

Hegemony and Abolitionist Strategy in the Field of Discursivity of Criminal Knowledge in Brazil

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Abstract

There is a dispute for hegemony in the field of discursivity of criminal knowledge, fought between the discourses of criminal efficiency, criminal minimalism and criminal abolitionism, particularly in the Brazilian context. This dispute conditions the policies in both criminal and public security matters. Criminal abolitionism finds itself in a position of absolute disadvantage in this clash, appearing as a counter-hegemonic discourse. This article aims to understand which discursive strategies can be mobilized to empower abolitionist discourse, putting it in a position to dispute hegemony, influencing more effectively institutional changes and public policies aimed at resolving problematic situations outside the logic of punishment. The methodology employed is bibliographic analysis, using genealogy, deconstruction and discourse analysis as tools, along the lines of the discourse theory of the Essex school. The reinterpretation of the Gramscian concept of hegemony promoted by Laclau and Mouffe enables discursive strategies to reposition abolitionism in the hegemonic dispute. We propose the fraying of the meaning of criminal abolitionism to the point of allowing its conversion into an empty signifier, articulated around the repudiation of cruelty as a nodal point. We conclude that, with this, it becomes possible to build a relationship of representation with several discourses dispersed in the discursive field of criminal knowledge, allowing criminal abolitionism to agglutinate, around itself, in a chain of equivalence, a greater number of particular identities. This will enable it to compete for hegemony, allowing it greater ethical reach and participation in the important task of guiding public policies and institutional changes in the criminal, prison and public security fields.

Keywords

Criminal Abolitionism, Hegemony, Discourse Theory, Post-Metaphysics

1. Introduction

Is it fair to make someone suffer? Under what circumstances, if any, can it be good to do evil? The question of the ethical basis of afflictive penalty is not a legal problem, but a question that concerns philosophy. We inhabit a society that cages human beings. We have naturalized the belief that collecting people from the most vulnerable social strata and caging them in kidnapping institutions, dominating their time and their bodies, so that they can suffer and, often, die there, is a civilized way of dealing with conflicts. This idea, consolidated in the popular imagination, however, has long suffered blows from criminal sciences and deserves to be viewed from a philosophical perspective. It is necessary to rebuild the dialogue between criminal knowledge and philosophy.

The phenomenon of the crisis of the penalty and the traditional theories that intend to justify it have provoked the most diverse reactions and responses in the criminal legal scenario. There are multiple positions that can be taken on the issue, but they can, however, be divided into two large categories: legitimizing (or legitimizing again) responses and delegitimizing responses to public punishment. Responses that (re)legitimize public punishment can propose an increase in punitive power, with the expansion of criminal law, suggesting that this will achieve greater efficacy in combating deviant conduct: this is the discourse of criminal efficiency. Someone, on the other hand, might suggest that, faced with the crisis of punishment and its difficulty in achieving its proposed purposes, it is necessary to reform the penal system, reducing it to a necessary minimum and guaranteeing the protection of fundamental rights: is the discourse of the criminal minimalism, in its various formulations. On the other hand, the radical delegitimization of public punishment can only lead to a stance that proposes its abandonment and replacement by other methods of resolving conflicts, thought out outside the logic of the calculated imposition of suffering. This radical rejection of the state's power to punish corresponds to the stance of criminal abolitionism (Andrade, 2006).

There is, therefore, in the Brazilian context, an ongoing dispute in the field of discursiveness of the criminal knowledge. It is a confrontation between the discourses of criminal efficiency, minimalism and abolitionism. This dispute has been polarized between criminal efficiency and criminal minimalism, with abolitionism in a counter-hegemonic position. The problem faced in the paper, then, is to understand what strategies could be mobilized for the discursive re-empowerment of the criminal abolitionism, with the aim of better positioning it in the dispute for hegemony. We use the term hegemony as the capacity that a discourse may have to represent and articulate the greatest possible number of identities in the same discursive field, becoming dominant discourse (although

always in a precarious and contingent way) (Laclau & Mouffe, 2015).

Only by renewing the discursive strategies can it become possible for criminal abolitionism to participate in the debate with real chances of competing for hegemonic space (Villa, 2020). The thesis supported here is that this strategic reinvention of the abolitionist discourse must make use of tools collected in post-metaphysical philosophy, with which criminal knowledge have not yet had the opportunity to dialogue sufficiently. One of these tools is the redescription made by Ernesto Laclau and Chantal Mouffe of the *Gramscian* concept of hegemony.

The discourses that legitimize public punishment with a criminal efficiency bias advocate the increase in punitive power, with the promise of an effective response to crime. Minimalism points in another direction: it invests in a reformist way, understanding criminal law as legitimate, as long as it is reduced to a necessary minimum, which guarantees and protects fundamental rights. Abolitionism, on the other hand, starts from the radical delegitimization of the criminal justice system and proposes the abandonment of criminal law, incapable of fulfilling its promises, and its replacement with other ways of dealing with problematic situations that legal language usually calls crimes.

The abolitionist discourse has not been successful in agglutinating and articulating, around itself, a sufficient number of particular discourses either to become hegemonic, or to even compete for hegemonic space on equal terms with minimalist and criminal efficiency discourses. There is hegemony when a certain particularity assumes the representation of an impossible totality, when a discourse is capable of articulating around its nodal points, in a chain of equivalence, several other discursive identities that, until then, were dispersed in the field of discursivity, representing them. This task has been carried out more competently by the discourses of criminal efficiency and criminal minimalism than by the discourse of criminal abolitionism.

Initially, we will develop the idea of hegemony from discourse theory. Next, we will deal with the four conditions of possibility of hegemonic discourse (dimensions of hegemony) proposed by Laclau and Mouffe, demonstrating how they are present or can be achieved in the field of discursiveness of criminal knowledge. Finally, we will apply the watermarks of this post-metaphysical notion of hegemony to the discourse of criminal abolitionism, proposing discursive redescription strategies that enable it to dispute hegemony in the field of discursiveness of criminal knowledge.

The methodology employed will be bibliographic analysis, using genealogy, deconstruction and discourse analysis as tools, along the lines of the discourse theory of the Essex school. With these resources and reading techniques it is possible to question the regimes of truth of the criminal knowledge, as well as the conditions in which its modes of veridiction and its practices of alethurgy take place. Thus, it is possible to make emerge, from the blank spaces of the analyzed discourses and texts, signs of the power relations that make these truths

and knowledge tellable. In this way, the articulation of knowledge hitherto disregarded in the field of discursiveness of criminal knowledge becomes viable, invoking the specters of the marginal and the unthought.

2. Hegemony and Discourse Theory

The notion of hegemony, rescued from Gramsci's work, finds in Laclau and Mouffe a deep connection with discourse theory. Language is nothing other than a system of differences in which meanings are constructed in relationships of "de-identification". Identities are also constructed in difference, and the actions of any identity can only be understood in a relational sense¹. Each identity yearns for universality and intends to impose its will in relations of antagonism to other identities, seeking to universalize what it has as particularity.

The intended universality, however, is impossible, due to the hypercomplexity of reality. Thus, a discursive project never achieves universality or has its meanings completely constituted. Discourses always articulate in contingency. Social consensuses are possible, but always precarious, incomplete and temporary.

In this scenario of incomplete and open meanings, identities are constructed from discursive orders that compete for space in what Laclau and Mouffe call the field of discursivity. Discourses must be understood, therefore, materially, as social practices, since every social space is a discursive space. A discourse is an articulatory practice that organizes social relations. Laclau and Mouffe clarify the concepts of articulation, discourse, moment and element:

In the context of this discussion, we will call *articulation* any practice establishing a relation among elements such that their identity is modified as a result of the articulatory practice. The structured totality resulting from the articulatory practice, we will call *discourse*. The differential positions, insofar as they appear articulated within a discourse, we will call *moments*. By contrast, we will call *element* any difference that is not discursively articulated².

In an articulated discursive totality, in which each element occupies a differential position, being reduced to a moment of it, all identity is relational. In discursive constructions, any values are relative to each other. Relationships, therefore, are necessary, since the modification of a particular element interferes with the whole. Identity is relational, but the system of relationships is never fixed as a stable system of differences. Every discourse is subverted by a field of discurs-

¹Judith Butler explains: "*The structural feature that all these identities are said to share is a constitutive incompleteness. A particular identity becomes an identity by virtue of its relative location in an open system of differential relations. In other words, an identity is constituted through its difference from a limitless set of other identities*" (Butler et al., 2000: pp. 30-31).

²Laclau and Mouffe clarify the concepts of articulation, discourse, moment and element: "In the context of this discussion, we will call articulation any practice establishing a relation among elements such that their identity is modified as a result of the articulatory practice. The structured totality resulting from the articulatory practice, we will call discourse. The differential positions, insofar as they appear articulated within a discourse, we will call moments. By contrast, we will call element any difference that is not discursively articulated" (Laclau & Mouffe, 2015: p. 178).

sivity that goes beyond itself and overflows it. The condition of the elements is that of “floating signifiers”, which can never be fully articulated within a discursive chain. Every discursive (and social, as we will see) identity is immersed in this floating aspect, so that the ambiguous character of the signifier and its non-fixation to any meaning is only possible to the extent that there is a proliferation of meanings. Therein lies the role of what Laclau and Mouffe call nodal points: to partially fix the meanings, since what disarticulates a discursive structure is not the lack of meanings, but polysemy³.

It turns out that, for Laclau and Mouffe, every social practice is an articulatory practice. They reject any distinction between discursive and non-discursive practices, understanding that: 1) every object is constituted as an object of discourse, since it occurs in discursive conditions of emergency; and 2) any distinction between linguistic aspects and behavioral aspects of a given social practice is incorrect or should be seen as a differentiation in the social production of meaning, structured as a discursive totality. Laclau and Mouffe are, therefore, aware of the contingency of language: every object is constituted as an object of discourse, which does not imply denying the existence of a world outside the thought (and language)⁴.

The authors, however, go further: not only is there no knowledge outside of language, but there are also no practices that are not discursive. Inspired by Wittgenstein, they give discourse not a mental character, but a material one⁵. Laclau and Mouffe propose analyzing social relations based on discourse theory, that is, interpreting social practices as discursively constructed. This stance of taking the relational logic of discourse to its ultimate consequences releases social analysis from the constraints and limits imposed by other perspectives. Accepting that discursive totality never exists in the form of a given and delimited positivity, we open relational logic to contingency. Thus, the political project of a given discourse never has its meanings fully constituted.

It is in the field of discursivity that discursive disputes take place. Every social space must be considered as a discursive space. Discourse is, therefore, this articulatory practice that consists of the agglutination of elements into a system that is organized around a nodal point. The nodal point, in turn, is a privileged

³“The practice of articulation, therefore, consists in the construction of nodal points which partially fix meaning; and the partial character of this fixation proceeds from the openness of the social, a result, in its turn, of the constant overflowing of every discourse by the infinitude of the field of discursivity” (Laclau & Mouffe, 2015: p. 188).

⁴“The fact that every object is constituted as an object of discourse has nothing to do with whether there is a world external to thought, or with the realism/idealism opposition. [...] What is denied is not that such objects exist externally to thought, but the rather different assertion that they could constitute themselves as objects outside any discursive condition of emergence” (Laclau & Mouffe, 2015: p. 181).

⁵“At the root of the previous prejudice lies an assumption of the mental character of discourse. Against this, we will affirm the material character of every discursive structure. To argue the opposite is to accept the very classical dichotomy between an objective field constituted outside of any discursive intervention, and a discourse consisting of the pure expression of thought. This is, precisely, the dichotomy which several currents of contemporary thought have tried to break” (Laclau & Mouffe, 2015: pp. 181-182).

discursive point that fixes, albeit precariously, the meanings of the system. This fixation always occurs partially, since discursive articulation naturally suffers constant sutures resulting from antagonistic relationships with other competing discourses in the field of discursivity. The nodal point, in turn, is a privileged discursive point that fixes, albeit precariously, the meanings of the system. This fixation always occurs partially, since discursive articulation naturally suffers constant sutures resulting from antagonistic relationships with other competing discourses in the field of discursivity. By suture we must understand the cuts and patches to which a discursive articulation is exposed, and which alter its meaning.

Discursive disputes for hegemony are always power relations and, precisely for this reason, contingent and unpredictable. A discursive system that today holds hegemonic political force may, tomorrow, see this configuration reversed. Social consensuses may be disregarded in the future by the same discursive subjects who, in the past, celebrated them.

Establishing a relationship of hegemony means establishing a relationship of order. The hegemonic discourse is a discourse that systematizes, agglutinates, that makes a unity, unifies differences. It is in this tension between universality and particularity that the concept of discursive hegemony is constructed. Forging a hegemonic discursive relationship means ordering a discourse that agglutinate, which seeks unity in differences. Hegemony is precisely opposed to what Laclau calls “constitutive lack”. For the author, every identity is constructed incompletely. This incompleteness may derive from its own incomplete articulation of meanings, from its relationship with other identities or from its denial resulting from antagonistic cuts promoted by rival identities. Identities are always in a permanent search for completeness. This search, however, due to the constitutive lack, is always ineffective. It is by seeking to fill this space of incompleteness that the search for hegemony is justified. Thus, Laclau understands hegemony as “a relationship in which a particular content assumes, in a certain context, the function of incarnating an absent plenitude” (Laclau, 2002: p. 122).

The construction of a hegemonic order is the process through which a particular discourse manages to represent discourses and identities that were previously dispersed. The hegemonic discourse supplements, in the Derridean sense of the term⁶, several other discourses, becoming a centralizing discourse, rooted in a nodal point capable of articulating multiple elements that, previously, were not articulated among themselves. Thus, the hegemonic relationship is “that re-

⁶Derrida draws attention to the dubious character of the French verb *suppléer*, which not only means to supplement but also to replace. Making reference to Rousseau, who treats writing as a “dangerous supplement” (*supplément*) of speech, Derrida asserts that every supplement reveals a lack in what it is going to supplement. The supplement, at the same time, complements the object to be supplemented and represents and replaces it. It is in this same sense that Laclau handles the idea that hegemonic discourse supplements a multiplicity of particular discourses: it complements their constitutive lacks and at the same time represents and replaces them (Derrida, 2006: pp. 173-200).

lationship by which a particular element assumes the impossible task of universal representation” (Laclau & Mouffe, 2005). This relationship takes place in an empty place that will always be the focus of perennial disputes between different discourses dispersed in the field of discursivity (Laclau, 1993a, 1993b: p. 45).

It is in the trenches of the discursive field that the political-criminal projects of criminal efficiency, criminal minimalism and criminal abolitionism wage their clash. The one capable of bringing together as many identities and particular discourses as possible around a nodal point prevails, articulating connections between them, connections that are not always evident. Thus, for a better performance of the abolitionist discourse in this “trench warfare”, it is necessary to know how to choose the nodal point on which to focus and which dispersed particular discourses we intend to bring together. To fray its particular meaning seeking for a universality (impossible, but desirable) capable of aggregating the maximum number of particular discourses around itself is the strategic challenge that arises in the face of the abolitionist discourse.

3. The Four Dimensions of Hegemony in the Abolitionist Discourse

Laclau developed the notion of hegemony, more recently, in his participation in the joint work *Contingency, hegemony, universality: contemporary dialogues on the left* (Butler, Laclau, & Žizek, 2000), in which he dialogues with Slavoj Žizek and Judith Butler. In it, he systematically discusses the concept, maintaining that hegemony is more than a useful category: it defines the very terrain on which political relations are constituted⁷.

For Laclau, there are four conditions for the existence of hegemonic discourse, which he calls four dimensions of hegemony: 1) the existence of an unevenness of power⁸; 2) the supplanting of the universality/particularity dichotomy⁹; 3) the production of empty signifiers¹⁰; and 4) the generalization of representation relations¹¹. For the discourse of criminal abolitionism to compete for hegemonic space in the field of discursiveness of criminal knowledge, it needs to be aware of these four conditions of possibility for hegemony.

⁷ “[...] ‘hegemony’ is more than a useful category: it defines the very terrain in which a political relation is actually constituted” (Butler, Laclau, & Žizek, 2000: p. 44).

⁸ “Thus we see a first dimension of the hegemonic relation: unevenness of power is constitutive of it” (Butler, Laclau, & Žizek, 2000: p. 54).

⁹ “We can, in this way, point to a second dimension of the hegemonic relation: there is hegemony only if the dichotomy universality/particularity is superseded, universality exists only incarnated in—and subverting—some particularity, but conversely, no particularity can become political without becoming the locus of universalizing effects” (Butler, Laclau, & Žizek, 2000: p. 56).

¹⁰ “Thus shows us a third dimension of the hegemonic relation: it requires the production of tendentially empty signifiers which, while maintaining the incommensurability between universal and particulars, enables the later to take up the representation of the former” (Butler, Laclau, & Žizek, 2000: p. 57).

¹¹ “Here we have a fourth dimension of ‘hegemony’: the terrain in which it expands is that of the generalization of the relations of representation as condition of the constitution of a social order” (Butler, Laclau, & Žizek, 2000: p. 57).

3.1. The Existence of a Situation of Unevenness of Power

The first dimension portrays hegemony as the very condition of the political relationship, based on an incessant dispute that presupposes unevenness of power. Laclau presents Hobbes's political vision as a counterpoint to hegemonic logic, because if every source of power has a single *locus*, the Leviathan in the State, there is no space for dispute, there is no power to be disputed and no particularities to be agglutinate. If there is no possibility of antagonism, it is not possible to talk about hegemonic disputes, as anti-hegemonic discourses will never emerge.

To use the logic of hegemony as an analytical category, it is necessary, therefore, to presuppose the existence of a perennial political dispute between different discourses in the same discursive field. The hegemonic space occupied by one of these discourses is always precarious, contingent and permanently threatened by counter-hegemonic discourses. If it were possible for one of the discourses to become universal and totalizing, we would have the death of politics itself, since total power is not, in fact, power¹². However, if there is an unequal distribution of power, which is contingently more concentrated in a certain discourse to the detriment of others, there is the possibility of antagonism and, consequently, a condition for hegemonic dispute. The dispute will be won by that discourse capable of presenting its initially particular objectives as compatible and representative of the desire of the greatest number of other discourses capable of interfering in the field of discursivity.

Would it be possible, then, to mobilize the analytical category of hegemony for criminal knowledge? We maintain that yes. There is, in the field of discursiveness of criminal knowledge, a debate between discourses of criminal abolitionism, criminal minimalism and criminal efficiency (Andrade, 2006). There is, however, no theoretical unity in these discourses, so that there are, in fact, multiple abolitionist discourses, multiple minimalist discourses and multiple criminal efficiency discourses.

Vera Regina Pereira de Andrade, like Louk Hulsman, pays attention to the fact that criminal abolitionism can be interpreted both as a theoretical perspective and as a social movement. As a theoretical perspective, there would be at least four important and distinct abolitionist discursive models: 1) Michel Foucault's structuralist variant; 2) the materialist variant of Marxist orientation by Thomas Mathiesen; 3) Louk Hulsman's phenomenological variant and 4) Nils Christie's phenomenological-historicist variant (Andrade, 2006: pp. 166-167).

Minimalism, likewise, exists as a theoretical perspective and as a model of practical reform. As a theoretical perspective, Vera Andrade distinguishes between minimalisms of means—which delegitimize the penal system, but defend a minimum criminal law that serves as a path until its total abolition becomes possible—and minimalisms of end—which legitimize the criminal system, as

¹²“A power which is total is no power at all” (Butler, Laclau, & Žizek, 2000: p. 54).

long as it meets certain guarantees and conditions of legitimacy. Between these two models of minimalism, she lists: 1) Alessandro Baratta's interactionist-materialist minimalism; 2) the interactionist, Foucaultian and Latin Americanist minimalism of Eugenio Raúl Zaffaroni and; 3) the enlightenment liberal-based minimalism of Luigi Ferrajoli (Andrade, 2006: p. 168).

This debate, however, according to the author, is mistakenly polarized into a false relationship of opposition between minimalism and abolitionism. The antithesis of criminal abolitionism is not minimalism, but criminal efficiency. The error of treating abolitionism and minimalism as antagonists leads to the unfair colonizing competition of criminal efficiency, which takes advantage of the aversion to abolitionist discourse to invest in the false mediation of a "hybrid category" minimalism.

We will discuss strategies to reverse the hegemonic position of this hybrid minimalism category below. It remains clear, however, that there is a field of discursivity marked by antagonisms, where there is unevenness of power. The first condition for the possibility of constructing a hegemonic discourse in the discursive field of criminal knowledge is then met.

3.2. The Supplanting of the Universal/Particular Dichotomy

The second dimension of hegemony requires that any discourse which intends to be hegemonic gives up its initial particularized condition to become a *locus* of universalizing effects (Mendonça, 2007: p. 252). This premise does not mean that, for a discourse to become hegemonic, it needs to deny its particular contents. What is necessary is an expansion of the particular contents of the discourse to the point that it can make sense of other discourses that are dispersed in the same field of discursivity. Laclau calls "hegemonic relationship" that "relationship by which a particular element assumes the impossible task of universal representation" (Laclau & Mouffe, 2005: p. 122).

Thus, the political relationship between discourses is seen as a relationship of representation. Absolute particularity prevents the relationship with other discourses, undermining the possibility of representation. A particularity that longs for universalization must search for something more, a supplement to its particularism. This supplement is what allows a particular discourse to represent particular contents of other discourses. To achieve this, the discourse must expand its meanings so that it can encompass other meanings not originally circumscribed by its identity.

The ability to represent other discourses without ceasing to represent itself is at the basis of the relationship of hegemony. This suppression of the universality/particularity dichotomy occurs, mainly, through what Laclau and Mouffe call "nodal point". The nodal point is a privileged discourse capable of articulating around itself a multiplicity of other discourses. These articulations form chains of equivalence capable of enabling the representation on which the hegemonic relationship depends.

The nodal point for repositioning the discourse of criminal abolitionism in the hegemonic dispute must be the denial of cruelty (Villa, 2020). If abolitionism knows how to appropriate the discourses of repudiation of cruelty and the cultural heritage of solidarity, around them it will be able to bring together dispersed discourses that do not have a clearly defined focus in the field of discursiveness of criminal knowledge. Around the denial of cruel treatment, it is possible to bring together both a nihilist and a Christian discourse, a left-wing or liberal discourse, both those from emancipatory social movements and conservative defenders of family, morality and good customs. Very few people would assume a final vocabulary that was openly favorable to cruelty.

By fraying the meaning of criminal abolitionism and, with inspiration from Rorty (2007), conceptualizing the abolitionist as someone who understands that cruelty is the worst thing that can be done, it is possible to gather around his speech—with the repudiation of cruelty as a point nodal—an enormous number of dispersed particularities that can come together and articulate as allies. This involves making criminal abolitionism an empty signifier.

3.3. The Production of Empty Signifiers

Laclau insists that hegemony necessarily requires the production of empty signifiers. The empty signifier is a signifier without meaning. It occurs when a discourse engages in the search for universality in such a way that it frays its contents to the point that it can no longer be meant precisely. This fraying is due to an expansion of the chain of equivalences in articulatory practice, bringing together previously dispersed elements.

Although the empty signifier is a signifier without an exact meaning, it has limits that are drawn by antagonistic discourses, which seek to subvert its meanings. Empty signifiers, then, carry this aporia: just as their limits prevent their polysemic expansion, threatening their existence, they also affirm their own existence¹³. This means that the expansion of meanings in the chain of relationships of the empty signifier is not unlimited, as in its surroundings there will always be antagonistic discourses incompatible with the minimum core of its particularity. Certain new relationships that emerged would simply be incompatible with the particularities forming part of the chain of equivalences.

The empty signifier, then, partially renounces its differential identity to become a nodal point of convergence between several particular identities previously disconnected from each other. Rorty gives an example of how to construct an empty signifier, in *Contingency, irony and solidarity*, when defining liberals, using Judith Shklar's concept, as those who understand that cruelty is the worst

¹³“At the same time that the limits of an empty signifier prevent its significant expansion and threaten its existence, they also exist to affirm the very existence of this discursive chain and, furthermore, to further unite the differences aggregated by it, bearing in mind that the antagonistic limit is identical to all the identities that constitute the empty signifier, generating, therefore, the union of these differences around a common struggle: against something that, in one way or another, prevents the constitution of all the elements of this chain of equivalences” (Mendonça, 2007: p. 252).

thing that can be done (Rorty, 2007). With this definition, he frays the concept of liberal so widely that a multiplicity of dispersed identities can now be housed under his mantle. This is a path that abolitionists must learn, if they intend to dispute hegemony in the field of discursive criminal knowledge, and that minimalism (more specifically, criminal guarantee) seems to have understood better.

The expression “guarantor” gained, in the common Brazilian legal sense, a much greater reach than the strict limits of its theoretical concept. During his confirmation hearing in the Senate, when nominated for the *Supremo Tribunal Federal* (Brazil’s Supreme Court) in 2012, Teori Zavascki was asked by Senator Álvaro Dias about whether he would be a “guarantor”, to which he replied: “I think being a guarantor or not is all a matter of terminology. If being a guarantor means ensuring what is in the Constitution, I am a guarantor, I think everyone should be a guarantor”¹⁴. According to the former Minister of the Brazilian Supreme Court, then, a guarantor is just “a terminology” (without content? A signifier without meaning?), and being a guarantor is “ensuring what is in the Constitution”, so that “everyone must be guarantors”. How can we not be a guarantor, with a concept as broad as this?

The meaning of “guarantee” has become so straight that it has become capable of agglutinating around itself a huge number of identities that do not necessarily share the same premises and conclusions as Luigi Ferrajoli’s ones, in *Law and Reason* (2002). There is even talk of “positive guaranteeism”¹⁵ or “integral guaranteeism”, genuinely Brazilian concepts, which would be types of “guarantee” concerned with protecting the individual rights of citizens from being violated by “criminals” and guaranteeing the State’s action right to punish offenders, based on so called “principle of prohibition of deficient protection” (Ferraz & Bezé, 2005: p. 57). It is, therefore, not guaranteeism itself, but a guaranteeism of a hybrid category, colonized by criminal efficiency—or which seeks to colonize it, agglutinating its discourses around the empty signifier “guarantee”. Thus, criminal guarantee means everything: from the limit to punishment to the imperative of punishment.

The signifier “minimalism” itself accounts for even more particularities. This is because, presenting itself as a voice for human rights, constitutionalism and as an antagonist of penal populism, it represents a series of discourses that are articulated around diverse nodal points. The expansion of meaning of minimalism as an empty signifier is such that it even agglutinates around itself several abolitionist discourses. It is mistakenly called “middle minimalism” to those models of weak criminal abolitionism¹⁶ that propose a weak, contingent, precarious

¹⁴Parliamentary pressure does not intimidate minister. O Estado de São Paulo, Brasília, September 26th 2012.

¹⁵Which has nothing to do with the one proposed by Alessandro Baratta.

¹⁶The adjective “weak” will be used throughout this article not in a pejorative way, but in the sense that Gianni Vattimo gives it, when proposing a weak model of thought for postmodernity, lacking strong metaphysical foundations, but capable of articulating in half-lights ethical and political proposals compatible with our times. Check out Vattimo, 1996.

criminal law¹⁷, articulator of its own reduction with a view to abolition. Thus, authors such as Alessandro Baratta and Eugenio Raúl Zaffaroni are labeled (and perhaps even allow themselves to be labeled), erroneously, in our view, as (middle) minimalists, not as abolitionists¹⁸. The middle minimalisms are, in fact, weak types of criminal abolitionism. Allowing them to be called minimalisms, ignoring their commitment to the delegitimization of the penal system and the desire for its abolition, is to allow the colonization of abolitionist discourses by minimalism, losing space in the field of discursivity¹⁹.

Criminal efficiency and Law and Order movements have equally been successful in colonizing other discourses, producing empty signifiers. What seems to be ongoing in the era of neoliberal globalization is not the antagonism of minimalism *versus* abolitionism, but an ever-increasing expansion of criminal law and penal populism, that is, a growth in the discourse of criminal efficiency (Andrade, 2006: p. 177). This discourse, interestingly, is also anchored in the crisis of penalty: it starts from the premise that the penal system does not work because it is not sufficiently repressive and, therefore, inefficient in combating crime. With this argument, it relegitimizes the system by defending an “inverted effectiveness”, proposing reforms of a punitive nature and selling the panacea of penal expansion as a solution to public security problems.

At the turn of the 1980s to the 1990s, the hegemony of minimalist discourse was threatened by the globalization of the North American frisson of Law and Order movements, with their broken windows and actuarial criminal policies. At the turn of the 1980s to the 1990s, the hegemony of minimalist discourse was threatened by the globalization of the North American frisson of Law and Order movements, with their broken windows and actuarial criminal policies. The media propaganda of Mayor Rudolf Giuliani’s Zero Tolerance policies in New York found traction even in the marginal reality of Latin American countries, including Brazil, promoting intense colonization in legislative, doctrinal, jurisprudential and political fields. The agenda of political parties and movements of all ideological nuance was infected by this discourse, feeding both a punitive right wing and a left wing, which surfed the electoral market thirsty for primary criminalization. Around the empty signifiers of Law and Order, the punitive agendas of moralists, family defenders, Christians, social movements, the punitive left wing, conservatives, liberals emerge... State cruelty, disguised as social defense, gathered around itself, as a nodal point, a countless number of particular discourses and identities that were absolutely disconnected and dispersed in the field of discursivity.

It is curious, however, that even many of the vocabularies of the “new social

¹⁷Check chapter 2, item 2, by Villa, 2020: pp. 99-162.

¹⁸Check, for instance, Andrade, 2006: pp. 174-176.

¹⁹Vera Pereira de Andrade, despite defining weak abolitionisms as minimalisms, is aware of the risk of forgetting her commitment to abolition: “To stand for minimalist models that are committed to abolitionism while ignoring this commitment is inconsequential in relation to the models and re-legitimizing before the criminal system. It is not consistent to support as an end minimalism that are proposed as means” (Andrade, 2006: p. 177).

movements”, which, in the analysis by Laclau and Mouffe, continue the 19th century struggles against inequalities²⁰, have been brought together by the discourse of criminal efficiency²¹. This increase in criminal efficiency, marked by the agglutination of different discourses thanks to the incessant production of empty signifiers (and the competent propaganda around them), guaranteed it a privileged space in the hegemonic dispute. The clash was marked and delimited between the two discourses that were most competent in producing empty signifiers and articulating particularities around nodal points: penal minimalism and penal efficiency. Penal abolitionism, conversely, was reduced to a counter-hegemonic discourse, a radical eccentricity of reliquary importance.

3.4. The Impossible (But Irrevocable) Generalization of Representations

The terrain in which hegemony expands is the terrain of the generalization of representation relations as a condition for the constitution of a social order (Laclau, 1993c: p. 57). The discourse capable of articulating other discourses around itself performs a representation function. It turns out that the very notion of representation is an aporia.

As seen, the constitutive incompleteness of the social is crucial for understanding the functioning of hegemonic logic. It turns out that what makes politics possible—the contingency of acts of institution—is also what makes it impossible, since “ultimately, no act of institution is completely realizable” (Laclau & Mouffe, 2005: p. 99). Openly inspired by Derrida and by the deconstruction, Laclau & Mouffe (2005: p. 99) states that “the condition of possibility of something is also its condition of impossibility”.

For him, deconstruction made possible a crucial turn in political theory, as it expanded the field of structural undecidability and, in doing so, opened the ground for a theory of decisions taken in an undecidable context. Based on these premises, Laclau deconstructs the logic of representation. Here are its main points: the condition for good representation is, apparently, that the representative conveys the will of those represented in a perfect and transparent way. In good representation, the will of the representative and those represented would flow in one direction, which presupposes complete identification of the represented one and their will. The transparency of this relationship would be undermined if representative’s will affects the will of those they must represent.

This relationship of representation, however, is necessary, since those represented are absent from the space in which the representation takes place and because it is there, in that place where they are absent, that political decisions need

²⁰“It is the permanence of this egalitarian imaginary that allows us to establish continuity between the struggles of the nineteenth century against the inequalities bequeathed by the *ancien régime* and the social movements of the present” (Laclau & Mouffe, 2015: p. 244).

²¹“(…) in the 1980s, groups close to the critical movement came closer to positions that demand the use of criminal law as part of the strategy of struggle and reaffirmation of rights. [...] In Europe, part of the social movements (including feminist currents) selected, in their strategies to fight for rights, the punitive discourse” (Machado & Agnello, 2017: pp. 1797-1798).

to be made. Like any decision, however, they involve negotiations whose results are indeterminate. This implies saying that “if the represented ones *need* representation, it is because their identities are incomplete and must be *supplemented* by the representative” (Laclau & Mouffe, 2005: pp. 101-102). It follows that the role of the representative cannot be neutral, that is, it will not simply reproduce the will of those represented. The representative will need to contribute to the identity of those they represent, at the moment they *supplement* the wishes of those represented, participating in negotiations in spaces where the represented ones are absent and making negotiation decisions in the face of unpredictable issues about which they will not have the opportunity to consult the represented ones in advance. Thus, the relationship of representation will be constitutively impure: the movement from represented one to representative will need to be supplemented by a movement that takes place in the opposite direction, from representative to represented one. The impure character of representation is, therefore, constitutive, since “what makes good representation possible is what, at the same time and for the same reasons, makes it impossible” (Laclau & Mouffe, 2005: p. 102). Thus, the fragmentation of social identities typical of complex societies requires forms of political agglutination that imply that representatives play an active role in the formation of collective wills, instead of just functioning as a passive mirror of the pre-constituted interests of those represented. This often includes, for popular leaders, in the reality of “third world” countries, the task of “providing the marginalized masses with a *language* through which the reconstitution of their identities and political wills becomes possible” (Laclau & Mouffe, 2005: pp. 102-103). This is because, in these cases, factors such as unemployment and social marginalization result in shattered social identities at the level of civil society. In these situations, the most difficult thing is to establish an interest, a will to be represented within the political system.

Thus, the ambiguity and undecidability between the various possible movements transform the relationship of representation on the hegemonic battlefield between a multiplicity of open decisions. Representation is a process through which the representative, at the same time, *replaces* and *embodies* the represented one. The conditions of a perfect representation, however, can never be satisfied in the political logic. Representation is always flawed, as the will of the represented one is never fully satisfied. Although unattainable, however, representation is necessary. Therein lies the aporia of the impossible, but irrevocable generalization of representations: every representation will necessarily be distorted, since it does not correspond to a possible object. The meanings of representation are those produced by the particular differences of the represented identities. This is where the very idea of hegemony lies: it is nothing more than this situation in which a certain particularity assumes the representation of an impossible totality.

A discursive equivalence chain is then formed around the hegemonic discourse. The fact that this privileged discourse represents the others does not im-

ply, however, the denial of the particular contents of the other discourses that are articulated in the chain. Connected to this discursive universe, Laclau states that it is entirely possible to establish the difference between what the discursive structure is and what its articulated elements and moments are. If this were not the case, we would not be faced with a chain of equivalences, marked by differences that are articulated around a common discursive project, but rather with equality, that is, with identical elements that, in truth, characterize a single element.

The representation that characterizes the hegemonic relationship always has a contingent and precarious character. There is not necessarily any predictability that a discourse will be capable of assuming the representation of other discourses. This representation occurs when a discourse manages to universalize its contents, going beyond the mere expression of its particularity, replacing and embodying other particularities. Hegemony occurs at the moment when the relationship of representation becomes generalized (albeit precariously).

This impossible and at the same time irrevocable generalization of the representation of other discourses is what the abolitionist discourse must seek. To do this, it needs to become capable of replacing and embodying as many particular discourses as possible. This representation is only possible, however, if the meanings of criminal abolitionism are frayed to the point of making it an empty signifier, articulating around its nodal point a series of other previously dispersed discourses and, thus, overcoming the dichotomy between particularity and universality.

4. Discursive Strategies for a Post-Metaphysical Criminal Abolitionism

We finally arrive at the point of synthesis. How can tools of post-metaphysical philosophy contribute to repositioning criminal abolitionism in the dispute for hegemony in the field of discursiveness of criminal knowledge? What role could a post-metaphysical criminal abolitionism play?

It is about thinking about a discourse for the criminal abolitionism of the future, since the abolitionist discourses of the past and present have not been achieving sufficient success in the hegemonic dispute. Enclosed in their own particularities, abolitionist discourses fail to generalize the representation of other discourses, replacing, embodying and supplementing them.

To modify this scenario, we assume that two types of criminal abolitionists are needed: metaphysicians and post-metaphysicians. It is in the last years that the project gets started. It is in the last years that the project gets started. Here we will call metaphysical criminal abolitionists those who believe there is a strong basis for repudiating cruelty, who believe there is a non-circular answer to the question “why not be cruel?” (or “why be an abolitionist?”). The post-metaphysical penal abolitionist, in turn, is that one who has overcome the belief in universals, in absolutes, who has abandoned the nostalgia of being as a presence and im-

mersed themselves in the contingency of language, engaging in the task of building new, consciously precarious vocabularies—and, also, in the perennial task of doubting their own final vocabulary.

To be successful in the search for hegemony, the post-metaphysical abolitionist will need to bring together, around nodal points, dispersed discursive particularities, premises shared by all the discourses that are intended to be articulated in a chain of equivalence. As we have seen, even when different elements are articulated in an equivalent chain and assume the position of represented ones in a more open discourse, their particularities are not denied. It is the metaphysical criminal abolitionist, in turn, who is responsible for disseminating the discourse of criminal abolitionism, adapting it to the identity particularities of the group to which it belongs and with which it shares a set of beliefs and values.

We maintain that the most appropriate discourse to assume the function of nodal point and agglutinate around itself and criminal abolitionism a large number of discourses dispersed in the field of discursivity is the discourse of denial of cruelty. In addition to being a recurring point among abolitionist discourses of the most diverse shades, the repudiation of cruelty is unlikely to be openly antagonized. Few speeches will be articulated in favor of cruelty. If the abolitionist is one who is against cruelty, it will be easy to make many particular identities represented in his speech. In theory, Christians, liberals, socialists, human rights defenders, social movements, environmentalists and so on are against cruelty. The post-metaphysical criminal abolitionist will, for example, be responsible for reaching the Christian, whether he is a metaphysical penal abolitionist, or someone who is not an abolitionist, but could become one. The Christian, then, once he feels represented by the abolitionist discourse of repudiation of cruelty, will promote this discourse among the group with whom he shares beliefs and values. Criminal abolitionism expands.

Post-metaphysical penal abolitionism, therefore, will have fundamental tasks to bring off this hegemonic project. We suggest some of them²².

4.1. To Expand the Historical Meaning of Abolitionism, Beyond Criminal Abolitionism, Identifying It with Other Achievements

Criminal abolitionism is a species of the abolitionism genus. It is important to highlight this point to dissociate the idea of an isolated, utopian and impossible movement from criminal abolitionism, which has never been put into practice anywhere in the world and never will be. Criminal abolitionism is part of a much larger project than the simple abolition of penalty or the penal system. It integrates, as a species, the genus of abolitionism, whose perennial task, which will never be carried out in its entirety, but which can also never be abandoned, is the fight for the abolition of cruelty, in all its forms of manifestation. By cruelty we mean the voluntary causing of unnecessary suffering.

²²For a complete detail of the proposals, see [Villa, 2020](#) and [Villa, 2023](#).

This movement to abolish cruelty is as old as the history of humanity. It has already manifested itself and manifests itself in several ways, having several species. Sebastian Scheerer reminds us, for example, that in the 19th century it was impossible to imagine pedagogical practices without punishment, including corporal punishment. Today, no pedagogue will try to achieve his objectives through intimidation, paralysis or other methods of coercion. The validity of values is no longer imposed by the master publicly punishing the student but is converted into a topic of discussion (Scheerer, 2001: p. 75). Just as the abolition of corporal punishment in pedagogical practices was possible, the abolition of slavery and the death penalty in most Western countries, the abolition of public punishment (penalty) is nothing impossible or utopian.

Many species of the “abolitionism” genus, understood as a movement that seeks the abolition of cruel treatment, have been successful throughout history. The achievements of the abolitionist movement, as a genus, are: 1) The abolition of slavery in several countries, including Brazil²³; 2) The abolition of the death penalty, life imprisonment, forced labor and corporal punishment in several countries, including Brazil²⁴; 3) The abolition of indeterminate sentences²⁵; 4) The abolition of torture as an investigation method²⁶; 5) The abolition of the inquisitorial system and its replacement by the prosecutorial system²⁷; 6) The abolition of pedagogical corporal punishment; 7) The abolition of asylums²⁸; 8) The abolition of leper colonies and concentration camps; 9) The abolition of eugenics; 10) The abolition of the divine foundation of God’s punishment and judgments; 11) The end of the witch hunt.

Many of these achievements were unimaginable and seemed impossible before they were achieved. How can we think of a society without slavery in Greece in the century of Pericles or in Brazil during the discovery? The abolition of slavery and the death penalty was unthinkable in the past, just as the abolition of prisons is considered unthinkable today²⁹. All these struggles are struggles against cruelty. It is necessary to allow criminal abolitionism to take its place in this chain of equivalences, showing that equally or even more difficult abolitions have already

²³This is a battle still ongoing. Slavery abolitionism is a species of the abolitionism genus that still has a long task ahead. It is estimated that there are, today, around 30 million people living in slavery in the world. Africa is the continent with the highest concentration of slaves. Regions such as Pakistan and India also record high rates, the latter having the largest number of slaves in raw numbers, around 14 million people (figures from the Global Slavery Index, available at: <http://www.globalslaveryindex.org>. Access on: Aug. 18, 2019).

²⁴A battle won in several countries, but it is still far from over. Even in countries with democratic regimes such as the United States, Japan and South Korea, the death penalty is still applied. Life sentences are still adopted even in European countries such as England, Wales and Italy. Corporal punishment is common in Middle Eastern countries.

²⁵In Brazil, under the argument that security measures are not penalties, we still have indeterminate sanctions, for example, for mentally ill people.

²⁶Guantánamo proves that the issue is still problematic even in countries with democratic regimes.

²⁷Even in Brazil we cannot say that we have a pure prosecutorial system.

²⁸Criminal abolitionism has a lot to learn from the anti-asylum movement and its struggle (still ongoing).

²⁹In this regard, Mathiesen, 2003: pp. 82-83.

been achieved historically, in the name of denying cruelty. Criminal abolitionism must be seen as a heterotopia, not as a utopia.

4.2. To Fray the Meaning of Penal Abolitionism, Making It an Empty Meaning, Using the Denial of Cruelty as a Nodal Point

Repudiating cruelty is part of the Western tradition. The sensibilities of contemporary man are tailored to do so. Traps are set for us to be cruel, but it is possible to mass strategies to unmask cruelty, in its most diverse forms of manifestation. The way to delegitimize penalty is the same way to delegitimize crime: repudiate cruelty, be it great cruelty, practiced by the State against the individual, or small cruelty, practiced by one individual against another.

Articulating the most different discursive identities around the denial of cruelty, as a nodal point, associating it with abolitionism (an abolitionist is anyone who seeks the abolition of cruelty), seems the best way to construct it as an empty signifier capable of representing the more diverse discourses dispersed in the field of discursivity of criminal knowledge. Thus, the true adversary of criminal abolitionism is neither criminal efficiency nor criminal minimalism, but cruel treatment. In this discursive field, there are only two alternatives: being an abolitionist or being cruel. The question must be put in these terms.

All speeches that legitimize punishment start from one premise: there are situations in which it is justifiable to be cruel. The abolitionist morally repudiates this premise, since they understand that being cruel is the worst thing one can do. If there is nothing worse than cruelty, there is also nothing that can justify or legitimize it.

Vincenzo Guagliardo maintains that criminal law is, in fact, a false science (a language) that aims to hide an aspect of reality: suffering. The objectivity of criminal-legal language presents itself as an illusion that disguises the fact that the criminal system intervenes in human subjectivity, that is, in something opposite to any objectivity, something that cannot be measured quantitatively (Guagliardo, 2013: p. 52). Pain is an indefinable experience. Because of this, he states that the first finding of criminal abolitionism is that criminal law serves to hide pain, suffering and cruelty (Guagliardo, 2013: p. 54). From this comes another discovery: by refuting a pseudoscience in the name of something that can never be an object of science (cruelty, pain, suffering), penal abolitionism is, above all, a moral critique.

This is how confronting cruelty and legalized suffering proves to be an abolitionist premise that is easy to share with other discursive identities. Nils Christie (1985) argues: “I cannot imagine the possibility of fighting to increase on earth the legal suffering that man inflicts on man”. Due to this, he concludes: “I don’t see that any other possibility can be defended other than fighting to reduce the severity of penalties”. When assuming punishment as cruelty of the State and criminal law as a rationalization of cruel treatment, there are only two alternatives left: being for or against cruelty, being a sadist or being an abolitionist.

4.3. To Phagocytize Discourses That Revolve around Other Axes

The dispute for hegemony is a dispute for discursive space. The discourse that manages to articulate more particularities, making them gravitate around its nodal points, has an advantage. Hegemonic is the discourse that can represent a greater number of identities. Therefore, identities such as Zaffaroni's reductive functionalism or Baratta's critical criminology, which absolutely delegitimize the penal system, cannot be allowed to be appropriated by criminal minimalism or by any discourse that seeks to legitimize punishment and cruel treatment. There is no middle minimalism, there is weak, non-radical, mediate criminal abolitionism. In the discursive dispute, names are everything, as the battle is fought in the field of language. It is necessary to describe as many speeches as possible using abolitionist vocabulary. Thus, the abolitionist must be attentive to minimalist or even criminal efficiency discourses that can be phagocytized and agglutinated, redescribed and represented.

4.4. To Agglutinate Dispersed Discourses around the Nodal Point, Using Shared Premises

There are, lost and dispersed in the field of discursivity, a series of identities that do not articulate in an oriented and coherent way when it comes to the criminal issue. Several of these dispersed identities share premises with criminal abolitionism, including an aversion to cruelty.

For [Perelman & Olbrechts-Tyteca \(2014\)](#), persuading an audience involves sharing some premises with it. Thus, abolitionist discourse needs to infiltrate and convert within groups that are open to discourse that antagonizes cruelty. In these circles, it is necessary to be incisive and reveal the violence of the penal system, how it stigmatizes and dehumanizes, how selective and perverse it is. Some of these particular identities that penal abolitionism must seek to represent and with which it needs to dialogue, seeking to form chains of equivalence, are:

1) Christianity: Christ represents love. His life example recommends concern for the marginalized and excluded and the rejection of cruelty. Christ himself was a victim of the penal system, having been considered a criminal, tried and sentenced to cruel punishment. Taking into account that crime is a social construction that varies in time and space, Christ, for the society in which he lived, was a criminal. The treatment given to him by the penal system of his time was natural at that time. For us, it is an eyesore. Likewise, in the eyes of the men and women of the future, our penal system will certainly appear to be a monstrosity.

2) Liberalism: the liberal tradition is based on the standards of the Enlightenment and the French Revolution: freedom, equality and fraternity. The penal system is a monument against freedom. Selective, once it also attacks equality. Based on revenge and cruelty, it also offends fraternity. [Rorty \(2007\)](#) traces the paths to associate liberalism with the repudiation of cruelty. Following the same route and redescribing the penal system as the rationalization of the great cruelty, the liberal's adherence to the abolitionist discourse seems imperative. Fur-

thermore, the economic argument about how the prison system is proven to be an expensive and ineffective luxury can also interact well with this tradition.

3) Socialism: the causes of the left wing were structured against the oppression, exploitation and marginalization of vulnerable populations. The penal system, selective and oppressive, is, in a Marxist reading, clearly among those products of the superstructure that exist to guarantee the maintenance of the *status quo*. It promotes an inequitable distribution of pain and suffering, applied primarily to the less favored classes. The struggles of the left wing can, therefore, easily be represented by the struggle that criminal abolitionism promotes against cruelty.

4) Social movements: the causes of social movements such as feminism, ethnic-racial movements, are often isolated in their particularisms, without realizing that all struggles against oppression and cruelty are interconnected. Having failed to dialogue effectively with these movements, criminal abolitionism has lost space in the most fertile and politically strategic terrain. Some social movements incorporate punitive agendas into their speeches. They forget, however, that each one, in their own way, proposes a deconstruction similar to that proposed by criminal abolitionism: they intend to produce discourses in which the center is occupied by the marginal elements of the binomial pairs that structure our society. Women, historically marginalized compared to men, occupy the center of feminism. The same goes for other marginalized communities, such as people of color. They are emancipatory movements that fight against marginalization, prejudice and cruelty imposed on socially vulnerable people. It is necessary to sew this discursive suture and bring together all the discourses that challenge oppression and domination around the same nodal point: the denial of cruelty.

5) Environmentalism and ecological activism: environmental defense movements are, as a rule, marked by vitalism and an aversion to cruelty towards animals and nature in general. This ability to feel empathy, repudiating suffering, gives space to the suture with the abolitionist discourse. We humans are also animals and part of nature.

6) Anti-asylum movement: the fight against the incarceration of the mentally ill has been successful and can teach a lot about penal abolitionism. The alliance between the discourses is almost intuitive and the approach seems simple and necessary.

7) Movements in defense of human rights: human rights movements have an umbilical connection with the prison issue. It turns out that its activists are often seduced by reformist discourse, putting their strength into the futile battle for prison reforms and the impossible humanization of a system that, in its structure, is inhumane. Bringing together the human rights discourse, awakening it to the need to accept the lack of legitimacy of the penal system, under penalty of reinforcing cruelty, is an equally urgent issue.

These are examples of discursive spaces where allies are glimpsed. Non-

metaphysical penal abolitionists must seek to colonize these spaces, producing more abolitionists there, even if, in some cases, metaphysical ones, tied to the strong foundations of their identity groups. Research and work must be developed to deepen each of these thematic axes, finding bridges and connections that strengthen the relationship of representation between criminal abolitionism and Christianity, criminal abolitionism and feminism, criminal abolitionism and the black movement, criminal abolitionism and the LGBTQIA+ movement, criminal abolitionism and human rights, criminal abolitionism and social movements and so on.

4.5. To Redescribe Abolitionism through Different Persuasion Protocols

It is also necessary to diversify the discursive tools to multiply the abolitionist message. Abolitionist authors cannot write just for themselves or for those who have already been introduced to the topic. One of the challenges is to abandon the hermetic vocabulary of those who preach to the already converted ones and expand the range of abolitionist discourse, redescribed as a denial of cruelty.

Rorty (2007) proposes that novels can be much more effective in sensitizing us against cruelty than philosophical treatises. Not only literature, but several other mechanisms can be equally useful to abolitionism, being more effective in arousing aversion to state cruelty than treatises on criminology and criminal law. Let's look at some of these paths to explore:

1) Literature and Poetry: Rorty clarified how literature can be a powerful tool in combating cruelty. There is a lot of ground to be explored by abolitionism, both in the production of abolitionist literature and poetry, and in literary criticism, redescribing the works from this bias.

2) Hyperbole: small changes in the language can alter the entire perception we have of what surrounds us. Hulsman (1997) teaches this when he proposes abandoning punitive language. It turns out that, if, on the one hand, Hulsman's language is instrumentalized by euphemism (replacement of heavy expressions in penal language such as "crime" with "problematic situations", for example), we also suggest the opposite appeal: the methodological use of hyperbole, in Nietzschean style, as a political strategy of transgression (Nehamas, 2002). The abolitionist discourse must promote the exaggeration of forms, as it highlights the association between criminal law and cruelty. The postmodern subject is not subtle. Always bombarded by hyper information, keeping their attention is no simple task. They need to be provoked by extremes. Therefore, we suggest, whenever possible, the replacement of euphemisms in punitive language with hyperbolic expressions that awaken the listener to the cruel nature of criminal treatment ("caging of human beings" instead of "custodial sentence", for example). It is important to exaggerate forms not only in written or spoken language, but in imagery. Visually denouncing the inhumanity of the punitive machine is also a tool.

3) Cinema and Theater: Films, series, plays. They are all tools capable of setting into motion the themes of denying cruelty and populating people's imagination in a remarkable way. Cultural criminology has provided good lessons on this (Machado, Zackseski, & Duarte, 2018).

4) Pop culture and music: spreading ideas of aversion to state cruelty and abolitionist discourse in pop culture and through music can also be a way.

5) Conventional media and propaganda strategies: penal populism operates through an efficient propaganda strategy that involves television, newspapers, portals, magazines... There must be counterpropaganda that occupies spaces in the media to address issues based on abolitionist approaches, denouncing the irrationality and cruelty that underlies the penal and penitentiary system. It is important, for example, to expose the daily deaths of "disposable" people that occur in the Brazilian prison system, showing the population the true genocide of vulnerable populations, especially black youth.

6) Social media: use media and social networks to propagate messages of solidarity and repulsion against cruelty, disseminating abolitionist discourse and ideas and denouncing the cruel treatment promoted by the system.

7) Philosophy and science: It is not necessary, however, to abandon technique and theoretical discourses. One must also argue with data collected from social reality, in empirical research, to denounce the lack of usefulness of the penal system and dispute hegemony in the academic world. Unmask to students, from an early age, the contradictions of the penal system, introducing them to abolitionist vocabulary. Bet on a weak criminal law, capable of articulating in half light, producing theory of crime and acting in the sphere of criminal dogmatics from the prism of delegitimization³⁰. Investing in groups to study and research on the topic. To reconcile criminology and philosophy, allowing the dialogue between penal abolitionism and contemporary philosophical projects of a post-metaphysical nature.

4.6. To Associate Antagonistic Speeches with Negative Discursive Elements

Another useful rhetorical strategy is to show the equivalences that exist between mechanisms of the penal and prison system and historical or theoretical entities that cause widespread repulsion. Prisons can be described as reinterpretations of concentration camps, rebellions and deaths in the prison system as genocides, penal populism and theories that legitimize punishment are closely linked to a certain type of sadism, criminal law corresponds to a dubious rationalization of the cruelty of the state and the criminal process works as a ritual sacrifice of people in vulnerable conditions.

4.7. To Invest in Micro Policies for Abolition and Institutional Changes

As we have already seen, actions are also speeches. In this item we can see, in a

³⁰In this regard, check Villa, 2023.

pragmatic way, how discursive strategies directly influence institutional changes and public policies. Here we will enumerate a series of micropolitics that can be thought of based on the influence of the abolitionist discourse³¹.

Guagliardo warns that, on an immediate level, a measure can only be said to be in the abolitionist direction if it: 1) reduces currently existing penalties; 2) opposes the increase in the number of prisoners and prisons; 3) favors automatisms, that is, objective mechanisms (based on the amount of sentence served or arbitrated) for granting benefits; and 4) consider affections and sexuality as a right of prisoners, not as a benefit (Guagliardo, 2013: p. 223). It seems to us, however, that there is something more to do.

On another occasion³² we have already referred to the main action strategies of criminal abolitionism: 1) to cease penalties; 2) decriminalization; 3) end incarceration; 4) delegitimization; 5) privatization; 6) denaturalization; 7) de-tagging. Criminal abolitionism must engage in specific struggles that have the power to weaken and dismantle the punitive logic. It is true that action strategies are not the object of this paper, which focuses on discursive strategies and the dispute for hegemony in the field of discursivity. Because we understand, however, with Laclau and Mouffe, that there are no non-discursive practices, we could not fail to list some micro policies of abolition for praxis, which can and should be included in the discourse of criminal abolitionism as specific challenges. It is even essential to include concrete proposals in the abolitionist discourse, not taking unmasking as an end in itself.

Some of these micro policies would be available now. Criminal law could be restricted only to conduct that involves violence or serious threat and that results in effective harm to the legal interests of life and physical/psychological integrity. The custodial sentence would also be restricted to these offenses. In other cases, criminal law could be replaced by a right of intervention—more or less as thought by Hassemer (1999: pp. 67-72)—a type of sanctioning administrative law that acts through non-distressing sanctions and precautionary measures that aim not to punish but prevent future injuries. This could be associated with: (a) Abolition of criminal offences and prison sentences for crimes that do not involve violence or serious threat to the person; (b) Abolition of types of criminal offences that seek to protect diffuse and collective rights; (c) Abolition of offences endangerment; (d) Abolition of culpable crimes; (e) Extinction of punishment in cases of white (bloodless) attempt (which does not cause any damage to another's legal asset); (f) Decriminalization and regulation of drugs and the end of the failed policy of war prohibitionism; (g) To think about the categories of the theory of offense in order to interpret them restrictively and taking into account the co-culpability of the state and society, as well as any condition of social vul-

³¹For a deeper discussion on the general influence of discursive strategies on institutional changes and public policies, check Villa, 2020.

An inspiring example is State Law No. 9,716/92, of the State of Rio Grande do Sul, which, in its art. 3rd, it promoted a true moratorium policy on the construction/expansion of asylums.

³²Check, for instance: Villa, 2020: p. 29.

nerability of the accused³³; (h) To invest in therapeutic justice as an alternative for drug addicts, treating the problem of drug addiction as a matter of public health, not public safety; (i) Abolition of the internment (incarceration) regime for minors; (j) Abolition of preventive detention for an indefinite period and under subjective criteria for its enactment (as a guarantee of public order); (k) Sanctions through administrative law: application of sanctions of a non-distressing nature in replacement of criminal sanctions; (l) Prohibition of the provisional execution of the sentence; (m) Replacement, in criminal proceedings, of the principle of necessity with that of opportunity, allowing conflicts to be prevented from being brought into the criminal justice system; (n) To invest in positive reinforcement (rewards), with state incentives for behavior that complies with the law, instead of the hegemonic logic of negative reinforcement (punishment); (o) bureaucratic politics as to the construction of prisons and the creation of incriminating criminal offences, and legislation that promotes *reformatio in pejus*; (p) Abandon the less eligibility policy: think of the places where sentences or security measures are served as human spaces, not as cages whose conditions must necessarily be worse than the worst living conditions in society³⁴; (q) Finally: to invest in restorative justice, rather than retributive justice, focusing on restoring broken bonds of solidarity and repairing the harm caused to the victim and the community, rather than allocating blame and imposing pain.

Engaging the discourse in micropolitics such as those mentioned allows immediate use of their transformative potential, moving towards reducing cruel state treatment. The redescription of criminal abolitionism and its consequent repositioning in the dispute for hegemony empowers discourses and policies such as those exemplified here. Thus, the way is opened for institutional changes and the dissemination of symbolic criminal legislation and penal populism is discouraged, which only contribute to the maintenance of the hyper-incarceration machine and feedback the rationalization of cruelty, disguised as (criminal) law and (criminal) justice.

5. Final Considerations

There is a dispute for hegemony in the field of discursiveness of criminal knowledge. It is a confrontation between criminal minimalism, criminal efficiency and criminal abolitionism. Abolitionism finds itself in a disadvantaged position in this clash, appearing as a counter-hegemonic discourse. If you long for hegemony, however, you need to redescribe yourself. We have proposed that this discursive redescription of criminal abolitionism, with a view to hegemony, must use tools of post-metaphysical philosophy. One of these tools is the Gramscian concept of hegemony, from the perspective of Ernesto Laclau and Chantal Mouffe.

³³Check Zaffaroni et al., 2011.

³⁴This would become possible with the considerable reduction in the number of inmates that would result from the measures mentioned above.

The clash in this discursive field is polarized between criminal efficiency and criminal minimalism, leaving the abolitionist discourse excluded from the hegemonic dispute. To change this configuration, criminal abolitionism needs to renew its discursive strategies. Discourses are articulatory practices that organize social relations. There is no reason to distinguish discursive practices from non-discursive practices, as every object is constituted as an object of discourse. It is for this reason that, throughout this paper, we are concerned with analyzing social relations from the theory of discourse, that is, interpreting social practices as discursively constructed. It turns out that, as the discursive totality does not exist in the form of a given and delimited positivism, the political project of a given discourse never has its meanings fully constituted. Precisely for this reason, in the field of discursivity, disputes always occur.

Once it is accepted that every social space is a discursive space, it is understood that social disputes are articulatory practices that seek to agglutinate elements into discursive systems organized around nodal points. The dispute is won, temporarily and always precariously, by the discourse that articulates the greatest number of discursive particularities around its nodal points, being capable of representing them in its identities. Therefore, the nodal points are responsible by fixing, even partially, the meanings of the discourse, being responsible for the suture that unites the particularities represented. A hegemonic discourse is a systematizing discourse, which seeks unity in the differences. The process by which the hegemonic order is constructed is a process in which a particular discourse manages to represent hitherto dispersed identities and discourses.

Thus, for the penal abolitionist discourse to be able to seek hegemony, it needs to articulate as many particular discourses as possible around nodal points, representing and embodying them. To do this, it will be necessary to observe constitutive requirements of all hegemonic discourse (four dimensions of hegemony): 1) the existence of an unevenness of power; 2) overcoming the universality/particularity dichotomy; 3) the production of empty signifiers; and 4) the generalization of representation relations. Given the unevenness of power in the field of discursiveness of criminal knowledge, marked by antagonisms, we verify the first condition of possibility for the discourse of criminal abolitionism to yearn for hegemony. Furthermore, this discourse will need to give up its condition of mere particularity to undertake the (impossible) task of achieving universalizing effects. A good strategy for the abolitionist discourse to go beyond its particularity, articulating other particular discourses around it, is to use the denial of cruelty as a nodal point.

It is also necessary for penal abolitionism to rise to the category of empty signifier, which will only occur if there is engagement in the search for universality that frays its content to the point where it can no longer be signified precisely, becoming a signifier without an exact meaning. This fraying of meaning occurs due to the expansion of the chain of equivalences in articulatory practice, aggregating previously dispersed particular discourses around the nodal points.

What we propose, therefore, is the advent of a post-metaphysical criminal

abolitionism, capable of overcoming the belief in universals, of abandoning the nostalgia of being as a presence, accepting the contingency of language. An abolitionism committed, at the same time, to the task of building new vocabularies and doubting its own final vocabulary. This would make possible the figure of the post-metaphysical criminal abolitionist, who understands that there is no non-contingent answer to the question “why not be cruel?” and who, even so, believes that cruelty is the worst thing that can be done. It is up to this post-metaphysical penal abolitionist to turn abolitionism into an empty signifier and identify the scattered discourses where there are fissures that allow suturing.

In the end, we suggest some strategies that we consider important for the abolitionist journey towards discursive hegemony: 1) To expand the historical meaning of abolitionism, beyond criminal abolitionism, identifying it with other achievements; 2) To fray the meaning of penal abolitionism, making it an empty meaning, using the denial of cruelty as a nodal point; 3) To phagocytize discourses that revolve around others axes; 4) To agglutinate dispersed discourses around the nodal point, using shared premises; 5) To redescribe abolitionism through different persuasion protocols; 6) To associate antagonistic speeches with negative discursive elements; 7) To invest in micro policies of transgression, understood as both deconstruction and reconstruction strategies.

The use of post-metaphysical philosophy tools allows the discursive redescription of criminal abolitionism, reinserting it into the debate on criminal knowledge with new potential to dispute hegemony. This paves the way for institutional changes and public policies with transformative potential, capable of boosting the rule of law and reducing cruel state treatment.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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