had to take responsibility, as I had the most convictions in the cell. They gave me R$1,500 (R$500 per device) to take control of the objects. I used the devices once. Each phone costs R$10,000 inside the prison.

The expression "I would have to take responsibility" indicates not a choice but adherence to internal organizational rules. The fact that the prisoner has a long sentence left to serve is mentioned here as a rational justification for taking responsibility and avoiding damage to others close to getting permission to leave the prison.

In case no. 7, the arrested person admitted to keeping the cell phone for a third party, in the same sense as above. In case no. 9, he stated that "it was not his; he was just taking it inside." In case no. 12, the accused states that he "sometimes keeps objects for prisoners from various other shacks [cells]."

Other striking statements include "I take responsibility so as not to complicate things for others" (no. 14); "I had these objects, not least because that is how I would be able to talk to the management, because I want to be transferred to Santa Catarina, where my family lives. Here, I have nothing, no family, no bag, nothing. Unfortunately, this was the way I found to draw attention to myself" (no. 15), indicating some continuities in the justifications given for the supposed confessions, all of which were always approved by the respective Disciplinary Board without further questioning: a) prisoners who take on the responsibility because they have no family in the area and therefore no visitors; b) because they have a long sentence remaining and are further away than the others from

being eligible for parole; c) because they are paid or have to pay off debts through the service of guarding the devices and taking responsibility in the event of seizure.

At the trial session of the Disciplinary Board on March 27, 2018, the prisoner who took responsibility for the seized prohibited items was not even in the cell where the items were found. The Board refused to accept a confession in this case: "Folks, now that is too much," said one of the technicians. However, instead of dismissing the case for lack of proof of authorship, the procedure was sent for further investigation because, according to the head of security, "someone would have to take responsibility" until the next meeting.

These standards were explained more than once by the prison's head of security to the members of the Disciplinary Board during the meetings without interfering with the unanimous position in favor of applying severe misconduct. As Cicourel stated, it is essential to identify the commonsense constructs that delimit social actors' understanding of things:

> If it is correct to assume that people, in their daily lives, organize their environment, attribute meanings and relevance to objects, and base their social actions on common sense rationales, field research or any other research method in the social sciences cannot be carried out without taking into account the principle of subjective interpretation. While talking to the people being investigated in the field, asking structured or unstructured questions in an interview situation or using the questionnaire, the scientific observer must take into account the common sense constructs employed by the actor in everyday life if they want to understand the meanings attributed to their questions by the actor, whatever the form in which they were presented to the actor. (Cicourel 1980, 110)

Therefore, whether based on imposed rules created by the prisoners, attitudes of solidarity, or commercial movements, the practices of false assumption of responsibility are naturalized and are not seen as a legal problem by the members of the Disciplinary Board.

Strictly speaking, we are not working with the legal concept of proof but with a strategic conception of disciplinary power according to which what matters is that there is a guilty person, whoever they are or under what circumstances, because this is the element that is important in the dynamics of symbolic affirmation of prison authority and maintenance of internal order. If there are no efficient mechanisms for investigation, the logic prevails that simply dismissing the case due to insufficient evidence of guilt would be tantamount to releasing the use of cell phones inside the galleries. It is a direct and didactic example of the strategic management of illegallisms, rather than an effective response to a particular prohibited practice.

In summary, of the sixteen cases in 2017, in six of them (cases no. 1, 2, 4, 9, 13, and 16), the same person took over several objects, and the offense was dismissed in court due to the lack of credibility of the confession and other evidence of authorship; in two situations (cases no. 10 and 11) there was no admission of guilt, but even so there was an imputation of severe misconduct by the unit, with dismissal in court, with the prisoners claiming that they were assaulted by staff. In another six situations (cases no. 6, 7, 8, 12, 14, and 15), the inmate clearly stated that he was taking responsibility for the objects so as not to harm others or that he was just storing them for a third party. In other

words, in only two situations (cases no. 3 and 5) are the circumstances regular: only one device, confession at the administrative stage and in court, with judicial confirmation of the fault. Moreover, the accused said they only used their cell phones to contact their families in both cases.

In addition to the commercial relationships and dynamics of oppression that can be present in interactions between prisoners, the Disciplinary Board's indifference to the logic of in dubio pro reo and the demand for "a guilty party," with retaliatory measures if no one takes responsibility for the objects, contributes to the realization of this great theater of discipline.

The significant proportion of offenses dismissed by the courts does not interfere with the Disciplinary Board's stance in the administrative sphere. On the contrary, there is full awareness that a large part of the severe misconduct applied administratively will be judicially annulled, and this is taken as a natural element in rationalizing the importance of sanctioning someone. After all, the sanctions of solitary confinement and suspension of rights will have been fully applied by the time the case reaches the judge.

Therefore, it is not a question of repression of deviance but of differentiated management of illegalisms. We are not talking about the law here but about social uses that value its in-between lines, its empty and free spaces.

6. Final remarks

The empirical focus of the research expresses part of a more significant issue concerning the necessary contrast between the disciplinary system's stated aims (such as the absolute ban on cell phone use in prisons) and the real functions materialized by its daily practices.

From a methodological point of view, the first challenge was to distance oneself from the object, an impossible task considering the concealment of the condition of the researcher and the entry into the field as a justice system professional, in other words, as a native, an integral part of the object itself. The role of the public defender is, in part, legitimizing since their presence is necessary to avoid the procedure being null and void, as well as their actions. However, they are as subject to the naturalization of the field as any other institutional role within the justice system. Therefore, it is necessary to demarcate a minimum distance to construct a reflection.

I prioritized analyzing public information as a source, i.e., the testimonies of prisoners who confessed to possessing seized prohibited items taken from the disciplinary administrative processes. However, all the interpretation of its context and meaning comes from being a participant observer in 2017. Ultimately, the fact that prisoners sanctioned for severe misconduct are not the real culprits responsible is quite explicit in the prison field. However, such sincerity remains restricted to the prison context – one only has to consider the considerable proportion of serious misconduct dismissed in court.

According to any parameter of usefulness or effectiveness, the ban on cell phones in Brazilian prisons is a hypocritical measure in terms of its stated aims, contributing only to the qualitative worsening of living conditions in prisons, which are already characterized by precariousness and violence. After all, the objective of preventing

criminal actions ordered from within the prison system seems a long way from being achieved. Although it was not the direct object of this research, it can be said with confidence that the cell phones seized very often were used to contact family and friends (see observation above about cases no. 3 and 5) and not to commit crimes. Moreover, what about the state's possible insertion and maintenance of cell phones to monitor illicit movements as part of so-called intelligence actions?

The results of the empirical sample indicate that disciplinary responsibility for serious misconduct is attributed to prisoners who are known to be innocent but who assume responsibility because they have no family in the area, because they have a long remaining sentence, or because they are seeking a financial reward or other favors. Roig is right when he claims that "the generalized prohibition-ism that surrounds this disciplinary fault (...) ends up fostering corruption, the exchange of favors, spurious privileges and the production of unnecessary damage (social costs) to the majority of people in prison who have no illicit purposes" (Roig 2018, 242).

The approach through the Foucauldian notion of illegalism emphasizes the scope for differential management, rather than suppression, of illegalisms, which "are neither dysfunctions of political technologies nor exceptions to their legal practices, but a constitutive part of the exercise of government" (Hirata 2014, 101). In short, the mechanisms for constructing internal order produce social uses of the law in such a way as to distance themselves from the legal/illegal binomial and move closer to the differentiated management of illegalisms.

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