

THE DISORGANIZATION OF CONSENSUS:

The selective arbitrariness and the criminal delegitimization in the case of Rafael Vieira Braga (Río de Janeiro, Brasil)

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Presentation: placing the case and the present work

In June 2013, the young Rafael Braga Vieira, a coloured person, collector negro, colector of recyclable materials who was living in the streets of Rio de Janeiro during periods of time, was arrested accused of suspected possession of a Molotov cocktail. The imprisonment of Rafael caused high impact – in the context of the so-called “Days of June”, including complaints against the State of Brasil at the Organization of American States.

In the case of Rafael Braga Vieira, the decisive factor for his sentence in December 2013 was his vulnerability facing the penal system, and not the commitment of a crime. The arbitrary selective complex functioning before his trial shows with force how moulding and shaping components of the penal system work, through the judicial agents, imposing decisions based merely on deductive abstractions, far away from the social troublesome reality, and operating in accordance with the necessities to legitimize the system and feedback its reproductive function. In the article we will analyze documents such as the lawsuit presented against Rafael and campaign materiales produced by groups that fight for his freedom. Our objective is to analyze, on one hand, how the content of the judicial criminal produces certain aspects of criminal selectivity and, on the other hand, how the incapacity of these practices to achieve consistency of the discourses in relation to the concrete contradictions of officials and institutions of the penal system contribute to break, even though unconsciously, the consensus about penal legitimation.

As a starting point, in the light of the critical analysis of the discourse (Fairclough, 2010; Ramalho, Resende, 2011), we will review two documents which compose the lawsuit presented against Rafael Braga Vieira in the years 2013 to 2016. Both documents are not available for public consultation, the possibility of consulting them online is restricted to lawyers with professional cards issued by the State of Río de Janeiro, Brasil. We will then analyze how the *Campaign for the Freedom of Rafael Braga* functioned to question the consensus on prison, revealing criminal selectivity, the structural racism in Brazilian society, the disastrous policies of the war against drugs and the persistent criminalization of impoverished persons in the country. In this summary we will briefly point out some contextual elements and assumptions that guide our work.

The prison: Rafael Braga Vieira meeting the police and law

When he returned from collecting garbage at the end of the day 20th June 2013, Rafael did not notice that in the street where he was living the Military Police had thrown a tear gas grenade to disperse a crowd of people. That day, the city registered one of the biggest demonstrations that ever took place in the country: more than one million of persons demanded, amongst other claims, the decrease of the cost of public transport (Amnistía Internacional, 2014; CONECTAS, 2014). Detected by a group of ten police agents, Rafael was arrested and tortured at the Police Headquarter for Children and Adolescents. On 21st June 2013, Rafael was accused under Article 16 of the Law of Disarmament of Brasil of possession of incendiary material and specifically accused to carry a Molotov cocktail, imputation which he always denied (BRASIL, 2003).

From the moment of the flagrant and provisional detention that took place in June till the sentence in December 2013 six months passed, and the process could have entered the statistics of errors ignored by the criminal justice system if it had not reached a journalist (Locatelli, 2013): the

'Molotov cocktail', was, in fact, cleaning liquid. During the night of arrest, Rafael carried two plastic bottles with chlorine, one of the brand *Barra* and the other *Pinho Sol*, with very little possibility to function as an explosive, according to the technical report (Río de Janeiro, 2013). Due to having carried these two bottles of cleaning liquid, Rafael Braga Vieira was processed and sentenced (Resende; SILVA, 2016).

In January 2016, after a long process of attempts of the Institute of Defense of Human Rights (DDH) to reduce the prison sentence, Rafael Braga Vieira was serving the sentence in open regime, but with a monitoring device around his ankle. Rafael was living at his mother's home, doña Adriana Braga Vieira, in the outskirts of the city of Río de Janeiro. He had gone to buy bread for his mother and was approached by the police in the family residence and arrested again, accused of drug trafficking, with witnesses testifying the make up of evidences.

Selectivity and the criminal delegitimizing: "the democracy of abolition"

Coloured, young, impoverished and without formal employment, Rafael is the rule more than the exception of the shaping power of the criminal justice system: the same as him, 53% of the prisoners in Brasil are racialized persons, who have had no access to formal education and belong to the impoverished population, according to a diagnosis published by the National Council of Justice in 2014 (Brasil, 2014). This socioeconomic and racial regularity in the group of those who serve sentences restrictive of rights and freedoms in Brasil have drawn the attention to one of the most scandalous aspects of the criminal system: its selectivity. Maintain prisons as a form of social control is nothing new. The production of securitized cities, the governmental management of circulation, the production of specific spaces for workers, goods, illnesses and the classes considered "dangerous" are the basis of modern governance, and these regulations are a central task of the security devices (Foucault, 2008). Nevertheless, the increase of punitive power in the new century has revealed the most disastrous face of the system: its confusion and unlimited expansion. In 1995, there were 148.760 prisoners in Brasil, now there are 711.463. This means that contrary to the total number of habitants, the imprisoned population of Brasil has increased four times in the last twenty years (Brasil, 2014).

The intersection between both components, be coloured and homeless – is a very vulnerable position, especially when these persons meet police forces. It is interesting to see how in our history this vulnerability has always been related to a certain idea of "public order", which is part of a bigger context of capitalist relations. The logic of exclusion is, nevertheless, closely related to the issue of racial prejudices. As Angela Davis observed, democracy, as conceived in many countries, is a promise that still has not achieved its principal objectives. Hence, Davis denominates "democracy of abolition" a specific type of democracy which, though based on abstract formal ideas of equality, with the support of a strong racial asymmetry continues reproducing actively the legacy of slavery, the institutional racism: "The penitentiary system continues with this terrible legacy. It converted into a receptacle for all those persons who bear the inheritance of a failure in the creation of democracy of abolition shortly after the era of slavery. And that inheritance is not only the case for coloured, Asian and poor white prisoners. On the other hand, its use as a receptacle for persons considered as waste of society continues growing all over the world" (Davis, 2009).

Other words: the text to come

What the case of Rafael Braga Vieira – coloured, young, homeless, sentenced in 2013 due to an abstract danger he always denied, accused of another crime in 2016, though the witnesses assure that evidences which support the imputation were made up – makes evident is that the police and judicial management of poverty is the rule and not the exception. The police management of poverty and imprisonment – informed by the ancient models of 'general suspicion' and the arbitrary concept of "dangerous clases" – are not only the limits of police intervention, a violation of fundamental rights, but represent the continuity of punitive and repressive practices which the proper abolition democracy introduced.

On the other hand, civil society, sensitive about justice, is getting mobilized. In the documents

produced and circulated, making use of the dispersion potential of the social networks and obtaining support in different sectors of society, the *Campaign for the Freedom of Rafael Braga*, a decentralized collective of activists sheds light on the case. The action, with the objective to promote a system to do justice to Rafael, leaves tracks on the discursive objectives which also help us to understand the complexity of the case better.

The text which will follow this summary is divided into four sections: in the first we contextualize briefly the case of Rafael Braga Vieira. In the second section, our efforts to contextualize are specifically focused on the evolution of the cases: i) Case nr. 0212057-10.2013.8.19.0001, of June 2013, y ii) Case nr. 0008566-71.2016.8.19.0001, of January 2016. In the third section we present our analysis, as detailed as possible in the frame of an article, of the two documents in the file of the case: the denunciation and persecution of Rafael presented by the Public Ministry of Rio de Janeiro 13 January 2016. The fourth section is dedicated to the analysis of the materials produced by the *Campaign for the Freedom of Rafael Braga* spread in the social networks. Finally, some considerations are presented on the effort to understand the intrinsic component which makes Rafael Braga Vieira be another victim of the criminal justice system.

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