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Rehabilitation, enablement, and ethical challenges in the Brazilian criminal justice system

Abstract

Electronic monitoring, currently used as a criminal tool focused on rehabilitation and recidivism reduction, still reflects racial and social inequality, with Black individuals, the poor, and men being the majority in incarceration statistics. While "green justice" seeks context-sensitive approaches and social reintegration, technology is still used as an instrument of control and surveillance in the Criminal Justice System, highlighting the persistence of criminal biopolitics. Also analyses the Maria da Penha Law with news instruments for reassocialization of domestic violence authors. This study adopts a qualitative, hermeneutic, and interpretive approach, seeking to understand e-carceration as a technological decoration of the Criminal Justice System and exploring alternatives to mass incarceration, aiming for a more just and equitable society in line with Sustainable Development Goal 16.

Keywords: electronic monitoring, ODS-16, desistance, green justice

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Introduction

The establishment of the Decree of December 14, 1830, in Bahia, established, one might say, the first measures of monitoring individuals in Brazil, as control measures for African slaves and freed blacks. They could only leave the cities, towns, or farms where they resided if they carried an identity document dated and signed by their master, administrator, or overseer, indicating the place they were going to and the duration of this authorization. According to the Decree, slaves who left the permitted circulation area specified in the identity document would be immediately arrested and sent back to their master to be duly punished. Black individuals who needed to leave the place where they lived to conduct business were also required to obtain an authorization passport from the criminal judge or justice of the peace, specifying the valid period of these documents, as individuals would be subject to arrest in case of non-compliance.[1]

In this historical context, we see the repetition of similar mechanisms in objectives, but with technologies in very distant times, by understanding electronic monitoring of individuals as control and incarceration measures for the heirs of slavery in the country, according to data on the profile of people in situations of deprivation of liberty, namely, black, poor, and mostly male, not excluding the increasing number of black women in this situation, especially during the pandemic. This study seeks to elucidate as a problem: the intensification through technological decoration, given by technological shackles, similar to those of the past, within the Criminal Justice System (CJS). The main objective is to search for perspectives that differ from technological mass incarceration, e-carceration, given by the ethics of abandonment, by tracing, secondarily, understandings about the return to the citizen's protagonism of individuals in situations of deprivation of liberty, according to Sustainable Development Goal 16, which deals with more effective justice institutions contributing to social peace and fairer judicial systems for access to rights. From the applied qualitative approach, characterized as hermeneutic-interpretative, the method of case study supported by legislative review and analysis on electronic monitoring, reports, and institutional documents, such as recommendations from international organizations, determinations of national councils, indexes, and data, was used. In addition to theoretical stances on the topic, a review of articles, books on social and criminological theory was conducted, seeking an interpretation of relevant information for the case.

To reduce complexity, it implies the selection of a scope of possibilities based on structures that determine how much complexity can be created. Therefore, the abstraction of this analysis uses the categories of Niklas Luhmann's Social Theory, which allowed a review within the category of "Meaning."[2] According to his theory, Luhmann considers meaning as the "medium" that allows the selective creation of all social and psychic forms. Meaning has a specific form, whose two sides are reality and possibility, or also actuality and potentiality. Meaning is an evolutionary achievement of social systems and psychic systems, which allows the shaping of self-reference and the construction of complexity of these systems. Similarly, the category "Time" is defined, according to Luhmann, as the observation of reality based on the difference between past and future.[2] In the category "Self-reference," the indication is made that there are systems that update and refer to themselves through each of their operations.[2] These are systems (organic, psychic, and social) that can observe reality through self-contact. Systems constituted in a self-referential manner are capable of distinguishing between what is characteristic of the system (its operations) and what they attribute to the environment.[2] Self-reference is realized through the structures of the system, not the environment. In the case of social systems, there is a basic self-reference, to the extent that communications have no other reference than the systems own communications and only on the basis of these references allows autopoiesis.[2] Communication in social systems culminates after the emission and reception of messages with the understanding of action, through two types of communication, that which is carried out individually, defining the unity of the social system, and communication between social systems, both allow autopoiesis.[2]

Luhmann adopts these terms, considering autopoiesis through the psychic system and the social system. Autopoiesis, for Luhmann, results from self-reference, communication, and differentiation; if these three categories of Luhmann's Social Theory are fulfilled, we can consider that there is autopoiesis.[2] Using the category of "Structural Coupling," the relationship between a system and the premises of the environment that must be present for it to continue within its own autopoiesis is presented,[2] in other words, every system adapts to its environment, if it were not so, it could not exist.

Electronic monitoring as decoration of the criminal justice system

The main factors contributing to the high levels of prison overcrowding in Latin America include the implementation of repressive policies for social control, which view deprivation of liberty as a fundamental response to public security needs, "tough on crime" or "zero tolerance" policies, excessive use of pretrial detention and deprivation of liberty as a criminal sanction, lack of a rapid and effective response from judicial systems to process both criminal cases and all incidents related to the execution of sentences, such as the processing of parole requests, and lack of adequate infrastructure to accommodate the growing prison population. In the current scenario, the struggle to maintain a minimal criminal law respectful of human rights and the limiting principles of the State's right to punish, such as legality, minimum intervention, equality, humanity of penalties, proportionality, and rehabilitation, becomes complex; however, those of us who truly believe that a better world is not only possible but also necessary for the survival of the human species cannot give up defending the validity of these principles for which humanity has fought over the centuries.

The report from the National Council of Justice[3] states that there is pent-up demand for more electronic ankle monitors in 50% of Brazilian states. It reports that as of March 17, 2020, 5,904 new trackers had been activated in the prison system, 190 for precautionary measures. It was also reported that 7,692 devices would be needed to meet the demand of the criminal justice system. This suggests that if Brazilian states were equipped with sufficient devices to comply with guidelines, the number of people monitored in the national territory would have increased by 13,596 between March and April 2020. The report also states[4] that no monitoring unit suspended services during the ongoing pandemic, meaning that the operation and control centers overseeing monitored individuals continued to function normally since the outbreak began. Thus, electronic monitoring is positioning itself as a continuous essential service, operating continuously to neutralize the simultaneous dangers that the new coronavirus and convicted offenders supposedly represent.

The use of electronic monitoring has been increasingly encouraged and adopted by the criminal justice system, both in the execution of sentences resulting from criminal convictions and in the investigation and pre-trial phases. Saldanha[5] suggests that a security logic anchored in fear of crime and a standardized conception of dangerousness has led to the indiscriminate use of electronic ankle monitors. Thus, the use of electronic monitoring is part of a process of securitization that was already underway, although it has become much more common during the COVID-19 pandemic. This is in line with the technical guidelines of the National Council of Justice (NCJ), which suggested that if used within normative parameters, electronic monitoring "can be an important tool in the context of the pandemic regarding the new coronavirus."[3] Given the legitimacy derived from the largest body of Brazilian judicial management and the low mortality rate from COVID-19 in the prison system, we project that public officials will be more inclined to resort to electronic monitoring in the future, further incentivizing financial investment in the technology. This will also expand the social imaginary regarding the conditions of the prison system, reinforcing the persistent claim that the unhealthy reality of Brazilian prisons can be alleviated through the use of electronic monitoring.

Another factor in favor of electronic monitoring is that imprisonment in a closed regime is recognized by the Brazilian Superior Court of Justice as an "unconstitutional state of affairs."[6] Faced with repeated "occurrences of widespread violation of detainees' fundamental rights regarding dignity, physical health, and psychological integrity, prison sentences imposed in prisons would become cruel and inhuman punishments."[6] Therefore, for most jurists, electronic monitoring is seen as a gentle, light, and more accessible measure that frees individuals from the chaotic closed regime and contributes to mass decarceration. Although electronic monitoring is generally seen as a more economically viable solution, the study conducted by the Ministry of Justice admitted that:

"The monitoring did not contribute to reducing the costs of the prison system, nor did it promote forms of social integration and decarceration. An example of this is the use of monitoring in semi-open regimes, as an additional control tool during temporary leaves, or even to allow work or study. In this situation, the State invests resources to keep those prisoners equally monitored, which translates into a greater use of public resources, deficient budget planning, and excessive criminal control."[7]

Based on the data analyzed here, primarily from official reports of the Brazilian Penitentiary Department and the Ministry of Justice,[4,7–10] we can affirm that over the past ten years, there has been an increase in the use of electronic monitoring in Brazil and that the method implemented by the Brazilian state was to outsource the supply and management of devices to private companies. As of 2021, Spacecom has contracts with sixteen out of the twenty-seven Brazilian states and is advertised as the largest offender monitoring company in Latin America. Another significant finding is the acceleration of the use of electronic ankle monitors during the COVID-19 pandemic. Data shows that in the first month of the pandemic, electronic monitoring increased due to both the admission of new individuals under custody and changes from closed, semi-open, and open regimes to alternative sentencing formats combined with electronic monitoring.

In light of the criticisms raised against electronic monitoring, it is evident that the reduction of the prison population and cost reduction are not exhaustive objectives; instead, it is the State and its desire to demonstrate that its punitive response through the motto of public security always returns to the context of selective criminalization.[11] They aim for the best individualization of the established electronic monitoring measure and for it to seek the realization of human rights guarantees, being the ultima ratio, according to art. 3, §1, of Resolution n. 412/2021, of the National Council of Justice. It also raises the possibility of imagining other forms of potentia puniendi.[11] In this regard, the discussion by Eligio Resta[12] on technique is relevant, as criminal law suffers from a technical weakness by not constructing exactly the response and individualization of the sanction only to an effective punitive protection that is limited to the carceral. It is understood that law binds words and shapes its language and its ritual, which become response mechanisms that impact people's lives. Furthermore, considering uninterrupted surveillance mechanisms, such as electronic ankle monitors with GPS systems adopted in the country.[11]

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Contributing to a libertarian spectrum by the contemporary U.S. experience of e-carceration through electronic monitoring, James Kilgore brings in his book "Understanding E-Carceration: Electronic Monitoring, the Surveillance State, and the Future of Mass Incarceration" his perspective as a former inmate and researcher on mass incarceration and open-air prisons as a new paradigm of criminal systems, through the use of technology and its efficiency as a solution to the immediate problems of these systems, namely prison overcrowding and cost-saving, when forgetting that these are not the issues that should have precedence. We talk about social and structural problems that enable the erosion of these prisons, especially oriented towards a punitive logic. E-carceration promotes one of the greatest harms of mass incarceration, the entrenchment of race and class subordination, and abandons genuine attempts at rehabilitation and reintegration.[13]

Kilgore also notes that changes in e-carceration technologies are generally not subject to due process and that although prison sentences and most electronic monitoring regimes (although not all) are determined in a legal process, changing the details of how e-carceration technologies operate usually does not occur in an open and transparent hearing. Thus, in the future, according to him, such determinations will increasingly be based on data, which means that terms of deprivation of liberty will be outlined by algorithmic calculation rather than human decision (Kilgore, 2022, p. 40). Thus, the idea of criminal law linked to human rights is discussed, which raises the dialectical debate between security and freedom, in which security is secondary.[11,14] The perspective of reducing public spending given by rational administration, predominantly by neoliberal models, by linking this reduction to improvements brought by private businesses, without collective and/or citizen participation. This debate worsens in the face of the crisis of the resocializing criminal model due to the privatization and individualization of risk management.[11] However, questions arise about the social inclusion of the monitored person as a factor of insertion and guarantee of rights by the monitored person, as well as the role of the Judiciary and public security administration bodies in the application of protocols and their tools for this fulfillment, and the data protection involved in this experience.[11]

On the other hand, he also highlights important points, such as e-carceration being able to punish entire communities through the use of cameras, fusion centers, drones, or targeted algorithms, that although the existing legal criminal system remains dominated by structural racism, general punishment is not collectively and explicitly applied to individuals because they are classified as a specific race or live in a certain neighborhood. Instead, the system punishes individuals from target groups, one by one. Therefore, e-carceration, for the author, has the ability to collectively and instantly target through the use of data and mathematical formulas, rather than human judgment (Kilgore, 2022), as technology can instantly decree a set of punitive policies for those who fit into a certain profile derived from data, whether it's just one individual or millions of people, whether they live in a community or are spread throughout the world. The creation of new risk groups to fill numbers of an economic and automated logic by data collection metrics about social behavior is also understood.[11,13,15] Electronic monitoring is becoming more widespread and intrusive; it is questioned as another technology of government[16] that can be considered forms of intervention orchestrated through an aggregate of forces (legal, professional, administrative, budgetary), implementation techniques (training, execution, evaluation), and authorized knowledge coined to regulate decisions and practices of individuals, groups, and organizations according to certain criteria.[17]

Criminal technological uses and its guidance towards rehabilitation

The analytical need for the conception of law regarding electronic monitoring practices is contemplated by the Fraternal Law Metatheory created by Eligio Resta,[12] which contributes to the realization of human rights through the antagonism drawn between the cold vision of justice about the goodness of law and the rigidity of politics; fraternity is what nurtures its relationships, requiring, in turn, its codification, linked to the technical weakness of criminal law. The revisited concept of fraternity carries within it biopolitics due to its paradox reflected in the idea of pharmakon, of medicine/poison, finding ambivalence in its freedom as a right. Fraternal law in its metatheory conjures up sharing, pact-making, friendship, limitless inclusion, understanding transformation as the necessity of the OTHER-SELF, where the SELF-OTHER and the OTHER-SELF walk together. Fraternity is called into question in reality when its effectiveness is questioned and thus appears as a means of encountering the other, exercising paths to alterity and recognition of difference.

Hannah Graham and Gill Mcivor reflect on research involving professionals and decision-makers focusing on the uses of electronic monitoring to reduce the risk of reoffending, as a penological goal of reduction and prevention, rather than its broader understanding of the impact on socially situated human development processes of desistance from crime.[18] They use the term "desistance" based on McNeill's[19] conceptualization that considers it a dynamic process of human development, situated and deeply affected by its social contexts, in which individuals move away from the practice of crimes and towards compliance with the law and social norms. A central finding here is that the potential "gains" and positive influences associated with electronic monitoring are far from mutually exclusive with the potential "sufferings" and negative influences for individuals and families, meaning that nothing inherent in electronic monitoring makes it a catalyst or a barrier to desistance from crime. Context matters.[18]

The importance of "green justice" approaches to conventional criminological issues (such as rehabilitation of offenders and cessation of crime) can be initially assessed through consideration of the interface between the social and the ecological. The standard approach of "social ecology" to understanding crime, especially concerning juvenile justice, situates the problem as something that requires attention at various levels of the social structure, such as the individual, families, groups, neighborhoods, communities, media, politics, and industry. The interaction between individuals and their sociocultural and natural environments is seen as important in shaping options and choices for these people. Consequently, crime and crime cessation are mutually influenced by the conditions and contexts in which they occur. The projects and initiatives examined in this article deal with the social ecology of crime and crime cessation through multifaceted and context-sensitive approaches.[20] However, when conducted ethically and effectively, the potential benefits of "green justice" for the human subjects of punishment seem promising. McNeill[21] explains how traditional criminal justice institutions and professional actors need to be attentive to the interrelated ways that offender rehabilitation can take - including, but not limited to, psychological rehabilitation and correctionalism. He emphasizes the need for common rehabilitative interventions, such as cognitive skills programs, accompanied by broader opportunities for social, moral, and legal rehabilitation, in order to enable better reintegration and crime cessation processes.[21]

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"Green justice" initiatives are those that engage respectfully with offenders in carceral institutions and in the community and have the potential to help them achieve different forms of rehabilitation. Environmental rehabilitation and ecological justice can serve as a catalyst for social and moral rehabilitation, allowing offenders to volunteer alongside other community members and charitable organizations, "contributing" to help other people and the environment. Becoming a community gardener or volunteering to save endangered species can facilitate processes of identity change, how they see themselves and how others see them, enabling their symbolic requalification as welcomed citizens, rather than stigmatized and excluded, after punishment.[21] Thus, by documenting their positive contributions in official records and files, they can affirm the civil rights of people deprived of liberty, through access to the job market and the capacity for reintegration. For example, at a practical level, certificates of appreciation or completion of green reintegration programs are useful in parole applications and job applications in the environmental industry and the "green" workforce.[21]

Criminal Law in the face of this theory presents itself as the exclusion of the individual when determining punishments, which would come from a sanctioning mechanism on a private basis, meaning that it confers the loss of freedom to an immunity logic, of community protection, which ecologically uses violence for its own antidote, of those who share communion and freedom together, an idea of maximum citizenship, that is, the paradox of biopolitics that needs to eliminate someone so that no one is eliminated, the decision of who lives and who dies, given by the community and the State, using its victims as an example for the obedience of others to this artificial sovereignty. Thus, the concept of fraternity would act in the composition of the humanization of punishment, reflecting on the person and not on the power to punish and watch.

Ethical challenges of offender rehabilitation in Brazil

In light of international impacts on the use of surveillance technologies, which originated from the United States and have emerged as a possible alternative for applying criminal sanctions in an economical and effective manner, criticism has arisen concerning the respect for human rights. It is justified to study these impacts in Brazil, especially regarding their implementation as an alternative sanction for offenders typified by Law No. 11,340/2006, known as the Maria da Penha Law (MPL), and their impacts on victims of domestic violence.[22] The use of techno-penal methods began with Decree No. 7,627, dated November 24, 2011,[23] which regulates electronic monitoring, as well as through the Brazilian Management Model for Electronic Monitoring Policy,[4] present in Resolution No. 412, dated August 23, 2021, from the National Council of Justice,[24] in order to understand the application of sanctions under the MPL through electronic monitoring. This application is envisioned as an innovative benchmark to be achieved in the seven experiences by Brazilian states initiated in 2023. It is understood that this measure should be seen as a last resort, prioritizing the application of alternative penalties provided for in national criminal legislation.

The MPL was born in accordance with the 1988 Constitution, Article 226, paragraph 8, in accordance with the international determinations of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Belém do Pará Conference, international conferences, and the demands of social movements. The MPL is not just a punitive law, as it establishes a new paradigm within the justice system, which envisages the construction of a network of public social policies capable of promoting actions for protection, prevention, punishment, and confrontation of gender-based violence. In this regard, the new techno-criminal application of protective measures established by the MPL for victims is provided by two devices: one to be worn by the perpetrator of violence (electronic ankle bracelet) and another to remain in the home or be mobile with the victim of gender-based violence, depending on the purchase made by the state criminal justice system. This technology aims to mark the perpetrator's proximity to the victim through GPS tracking and sound signals, as well as issuing alerts. The expected result of this technology is effective protection, although this protection also depends on the effectiveness of other factors that comprise the entire field of public safety, such as the quick response of public security agents to alerts emitted by devices in the possession of victims.

In this aspect, it is understood that surveillance is carried out on two monitored factors: the perpetrator of violence who fulfills the sanction and the victim, which also implies their stigmatization, resulting in double victimization, as they become the object of domestic violence and now state violence, with their lives being monitored by the State. Furthermore, even if the victim does not use ankle bracelets, their data becomes part of the monitoring, as they need to provide information for the formation of inclusion and exclusion zones for the monitored person. This situation inevitably extends to the social relationships of the victim, who needs to participate with their information in this monitoring, as they are recorded by the routes the victim needs to take, such as attending their children's school.

An alternative complement already implemented since 2020 by the NGO Themis - Gender, Justice, and Human Rights, together with the Court of Justice of Rio Grande do Sul in Canoas, is the monitoring of victims by telephone.[25] Furthermore, it should be noted that there is a stigma attached to the idea of an "aggressor" according to Erving Goffman,[26] as the "aggressor" is considered someone who is asked to recognize the violence they have exerted, thus requesting them to recognize themselves as bearers of an intrinsic attribution, part of their being, which is hardly dissociated from them subsequently in society, and this also applies to being a "victim", exacerbating their vulnerability throughout the process of blaming the perpetrator of violence. It is important to observe in relation to the effectiveness of protective measures that it is also necessary to combine measures for the rehabilitation of these violent individuals, in addition to sanctions. For this reason, the precision that Goffman highlights about the process of stigmatization, which does not depend so much on "a language of attributes", but rather on a "language of relationships", is pertinent, as "an attribute that stigmatizes one type of possessor can confirm the normality of another, and therefore, an attribute is neither honorable nor ignominious in itself."[26] In other words, stigmatization is subject to contexts and social relationships that, in the case of male violence against women, are undergoing drastic changes, which are necessary for long-term transformations, such as the elimination of all forms of sexist, racist, and classist violence, within the white patriarchal heteronormative capitalist system.

Thus, by employing the attribute of "violent", it begins to be considered something deeply discrediting, characteristic of a "flawed" man, subject to an incipient process of stigmatization.[26] The "violent sexist" is a form of caricature as the representative of an archaic and aberrant system, depicted as cold, calculating, dominant, rational, traditional, antiquated, and authoritarian. In this context, it is not surprising that even they themselves consider themselves the "violent", the "abuser", or the "aggressor" as an alterity with which it is difficult to identify. It is thus possible to understand that the expansion of social achievements resulting from the enactment of the MPL, through the recognition of violence against women, women in this research are used to preserve the most diverse meaning about gender, as a violation

of human rights that affects women in their intersectionality of gender, race, and class, also extends to "aggressors" as such, in terms of their repression, and now with the possibility of double punishment when considering double stigmatization, as aggressors and monitored, just as victims are indirectly monitored.

It is worth noting that by breaking with the perspective of punishment, the MPL incorporates perspectives to prevent, such as educational measures, and to protect, such as protective measures. The MPL as a law brings feminist impressions that change in its implementation, considering a mutable domain between the letter of the law and concrete law. In view of research over the past fourteen years, Nothaft and Lisboa[27] emphasize:

the numerous obstacles to its full implementation and effectiveness, such as the resistance of legal operators, the insufficient specialized service network and the lack of investment for its creation and maintenance, the low specialization of professionals, and the persistence of discriminatory and harmful treatment towards women, among others. Circumstances that result in [...] the non-universalization of access to justice and rights for women who often end up with a police report in one hand and a protective measure in the other, without, beyond these documents, policies that provide more effectiveness to their protection and conditions for them to leave the situation of violence.

The majority of feminist studies on violence disregard or only mention the importance of the "knot" constituted by the fundamental contradictions of Brazilian society (gender-race-class), as explained by Heleieth Saffioti,[28] which highlights the need to counterpose this violence to its other causes, not limited to the binary of man and woman, but rather by a power system created for the oppression of all vulnerable bodies, to a greater or lesser extent.

The phallocentrism that crystallizes in the discourse about bodies, distinguishing them by the insatiable male sexual impulse and the passive and objectified woman, creates a worldview that legitimizes women's minority regarding decisions about their own sexuality: the theses of legitimate defense of honor and the impossibility of marital rape are eloquent examples of this custody of women by justice, which endorse systematic violence against women. By understanding phallocentrism as the expression of a culture structured to meet the needs of the "masculine imperative," sexuality is referenced to male experiences and meanings, which, although not precluding homosexuality, certainly has the effect of making it incomprehensible and pathological, as it is disconnected from serving the Phallus's pleasure ("Phallus").[29] Regarding the history of Brazilian feminism in the context of the implementation of the Maria da Penha Law (MPL), aspects related to gender essentialism arise, that is, the stagnant discussion of the variable gender, without or with little interrelation with other axes of subordination experienced by the subjects involved. Therefore, essentialism is illustrated by the invisibility of the race variable in these violent relationships and also by the profound heterosexism that marked the theory and also marked the relationships between heterosexual and lesbian militancies.

In the case of domestic violence, which also causes these stigmas, this system is capable of establishing different legal regimes depending on the differences it helps to create. It is, therefore, an urgent field of investigation on how criminal law produces meanings about sexualities, especially dissenting ones, and, in doing so, subjects individuals based on their practices, which are inhumane, when dealing with the uses of electronic monitoring as a precautionary measure of the MPL. It is emphasized that as a structuring element of legal-criminal discourse, phallocentrism helps to produce a patriarchal definition of "woman's" sexuality that, through the "eroticization of dominance and submission,"[30] serves both to reinforce the foundational binary man/woman (active/passive) and to mark the difference between the "good woman" (heterosexual and modest) and the "dangerous woman" (lesbian and untamed), in addition to perpetuating the concept of normal and abnormal woman, standard and non-standard. From the construction of gender binary and essentialist gender, it is important to consider the application of Electronic Monitoring (EM) for compliance with protective measures. Furthermore, it is urgent to understand that technopenal measures go against the very breadth of the applicability of the MPL, which is not driven by an attempt to legitimize this unequal system but by the foundation of the ideological and symbolic dimension about who can/should be labeled as "criminal" and who can/should claim the status of "victim". Thus, seeking possible openings for new fields of discussion on the unequal processes of criminalization and victimization of the criminal justice system and its stigmas.

The use of electronic monitoring as a last resort is questioned, as it expands in the criminal system its application to any measures that are more economical and efficient, not aiming for coherence with the desired human rights principles, such as the rehabilitation of incarcerated individuals. As already mentioned, electronic ankle monitors suffer from stigmatization that is so damaging to the recognition of these individuals as citizens again, as well as the stigmatization of victims and their families. Security policies that focus only on economic issues are not in line with the MPL when it places at its core also prevention measures. Prevention in this case is accompanied by measures of reintegration also provided as human rights to every person within the criminal justice system. Urgent implementation of necessary public policies to combat social inequalities aimed at gender equity is needed.

Therefore, it is important to discuss the social constructions of the "victim" and the "perpetrator," which are nothing more than unreal actors of a static, non-representative system within objectives aimed at achieving equity, considering that overcoming these representations is important, and for this, education and welcoming policies for diversity are also presupposed, reflecting a space for violence perpetrators provided for by the MPL. Thus, when thinking about services for perpetrators of violence together with women and other people affected by gender and domestic violence, it is important to preserve places of speech, whether or not within mediation between the parties, always considering the historical, cultural, and social differences of the people involved in the violence situation, whether they are women or people who suffer from domestic and gender-based violence. However, these mediation forms should not be absorbed by the painful inclusion of technopenal measures and the increase of state violence against bodies. It is also emphasized that an adequate understanding of the situation of violence must take into account the prevailing meanings in the cultural reference group of those involved, in order not to fall into practices of massive silencing of the voices of women and other subjects impacted by gender violence again.[27] EM does not reflect a means for the necessary resocialization for prevention as determined by the MPL in its application; thus, they are only used as a last resort.[31–33]

Conclusion

The article addresses the growing use of electronic monitoring as a way to deal with prison overcrowding in Latin America, with a focus on Brazil. Overcrowding is attributed to the implementation of repressive policies, lack of effective responses from judicial systems, and inadequate infrastructure. During the COVID-19 pandemic,

electronic monitoring was expanded as a solution for the prison system, with private companies playing a significant role in providing this service. However, there are ethical and social concerns related to the excessive use of monitoring technology and its possible influence on the privacy and human rights of monitored individuals.

The debate about electronic monitoring is complex, with different perspectives on its use. Some see the technology as a lighter and more affordable alternative to imprisonment, contributing to mass decarceration, while others criticize the lack of cost reduction in the prison system and the potential violation of human rights. The increasing use of e-carceration raises questions about the privatization of risk management and the transformation of places of freedom into spaces of surveillance. Additionally, the technology can create exclusion zones and raise concerns

about discrimination and excessive control, especially when combined with data collection and analysis. The discussion about electronic monitoring requires a careful and reflective approach, considering the social and ethical implications involved. Thus, there is an urgent need to analyze the law from the perspective of fraternity, a conception that seeks to realize human rights through sharing, inclusion, and recognition of difference, especially for more effective justice systems. In the context of electronic monitoring, it is important to consider the impact of this practice on processes of human development and crime desistance. By emphasizing the discussion on "green justice" means bringing the importance of multifaceted and context-sensitive approaches to understand crime and crime cessation, including interventions aimed at the social and moral rehabilitation of offenders. The idea of fraternity can act in the humanization of punishment.

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Conflicts of interest

The author declares there is no conflict of interest.

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