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**Social Life and Civic Education in the Rio de Janeiro City Jail**  
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In the six weeks from mid-July to early September 1912, about a third of the 389 men whom guards escorted through the front doors of the Rio de Janeiro city jail had been arrested for vagrancy, or in Portuguese vadiagem, an infraction whose etymological connection to the word “vague” is not a coincidence. These men remained in detention for between five days and over a year, accused by arresting police officers of having committed the crime of doing nothing. As they awaited trial or, for the least fortunate, transportation to an offshore penal colony, they shared the crowded space of the jail with a remarkable variety of other detainees: a twenty-nine-year-old American sailor; four stevedores; waves of men of differing ages and skin colors wearing the uniform of the penal colony Dois Rios; a thirty-five-year-old Italian laborer from São Paulo, who stayed in the jail en route to the ship that would expel him permanently from Brazil; and, most arresting of all, a plethora of inmates of different ages and skin colors detained for “unknown reasons.”<sup>1</sup>

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<sup>1</sup> On vagrancy see Pedro Tórtima, Crime e castigo para além do Equador (Belo Horizonte, 2002), 129-130; Olívia Maria Gomes da Cunha, Intenção e gesto: Pessoa, cor e a produção de (in)diferença no Rio de Janeiro, 1927-1942 (Rio de Janeiro, 2002);

In the years just after independence from Portugal in 1822, Brazilian jurists, politicians, and intellectuals already prided themselves on their country's advances in criminal law. The Brazilian Criminal Code of 1830 and Code of Criminal Procedure of 1832 served as models for the hemisphere, and Rio de Janeiro's prison, the Casa de Correção, counted among the very first modern penal institutions in Latin America.<sup>2</sup> Yet despite an abstract commitment to due process, historians have demonstrated a persistent gap between the rights conferred on all citizens and the injustices suffered by those without the social power to avoid arrest.<sup>3</sup> Arrest often came as the result of the cupidity or bias of police, rather than the straightforward application of the codified law—or, in the case of the many arrested slaves, grave contradictions in the law itself. The majority of persons arrested in Rio de Janeiro, then the Brazilian capital city, found themselves in the city's central detention center: the Casa de Detenção (House of Detention). Focusing on the decades immediately following the final abolition of slavery (1888) and the end of the monarchical Empire (1822-1889), this article investigates the role that the House of Detention in Brazil's capital—and by extension, the penal system writ large—played in generating and perpetuating the extralegal logic of the legal system, on the part of both the state and its citizens.

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Martha Knisley Huggins, From Slavery to Vagrancy in Brazil (New Brunswick, 1985); Marcos Luiz Bretas, Ordem na cidade: O exercício cotidiano da poder policial na cidade do Rio de Janeiro, 1907-1930 (Rio de Janeiro, 1997), 61-91. All data concerning these 389 detainees comes from Arquivo Público do Estado do Rio de Janeiro (APERJ), CD-5633.

<sup>2</sup> Ricardo D. Salvatore and Carlos Aguirre, "The Birth of the Penitentiary in Latin America: Toward an Interpretive Social History of Prisons," in Ricardo D. Salvatore and Carlos Aguirre, eds., The Birth of the Penitentiary in Latin America: Essays on Criminology, Prison Reform, and Social Control, 1830-1940 (Austin, 1996), ix.

<sup>3</sup> Brodwyn Fischer, 'The Poverty of Law: Rio de Janeiro, 1930-1964', unpubl. PhD diss., Harvard University, 1999; Rachel Soihet, Condição feminina e formas de violência: Mulheres pobres e ordem urbana, 1890-1920 (Rio de Janeiro, 1989).

To assert that rules were not followed and practice diverged from code is to identify a generic human condition. Beyond recognizing that this gap exists, I am concerned with comprehending the vernacular experience of it, and the process through which it became institutionalized.<sup>4</sup> To this end, the pages to follow reconstruct the routines and practices that developed in one institution that bore the impact of this disjuncture between official and informal rules in an exaggerated way. Examining this institution, I wish to offer an alternative to the predominant views inherited from Michel Foucault that modern carceral institutions constitute spaces of state surveillance and discipline, or of “social death,” to use the term that Orlando Patterson employs in his influential study of the historical sociology of slavery.<sup>5</sup> Rather, I draw on a multitude of administrative and other sources to suggest that Rio’s<sup>6</sup> House of Detention became a site of civic education, characterized by the circulation of crucial information between the state and citizens about the practicalities of Brazil’s arbitrary and biased judicial system.

Studies of the Brazilian criminal justice system have documented the entrenched extralegality by which citizens and officials navigated the gap between code and practice, and the perennial denial of rights and frequent violence toward the nation’s poor and Afro-descended citizens.<sup>7</sup> Yet no one has considered in depth what lessons the thousands of journeys through the criminal justice system might have impressed upon poor, urban Brazilians. This article thus takes a direction anticipated but not yet taken by the existing

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<sup>4</sup> See Myrian Sepúlveda dos Santos, “A prisão dos ébrios, capoeiras e vagabundos no início da Era Republicana,” *Topoi* 5:8 (January-June 2004): 138-169.

<sup>5</sup> *Slavery and Social Death: A Comparative Study* (Cambridge, MA, 1982).

<sup>6</sup> “Rio” is a common abbreviation for Rio de Janeiro.

<sup>7</sup> See for example da Cunha, *Intenção e gesto*; Fischer, “The Poverty of Law”; Enrique Desmond Arias, *Drugs and Democracy in Rio de Janeiro: Trafficking, Social Networks, and Public Security* (Chapel Hill, 2006).

scholarship, aiming to bring the study of incarceration more explicitly and pointedly into the ongoing discussion about how so much activity in Brazil (as elsewhere) has occurred in the shadowy corners of the law.<sup>8</sup>

The passage from monarchical Empire to Republic and from slave to free labor in the late 1880s brought about new public order concerns—in particular, an official obsession with the suppression of petty crime, and the criminalization of previously tolerated vernacular practices—which lent the Brazilian capital’s jail a renewed significance in maintaining emerging disciplinary routines and institutions.<sup>9</sup> Officials enacted anti-vice campaigns and undertook political policing of, for example, anarchists or participants in the several revolts that threatened to topple the new Republican government. As we will see, police also enjoyed increasing power to make decisions about the law at its vaguest corners, arresting many individuals for a range of newly criminalized acts and behaviors defined in exceedingly fuzzy terms. All of this bore an immediate impact on the Casa de Detenção, as it filled daily with an extraordinary population. Those accused of such crimes as homicide and rape ate, slept, bathed, and waited cheek by jowl with gamblers, labor activists, bellicose foreign sailors, hapless street vendors, unlucky manufacturers of false coin, as well as the hoards of men and women charged with the catch-all offence of vadiagem.

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<sup>8</sup> On the origins of the concept of the informal sector, see John C. Cross, Informal Politics: Street Vendors and the State in Mexico City (Stanford, CA, 1998), 1-8.

<sup>9</sup> For instance, entrudo, a traditional part of Rio’s Carnival celebration, was extirpated during the First Republic (in 1903); Jaime Larry Benchimol, Pereira Passos: Um Haussmann tropical, A renovação urbana da cidade do Rio de Janeiro no início do século XX (Rio de Janeiro: Biblioteca Carioca, 1990), 284.

Although slow to take up the study of prisons, the surging Latin Americanist scholarship on crime and punishment, in part, guides this research.<sup>10</sup> Historians have long resorted to criminal records to reconstruct the ever-elusive lives of the illiterate poor. The critical and self-reflective study of subaltern history in the judicial archive has more recently translated into a preoccupation with the workings of judicial systems, themselves.<sup>11</sup> Having extended its purview beyond the scribbling classes, Latin American legal history has had to reconcile the region's particularities with the Eurocentric assumptions behind the most important strains of modern social theory that trace the development of "disciplinary society" and connect the state to its subjects by way of penal institutions.<sup>12</sup>

The Casa de Detenção's population, which combined enslaved and free inmates for the first thirty-two years of its existence, highlights one especially striking particularity of the modern history of prisons in the Americas: the long shadow that African slavery cast on post-abolition penal regimes. Examining the development of

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<sup>10</sup> Notable exceptions to the lack of attention to prisons are Carlos Aguirre, *The Criminals of Lima and their Worlds: The Prison Experience, 1850-1935* (Durham, NC, 2005); Donna J. Guy, "Girls in Prison: The Role of Buenos Aires Casa Correccional de Mujeres as an Institution for Child Rescue" and Lila M. Caimari, "Remembering Freedom: Life as Seen From the Prison Cell (Buenos Aires Province, 1930-1950)," in Ricardo D. Salvatore, Carlos Aguirre, and Gilbert M. Joseph, eds. *Crime and Punishment in Latin America: Law and Society since Late Colonial Times* (Durham, NC, 2001), 369-90, 391-414; Fernando Picó, *El día menos pensado: Historia de los presidiarios en Puerto Rico (1793-1993)* (Río Piedras, 1994).

<sup>11</sup> Natalie Zemon Davis, *Fiction in the Archive: Pardon Tales and their Tellers in Sixteenth-Century France* (Cambridge, 1987); Sidney Chalhoub, *Trabalho, lar, e botequim: O cotidiano dos trabalhadores no Rio de Janeiro da Belle Époque*, 2<sup>nd</sup> ed. (Campinas, 2001); Boris Fausto, *Crime e cotidiano: A criminalidade em São Paulo (1880-1924)*, 2<sup>nd</sup> ed. (São Paulo, 2001).

<sup>12</sup> Miguel Angel Centeno, "The Disciplinary Society in Latin America," in Miguel Angel Centeno and Fernando López-Alvez, *The Other Mirror: Grand Theory through the Lens of Latin America* (Princeton, 2001), 289-308; Salvatore and Aguirre, "Birth of the Penitentiary," 16.

penal systems in the Americas during and after the process of decolonization, scholars have drawn compelling historical continuities between slavery and the post-abolition carceral state.<sup>13</sup> Those writing with a Foucaudian or Marxian-materialist orientation have largely concurred that prisons in nations like Brazil, the United States, and Cuba became repositories of the reserve armies of workers needed to compensate for the post-emancipation loss of both social control and a cheap labor force.<sup>14</sup> Newer approaches to the sociocultural impact of the criminal persecution of the popular classes have appeared on the horizon that turn away from this proletarianization narrative. Notably, Olivia Maria Gomes da Cunha demonstrates how the forensic identification of Afro-Brazilians in the early and mid-twentieth century translated into “the production of specific social identities” and the consequent, permanent, racially-based dishonor of persons whom the criminal law targeted.<sup>15</sup> Da Cunha and others have effectively transcended both overly deterministic analyses of the impact of slavery on post-abolition racism and the

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<sup>13</sup> Diana Paton, No Bond but the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780-1870 (Durham, 2004); Robert Perkinson, “The Birth of the Texas Prison Empire, 1865-1915,” (Ph.D. Diss., Yale University, 2001); Zachary Ross Morgan, “Legacy of the Lash: Blacks and Corporal Punishment in the Brazilian Navy, 1860-1910,” (Ph.D. Diss., Brown University, 2001), 7; Peter Beattie, The Tribute of Blood: Army, Honor, Race, and Nation in Brazil, 181864-1945 (Durham, 2001); Huggins, From Slavery to Vagrancy.

<sup>14</sup> Michael Ignatieff, A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850 (New York, 1978), 174-206; Chalhoub, Trabalho, Iar; Huggins, From Slavery to Vagrancy. On Foucault, see for example Power/Knowledge: Selected Interviews and Other Writings (1972-77) Ed. Colin Gordon (New York, 1980).

<sup>15</sup> Da Cunha, Intenção e gesto. The quotation is from Olivia Maria Gomes da Cunha, “The Stigmas of Dishonor: Criminal Records, Civil Rights, and Forensic Identification in Rio de Janeiro, 1903-1940,” in Sueann Caulfield, Sarah C. Chambers, and Lara Putman, eds., Honor, Status, and Law in Modern Latin America (Durham, 2005), 299. I am grateful to Barbara Weinstein for her insights on these historiographic trends; personal communication (2006).

limitations of the previous generation of scholars' preoccupation with social control.<sup>16</sup>

This new wave of research has contributed immeasurably to our collective understanding of how social inequality operates, in dissecting the inner workings of institutions—such as the Casa de Detenção, which figures prominently in da Cunha's study—that act as the state's five senses and generate its permanent memory.

An older line of inquiry that complements the still largely top-down perspective of this recent scholarship is the decades' worth of research into the social and psychological impact of incarceration in what Erving Goffman famously called “total institutions”: enclosed, residential institutions cut off from the outside world where inmates live controlled, regimented lives.<sup>17</sup> Goffman argues that inmates in such an institution must endure a multitude of losses, some of which are “irrevocable”; they will never recapture the time spent away from family, friends, work, and life. He defines the “permanent abrogation” of rights and the erasure of certain crucial aspects of the inmate's self in dramatic terms, likening this “permanent dispossession” to a sort of ‘civil death’.<sup>18</sup>

References to “civic -,” “civil -,” or “social death” abound in the literature on modern-day prisons, a tendency that may have its roots in the historical continuities often drawn between slavery and incarceration.<sup>19</sup> Most famously, sociologist Orlando

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<sup>16</sup> George Reid Andrews warns against an excessive emphasis on slavery in understanding post-abolition racism; Blacks and Whites in São Paulo, 1888-1988 (Madison, 1991), 6-10.

<sup>17</sup> Erving Goffman, Asylums: Essays on the Social Situation of Mental Patients and Other Inmates (Chicago, 1961). See also Teresa Mireles et al, O sistema penal na cidade do Rio de Janeiro: Fator crimogénico (Rio de Janeiro, n/d), 20, 41-54.

<sup>18</sup> Goffman, Asylums, 15-16

<sup>19</sup> See for example Regina Célia Pedroso, Os signos da opressão: História e violência nas prisões brasileiras (São Paulo, 2003), 29.

Patterson’s synoptic, comparative study of world slavery posits the slave’s complete and fatal loss of honor.<sup>20</sup> He emphasizes the “profound social and emotional implications” of the lack of any formally recognized social attachments.<sup>21</sup> Extending Patterson’s analysis, literary scholar Joan Dayan traces a “developing logic in modern law” as both giver and taker of life.<sup>22</sup> As a direct result of the rise of racial slavery in the West and its consequent process of stigmatization and exclusion, came a penal society that “produce[d] a class of citizens who were dead in life: stripped of community, deprived of communication, and shorn of humanity.”<sup>23</sup> The penitentiary, she argues, replaced slavery as a form of civil death.<sup>24</sup> Both Patterson and Dayan construct useful genealogies for social—and especially racial—stigma: Just as Patterson explains that the “social death” of slavery originated as a substitute for actual, physical death in battle, others have shown that, in liberalizing penal regimes, incarceration replaced the pre-modern punishments of both death and penal servitude.<sup>25</sup> Whether directly or implicitly, much of the scholarship on incarceration—particularly literature that draws continuities between slavery and the carceral state, by emphasizing the dishonor of those subject to the biases of the law,

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<sup>20</sup> In Patterson’s often cited definition, he describes slavery as “*the permanent, violent domination of natively alienated and generally dishonored persons*”; Slavery and Social Death, 13 (italics in original).

<sup>21</sup> Although Patterson argues that slaves did “experience [and] share informal social relations,” these social ties were “never recognized as legitimate or binding.” Significantly, it is the formal recognition that is crucial to Patterson; having informal social relations does not confer social life; Slavery, 6.

<sup>22</sup> Joan Dayan, “Legal Slaves and Civil Bodies,” Neplanta: Views from the South 2:1 (2001): 5.

<sup>23</sup> Dayan, “Legal Slaves,” 10.

<sup>24</sup> Dayan points to Ruffin v. Commonwealth (1871), which determined that “a criminal punished with ‘civil death’” would become a “‘slave of the state’,” 16. It should be noted here that both Dayan and Patterson acknowledge that social death is a legal fiction.

<sup>25</sup> Patterson, Slavery and Social Death; Ruth Pike, Penal Servitude in Early Modern Spain (Madison, 1983), 3.



broadly construed—see penal institutions as worlds apart, as mausoleums where the state entombs the socially dead.<sup>26</sup>

Before we pronounce the social or civic death of those snared in the criminal justice system, though, we need to examine prison’s social life. One can argue that the most isolating penal institutions, like the “special security units” in the present-day United States, do indeed remove inmates from circulation in society and amount to the “permanent alienation” of which Patterson writes.<sup>27</sup> However, as useful as such limit cases of penal isolation are, they do not lend themselves to further understanding of the production of culture within prisons, and the flow of culture in and outside prison walls. My study of the Casa de Detenção answers the recent call issued from many disciplinary camps for a better understanding of how, as David Garland puts it, “penality shapes the social environment” as well as the reverse.<sup>28</sup> The Casa de Detenção was the crux of the criminal justice system, a site of abundant circulation of people and ideas. The normality of—frequently extralegal—detention in the Casa de Detenção for people of the poorer socioeconomic classes, and the numbers of people whose lives were touched by the experience of incarceration there, call into question the conventional idea of modern, bureaucratic, utilitarian, institutionalized punishment that removes people from and takes place out of view of society.

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<sup>26</sup> Garland, Punishment and Modern Society, 259-60

<sup>27</sup> Much of the best law and society scholarship on punishment, especially by scholars concerned with the human rights and policy implications of their work, has justifiably focused on solitary confinement and the death penalty; see Austin Sarat and Christian Boulanger, eds., The Cultural Lives of Capital Punishment: Comparative Perspectives (Stanford, 2005); Austin Sarat, When the State Kills: Capital Punishment and the American Condition (Princeton, 2002). Dayan, for example, focuses on solitary confinement and “special security units”; see “Legal Slaves,” 5.

<sup>28</sup> Garland, Punishment and Modern Society, 21-22. Cf. Ricardo D. Salvatore and Carlos Aguirre, “Introduction,” in Salvatore and Aguirre, eds, Birth of the Penitentiary, xvii.

Incarceration was a formative experience, but the law taught lessons that diverged widely from those for which these institutions were intended.<sup>29</sup> The state educated people in its missteps and shortfalls, not just its successes.<sup>30</sup> A close examination of the Casa de Detenção impels us to push beyond analyses of the law's didactic function, many influenced by Foucault, that only imagine a one-way flow of information from the state to its hapless subjects.<sup>31</sup> Extending the existing investigations of the "pedagogy of the law," we need to consider how inmates learn about the law in practice through first-hand experience and from each other.<sup>32</sup> It is not only true that the state's attempts at domination often failed to operate as planned, but also that even within the relationship of subjugation, knowledge circulated in a manner that we can accurately characterize as neither domination nor resistance.

The Casa de Detenção was a privileged meeting place between the state and

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<sup>29</sup> Goffman, Asylums; Centeno, "Disciplinary Society," 294; Paton, No Bond, Chapter 5; Garland, Punishment and Modern Society, chapter 11. Cf. Stephen L. Esquith, Intimacy and Spectacle: Liberal Theory as Political Education (Ithaca, 1994).

<sup>30</sup> Michel Foucault, Discipline and Punish: The Birth of the Prison trans. Alan Sheridan 2<sup>nd</sup> ed. (New York, 1995), 250-51. Even scholarship that critiques the social control model seems to hold an implicit assumption of the state's efficacy; Garland, Punishment and Modern Society, chapter 11. Carlos Aguirre comes to a conclusion similar to my own in his discussion of penal reform in Peru; Criminals in Lima. See also Paton, No Bond, 8-9. In A Just Measure of Pain, Michael Ignatieff approaches punishment in a manner similar to Foucault but later questions the state's supposed monopoly of power and argues that "all social relations" cannot necessarily be described in the language of subordination; "State, Civil Society and Total Institutions: A Critique of Recent Social Histories of Punishment," in Stanley Cohen and Andrew Scull, Social Control and the State: Historical and Comparative Essays (Oxford, 1983), 77.

<sup>31</sup> In Discipline and Punish, Foucault posited a shift in the goal of penology, which in the modern era aimed "to teach rather than to punish"; Centeno, "Disciplinary Society," 294.

<sup>32</sup> Ricardo D. Salvatore, Wandering Paysanos: State Order and Subaltern Experience in Buenos Aires during the Rosas Era (Durham, 2003), 136, 144, 175-181; Douglas Hay, "Property, Authority and the Criminal Law," in Douglas Hay et al, Albion's Fatal Tree: Crime and Society in Eighteenth-Century England (New York, 1975), 17-63; Garland, Punishment and Modern Society, 67-80, 252; Morgan, "Legacy of the Lash," 3.

society, which facilitated the exchange of useful knowledge about how one should conduct one's self before police, judges, prison guards, and other inmates, and more generally about what it meant to be poor and Brazilian. Before the populist reforms of the mid-twentieth century, schooling was a strictly elite undertaking, few read, and fewer voted, but thousands each year were arrested and, however briefly, slept in the crowded cells of the Casa de Detenção.<sup>33</sup> Like Lima's prisons recently studied by Carlos Aguirre, Rio's prisons were "among the few truly national institutions in the sense that they reflected the diversity of regional, ethnic, social, and cultural backgrounds of the [nation's] population to a greater extent than such institutional settings as schools, universities, the state bureaucracy, or the clergy."<sup>34</sup> As indeed the only substantial contact that many Brazilians would have had with the state, in this setting inmates, and by extension their families and associates outside prison walls, acquired a civic education. <table 1 here>

### **A Dungeon in an Age of Penal Reform: The Rio de Janeiro *Casa de Detenção***

Colonial penal institutions in Brazil, as elsewhere in Latin America, existed to punish and isolate. After the 1808 arrival of the Portuguese royal family and subsequent Brazilian independence, reforms brought liberal ideas about due process and the rule of law to bear on the Brazilian criminal justice system, and sought to abolish certain types of punishment associated with the barbarity and backwardness of a colonial regime. A new criminal code and related legislation limited the arbitrary power of the police and

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<sup>33</sup> José Murilo de Carvalho, Os bestializados: O Rio de Janeiro e a República que não foi (São Paulo, 1987), 38. Centeno, "Disciplinary Society," 303-4.

<sup>34</sup> Aguirre, Criminals of Lima, 111; emphasis in original.

attempted to implement the new conception of state punishment as ultimately aimed at reintegrating the recuperated criminal into society.<sup>35</sup>

As part of this post-colonial attempt to modernize its criminal justice system, the Brazilian government constructed a House of Correction (Casa de Correção da Cidade do Rio de Janeiro) in the Imperial capital in 1834.<sup>36</sup> Very much a part of the mid-nineteenth century's transnational prison reform movement, the Rio de Janeiro Casa de Correção was modeled after correctional facilities in the United States and based on designs and recommendations published in England. Only two of the four rays of the panoptic plan that its architects designed were built before the budget ran out.<sup>37</sup> Reflecting the nineteenth-century doctrinal shift away from purely punitive imprisonment and toward an ideal of regeneration through hard labor, the Casa de Correção was designed to accommodate inmates sentenced to "prison with work" (prisão com trabalho). The building had patios, workshops, and other common areas as well as individual cells, in order to put into practice the systematic, hybrid regime of isolation and socialization that the new penal philosophy demanded.<sup>38</sup>

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<sup>35</sup> Santos, "A prisão dos ébrios," 140-1; Thomas H. Holloway, "'A Healthy Terror': Police Repression of Capoeiras in Nineteenth-Century Rio de Janeiro," Hispanic American Historical Review 69:4 (1989): 649-54; Tórtima, Crime e castigo.

<sup>36</sup> Mauricio de A. Abreu, Evolução urbana do Rio de Janeiro 2<sup>nd</sup> ed. (Rio de Janeiro, 1988), 39; O sistema penal, 45. The Casa de Detenção was located on what is today Frei Caneca Street. A royal edict (carta-régia) mandated the construction of a Casa de Correção in 1769, but construction began only in 1834; O sistema penal, 45.

<sup>37</sup> Construction was still unfinished when the Empire fell in 1889; Relatório do Ministério da Justiça e Negócios Interiores, (Rio de Janeiro, 1889), 98. Hereafter, all annual reports from the Ministry of Justice (and the Interior) will be abbreviated as Relatório.

<sup>38</sup> Decreto 677, 6 de julho de 185?. In such provincial capitals as Recife (1848) and São Paulo (1852), new penal facilities similarly sprang up in the mid-nineteenth century.

In June 1856, the House of Detention (Casa de Detenção), with a capacity for 160 inmates, was carved out of a section of the ground floor of the House of Correction.<sup>39</sup>

Only two functionaries ran the new establishment: an assistant and scrivener, both former employees of the old slave prison (Aljube) who had found themselves unemployed when reforms closed it down. Almost all of the conditions under which the Brazilian government established its capital city's House of Detention were strictly provisional: its locale, its staff, and the rules under which it operated. However, as a Ministry of Justice official would wryly observe in 1888, in the course of a few decades "the provisional passed little by little into the definitive."<sup>40</sup>

A series of laws broadly but explicitly defined the categories of prisoners whom this "prison for the accused" should hold.<sup>41</sup> By the 1880s, the population was intended to include just about all persons in just about any stage of their journey through the criminal justice system, as long as they were being legally detained and had not already been

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<sup>39</sup> The House of Detention was built in the wing of the Casa de Correção that was originally intended to serve as Brazil's first strict penitentiary. Because of the massive overflow of detainees in the Aljube (the slave prison that also housed the poorest Brazilians), the "House of Detention was provisionally established" there instead; Moreira de Azevedo, O Rio de Janeiro e sua história, monumentos, homens notáveis, usos e curiosidades vol. 1 (Rio de Janeiro, 1877), 411. See also Evaristo de Moraes, Prisões e instituições penitenciárias no Brasil (Rio de Janeiro, 1923), 15. The Casa de Detenção was administered as an appendage of the Casa de Correção; Ministério da Justiça e Negócios Interiores, Notícia Histórica dos serviços, instituições e estabelecimentos pertencentes a esta repartição, elaborada por ordem do respectivo ministro, Dr. Amaro Cavalcanti. (Rio de Janeiro, 1898), 10.

<sup>40</sup> Relatório (1888), 119-120. Jurist Evaristo de Moraes makes an identical remark about the "provisional" nature of the House of Detention in his 1923 publication on prisons in Brazil; Prisões, 15. The institution was administered independently from 1881. In 1889, it was put under the control of its own Administrator (Decreto 10.223), and in 1914 it came under the administration of the Ministry of Justice.

<sup>41</sup> Relatório, (1885), 125; APERJ, Casa de Detenção da Corte, Instrumento 1.1.8.

sentenced to serve time in another penal institution.<sup>42</sup> The law was not forceful in segregating different types of detainees, except under extreme circumstances: “Anyone accused of a crime that could carry the death penalty, a life sentence to labor in the galleys, or imprisonment for more than ten years; those condemned for any crime for which a pending appeal suspends the execution of the sentence; those who broke a prison infraction and were ordered kept separately by the chief of police; those suffering from contagious or repugnant diseases.”<sup>43</sup> A 1888 law affirmed that Rio’s Casa de Detenção should only contain persons who were serving sentences of “prisão simples,” in contrast with the Casa de Correção, which exclusively held those serving sentences of penal servitude: “prisão com trabalho.”<sup>44</sup> The names of these two institutions summarize their respective purposes: one sought to correct, and the other simply to detain.

The Casa de Detenção mixed not only prisoners accused of vastly different types of infractions but also both slaves and free persons, which lent added peculiarity to this penal institution and predisposed it to both the extralegality and procedural ambiguity that would characterize it well into the post-abolition period. Slightly more than half of the House of Detention’s population in the last half of the nineteenth century consisted of free (non-slave) criminal defendants. The sizeable population of freed slaves who also inhabited the Casa de Detenção at any given time poignantly manifests the vagaries of the criminal (and civil) law under a slave regime; they remained in state custody although

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<sup>42</sup> Foreign subjects detained at the request of their consul were also to be held in the Casa de Detenção. Moreira de Azevedo, 411; Relatório (1880 e 1881).

<sup>43</sup> Relatório, (1885). 125. Only in 1890 did Brazil abolish the death sentence.

<sup>44</sup> Decreto 10.233 de 4 de abril de 1888 and Lei 3.397 de 24 de novembro de 1888; see Relatório (1888), 119.

often not charged with any crime and were forced into involuntary labor for the state, mostly in public service and public works projects.

A sizable segment of the Casa de Detenção's population consisted of slaves accused of crimes, who occupied a jurisdictional gray area between state and private authority. In 1879, even as legislative measures and sociocultural realities made slavery's end imminent, 2,028 of the 7,225 persons who passed through the Casa de Detenção (about 28%) were slaves, many of whom were charged only with the crime of running away.<sup>45</sup> In 1887, there were 10,072 free and 849 slaves who passed through there, and 385 free and 19 slaves remained at the year's end, less than one year before abolition.<sup>46</sup>

In 1888, the nearly one million Brazilians of African descent still held in bondage were freed. A year later, militant republican elements in Rio's military academy and local republican political parties staged a coup that resulted in the Emperor's exile to Europe and initiated the era now known as the First Republic. This political transition altered little in Brazil's penal system right away.

The Republican regime soon did perceive the need for new criminal legislation to supersede the 1830 Criminal Code, which was stained with the "vestiges of slavery and

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<sup>45</sup> Relatório (1879), 104. In 1871, the Law of the Free Womb emancipated all children born to slaves. At the end of 1882, the existing population in the Casa de Detenção of 395 included 285 free persons and 110 slaves; Relatório (1882), 140. In 1883, of the 635 total that were held there at the end of the year 1883, 493 were free persons and 142 were slaves; Relatório, (1883), 157.

<sup>46</sup> In 1884, of the 324 there at the end of the year, 149 were free and 175 were slaves. There were 271 free persons and 111 slaves at the end of 1885. In 1886, it held a total of 8,764 free and 1,053 slaves; at the end of the year, there were 395 free and 91 slaves; Relatório (1884); Relatório (1886). The slave population in Rio fell from 41,381 in 1877 to 35,332 in 1881; Eulália Maria Lahmeyer Lobo, História do Rio de Janeiro: Do capital comercial ao capital industrial e financeiro, (Rio de Janeiro, 1978), 441.

the cruel penalty of the lash, with the infamy of the galés (galleys, or hard labor in chains), with the death sentence administered even for political crimes, and life sentences for a great number of cases, and the impossibility of renouncing them all.”<sup>47</sup> The 1890 Penal Code and other new Republican legislation abolished the galleys and banishment (banimento, desterro, and degredo), made life sentences into prison terms of thirty years, and carried out other reforms meant to render incarceration more systematic and humane. The new Republican regime adopted in principle a rehabilitative “good penitentiary regime” based on cellular prison with isolation during the initial period of incarceration, never to exceed two years, and with communal work, nighttime segregation of prisoners, and silence during the day. Jurists, politicians, and bureaucrats laid out plans to apply an eclectic, reformist penal philosophy to the punishment and correction of criminals in early Republican Brazil. They combined the Philadelphia (isolation) and Auburn (“congregation”) schools with some elements of the Irish school, including “intermediary imprisonment” and conditional freedom. The Republican government also adopted a variety of partially open penal establishments, especially agricultural penal colonies.<sup>48</sup> New budgetary measures and forms of prison labor to produce the goods and small repairs required within prisons proposed a creative solution in which the penal system itself would generate its own solution to public penury.

But less than complete adherence to these ideals—in fact, in some cases, their complete disregard—was the rule. In part, Republican officials attributed their failure to

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<sup>47</sup> Relatório (1889), 18.

<sup>48</sup> Ricardo D. Salvatore, “Penitentiaries, Visions of Class, and Export Economies,” in Salvatore and Aguirre, eds., Birth of the Penitentiary, 194-223; Santos, “A prisão dos ébrios,” 144; Relatório (1889), 96; Relatório (1896), 103; Evaristo de Moraes, Prisões, 15.



reform the penal system to a lack of resources. The success of such penalties as prison with work and exile to a “correctional colony” turned on an infrastructure that simply was not in place. An official from the Ministry of Justice acknowledged in 1896, for example, that although the Casa de Detenção had been established in one wing of the (already ill equipped) Casa de Correção in 1856 on a strictly provisional basis, the temporary jail remained there. Even if it “satisfies certain policing exigencies,” it also “endangers the correctional service to those condemned to the penitentiary.” New reports issued from the justice ministry two years later repeat the same concerns: this prison that was set up “provisionally” was still operating in a manner that diverged disturbingly from code and negated the systematic work and isolation regime that the prison complex was supposed to be operating.<sup>49</sup> A study of the Brazilian penitentiary system published in 1907 remarks that the “Casa de Detenção, intended for the provisional custody of persons accused of crimes, unjustifiably placed in a ray of the same building as the Casa de Correção, consists of a tumultuous and infectious amalgamation of men, women, and children, promiscuously thrown in humid, featureless compartments, in flagrant violation of all rules of hygiene and morality.”<sup>50</sup>

The Ministry of Justice official’s observation from 1888 quoted earlier concerning the status of the House of Detention at the end of the Empire—where “little by little the provisional passed into the definitive”—had been prescient; by the end of the first decade of the Republic, the Casa de Detenção had become a permanently provisional institution. Its nineteenth-century character anticipated its role in the twentieth, and its existence both

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<sup>49</sup> Relatório, 82. The rapid turnover in the institution’s chief administrator (due to both deaths and firings) seems to be either a cause or a result of its inability to fulfill its proper function in the Brazilian system of criminal justice. Relatório, (1897-98), 249.

<sup>50</sup> Cited in Pedroso, Os signos, 72-3.

prefigured and helped to determine the form that policing the post-abolition republic would take.<sup>51</sup> The existence of this penal purgatory as it formed in the last half of the nineteenth century, in effect, enabled the police and judicial persecution of certain types of behavior that straddled the line between the socially acceptable and the impermissible, such as a slave's escape from her master, a gambler wagering on an unlicensed lottery, or an unemployed person arrested for vadiagem. The Casa de Detenção made possible the existence of a category of criminality with lower penal stakes and ambiguous juridical standing.

An emerging, acute official concern about petty crime marked the transition from Empire to Republic. Just months after the fall of the Empire, the executive and judicial branches of the new Republican government discussed “the division of infractions of the Penal Law into crimes and misdemeanors” in both juridical theory and policing practice.<sup>52</sup> Unlike the 1830 Criminal Code that preceded it, the 1890 Brazilian Penal Code contained a subset of offenses explicitly described as contravenções, a term that loosely translates into English as misdemeanors.<sup>53</sup> Several of the articles in the 1890 Penal Code defined as contravenções had already been prohibited under the previous code, while others had been informally persecuted but not officially labeled as criminal

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<sup>51</sup> See Ian Taylor, Crime in Context: A Critical Criminology of Market Societies (Boulder, 1999), 34.

<sup>52</sup> Relatório (1889), 19.

<sup>53</sup> On the 1830 Criminal Code, see Joaquim Jose Pereira da Silva Ramos, O Indicador Penal Contendo por ordem Alfabética as disposições do Código Criminal do Império do Brasil e todas as leis penais posteriormente publicadas até o presente (Rio de Janeiro, 1861). For a legal definition of contravenção, see José Naufel, Novo Dicionário Jurídico Brasileiro, Vol. II (Rio de Janeiro, n/d), 110.

infractions.<sup>54</sup> This juridical category had a powerful effect on criminal jurisprudence and policing practice; it came into regular use as a tool to categorize types of behavior—like gambling, prostitution, itinerant vending without a license, and public loitering—that many recognized as unhealthy to society, but whose perennially fuzzy definitions gave extraordinary power to those charged with carrying out the law in everyday practice.<sup>55</sup>

Ultimately, it fell to the police to compensate for the vagueness of the law with respect to petty crimes.<sup>56</sup> Despite a half-century-long trend in professionalizing the policing of the city, in the first decades of the carioca First Republic individual policemen possessed increasing power to set policy and administer justice on the streets.<sup>57</sup> The most frequently cited contravenções—vagrancy, distantly followed by begging and gambling—all described acts that were also legal under other, qualitatively indistinguishable circumstances.<sup>58</sup> Lacking any juridical or moral consensus about the

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<sup>54</sup> The most frequently cited example is capoeiragem, a martial art of Afro-Brazilian origin; see Carlos Eugênio Líbano Soares, A capoeira escrava e outras tradições rebeldes no Rio de Janeiro, 1808-1850 (Campinas, 2001). See also Dain Borges, “Healing and Mischief: Witchcraft in Brazilian Law and Literature, 1890-1922,” in Salvatore, Aguirre, and Joseph, eds., Crime and Punishment in Latin America, 181-210.

<sup>55</sup> João Vieira de Araujo, O Código Penal interpretado, segundo as fontes a doutrina, e a jurisprudencia e com referencias aos projectos da sua revisão (Rio de Janeiro, n/d). Franz von Liszt, O Brasil na Legislação Comparada (Direito Criminal dos Estados Extra-Europeus) (Rio de Janeiro, 1911), 64; Viveiros de Castro, Jurisprudência criminal: Casos julgados, jurisprudencia estrangeira, doutrina jurídica (Rio de Janeiro, 1900), 1-14.

<sup>56</sup> Tórtima, Crime e castigo, 131.

<sup>57</sup> Bretas, A guerra das ruas, 63-70. On the Empire, see Thomas H. Holloway, Policing Rio de Janeiro: Repression and Resistance in a Nineteenth-Century City (Stanford, 1993); Chalhoub, Trabalho, lar. See generally David F. Greenberg, ed. Crime and Capitalism: Readings in Marxist Criminology (Philadelphia, 1993), 482, and 553-554. The term carioca refers to a person or thing from the city of Rio de Janeiro.

<sup>58</sup> The frequent arrests of mendigos and the homeless illustrates well the ambiguity of police’s role in treating the city’s poor and homeless; police officers tended to act outside their official mandate in what may have simultaneously constituted efforts at social control and social welfare. In 1918, police admitted 298 “beggars” to the Casa de

illegality of these acts, a carceral regime nonetheless developed to accommodate the mounting concern in some quarters with petty crime and the resulting police repression of previously tolerated practices. This punishment regime included imprisonment with work in agricultural penitentiaries and military presidios for “idlers and vagabonds who were incorrigible by ordinary means.” New penal colonies sprung up to accommodate persons found guilty of contravenções, especially the infamous Colonia Correccional de Dois Rios.<sup>59</sup> This transition in criminal justice also impacted the Rio de Janeiro Casa de Detenção, whose entry logs in the 1890s demonstrate a striking increase in the number of people arrested for such infractions as gambling and vagrancy.<sup>60</sup>

As the repository of those arrested for any infraction, the Casa de Detenção stood as a living monument to this juridical imprecision concerning petty crime. The spotty statistical information now available to us shows that the jail consistently held more

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Detenção, all “in extreme misery” and needing medical assistance; Relatório (1918-1919), 94.

<sup>59</sup> The Colonia Correccional de Dois Rios on Ilha Grande functioned for just two years before being closed for not fulfilling its objectives. It then reopened in 1903, and in 1907 was judged inadequate and completely reorganized. Santos, “A prisão dos ébrios,” 138; Relatório (1889), 19.

<sup>60</sup> APERJ, Série CD. On official concern with petty crime during the First Republic see Carlos Eugênio Líbano Soares, A negrada instuição: os capoeiras na Corte Imperial, 1850-1890 (Rio de Janeiro, 1999); Bretas, A Guerra das ruas; José Murilo de Carvalho, Os bestializados: O Rio de Janeiro e a República que não foi (São Paulo, 1987); and Santos, “A prisão dos ébrios,” 139. For evidence of the intensification of official concern with petty crimes in the transition from Empire to Republic, see the arrest figures that Thomas H. Holloway published concerning the numbers of persons arrested by military police in 1871. Only 7 of the 171 arrested in a five-month period were for vagrancy, a figure strikingly lower than any for the Republic; “A Healthy Terror,” 657. Reportedly, minors arrested for petty theft routinely spent fifteen days in the Casa de Detenção before being taken to the delegacia to sign a writ promising to “take an occupation within 15 days and is then set free”; Ernesto Senna, Através do Carcere (Rio de Janeiro, 1907), 10.

individuals for misdemeanors than for more serious infractions.<sup>61</sup> By 1890, fully sixty percent of persons brought to the Casa de Detenção had been arrested for such misdemeanors as drunkenness, vagrancy, and disorderly behavior.<sup>62</sup> A random sample of those surviving archival records of entering detainees during this period both provides some poignant glimpses at individual detainees and, in the aggregate, confirms the prevalence of misdemeanor offenders among them. In February of 1891, a farm laborer described as “dark-skinned” was arrested for breaking his promise to the state (in the form of a Termo de Bem Viver, or “Writ of Good Living”) to obtain proper work; he spent two weeks in the Casa de Detenção. Of the 489 persons admitted in August 1911, the great majority of male detainees stood accused of vagrancy.<sup>63</sup> The vast preponderance of the 496 detainees who entered between late April and July 1912 were accused of vagrancy, and once again from mid-July through early September 1915, and in October through November of 1916, and in March 1919.<sup>64</sup> The large numbers of prisoners detained there en route to or from penal colonies, most of whom had also been arrested for similar crimes, also swelled the numbers of detainees held for misdemeanor offenses. Whatever the reason for one’s arrest and confinement to the Casa de Detenção during the first decades of the First Republic, one would have been surrounded on all sides by others answering for charges of vagrancy or similar infractions. <table 2 here>

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<sup>61</sup> The surviving entry logs for the Casa de Detenção (APERJ) contain the most complete data on detainees in that institution. The Ministry of Justice’s annual reports (Relatórios) usually indicate the total number of persons who both entered and departed from the Casa de Detenção each year but contain neither demographic information about detainees nor information concerning the infractions for which they were arrested.

<sup>62</sup> Carvalho, Os bestializados.

<sup>63</sup> APERJ, CD-6316. Most of the surviving entry logs for the Rio de Janeiro Casa de Detenção consist only of men. Women detainees are recorded in separate log books, almost all of which appear to have been lost.

<sup>64</sup> APERJ, CD-6315; CD-6318; CD-5620; and CD-6326; CD-6334.

The Casa de Detenção was never officially intended to have a therapeutic role in treating criminality, only a pragmatic, logistical one. If anything, its role was a negative one: the institution must prevent its inmates from sinking more deeply into their criminal ways. According to the thinking of the day, crucial in fulfilling this role was the necessity to discriminate among prisoners in order to mitigate the dangers that contact between vastly different “classes” of prisoners posed.

Jurists and lawmakers in the early nineteenth century already demonstrated a pronounced concern with the mixing of different types of inmates in the Casa de Detenção and demanded that inmates be separated by the severity and type of their crimes, their sex, and their age, but negligent management and logistical constraints such as overcrowding prevented this ideal from becoming a reality.<sup>65</sup> In the course of the next century, Brazilian officials’ fears about the “promiscuous” and dangerous combination of different types of detainees reached an obsessive level.<sup>66</sup> Justice officials first asked and then begged for funding throughout the 1910s to construct two new pavilions, one for contraventores and the other for delinquent minors, in order to separate these partially but not irrevocably corrupted classes from the pernicious influence of other criminals.<sup>67</sup> Several measures were taken in the early twentieth century to attempt to alleviate the situation. Yet the thousands of detainees who passed through Rio’s Casa de Detenção found themselves provisionally placed amid a largely undifferentiated, overcrowded mass of inmates.

### **Social Ecology of the Casa de Detenção**

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<sup>65</sup> Santos, “A prisão dos ébrios,” 140.

<sup>66</sup> Relatório, 1883, Appendix G, 8.

<sup>67</sup> Relatório, 1915-1916, 88; Relatório (1917-1918), 115.

A person arrested in early-twentieth-century Rio de Janeiro en route to the Casa de Detenção traversed a gauntlet of forensic and bureaucratic procedures designed to create an indelible paper trail for each person who passed through the criminal justice system. The identification of criminals acquired a central role in policing the city by the first decade of the twentieth century.<sup>68</sup> Registering criminal suspects by photography and anthropometry mostly ended in favor of fingerprinting around 1907, although in 1910 police photographers reportedly captured the images of 1,362 prisoners for the purpose of identification and record keeping.<sup>69</sup> While still in the police station (delegacia), police officials—the scrivener (escrivão), witnesses (who were often police officers) and the arresting officer, and attended by the district chief (delegado)—recorded the details of the suspect under arrest in an eyewitness report, or auto de flagrante. He or she was subsequently subjected to fingerprinting and other forms of recording one’s physiognomy, as well as a medical exam, all of which together would comprise the beginning of the person’s criminal file.<sup>70</sup> The Office of Identification and Statistics (Gabinete de Identificação e Estatística), where bureaucrats recorded personal information about the suspect and maintained a running criminal file listing all arrests for each individual, was conveniently located in the same building as the Casa de Detenção. Detainees would then pass through the Forensic Institute for a medical exam to determine the suspect’s mental state and aptitude for work. The entrance ritual completed, policemen escorted criminal suspects through the doors of the House of Detention where they would don blue pants and white cotton shirts bearing the initials “C.D.,” with traces

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<sup>68</sup> Da Cunha, “The Stigmas of Dishonor,” 297-298.

<sup>69</sup> Relatório, (1910 e 1911), 81; da Cunha, “The Stigmas of Dishonor,” 300, 306.

<sup>70</sup> Relatório, (1910 e 1911), 81; Ernesto Senna, Através do cárcere; Da Cunha, “Stigmas of Dishonor,” 297-298, 300.

of black ink still on their fingers and no idea of the duration of their stay.<sup>71</sup> And then the suspects would vanish from the historical record, at least until the brief notation in their record indicating the date of their release.

Orestes Barbosa, a prolific journalist and chronicler of urban life prosecuted for libel in 1921, did leave us some precious glimpses into these inmates' world. After a several-month stay in the Casa de Detenção, he quickly published two collections of chronicles about his experiences there and the multitude of colorful characters with whom he came in contact. With its onomatopoeic firing-gun title, Bambambã! (1923), the second of Barbosa's two immensely popular books begins by urging the reader to see the Casa de Detenção for him or herself: "See if you are able to get permission from the illustrious [warden] coronel Meira Lima to visit the galleries. If you do manage to see the Detention from the inside, you will have the impression that all of Brazil is in there." He addresses the reader, implicitly a middle-class, literate person like himself fascinated by the proliferation of people "like ants" who filled the Brazilian capital's penal institutions.<sup>72</sup>

Barbosa's work is part of a genre of prison diaries, useful but highly problematic and idiosyncratic historical sources that fill in some of the details of daily life inside the Casa de Detenção in the early twentieth century, a time for which no other narrative accounts of the inside of this penal institution exist. Popular among the reading public, these published prison chronicles reveal much about both contemporary conceptions of

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<sup>71</sup> Senna, Através do Carcere, 14-15, 17. Olívia Maria Gomes da Cunha argues that early-twentieth-century Brazilian forensic identification procedures comprised a "ritual complex" rather than necessarily serving any pragmatic purpose; da Cunha, "The Stigmas of Dishonor," 305.

<sup>72</sup> Orestes Barbosa, Bambambã! 2<sup>nd</sup> ed. (Rio de Janeiro, 1993), 25-26.



incarceration and, moreover, of the texture of daily life in jail. Journalist Ernesto Senna's similar chronicle written in 1908 about the Casa de Detenção, Através do cárcere ("Through the Prison"), also describes the material and social life there.<sup>73</sup> The author's apparent fascination with inmates' creativity compelled him to document the intricate designs that they produced in their cells on makeshift playing cards, tattoos, and pencil drawings. He describes the sharp instruments that they fashioned from objects like spoons, nails, and pens as tools not just for warfare but also for art, the puzzles and parlor games that they developed with matchsticks and fingers, and the dice made of bread dough, pencils, beans, and balled-up paper. He marvels at how inmates played dominoes sculpted out of hardened bread, and stuffed messages into empty matchboxes, which the detainees nicknamed "carrier pigeons" and would toss from cell to cell. Like Barbosa's, Senna's descriptions evoke a setting with a vibrant social life where inmates conversed, fought, played cards, exchanged stories, collaborated in producing folk art, carried on friendships and romances.

These prison diaries also present suggestive evidence of the intricate connections between the social life within the Casa de Detenção and the outside world. Barbosa's chronicle repeatedly emphasizes the porosity of the House of Detention's walls, showing visitors' movements in and out and cutting back and forth between inside and outside.<sup>74</sup> He describes the Casa de Detenção as a microcosm of the larger city of which it is a part: "It has commerce, authorities, politics, chic clubs, tumults—it has romances and even

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<sup>73</sup> (Rio de Janeiro, 1908).

<sup>74</sup> Robert Moses Pechman, Cidades estreitamente vigiadas: O detetive e o urbanista (Rio de Janeiro, 2002), 343.

emotional literature.”<sup>75</sup> The rhythm of the day is punctuated by visiting hours from noon to two o’clock and ends with nightfall, with guards patrolling the prison halls “just like the night watchmen (noturnos) of our cities.”<sup>76</sup>

These chronicles have their biases and limitations, and their depictions tend toward a low-key form of sensationalism. Senna’s preoccupation with detainees’ production of art crowded out most other aspects of their social life. Barbosa’s primary interest seems to be his ironic commentary on the social inequalities and contradictions of Brazilian urban society, which he makes by establishing an analogy between inside and outside the detention center. As historian Marcos Bretas shows, writers in this genre mostly sought to reveal the sordid urban underbelly at a safe distance.<sup>77</sup> But these writings do demonstrate convincingly how active the House of Detention’s social life was and, in the voice of someone other than a reformer or a government bureaucrat, suggest the ways in which culture and information circulated.

To reconstruct the social life of Rio’s city jail, we must rely primarily on the local and federal governments’ official reports. While Brazil’s federal bureaucracy reported dutifully on the Casa de Detenção annually throughout the First Republic, these reports reveal little about everyday life within the institution except as it concerns the complaints of the Minister of Justice. Each year, justice officials repeatedly, almost ritualistically lamented the Casa de Detenção’s inability to advance the ideals of its founders, and begged for more funds to rectify the situation. Pathological as it is, the information in

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<sup>75</sup> Barbosa, Bambambã!, 45. Historian Carlos Aguirre points to a similar phenomenon in the Guadalupe prison in Lima, Peru; Criminals of Lima, 123.

<sup>76</sup> Barbosa, Bambambã!, 45-48.

<sup>77</sup> Bretas, “What the Eyes Can’t See”; Francise Masiello, “Melodrama, Sex, and Nation in Latin America’s Fin de Siglo,” in Doris Sommer, ed., Places of History: Regionalism Revisited in Latin America (Durham, 1999), 135.

these ministerial reports allows us to begin to imagine detainees' daily experience. Combined with other sources such the chronicles described above and the jail's entry logs, these administrative reports provide evidence of the enormous diversity of inmates in Rio's House of Detention who had intimate, daily contact with each other and, through the constant entrance of new detainees, guards, visitors, and their own frequent trips to police stations and courtrooms for mandatory hearings, with the outside world.<sup>78</sup> Piecing together the social life of this busy detention center is thus a step toward conceptualizing the ways that inmates might have learned of the realities of civic life from their experiences in jail.

In the beginning of the twentieth century, the Casa de Detenção continued to occupy the ostensibly temporary space in which it had been installed in 1856 in one of the spokes of the Casa de Correção's never-completed panopticon. It had three galleries, one of which was specially designated for "criminals responsible for murder, robbery, and counterfeiting." Despite the improvements made, reports written in the 1910s claimed that the institution still lacked sufficient space and called for the construction of two more pavilions, "one for the simple incarceration of contraventores, and another especially for the reclusion of delinquent minors, in order to isolate them completely from the other criminals," as determined by law. In the jail's three galleries, reports in the 1910s boasted that all cells had been repaired, and bathrooms were remodeled and repaired. Women stayed in their own, separate wing only from in the early 1920s on, which contained three "large" rooms, an infirmary, bathrooms, and a laundry room. The

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<sup>78</sup> Especially striking is the number of foreign nationals, especially among the male prisoners. In one week in 1911, for example, Norwegian, English, and Argentine as well as Brazilian nationals entered the Casa de Detenção; APERJ, CD-6316.

space that female detainees had vacated was then designated for detained minors.<sup>79</sup>

Above all, these annual reports consistently describe the detainees arranged in a random “agglomeration” rather than the systematic segregation prescribed by the prevailing criminology of the day.<sup>80</sup>

By the early twentieth century, Brazilian officials’ principled commitment to separating those sentenced to “prison with work” from those serving “simple prison” time or in provisional detention had gradually given way to reality. An 1881 law permitted poor detainees in the Casa de Detenção “who wish to work” to labor in the workshops in the Casa de Correção or in their cells, and to receive any wages earned upon their release, with taxes and the cost of their food deducted. This measure was never implemented; the massive overcrowding in both penal institutions made organizing such a scheme impossible.<sup>81</sup> By 1909, detainees were already laboring in workshops haphazardly installed right in the jail. Although technically contrary to the directives of an institution meant only to detain prisoners temporarily, these workshops are a subtle clue to the degree to which this detention center had become an actual prison. In 1917, a justice official asked for the construction of a number of workshops for both moral and financial reasons: “The detainees remain absolutely idle in the cells... some men have an affinity for work and used to occupying themselves with honest tasks, and these qualities become corrupted in the cells of this House for the lack of means of taking advantage” of this

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<sup>79</sup> Relatório (1914-15), 98; Relatório (1917-1918), 115-116; Relatório (1918-1919), 94.

<sup>80</sup> Relatório, (1914 e 1915), 97-98. The Casa de Detenção do Distrito Federal was regulated by this time under Decreto 10.873 do 29 de abril de 1914.

<sup>81</sup> Relatório (1885), 126.

impulse to work and thus “correcting the defects that brought them to the House of Detention” in the first place.<sup>82</sup>

The Casa de Detenção’s workshops were well established by the 1910s, with a full complement of tools and paid masters overseeing the detainees’ labor. Both male and female inmates worked. Under the supervision “of a woman (senhora) hired for this purpose,” the eighty women then held in the Casa de Detenção washed clothes, sewed, cooked, and cleaned not only their own living space but also other penal institutions and administrative offices. Detainees’ labor produced most of the materials that the institution needed. The workshops created there included carpentry and a leather shop that furnished the General Postal Department with a large quantity of mail bags, produced the holsters in which police kept their revolvers, and fashioned equipment used for the draft animals still used to transport prisoners.

Another concern that repeatedly arose in the annual ministerial reports is the problem of overcrowding in the Casa de Detenção. It is striking that while Rio’s population increased dramatically over the course of the late nineteenth and early twentieth centuries, the population of the Casa de Detenção fluctuated relatively little. The jail had evidently reached, and in fact surpassed, its maximum capacity by the 1880s; it simply could not hold any more people (See Table 1). Built to hold about 150 inmates, its population routinely exceeded 400 in the first decades of the twentieth century, and often reached between 600 and 700.<sup>83</sup> The justice ministry’s 1907 plea that the president budget for the construction of an addition to the detention center typifies the requests

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<sup>82</sup> Relatório, (1909), 99; Relatório (1910-1911), 81-82; Relatório (1917-1918), 115; Relatório (1919-1920), 95.

<sup>83</sup> Pedrosa, Os signos, 92, 96.

made year after year for more space: the establishment lacked the “capacity to house the increased number of individuals who constantly occupy it, forcing the excessive accumulation of detainees in the same cell, contrary to all the hygienic precepts and good discipline.”<sup>84</sup> By 1917, the situation had still not improved; overcrowding forced “twenty-five or more men” to cram into cells designed to hold six, “which threatened the maintenance of good order and discipline” as well as the prisoners’ moral and physical health. Each of the 163 cells contained so many detainees that it “alter[ed] the properties of the air” in the entire section of the prison.<sup>85</sup> As a result of this overcrowding, as well as neglect and a perennial lack of funding, the jail experienced continual problems with maintaining an acceptable level of hygiene. Reports of rampant disease regularly emerged, especially beri-beri and “intermittent,” “pernicious” fevers.<sup>86</sup> With a pitch of increased desperation, official complaints continued into 1920s.<sup>87</sup>

Official sources from the late nineteenth and early twentieth centuries corroborate the prison diaries’ characterizations of the Casa de Detenção’s relatively loose disciplinary regime, which permitted inmates in the tightly crammed jail ample

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<sup>84</sup> Relatório, vol. I (1907), 82.

<sup>85</sup> Relatório (1910-1911), 81-82; Relatório, (1917-1918), 112-113. Moreira de Azevedo describes the dimensions of the Casa de Detenção’s cells as 3.93 meters high, 2.68 meters wide, and 5.46 meters long; O Rio de Janeiro, 412.

<sup>86</sup> For example, of the 6,580 detainees held during the year 1897, 552 visited the infirmary (501 men and 51 women); 9 men and 2 women died. In 1909, out of a total of 2,737 individuals incarcerated in the Casa de Detenção, 192 visited the infirmary and 18 died; Relatório (1897 e 1898), 250.

<sup>87</sup> Relatório (1924), 167; Relatório (1919-20), 95; Relatório (1922-23), 169. In the 1922-1923 report, the Ministry of Justice complained again about the overcrowding, which had apparently resulted from the July 1922 Tenentes revolt, an ultimately unsuccessful military revolt in which a group of young officers conspired to overthrow the government. “Around a thousand people have accumulated in accommodations meant for little more than two hundred”; Relatório (1922-1923), 171.

opportunity for exchanging ideas and experiences.<sup>88</sup> According to a report from the Minister of Justice, “Prisoners who broke regulations were subject to disciplinary penalties such as individual censure, public reprimand, removal to another prison, deprivation of correspondence or visitors, prohibition from working, solitary confinement, and restriction of food,” punishments that the Chief of Police applied after reviewing the case. Regulations curtailed detainees’ actions but still allowed room for substantial, sustained interactions between them. They bathed together in groups of six.<sup>89</sup> The disciplinary arrangement in fact necessitated social interaction, since one inmate in each cell was designated as the one responsible for maintaining order and representing the inmates to the prison administration.<sup>90</sup> In contrast with the Casa de Correção, where prisoners labored in a common space under strict silence and remained confined and segregated in nightly lockdown, inmates in the Casa de Detenção were permitted to converse amongst themselves until the hour of silence, as long as they did not disturb the peace in the other cells.<sup>91</sup>

Guards, too, had close contact with inmates. At least one lost his job for “bargain[ing] with the detainees,” and allegedly “having helped detainees’ attempts to

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<sup>88</sup> The penitentiary system properly speaking was not ever fully implemented; Evaristo de Moraes, 64-65. See also Aguirre, Criminals of Lima.

<sup>89</sup> Senna, Através do Carcere, 17.

<sup>90</sup> Senna, Através do Carcere, 18; Barbosa, Bambambã!, 48.

<sup>91</sup> Silence began at eight o’clock during the winter and at nine o’clock during the summer; Senna, Através do Carcere, 18. The disciplinary regime that the Casa de Correção initially adopted was influenced by both the Auburn and Philadelphia penal systems from the United States. From 1910 on, the Casa de Correção leaned heavily toward the Auburn system, in which prisoners were compelled to collective work in silence during the day, rather than, as in the Philadelphia system, isolation in cells to reflect on wrongdoing and eventually to generate regret and regeneration.

escape.”<sup>92</sup> By the 1920’s, thirty-four guards oversaw the crowded jail.<sup>93</sup> Many of the practices documented by prison diarists and ministerial officials were informal rules that became institutionalized in an unofficial but permanent way. Whether because of incapable guards or corruption and complicity, illegal activity occurred, apparently openly. Games, alcohol, cigarettes, musical instruments, arms, and combustible, flammable, or explosive materials were expressly prohibited. Yet an underground economy flourished in the Casa de Detenção, which stretched into the city outside.<sup>94</sup> Senna reports that Giuseppe Labanca, a banker for the clandestine lottery called the jogo do bicho, continued to operate the illegal game from his jail cell.<sup>95</sup> The journalist’s elaborate descriptions and photographic illustrations of inmates’ playing cards also bear witness to the frequency and brazenness with which official regulations went unheeded.<sup>96</sup>

The Casa de Detenção’s entry logs demonstrate that its population in the early First Republic fit into three general categories. First, it served as a holding pen for persons in liminal positions in the penal system, for example those already sentenced and en route from one penal facility to another or foreigners accused of crimes and waiting to be deported. Second, some detainees prosecuted for a criminal offense were informally serving out a short sentence. The third and largest group includes those arrested and awaiting formal processing. All three categories reflected the social divisions of urban Brazilian society in the early First Republic, and show how these social divisions had become entrenched within the informal workings of the justice system.

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<sup>92</sup> Relatório (1888), 121.

<sup>93</sup> Only two guards and one senhora (a civilian overseer) worked with the much smaller population in the women’s section of the House of Detention. Relatório (1927-28), 151.

<sup>94</sup> Cf. Aguirre, The Criminals of Lima, 146-48.

<sup>95</sup> Senna, Através do Cárcere.

<sup>96</sup> Através do Cárcere, n/p.



Inmates at the Casa de Detenção on their way to or from elsewhere came from a variety of penal institutions, and many foreign nationals also were held there while they waited to be deported.<sup>97</sup> Many waited in jail for months for space to open up in the perpetually overcrowded Casa de Correção. A large proportion of the detainees in transit in the Casa de Detenção were en route to or from one of the penal colonies that were emerging in the late nineteenth and early twentieth centuries as the Brazilian state's primary means of disciplining and sequestering its wayward citizens.<sup>98</sup> Rio's detention center, for example, consistently held young inmates who had been sentenced to (often lengthy) stays in one of Brazil's rural colonies that sought to reform abandoned and delinquent minors through agricultural labor and vocational instruction. A group of minors that arrived in the Casa de Detenção in 1918 were destined for one such institution, the Patronato. After an administrative ruling judging these adolescents unfit for agricultural labor, they remained at least several weeks in the Casa de Detenção while judges and bureaucrats deliberated about the boys' fate. Clues in these documents suggest that these fourteen-, fifteen-, and nineteen-year-old boys, all accused of petty theft and without a home, had arrived in the Casa de Detenção directly from the Casa de Correção and were on their way to the agricultural labor camp. The justice official's emotive request on behalf of one of these boys to return him to his native state of Minas Gerais provides a glimpse at the complexity and mobility of the incarcerated population on the move in the environs of Brazil's federal capital.<sup>99</sup>

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<sup>97</sup> Lená Medeiros de Menezes, Os indesejáveis: Os desclassificados da modernidade, Protesto, crime e expulsão na Capital Federal (1890-1930) (Rio de Janeiro, 1996). See tables 2 and 3.

<sup>98</sup> Beattie, Tribute of Blood, 143,150.

<sup>99</sup> AN, Série Justiça – Polícia IJ<sup>6</sup>-657, Pasta: “Casa de Detenção- 1918.”

Once again, the dearth of reliable statistical data leaves us squinting at the few glimmers of insight that archival documents and published ministerial reports provide. For example, the entry log from June to July 1909 records about 460 detainees. At least 20 of these had “come from [the Dois Rios Penal] Colony” (“veio da Colonia”). Within these same five weeks, at least ten detainees were “about to be expelled” from the country (“para ser expulso”).<sup>100</sup> Another surviving log book from 1911 records the arrival of 448 detainees within a period of approximately five weeks, many of whom are categorized as “coming from the Colony” (“vindo da Colonia”), with a similar proportion of detainees “on their way to the Colony” the following month.<sup>101</sup> In 1910, 44 detainees were on their way to the Casa de Correção and 354 to the Dois Rios penal colony.<sup>102</sup> In 1917, 881 of the 3,275 who were released from the Casa de Detenção were destined for the Colony.<sup>103</sup> In 1924, of the total 168 prisoners who left the Casa de Correção (by then called the Penitenciária), 36 were transferred to the Casa de Detenção, considerably more than the number of detainees sent to any other facility. In that same year, 31 of the 243 who entered the Penitenciária had come directly from the Casa de Detenção.<sup>104</sup> During the late Empire and early Republic, capoeiras stayed in the Casa de Detenção temporarily en route to the prison at Fort Santa Cruz and, finally, to the distant Fernando de Noronha penal colony off the coast of northeastern Brazil.<sup>105</sup> All roads led to the Casa de Detenção, which was at the geographic and logistical center of the Brazilian capital’s

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<sup>100</sup> APERJ, CD-6335.

<sup>101</sup> APERJ, CD-6316.

<sup>102</sup> Relatório, (1910 e 1911), 82-83. This report does not indicate the total number of detainees for that year.

<sup>103</sup> Relatório, 1917 e 1918), 117.

<sup>104</sup> Relatório (1924), 167.

<sup>105</sup> Santos, “A prisão dos ébrios,” 147.

growing penal archipelago. <table 3 here>

### **Living the Gap Between Code and Practice**

Other than those detainees destined for transfer to penal colonies, the House of Detention also held persons charged with offenses and informally serving out short sentences, as well as those arrested and awaiting formal judicial processing. Throughout this period, a great many persons entered the Casa de Detenção “with no declared reason” (“sem motivo declarado”).<sup>106</sup> In each case, the scrivener painstakingly recorded the detainee’s name, address, skin color, profession, level of literacy, filiation, and even, where applicable, scars and tattoos, but not the infraction for which the inmate had been arrested.

In his annual reports to the President of the Republic from the late 1880s to the early twentieth century, the Minister of Justice routinely complained not only about the immense overcrowding and “promiscuous” mixing of different classes of detainees but also the disturbing fact that nobody was quite sure why many of the detainees were there in the first place. A newly appointed justice official in 1887 demanded the “immediate verification of the charges” under which the many prisoners held there for whom the facility had no record of their reason for arrest. He also ordered that the judicial process be sped along for the many others awaiting action, and that measures be taken to put an end to the “complaints brought against the inobservance of due guarantees [of rights] to the detainees.” The fault, this report intimated, often lay with the police; the police chief tended to ignore his responsibility to provide the penal facility with detainees’ judicial

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<sup>106</sup> For example, APERJ, CD-5612; also see CD-5617 (1928).

documents indicating such important details as the sentence or the motive for arrest.<sup>107</sup>

Again in 1915, the Brazilian executive branch observed that “there remain detainees here in the prisons without the incidents of their respective cases being known” and without the police sending along any proper documentation. The requests that detainees be released on the basis of Habeas Corpus made during the early twentieth century, most likely by court-appointed lawyers on behalf of the detainees, attest to the occasional efforts made to free unsentenced detainees, some of which were successful.

Officials did not always openly admit to the apparently large number of inmates in the Casa de Detenção for unknown reasons, at least in any direct way. They did show an awareness of this problem not only in the occasional attempt to take executive or judicial action against it but also in the everyday gestures through which prison functionaries categorized detainees. The escrivães (scriveners) who recorded data on entering detainees exercised considerable discretion, and it is informative to pay attention to the varying language that they used to indicate—or, very frequently, not to indicate—detainees’ “reason for imprisonment” (motivo de prisão) in the Casa de Detenção’s entry logs.<sup>108</sup> Leaving this space blank or simply stating “reason not declared” highlights the sharp contrast between penal philosophy and penal practice. These entry logs, meant to demonstrate the systematic and predictable operation of a modern justice system and its commitment to due process, became part of the routinized extrajudiciality that characterized policing and punishment in Brazil.

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<sup>107</sup> Relatório (1887), 136. The judicial documents that this report specifies are the nota de culpa or intimação da pronúncia.

<sup>108</sup> Relatório, 1915-1916, 88; AN, Série Justiça – Polícia IJ<sup>6</sup>- 657, Pasta: “Casa de Detenção-1918.” See also da Cunha, Intenção e gesto, 111-114; Marc Adam Hertzman, “Workers into Vagrants: Policing Rio de Janeiro before (and after) Music was the Point, 1890-1940,” unpublished ms. (2005): 8.

The Casa de Detenção's unofficial but deeply entrenched role in Brazilian criminal legal practice and social policy is also apparent in the numerous inmates there who had not been accused of committing any crime, but whom the state perceived as needing public assistance. These incarcerated beggars, abandoned children, and homeless persons in the early First Republic are living evidence of often-analyzed process through which the social question, by the early twentieth century, became "a question for the police."<sup>109</sup> Both government officials and concerned citizens frequently lamented the common practice of sending abandoned or "delinquent" children to both the Casa de Detenção and the Colonia Penal simply because of a lack of institutional alternatives.<sup>110</sup>

The state's extralegal uses of the Casa de Detenção also included the consistent presence of detainees serving out terms there rather than the institution to which they had been sentenced. For the most part, this resulted from overcrowding in the Casa de Correção. Persons found guilty and sentenced to prison terms with or without work frequently remained in Detention for months, and in some cases over a year, never knowing the penitentiary regime that had been legally prescribed for them.<sup>111</sup> Although the institution had been "exclusively destined to be a deposit for prisoners in custody

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<sup>109</sup> Rui Barbosa, A questão social e política no Brasil: Conferência pronunciada no Teatro Lírico, do Rio de Janeiro, a 2-0 de março de 1919 Evaristo de Moraes Filho, ed. (Rio de Janeiro, 1983); June E. Hahner, Poverty and Politics: The Urban Poor in Brazil, 1870-1920 (Albuquerque, 1986); Sílvia Moreira, São Paulo na Primeira República (São Paulo, 1988), 27, 30.

<sup>110</sup> AN, Série Justiça- Polícia IJ<sup>6</sup>-657, pasta: "Casa de Detenção, 1918; Barbosa, Bambamba!, 105; Relatório (1917-18), 114; Santos, "A prisão dos ébrios," 153. Relatório (1924), 167.

<sup>111</sup> Relatório, (1917-1918), 113. In 1915, "620 criminals and 64 contraventores served their sentences here, being that the Casa de Correção only has the capacity for 198, and it has prisons neither for women nor for minors." Relatório, 1915-1916, 88.

under judges' orders," a justice official complains in 1914, "the establishment has transformed into a correctional facility" with "a large number of convicted prisoners awaiting a space in the Casa de Correção and the Colonia Correccional [de Dois Rios], so that they can then be transferred there."<sup>112</sup> The high acquittal rate also meant that many detainees served usually brief but unsentenced terms in the Casa de Detenção.

The court's ability to prosecute kept pace with neither the new interest in petty crime nor the police's official authority and informal power to make arrests. The population of the House of Detention is a testament to the way Rio police acted outside the law, but in often patterned and predictable ways. In direct, unambiguous violation of the most basic principles of criminal jurisprudence, police routinely arrested people for "being" something rather than for actually committing a criminal act. Throughout the period that this article covers, the examples in the Casa de Detenção's entry logs are legion: "for being a known thief"; "for being a gambler"; "for being a pickpocket and disorderly"; "for being an incorrigibly disorderly person"; and the very ubiquitous "for being a vagabond."<sup>113</sup> The arbiters of Brazilian criminal jurisprudence debated the conditions necessary to constitute a misdemeanor but agreed that criminal intent or negligent fault needed to be present, and that only a consummated act rather than an attempted crime could be prosecuted.<sup>114</sup> Although judges acquitted many of these cases

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<sup>112</sup> Relatório, (1914 e 1915), 97-98. An identical complaint arose later; Relatório (1915-1916), 88

<sup>113</sup> See for example APERJ, CD-3970; CD-5626, esp. 389-391; CD-6333.

<sup>114</sup> Viveiros de Castro, "A Boa Fé nas contravenções," in Jurisprudência criminal: Casos julgados, jurisprudência estrangeira, doutrina jurídica (Rio de Janeiro, 1900), 1-14.

on exactly these grounds, any of these defendants who could not afford to post bail spent a period of between a few days and a few weeks incarcerated in the Casa de Detenção.<sup>115</sup>

The Brazilian criminal justice system's divergences in practice from its universal guarantees of equal protection and rights reinforced social inequalities not only by harassing those most vulnerable to the legal, economic, and even physical hardships of incarceration—especially the poor, darker-skinned, and unemployed. These formalized informalities also created a socioeconomic hierarchy of inmates within the Casa de Detenção, which conferred special privileges on those of a higher status. The inmate population there consisted primarily but not exclusively of the underclasses. Inmates were divided into two groups: “abastados” (“the well-off”) and “proletários” (“proletarians”). Only the abastados could receive visitors and leave their cells, walk around in the fresh air of the patio, or eat food from outside the jail, after inspection by the warden or another official. The proletários had to receive visitors through the bars of their cells and were forbidden access to the patio.<sup>116</sup> The social dynamics of the Casa de Detenção reflected the social inequalities of the world outside in the racial composition of the detainees, too. Statistics on the skin color of those who entered the House of Detention are sporadic, due not only to the dearth of surviving and easily accessible documentation but moreover to the Brazilian official desire to disregard race in the immediate aftermath of slavery. Nonetheless, researchers have pieced together ample

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<sup>115</sup> See for example APERJ, CD-5626; CD-3970; CD-6333. See also Hertzman, “Workers into Vagrants,” 8.

<sup>116</sup> Relatório, (1920-21), 136; Pedroso, Os signos, 92, 93, fn 36. These class hierarchies were enforced not only by the prison authorities but also by the inmates themselves; see Pablo Piccato, “Cuidado con los Rateros: The Making of Criminals in Modern Mexico City,” in Salvatore, Aguirre, and Joseph, eds., Crime and Punishment, 253.

evidence that most persons arrested for petty crimes and detained in the Casa de Detenção were dark-skinned Brazilians.<sup>117</sup>

We can turn again here to Orestes Barbosa's literary-journalistic account of Casa de Detenção for insights that administrative documents and codes of criminal procedure cannot offer. Writing in a humorous mode, he describes the House of Detention like a city—crowded, diverse, and fractured along the lines of class hierarchies. He likens the better or worse cells to Rio's wealthier or poorer neighborhoods; Rooms One and Two, the more comfortable clusters of cells, are the well-to-do Flamengo and Botafogo. In the cells of the second gallery, the teeming tenement houses of this city within a city, "ten, twenty, thirty, even forty men" share a cell, and "some are naked in the black, suffocating environment."<sup>118</sup> The Casa de Detenção's daily rhythm keeps time with the city outside: "Before the neighborhood wakes, the milkman, baker, and newspaper deliverer arrive." But the abundance of one's morning delivery depends on one's social class: "The milkman only visits the wealthy neighborhoods" of the jail; "the slum dwellers do not drink milk." In the wing that housed minor inmates, "children of the jail play in the yard." When evening falls, the wealthiest "neighborhoods" in the third gallery are brightly lit while the others struggle under a "dim light that barely allows one to read the evening paper." Meanwhile, in the "chic neighborhoods, in well-lit palaces" the residents

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<sup>117</sup> One ministerial report breaks down the 2,783 male detainees at the CD as follows: 1,700 whites, 413 pardos (brown), 670 pretos (black). The female inmates included: 61 white, 45 parda, and 116 preta; Relatório, (1917), 121. This striking racial discrepancy between men and women occurs in almost all years in the CD entry logs and merits closer investigation elsewhere. On the skin color of detainees, see Marcelo Badaró Mattos, "Vadios, jogadores, mendigos e bêbados na cidade do Rio de Janeiro do início do século," (M.A. thesis, Universidade Federal Fluminense, 1991), 89-91; Sam Adamo, "The Broken Promise: Race, Health, and Justice in Rio de Janeiro, 1890-1940," (Ph.D. Diss, University of New Mexico, 1983), 196, 198, 201.

<sup>118</sup> Barbosa, Bambambã!, 45.



are involved in heavy gambling. Just like the periodic anti-gambling campaigns then occurring in Rio, from time to time “the warden conducted a surprise search, closing down the gambling dens.” The next day, the cards and dice reappear, nobody knows how.<sup>119</sup> Barbosa’s narrative parodies the city outside as much as it describes life within prison walls. He posits the very opposite of the sealed-off “total institution”; instead, the Casa de Detenção is a crucible in which urban life is boiled down to its very essence.

### **Civic Education in the City Jail**

To follow the law, people must somehow learn about it, even the least learned. Of course, those with no access to the printed word have always had contact with legal codes by word of mouth, through the common practice of announcing laws and regulations out loud, and the official acts and ceremonies designed to impress upon citizens the sovereignty and fairness of the law and the gravity of breaking it.<sup>120</sup> In Republican Brazil, agents of the law—police officials, scribes, and judges—included didactic elements in their interactions with those accused of having violated the law. In asking inmates entering Rio’s House of Detention about filiation, for instance, officials communicated the importance of membership in a legitimate family and, more subtly and subconsciously, the bias against ex-slaves. One’s clothing, a semaphore for one’s socioeconomic standing, was also carefully noted in the jail’s entry logs and the Office of Identification and Statistics, showing how class status mattered as part of one’s documentary, as well as actual, self.<sup>121</sup> Criminal defendants learned, too, that what counted in determining one’s culpability went far beyond what the law prescribed.

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<sup>119</sup> Barbosa, *Bambambã!*, 45-48.

<sup>120</sup> Salvatore, *Wandering Paysanos*, 175-183.

<sup>121</sup> Cf. Salvatore, *Wandering Paysanos*, 136, 144

Being “known to the police,” itself, had come to constitute an unofficial but widely recognized form of criminality. To make arrests, police relied heavily on informal, local knowledge gained by way of their own circuits of information and witnesses’ testimony.<sup>122</sup> Criminal files included a list of the suspect’s prior arrests, even if these previous cases had resulted in acquittals.<sup>123</sup> The new ability to maintain and retrieve elaborate information about individuals’ previous arrest records, best demonstrated by the Office of Identification and Statistics, intensified the protracted effects of arrest and detention.<sup>124</sup> Being someone who “frequents the Casa de Detenção” began to appear in the 1910s as a motive for arrest, an event almost inevitably followed by a stay in the Casa de Detenção.<sup>125</sup> Such circular logic that fashioned “known criminals” out of detainees made apparent sense to police, judges, and lawmakers, whose class and racial biases by then eclipsed their knowledge of the Detention House’s extralegal uses.<sup>126</sup> Detainees led through the institution’s entrance procedures involving physical examinations, recording anthropometric and personal data, fingerprinting, and photography—“rituals of social branding,” in the apt words of Olívia Maria Gomes da Cunha—would have known about the importance and permanence of the paper trail that their detention generated.<sup>127</sup>

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<sup>122</sup> Marc Adam Hertzman, “Workers into Vagrants,” 7. Cf. Piccato, “Cuidado con los Rateros,” 247.

<sup>123</sup> See for example AN, Fundo 10a Vara Criminal, Notação CX 270, Proc. 70, Galeria B; da Cunha, “Stigmas of Dishonor,” 304.

<sup>124</sup> da Cunha, Intenção e gesto; da Cunha, “Stigmas of Dishonor.”

<sup>125</sup> Hertzman, “Workers into Vagrants,” 18.

<sup>126</sup> As Joan Dayan points out, just as the Dred Scott v. Sanford (1856) decision in the US “used the fact of slavery to prove degradation, conditions of confinement are manipulated in order to confirm depravity”; “Legal Slaves,” 22.

<sup>127</sup> da Cunha, “Stigmas of Dishonor,” 299. As da Cunha convincingly claims, the refusal of some persons accused of vagrancy to submit to fingerprinting or to sign the autos de

Beyond the circumstantial evidence of their mere presence in the Casa de Detenção and subjection to the rules, procedures, and social stigma associated with their stay there, we find scattered data in both historical scholarship and the criminal records themselves that testifies to inmates' knowledge of the inner workings of the criminal justice system.<sup>128</sup> Prison diaries again provide some telling clues. The lexicons of criminal argot that chroniclers like Senna published are full of terms that describe criminals' complicity with the police, and the protracted effects of being arrested. The expression "dar à cara," for example, literally "to give to the face" or "to give to the guy," means to pay off a police officer in order to avoid arrest and refers directly to the informal partnership between authorities and petty thieves. Other slang terms describe the process of being documented and photographed by they police ("escrachado"), again showing that the significance of the state's record-keeping procedures was not lost on criminal defendants. These slang terms' common use, as well as their publication in books widely read by a bourgeois public, suggest that this intimate knowledge of the extrajudicial side of everyday policing circulated in a much wider cultural milieu.<sup>129</sup>

Popular knowledge of criminal justice as it really operated is also evident the strategic uses of nicknames, which Senna also documents in his prison chronicles. The journalist lists the creative "nomes de guerra" that detainees assumed: Seven Heads, Little Russian, Thirty-Four, Little Whitey, and Cigar, to name just a few. Two prisoners would sometimes exchange names "with the intention of confusing the authorities who,

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flagrante ("eyewitness statements") demonstrate that they understood these criminal records' power and importance.

<sup>128</sup> See da Cunha, "Stigmas of Dishonor," 299. For a related argument concerning petty thieves in Mexico City's prisons, see "Cuidado con los rateros," 253-54.

<sup>129</sup> Senna, Através do Carcere, 49.

in order to know who the recidivists are, look at the inmates' registration book, in such a way that, on occasion, one finds the name of a white minor or one of color, one mentions a certain distinguishing mark, but one cannot discover him."<sup>130</sup> A convenient and apparently successful subterfuge to hide their identity, changing and circulating nicknames might have served the dual purpose of evading authorities and countering the erosion of self that comes with incarceration.<sup>131</sup>

In another example of how people knew about the informal workings of the system, Orestes Barbosa tells of his encounter with a woman, a midwife by trade, who performed illicit obstetric services to women at the legal borderlands between medicine and "witchcraft." When he asked her what had motivated her arrest, she replied "399," showing her knowledge of the Penal Code and, moreover, the police's discretionary use of ambiguously defined misdemeanor offenses. As this woman had learned, article 399 on the 1890 Penal Code indicated vagrancy, which police and judges routinely applied as a catch-all infraction in juridically indeterminate cases such as hers.<sup>132</sup>

Suggestive evidence of the effect that a stay in the Casa de Detenção had on people emerges from close readings of defendants' criminal files (processos). As Marc Hertzman shows in his close study of hundreds of vagrancy records in the 1890 to 1940, arrested persons routinely sought not only to get out of jail but also to clear their names and mounted earnest defenses even when the fate of their cases seemed sealed.<sup>133</sup> The fact that defendants routinely based their written defenses (autos de defesa) on the

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<sup>130</sup> Senna, Através do Carcere, 10.

<sup>131</sup> Goffman calls this "personal defacement"; Asylums, 21.

<sup>132</sup> Barbosa, Bambambã!, 59-60. This midwife appears to have been performing abortions.

<sup>133</sup> "Workers into Vagrants." For specific cases, see for example AN, Varas Criminais, 11<sup>a</sup> P. C., n. 7769, caixa 1180; AN, OR.0822.

assertion that they had not previously had to answer for any crime suggests their awareness that being “known to the police” and a “frequenter of the Casa de Detenção” did not depend on having been convicted, only having passed through this institution.<sup>134</sup> Experience would have taught anyone who had had even a passing brush with the criminal justice system that it always pays to protest one’s innocence because of the difficulty of convicting petty crime cases. Yet evidence strongly suggests that defendants were aware of both the enormous importance and the difficulty of effectively setting their record straight, even if found innocent.

It is not only scholars and jurists who have recognized the gap between code and practice in Brazilian criminal law, then.<sup>135</sup> Individuals subject to the vagueness and arbitrariness of the law, themselves, also appear to have recognized the disjuncture between the dictates of the law and how it was actually carried out in streets, police stations, and courtrooms. The great popularity of crime reporting and prison diaries can also be interpreted in this light.<sup>136</sup> It is telling that Orestes Barbosa locates the origin of malandragem—urban scoundrelry so crucial to cariocas’ cultural self-depictions even in the present day—in the “finishing schools” of the Casa de Detenção and the Colonia

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<sup>134</sup> See for example the numerous criminal cases against José Maria Ribeiro: AN, T8-2543; AN, T8-3077; AN, T8-3074; AN, D3, Caixa 955, proc. 5135/47.

<sup>135</sup> Keith S. Rosen, “Brazil’s Legal Culture: The Jeito Revisited,” Florida International Law Journal, vol. 1, n. 1 (Fall 1984): 1-43. See also Marcos Luiz Bretas, “O informal no formal: a justiça nas delegacias cariocas da Republica Velha,” in Discursos sediciosos: Crime, direito, e sociedade (Rio de Janeiro, 1996), 213-22.

<sup>136</sup> Ernesto Senna, Através do cárcere; Marcos Luiz Bretas, “What the Eyes Can’t See”; Lima Barreto, Vida Urbana: Artigos e Crônicas, 2nd ed. (São Paulo, 1961), 55; Carmen Lucia Negreiros de Figueiredo, Lima Barreto e O Fim do Sonho Republicano (Rio de Janeiro, 1995), 89; Barbosa, Na prisão; Masiello, “Melodrama, Sex, and Nation,” 135.

Penal, for malandragem does not simply signify criminality but rather a knack for getting around the rules.<sup>137</sup>

## Conclusion

Throughout the modern world, many repeat the commonplace that prisons act as schools of criminality. One's experience of internment and the interactions with others also detained there, it is often said, educates a prisoner in unlawfulness and cross-trains him or her in new types of antisocial behavior. The simile between an institution of punishment and one of learning deploys a powerful irony, and presents a moving allegory of the spectacular failure of an institution born out of an optimistic, if naïve and shortsighted (or, as many have claimed, nefarious), reformist moment in the nineteenth century.<sup>138</sup>

Official rhetoric in late-nineteenth- and early-twentieth century Brazil echoed the idea both that social pathology resulted from a lack of education, and that prisons taught criminal behavior.<sup>139</sup> The mixture of persons detained for different reasons in the Casa de Detenção, a report from the justice ministry pontificates, breeds criminality. The detainee who has simply diverged momentarily from the straight and narrow path comes

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<sup>137</sup> “É a malandragem, mesmo bem vestida, há de existir sempre. Ninguém cuida da educação das crianças./ É difícil colocar um menor numa escola dessas feitas para os pobres./ A polícia arrebanha-os para a Colônia e para a Casa de Detenção que são escolas de aperfeiçoamento...”; Orestes Barbosa Bambambã!, 105. See Antonio Cândido's classic essay, “A dialética da malandragem,” Revista do Instituto de Estudos Brasileiros vol. 8 (1970), 67-89

<sup>138</sup> I agree with both David Garland and Michael Ignatieff's rejection of the failure model for understanding the modern history of the penitentiary. Ignatieff argues that nineteenth-century penal reform was not a failure, in that it took over the administration and organization of prisons throughout Europe and North America. A Just Measure of Pain, 208-9. See also Garland, 5-6. Cf. Foucault, Discipline and Punish, 276-7.

<sup>139</sup> Luiz Carlos Soares, “Prostitution in Nineteenth-Century Rio de Janeiro,” University of London Institute of Latin American Studies Occasional Papers, 17 (1988): 39; Mattos, “Vadios,” 62.

in contact with a repeat offender already “degenerated from vice.” “Each entry into Detention is a new and extremely dangerous lesson for the individual, quickly leading to demoralization.”<sup>140</sup> Throughout the early First Republic, Brazilian officials describe the Casa de Detenção, as it operated in practice, as a place where a detainee might learn “new infractions that he had not practiced before.”<sup>141</sup> Justice officials believed that this necessary but apparently unmanageable institution had taken on the role in “forming new criminals,” a role that, in effect, turned the nineteenth-century reformist urge toward the re-education of criminals on its head.

Contemporary observers of early-twentieth-century Brazilian penal institutions had few delusions about the fruitfulness of the penitentiary project as it was unfolding in practice. Judging the prison population “vile” and beyond redemption, prison officials and workers had already abandoned all hope of the reformist mission’s success by the 1860s. As historian Marcos Bretas has illustrated, an awareness of and general cynicism about the gap between code and practice, between reformists’ aspirations of “regeneration” and the sordid reality of penal institutions is evident in the prison narratives so popular in the first two decades of the twentieth century; their one common feature was their conviction that the prison reform project had failed.<sup>142</sup> As former police district chief (*delegado*) Vicente Reis opines in 1903, the prevalence of repeat offenders in prisons testifies to the failure of the penal system to reform inmates, and suggests that, in a city full of temptations to transgression, the cells of the Casa de

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<sup>140</sup> *Relatório* (1983), Appendix G, 8.

<sup>141</sup> *Relatório*, (1918-1919), 93.

<sup>142</sup> Bretas, “What the Eyes Can’t See,” 106-7.

Detenção were the most corrupting place of all.<sup>143</sup> Such anxious talk about the dangerous lessons that inmates learned in prisons arose with increasing urgency in the mid- and late twentieth century, especially as “common criminals” came to share the tight spaces of detention centers and penal colonies with elite political prisoners.<sup>144</sup>

Ernesto Senna hesitated to weigh in as either a champion or a detractor of penal reform. He writes in Através do Carcere, “I do not have complete conviction whether inmates leave our prisons more criminal than before or if, effectively, these institutions provide an incentive for inmates’ complete regeneration, whether by awakening good and generous sentiments long dormant beneath their vice and crime, or whether inculcated by the severe, rigorous discipline and the love of work, the respect for life and for property.”<sup>145</sup> Even in his indecision, the journalist allows for only two possibilities: either inmates receive an education in criminality, or they are regenerated as disciplined, hardworking citizens. The past century and a half of scholarship that debates the efficacy of penal reform echoes the limitations of Senna’s sociological imagination; by vilifying

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<sup>143</sup> Os Ladrões do Rio (Rio de Janeiro, 1903), 5, 8.

<sup>144</sup> On political policing see Marcos Luiz Bretas, “Polícia e polícia política no Rio de Janeiro do anos 1920,” Revista do Arquivo Público do Estado do Rio de Janeiro (2000), 25-34; Maria Werneck, Sala 4: Primeira prisão política feminina (Rio de Janeiro, 1988); Graciliano Ramos, Memórias do cárcere 3<sup>rd</sup> ed. (Rio de Janeiro: Editora Olympio, [1953], 1954); R. S. Rose, One of the Forgotten Things: Getúlio Vargas and Brazilian Social Control, 1930-1954 (Westport, 2000). Political prisoners abounded in the Casa de Detenção by the 1920s: for example, in 1924, of the 1,065 who entered the CD, 298 were “por efeito de sedições” (for sedition). At the end of the year, 70 remained of the 576 persons detained “por sedições,” likely as a result of the military (Tenentes) rebellion of July 1922; APERJ, CD-6325. See also APERJ, CD-5619; Relatório (1922-1923), 171. Also see Aguirre, Criminals of Lima, 213-21; Satadru Sen, Disciplining Punishment: Colonialism and Convict Society in the Andaman Islands (New York, 2000), 264-71.

<sup>145</sup> Senna, Através do cárcere, 1.



the carceral state rather than the criminal, revisionist research that has questioned the humanitarianism of the reformist urge has simply inverted who the “bad guy” is.<sup>146</sup>

Looking beyond this choice between a prisoner’s “education” in discipline or vice requires a paradigm that mediates between the analytical extremes of social control on the one hand and resistance on the other. The complexity of the interactions between the state and society was a direct result of both the ambiguity of the law and the prisoners’ interpretive agency. To understand how “extrajudicial normativity” operates and why it prevails, we need to do more than simply assess the extent of economic necessity and lawlessness; we also need to understand the transmission of popular knowledge of how things work.<sup>147</sup> Placing penal institutions at the center of this flow of information need not lead us back to a focus on state surveillance, but rather it pushes us to examine the exchange of information between the state, those subject to state power, and state agents like police who acted beyond the bounds of their official mandate, according to their creativity, personal interests, or wont.

What did detainees think about their experiences in the Casa de Detenção, and what lessons did they learn there? We can only guess. Only through an act of vaulting extrapolation can we imagine the nature of daily life on the inside.<sup>148</sup> Yet, we do have fragments of information about the material surroundings and personal backgrounds of

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<sup>146</sup> Pieter Spierenburg, “From Amsterdam to Auburn: An Explanation for the Rise of the Prison in Seventeenth-Century Holland and Nineteenth-Century America,” Journal of Social History, vol. 20 (1987): 439.

<sup>147</sup> Iván Alonso, Fernando Iwasaki, Enrique Gherzi, eds., El comercio ambulatório en Lima (Lima, 1989), 13.

<sup>148</sup> David Garland likewise argues that the evidence that we have to trace the “reception” of penality is “woefully inadequate”; Punishment and Modern Society, 253.

the detainees, as well as the legal circumstances of their incarceration. And, as we have seen, even those with no formal schooling somehow acquired a civic education.

In Republican Rio de Janeiro, ordinary citizens had relatively little contact with the state except through their run-ins with the police, often followed by a short stint in Detention. Our evidence concerning the circumstances under which thousands passed through the Casa de Detenção leads us to consider the possibility that it was through individual and collective experiences of this and similar institutions that people were educated in, to borrow historian Thomas Holloway's darkly clever turn of phrase, what we "euphemistically call law enforcement."<sup>149</sup> Former inmates found themselves permanently stigmatized by their arrest and imprisonment, damaged financially by the loss of salary during the term of their detention, and possibly sickened by the disease and unhealthy conditions about which justice officials constantly but fruitlessly complained. As none knew better than those who had been arrested, detained, and then found innocent, acquittal did not mean avoiding punishment. Considering the life-changing experience of leaving one's fingerprints indelibly in the Gabinete de Identificação and then huddling among the scores of other inmates at the Casa de Detenção, we can begin to imagine how many Brazilians were brought into the national embrace through such informal, "permanently provisional" means.

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<sup>149</sup> Holloway importantly emphasizes that his monograph Policing Rio is not a study of law enforcement, because often it was not an actual law that the police were upholding. His study, instead, concerns "the changing definition" of what was permissible and what was not, and on "the selective application of laws"; 9.

Appendix to  
 “Social Life and Civic Education in the Rio de Janeiro City Jail”

**TABLES**

Table 1: Number of detainees in Casa de Detenção (CD) by year<sup>150</sup>

| Year | Total number of detainees | Number of detainees already in CD at beginning of year | Number of detainees who left the CD during the year | Number of detainees who entered during the year |
|------|---------------------------|--|---|---|
| 1875 | 4,258                     | 276  | 3,927   | 3,982   |
| 1879 | 7,225                     | 393  | 4,796   | 6,832   |
| 1881 | 8,169                     | 651  | 7,690   | 7,518   |
| 1882 | 8,537                     | 460  | 8,142   | 8,077   |
| 1883 | 8,864                     | 395  | 8,229   | 8,469   |
| 1884 | 8,497                     | 635  | 8,173   | 7,802   |
| 1885 | 8,701                     | 324  | 8,319   | 8,377   |
| 1886 | 9,817                     | 382  | 9,331   | 9,435   |
| 1887 | 10,921                    | 445  | 10,476  | 10,517  |
| 1888 | 6,286                     | 445  | 5,841   | 5,010   |
| 1889 | 5,494                     | 363  | 5,031   | 5,131   |
| 1892 | 9,573                     | 487  | 9,156   | 9,068   |
| 1893 | 9,305                     | 417  | 8,637   | 8,888   |
| 1895 | 5,308                     | 375  | 5,308   | ---   |
| 1897 | 6,793                     | ---  | 6,580   | ---   |
| 1902 | 8,139                     | 688  | 7,462   | 7,451   |
| 1906 | ---                       | ---  | 2,643   | 2,737   |
| 1909 | 4,134                     | 54   | 3,668   | 4,080   |
| 1910 | 3,779                     | 541  | 3,238   | 3,039   |
| 1912 | 4,152                     | 541  | 3,371   | 3,611   |
| 1914 | ---                       | ---  | 2,424   | 2,415   |
| 1917 | 3,942                     | 1,246  | 3,275   | 2,696   |
| 1918 | 2,328                     | 1,154  | ---   | 1,174   |

<sup>150</sup> All data for this table comes from a survey of the annual reports (Relatórios) of the Brazilian Ministry of Justice (called both the *Ministerio da Justiça* and, after 1892, *Ministerio da Justiça e Negócios Interiores*) from 1875 to 1928. Narrative reports of the movement in and out of the *Casa de Detenção da Côrte/ Casa de Detenção do Distrito Federal* can usually be found either in a separate section of the Relatório or as part of the section titled “*Serviço Policial*.”

|      |       |     |       |       |
|------|-------|-----|-------|-------|
| 1919 | 3,808 | 578 | ---   | 3,230 |
| 1921 | 3,196 | 757 | 2,430 | 2,439 |
| 1922 | 3,544 | 761 | ---   | 2,783 |
| 1923 | 2,373 | 714 | ---   | 1,659 |
| 1924 | 1,607 | 542 | 1,631 | 1,065 |
| 1925 | ---   | --- | ---   | 1,184 |

Table 2: Reason for internment, sex, nationality, and social class of the 363 inmates in the Casa de Detenção present at the beginning of the First Republic (1889-1930)<sup>151</sup>

|  | <b>Number of detainees on<br/>November 15, 1889</b> |
|--|---|
| Detainees  | 217   |
| Sentenced ( <i>pronunciados</i> )  | 94  |
| Condemned ( <i>condemnados</i> )   | 24  |
| Foreign sailors detained at<br>the request of their consuls                | 5   |
| Completing sentence of<br>simple imprisonment<br>( <i>prisão simples</i> ) | 23  |
| Men  | 328   |
| Women  | 35  |
| Brazilian nationals  | 209   |
| Foreign nationals  | 154   |
| Proletarians ( <i>proletarios</i> )  | 352   |
| Well-off ( <i>abastados</i> )  | 11  |

Table 3: Destination of detainees released from the Rio de Janeiro Casa de Detenção in 1914 (out of a total population of 2,424 detainees)<sup>152</sup>

| <b>Destination after release from CD</b>              | <b>Number</b> |
|---|---------------|
| Transferred to Correctional Colony Dois Rios          | 237           |
| Transferred to the House of Correction                | 78            |
| Completed prison term within the Casa de Detenção     | 513           |
| Acquitted   | 1,018         |
| Case nullified or vacated ( <i>processos nullos</i> ) | 112           |

<sup>151</sup> Relatório do Ministro da Justiça (1889), 96.

<sup>152</sup> Relatório do Ministro da Justiça e Negocios Interiores (1914), 99.

|   |     |
|---|-----|
| Case archived   | 17  |
| Charges dropped ( <i>despronunciados</i> )  | 24  |
| Habeas corpus   | 32  |
| Out on bail   | 60  |
| Case could not proceed on technical or<br>juridical grounds ( <i>procesos<br/>improcedentes</i> ) | 125 |
| Deported  | 6   |
| Other   | 202 |