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The Public Defender's Office Has No Identity: An *Essay* on the *Ambiguity*, Its Effect of *Uncertainty* and the *Stabilizing Meaning* of Discourses and Practices in a Juridical-Political Institution

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Abstract

In this article, I propose a reflection on the distance between the factual possibilities of the Public Defender's Office and the normative beliefs manifested in the speeches of its operators. I monitored daily life and interviewed public defenders from the states of Rio de Janeiro and Bahia between the years 2020 and 2022. I noticed that they express clarity about the distance between their concrete activity and the egalitarian goal intended for their office by the 1988 Constitutional of the Federal Republic of Brazil and, although resolving this distance is stated as a common concern, that normative goal is affirmed as the factual reality of the institution by everyone interviewed. Moreover, I realized that neither the awareness of the distance nor the desire to resolve it finds concrete translation. Hence, I questioned the nature of the actors' behavior *ambiguity* and its role in the reproduction of an institution that is normatively egalitarian but exists in a social and institutional environment that is hierarchal. My objective was to investigate to what extent stating a constitutional expectation that is not practiced places the Public Defender's Office as a *stability* source for the action of an unjust "justice system", both for the institutional scope and for society.

Keywords

Public Defender's Office, Reproduction, Material Inequality

1. Introduction

In one of his traditional research meetings, Professor Roberto Kant de Lima of-

fered us an intriguing synthesis regarding the distance between discourses and practices in legal institutions: "the reason the Brazilian Criminal Process does not change is not because it is inquisitorial, but precisely because it is constantly stated that it is not!"[1]. He was addressing a hypothesis that had just been raised during the meeting, in which inquisitoriality and other factual impediments were considered as the reasons why the possibility of substantive changes to our Criminal Process was precarious. "The discourse of precariousness does not reflect an absence, but a presence!", he concluded. More than referring to the distance between the practices that deem Brazilian Criminal Process inquisitorial and the legal discourse that defines it as accusatory, Professor Kant de Lima was pointing out one of its effects. That was certainly an important moment for the research I developed with the Public Defender's Office[2], whose partial results I present in this paper dedicated to the *ambiguity*, its effect of *uncertainty* and the *stabilizing meaning* of discourses and practices in a juridical-political institution and the way we see them.

Before I present the research problems that guided me and my research itself, it might be opportune to present general features of the Brazilian legal system. As of 1988, the Constitution of Brazil formally ended a twenty year-old dictatorial period and, in its place, normatively fixated a Federal Republic, guided both by Liberal Republican and Social Democratic values. As a result of a negotiated transition, in which the many crimes of the regime were grossly overlooked and its criminals got to be members of the Constitutional Assembly, the 1988 Constitution reflects desires and compromises of the progressist actors involved in advancing the possible democratization at the time. Its text starts as follows:

"We, representatives of the Brazilian people, gathered in the National Constituent Assembly to establish a Democratic State, designed to ensure the exercise of social and individual rights, freedom, security, well-being, development, equality and justice as values supreme of a fraternal, pluralistic and unprejudiced society, founded on social harmony and committed, in the internal and international order, to the peaceful resolution of controversies, we promulgate, under the protection of God, the following CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL." (Brasil, 1988)[3]

[1]I take this opportunity to acknowledge the presence of Prof. Kant de Lima's thought in my work, as well as to thank him for having me as an external student in his courses in the Anthropology Graduate Program of the Federal Fluminense University (PPGA/UFF—http://ppgantropologia.sites.uff.br) for his dedicated orientation and careful reading of the notes used in this paper, and for the all-around generosity with which he conducts the supervision of my post-Doctoral research at the Law Graduate Program of University Veiga de Almeida (PPGD/UVA). The research meetings I referred to are conducted by Professor Kant de Lima every Monday at 5 p.m., at the Center for Teaching, Research and Extension of Comparative Studies in Institutional Conflict Administration (NEPEAC/UFF—https://nepeac.uff.br) and are opened to all researchers of the National Institute of Science and Technology—Institute of Comparative Studies in Institutional Conflict Administration (INCT-InEAC/UFF—https://www.ineac.uff.br).

[2]Henceforth, I will refer to the Public Defender's Office and to Public Defenders as PD's Office and PDs, respectively.

[3]Brazil. *Constitution of the Federal Republic of Brazil*. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/ConstituicaoCompilado.htm.

In order to achieve that *exercise of rights* in a *society founded on social harmony* and *committed to the peaceful resolution of controversies under the protection of God*, the Constitution fixated on the creation of Public Defender's Offices in both Federal and State levels. This research is dedicated to the latter.

In its Art. 5th, LXXIV, the Constitutional text asserts that "the State will provide full and free legal assistance to *those who prove insufficient resources*". Those with *proven insufficient resources* are further referred to as *those in need*, but, overall, public defender's refer to their clientele as *the assisted*. In the Art. 134, it says:

"Art. 134. The Public Defender's Office is a permanent institution, essential to the jurisdictional function of the State, responsible, as an expression and instrument of the democratic regime, fundamentally for legal guidance, the promotion of human rights and defense, at all levels, judicial and extrajudicial, of individual and collective rights, in full and free of charge, to those in need, in accordance with section LXXIV of art. 5th of this Federal Constitution."

With that context, values and roles in mind, when I began researching with the PD's Office, I was driven by two problems. At the institutional level, although derived from an egalitarian objective of the 1988 Constitution[4], the PD's Office composes and legitimizes a "justice system" (Kant de Lima, 1999: pp. 23-38)[5] that operates as a vigorous reproducer of inequality[6]. At the level of the actors, the problem is that PDs tend to define their Office as the "home of the people", a "democratic institution", an "important constitutional provision", the "good side of the force", the "defenders of the vulnerable" against "abuses of the

[4]"Art. 1 The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, constitutes a Democratic State of Law and has as its foundations: […] II—citizenship […] Art. 3 The fundamental objectives of the Federative Republic of Brazil are: I—build a free, fair and supportive society; […] III—eradicate poverty and marginalization and reduce social and regional inequalities; IV—promote the good of all, without prejudice based on origin race, sex, color, age and any other forms of discrimination […] Art. 134. The Public Defender's Office is a permanent institution, essential to the jurisdictional function of the State, being responsible, as an expression and instrument of the democratic regime, fundamentally, for legal guidance, the promotion of human rights and the defense, at all levels, judicial and extrajudicial, of individual and collective rights, in full and free of charge, to those in need, in accordance with section LXXIV of art. 5th of this Federal Constitution" (Brasil, 1988)

[5]Whenever words and expressions are written between quotation marks, reference is made to native categories, that is, to the vocabulary of the actors in the field, which reveals that they have been charged with a specific semantic load capable of marking their place in the linguistic agreement and its integrating force. In this case, "justice system" is the category by which legal operators refer to the set of institutions involved with the administration of "judicial provision" and which, despite being part of a mechanism that reproduces social inequality (see footnote 4), is named justice. It "designates the institutions that make up a state structure that does not claim a 'popular' or 'democratic' origin. On the contrary, it claims to be the product of an enlightened reflection, a 'normative science', which aims to control an uneducated, disorganized and primitive population. Legal models of social control, therefore, do not and could not have as their origin 'the will of the people', as a reflection of their lifestyle, but are the result of these specialized legal formulations, legislatively or judicially. In these circumstances it is not difficult to understand that, as 'application of the law by the people' is not considered an ideal formula, legal values, when they are applied, tend to be seen as external constraints on the behavior of individuals." (Kant de Lima, 1999: pp. 23-38)

State", "inequality" and "social injustice" and, therefore, as fundamentally different from the District Attorney's[7] appetite for indicting and the judicature's for convicting. However, when asked to describe their practices, PDs will list numerous factual obstacles that are imposed on the achievement of everything they stated before and that make the work at the PD's a task of "drying ice". And yet, if the first question is asked again, the answers will be identical.

Taken as elements of a diagnosis, PDs answers to the questions *what is PD's Office*? and *what is it to be a PD*? are significant of a circumstance identified as problematic in recent studies (Garau & Babo, 2021; Campos & Pessoa, 2019; Tulio, 2019) dedicated to the institutions of the "justice system". They identify patterns of affinity between the actors and their practices. I refer specifically to three of the public institutions that are involved in the course of judicial proceedings, namely, the PD's Office, the DA's Office and the Judiciary. Such affinities are interpreted as problematic, because they are considered as harmful to the performance of the republican functions of the institutions of "justice". It is considered that their roles should be distinct, if not antagonistic, and, therefore, any affinities between their actors and practices would compromise the "jurisdictional provision" (Pontes de Miranda, 1999: p. 46)[8], an element dear to the liberal-republican songbook.

We are all capable of having expectations about our own activities. And we all feel it when we stumble into concrete. And no one stops having expectations because of this. However, what results from the educational and professional processes of legal socialization might be something else entirely. Both legal professionals and institutions appear ultra-competent in breathing in the pressure level of expectation, to the point of describing it as the concrete. I will call this

[6]I affirm that the justice system reproduces social inequality somewhat peremptorily, but I do so because of how flagrantly unequal and unequalizing the effects of judicial procedures are, which finds its most eschatological expression in the poor, black and young population selected to be sentenced to the prison system. It is not speculation, but logic what orients the understanding that, in demophobic and racist societies, institutions that preferably sentence poor, black, young people to the objective and subjective effects of incarceration participate in reproducing the fate that this population had already received at birth. In 2018, data from Infopen showed that Brazil ranked as fourth in largest prison population in the world, with approximately 700 thousand prisoners, 61.7% of which were black women and men and 75% had completed less than primary education, which is an indicator of low income. In 2022, Brazil jumped to rank 2nd in terms in largest incarcerated population in the world, behind only the USA. Our prison population today is composed of approximately 1 million women and men, of which 404,500 are pre-trial detainees. Brazil constitutionalized the republican principle of the presumption of innocence in Article 5, LVII of the 1988 Constitution which establishes that "no one will be considered guilty until the final and unappealable criminal sentence has been reached". That means that around 44.5% of prisoners in Brazil, virtually half a million poor women and men were sent to incarceration by the justice system while legally innocent. Regarding the inequality of treatment recognized by the population by the institutions of the justice system, there is also the works of Baptista (2020) and Lobo (2021).

[7]Henceforth, I will refer to the District Attorney's Office and to District Attorneys as DA's Office and DAs, respectively.

[8]This is the technical name given to the right to the outcome of the judicial procedure. On a normative level, it results from the liberal-republican belief that modern law would guarantee technical continuity to the resistance offered to arbitrariness faced in the concrete political level. Thus, the notion of the Rule of Law would be operationalized as a jurisdictional function, with which the subjective right to the legal protection would be preserved in the face of conflicting interests (Pontes de Miranda, 1999: p. 46).

level of pressure as the *normative registry*[9]. Everyone who studies and works in the field of law learns to look at reality and project onto it everything that is absent. We know how to preserve the "should be", even in the face of the harshest evidence that it is not.

A positive element can be recognized to it. It might be enough to mention that, sometime in the 6th century, Athenians chose to state that we don't have to be determined by what makes us asymmetrically different. They gave that normative delirium the name *isonomia* (Finley, 1963: p. 42). A few 24 hours later in history, women and men from very different social classes engaged together in violent action and, believing they were all *Citoyen*, committed their lives to a delirium of freedom. I call the reader's attention to the act of will that is present is both cases, and to the nature of its force. Something seemed false, bad, ugly or, in any case, foreign enough to allow the plausibility of the sacrifices involved in performing such acts. I propose that, in that sense, epistemology is not that far from politics: we face a world that is different from us, outside, inaccessible, and the impossibility of complete transitivity is clear. So, we select and symbolize to "discover" the world (Cassirer, 1972: p. 227). And we act it in the often-violent attempt to, creating the world, get to know it/have access to it. If that is so, it would be a sad day when we believed we were doomed to live in a world that was anything less than a full attempt at what we really want. In that sense, a case could be made in favor of the tradition that taught us to believe that we determine the world—and not the other way around.

A few operative words in the speculation above are of importance: belief, create and determine. Scientists often take beliefs for granted, though science rests on the very philosophical tradition according to which beliefs are the motionless engine that allows us to preserve possibilities, create means of accessing the world and resist to its apparent determinations. However, in the example of the distance between discourses and practices identified in the PD's Office, functioning in the normative register hasn't allowed that. Instead, a resilience to endure and reproduce a heavy *ambiguity* in the relationship between discourses and practices was learned. The issue the DPs face is that they simultaneously manifest an understanding of the nature of reality that includes the possibility of the impact of their will on it, whilst also stating that any contrary evidence/fact/difficulty somehow doesn't actually contradict them.

The ambiguity experienced by actors who breathe in the level of pressure of the *normative register* in legal institutions allows a kind of *uncertainty* that is interesting for at least two reasons. First is that it may seem normal. Uncertainty is not foreign to anyone who works in or with our "justice system". In Brazil, judges enjoy a lot of social, economic and institutional capital. There is a general belief in their technical objectivity and that their office is a direct result of their merit; they are very corporate and don't really answer to any institutional instance that is not occupied by their peers—so much so that the worst possible sanction a judge can suffer is early retirement with a full pension—and in a

[9]When highlighted in *italics*, words and expressions are analytical categories proposed by me.

country where minimum wage is R$ 1,320.00, 85% of the country's judges receive wages above the constitutional limit of R$ 41,650.92, and their salaries can vary from R$ 502,270.92 (Pleno News, 2023) up to R$ 914,000.00 (Exame, 2023). Their power expresses itself in legal procedures. There's no control over judicial decision making or precedent management, so a judge is not obliged to observe the way the same matter has previously been resolved by a colleague or a Court. Judges don't even have to answer to all the arguments raised by the parties. Here, each judge can decide according to an individual "understanding", sentencing differently from one another in identical matters—sometimes even the same judge will change his "understanding" (Nuñez, 2018: pp. 153-154)[10]. As a result, among people who work in or with the "justice system", that uncertainty is commonplace and often explicitly referred to in a naturalized manner. The second reason is that the uncertainty reaches everyone who gets in touch with legal institutions. And again, uncertainty feels normal in a hierarchal society such as ours, where it translates as the result of the presence of authority without much difficulty.

In this essay, I present part of the results of research carried out with PDs between 2020 and 2022. I seek to describe what was said and done by the PDs interlocutors who kindly agreed to grant me research interviews and allowed me to follow their activities during that time. In the end, I propose an interpretation of the role of ambiguity, its relation to uncertainty and its impact on the stability of legal institutions. The empirical research that supports the reflection set out in this essay is part of the broader effort to investigate the concrete functioning of the political institutions that make up the so-called "justice system". Here, such an effort is restricted to state PD's Offices, specifically those of the states[11] of Bahia and Rio de Janeiro. Unstructured interviews were carried out with various actors and the daily work of PDs was monitored. I noticed that the actors are clear about the distance between their concrete activity and the constitutional purpose of the PD's Offices. More than this, I realized that resolving this distance, that is, bringing the practices and discourses of its operators closer to the normative expectations associated with PD's Office under the 1988 republican order, was a common element in the concerns of almost everyone interviewed. Based on this data, I questioned the tension between the normative and the factual elements as an ambiguity inherent to the concrete manifestation of political institutions, a characteristic that, even when known, remains opaque. My objective is to advance an investigation into what ambiguity on the discursive level

[10]It would be the case to problematize the vey use of the word system to designate how "justice" is provided in Brazil, where "[…] we cannot talk about a 'criminal justice system' […] because the idea of a system presumes institutional continuity and integration, which does not happen in the Brazilian case, which presents itself in a broken way and whose agencies (police, DA's Office and judiciary) do not communicate in an articulated way and compete with each other in exercising of their functions." (Nuñez, 2018: pp. 153-154)

[11]When the words "state" is written starting with a lowercase letter "s", it refers to a Federative unit. As a Federative Republic, Brazil is composed by Federative units, 26 of which are states, including the states of Rio de Janeiro and Bahia, whose PD's Offices considered in this researched. As the instance of exercise of political power, "State" is written starting with a capital letter "S".

performs on the concrete level. In other words, I try to investigate to what extent encouraging a constitutional expectation that is known not to be realized can operate as a legitimizing and stabilizing source of the action of the "justice system", both for the institutional scope and for society.

2. Description of the Field Work, Its Circumstantial Methodological Limits and a Note on the Form of the Essay

The empirical research work began with two unstructured interviews carried out with DPs: Philip, a public defender for six years in the state of Bahia (2020), and Vivian, a defender in the state of Rio de Janeiro for around 20 years[12]. For the purpose of reflecting on the *ambiguity*, resulting from discourses and practices of the operators of the institutions of the "justice system", access to these actors was especially fortunate. In addition to serving in PD's Offices from different states, their paths, convictions, and engagement patterns seem opposite, and offered a rich panorama in view of the limits and possibilities of field research at that time of pandemic. That part of the field work is presented in sections 2 and 3. The results of interviews with and shadowing of other actors are presented in section 4. As a research strategy during isolation, I privileged working with PDs that occupied elective offices in the PD's Office, in order to increase the validity of the research's results.

Philip comes from a progressive, middle-class family. He graduated in philosophy before studying law and displays unusual critical skills for someone who, like myself, has been subjected to the deformations that almost always result from the training provided by education in two normative disciplines. Vivian is the daughter of an affluent family of reactionary Catholics. Law was her first and only training. The distance that is problematized in this article is no stranger to both. But Philip description of the PD's Office and his expectations for it are inexorably normative. Vivian, on the other hand, although revealing considerable ignorance about the republican inspiration of the service expected from the PD's Office, describes it in an enviably clear-sighted manner.

During the time I was doing field work, Joe and Terrence were recently elected for important positions regarding the PD's Office of the state of Bahia and were then acting as General PD[13] and as Director of the Superior School of that PD's Office, respectively. Joe studied law at the Federal University of Bahia (UFBA) and, as a student, worked at the Legal Support Service (SAJU), an organization created and maintained by student initiative with the objective to take part in promoting social justice through the provision of legal services to people that, due to their material circumstance, wouldn't have access to it otherwise.

[12]In order to protect the privacy of the actors and to highlight the institutional level, avoiding reducing the analysis to the subjective, I chose to replace the names of the actors who kindly collaborated with the research.

[13]The General PD is instated by the Governor, who chooses a name from a list of three PDs which results from an internal election where PDs votes are secret and mandatory, for a mandate of two years, after which she/he can be reconducted (reelected) once.

Terrence studied law at Catholic University of Salvador (UCSAL). He first had been elected General PD for the last two terms prior and is regarded as a reformer and a progressist, and his support in the next elections regarded Joe's mandates as a continuance of that progressive orientation. They are both well versed in speaking and acting in the *normative register* and breathing in its contradictive level of pressure, and their reforms show awareness about the distance between the constitutional and factual existence of the PD's Office.

All actors identify the distance between the constitutionally foreseen design for the PD's Office and the practice manifested in the daily life of the institution. And, when interpreting the difficulties faced in the concrete realization of their normative belief, despite considerable differences in degree, they all describe them as arising from factors that are both external and beyond their ability to act. In different ways, they all identify the distance between fact and norm. And, from points of view and availability for action that are also different, they all reconciled with it, as I try to point out.

The interviews began during the pandemic. In fact, it was this tragedy that allowed me to study a PD's Office in another state at that time. When I first talked to Philip, at the end of 2020, I was in Rio and what made it possible to follow his daily life was the fact that everything started to happen remotely. However, one of the many virtues of field work is that it is conducted in proximity with the studied phenomenon. In order to produce valid empirical research under the dire limitations of isolation, I chose to interview and shadow actors who 1) had different social and political backgrounds, 2) had been serving as PDs for different amounts of time, 3) presented opposed views regarding the meaning of the PD's Office and 4) were occupying elective offices.

The text I bring to the reader goes back to the moment when I began my late socialization with the bibliography and the modes of Anthropology[14]. But I am not an anthropologist, and this text certainly is not an ethnography. My way of thinking and writing and my old intellectual friends are here, only now they are accompanied by some new steps and a very new sensibility. Hence the *essay* in the title of the work. This can be of interest as a presentation of the work. It seems to me that the Form, rules, and space that ethnography reserves for authorship crystalize what today comes closest to what was once the tradition of the essay, which is dear to the Brazilian intellectual tradition. The essayist, like the ethnographer, seems to be someone who speaks with and never at the reader. On the other hand, that takes away the possibility of disregarding Form as representation of substance, which imposes a considerable risk to the essayist, to whom a recognizable model of presentation is unavailable and whose every ac-

[14]My socialization with the field of Anthropology started with the orientation Prof. Delma Pessanha Neves, whose courses of Anthropological Theory I attend whenever they are available in the Anthropology Graduate Program of the Federal Fluminense University (PPGA/UFF). For the unusual generosity and the precious training she has provided me, I take this opportunity to publicly express my gratitude to Prof. Neves. I also have been fortunate enough to have been included in the fold of researches INCT-InEAC, under the coordination of Prof. Kant de Lima, whose role in my professional education I recognized earlier in this text.

tion is a responsible authorial decision. However, in the essay, it is in the writing that the work of reflection and research is completed, granting the possibility of thinking with the reader. Therefore, in addition to the methodological investment of the research presented here, the intention of establishing the essay path of an ethnographer at the beginning of her training is added.

I scheduled a first interview with Philip in an exchange of messages in 2020. Soon after I presented a summary of the outlines of the research and the purposes of the conversation, he stated: "I understand that the problem is that the PD's Office has no identity". He then highlighted two circumstances that he considered problematic. The first referred to the presence of staff that identified very little with the tasks involved in advancing the "aptitude of the PD's Office as an instrument for promoting systemic rupture and structural disruption", which he considers to be the "revolutionary" potential of the institution. The second referred to what he considered to be the absence of institutional consistency (standardization) in the functional performance of PDs. Philip would return to this several times, in the form of a proposal for action, in order to find "a solution to the contradiction between the discourse surrounding the actions of the PD's Office and its real systemic effects", through the centralized "standardization of functional exercise protocols".

3. Shadowing and Interviewing PD Philip

When asked what he was referring to by "identity" and what he meant by its absence, Philip pointed out that the PD's Office is composed of a considerable number of members who are not genuinely linked to its egalitarian constitutional purpose. According to his assessment, such operators would have reached the position of PD due to other reasons, such as the stability of the public service, the possibility of achieving a good salary with low qualifications or, even, simply as a stage on the path to achieve higher positions, such as prosecutor and judge. Philip associated a series of effects with this. The low intensity of the connection of such operators with the institution's normative expectations would produce actors less identified with the PD's Office and its clientele than with their procedural opponents. For them, each action aimed at assisting a public that is foreign to them would be costly and, on the other hand, each negative procedural result for the defense would be less significant. Such PDs would tend to stay for less time in inland districts and would be less open to the direct work with the population, which Philip repeatedly associated with the role of the PD. Finally, all of this could be summarized in the statement that the PD's Office lacked an identity.

Philip's diagnosis is in line with the results of recent scientific research carried out with legal institutions. I would like to highlight two points in particular. The first is relevant to recruitment processes. The specialized bibliography identifies common elements in the selection pattern for the staff of institutions with different normative purposes. Among these, I highlight that 1) specific skills are not required to carry out the duties of the position, which are rarely even explained in notices (Tulio, 2019: p. 15), 2) the exams are not reflective and, on the con-

trary, test the memory of very extensive content and mostly dogmatic, 3) the criminal skills of candidates are emphasized (Idem: p. 16) and 4) those approved are mostly recruited from among the richest 1% in the country (Campos & Pessoa, 2019)[15]. It is no surprise, therefore, that such processes result in the recruitment of staff with similar profiles.

The second point results from observation of the operators' daily practices. Among the members of the so-called "state careers", it the notion that PD, DA and judge form a "judicial family" is not uncommon (Nuñez, 2018: p. 80). However, the proximity that is expected to exist between the PD and the "assisted" (Kant de Lima, 2004)[16] to provide the defense service makes PDs constantly appear to be running after their activity. The differences related to the routine and volume of work, remuneration and decision-making power of PDs are concrete indicators of the asymmetry between the members of that "family". They are not explicitly justified on a normative level and, therefore, are constantly regarded as concrete, but external reasons why the PD's Office doesn't fulfil its constitutional duty. Such elements also function as signs that help to reify the notion of superiority about which prosecutors and judges already have enormous conviction. Even the operators who became PDs "out of passion" are led to naturalize and, therefore, participate in the reproduction of judicial procedures that advance the interests of everyone, except of those the "assisted". I am referring to consultations and hearings that follow the "quick game"[17] rite (Garau & Babo, 2021: p. 458)[18], the lack of affectation in the face of the testimony of the "as-

[15]In a study carried out using data pertinent to the remuneration of State Court magistrates in the South, Southeast and Central-West regions, in 2017, and the Annual Social Information List of the Ministry of Economy of the Federal Government (Rais/ME), it was found that, in the last ten years, most of the judges recruited were already inserted in sectors of the Judiciary. This number reached 76.5% in 2012. The wages of the then candidates varied between R$ 8310.00 and R$ 10,870.00, much higher, therefore, than the average Brazilian income, which, according to IBGE data from 2019, was R$ 2,244.00 (Campos & Pessoa, 2019).

[16]"Assisted" is a native category, that is, how the person that uses the service provided by the PD's Office is referred to in the field. It is also how the access the "justice system" is referred to in the 1988 Constitution. That may be of interest, since the notion that the role of the PD's Office is a gesture of assistance differs from the conception of access to justice as a republican right, without which the very possibility of integrating the social order as a citizen is undermined. As an "assisted", a person is in a circumstance of need that fixates her/him as less than, for example, the person who is involved in providing her/him with what is missing for that citizenship to be whole. Since that asymmetry is found in the constitutional text, the Brazilian Republic presents its own normative ambiguity. In regard to the problem of social inequality, we face the challenge of advancing the constitutional goal of achieving social justice while existing under a Constitution that fixates formal inequality in its very text. At the same time, because PDs are expected to be close to the "assisted", someone they are trained to see as unequally different, and because that proximity in not expected from DAs or judges, their work is not only heavier, but is also seen as less than by the other members of the "judicial family". There is an interesting bibliography dedicated to exploring the multiple negative effects of legal inequality and its impacts on how legal institutions operate (Kant de Lima, 2004).

[17]"Quick game" is a translation of a native category used by actors in the field to designate a faster and often very informal version of a procedure.

[18]"Should I leave?" I asked reluctantly to the defender who was loosening his tie. I was probably more uncomfortable with the presence of the police officer and the woman who never took her eyes off the computer than with my own condition as an observer. "No need, this will be 'quick game'". I turned my attention to the conversation between the public lawyer and the defendant. I didn't have to make much effort to listen. They talked in a normal tone, despite the fact that they were not alone. They didn't know each other. They had never seen each other before (Garau & Babo, 2021: p. 458).

sisted"[19], the defense reduced to only what does not displeases the judge[20], the common and often vulgar vocabulary used to refer to the "assisted"[21], the acceptance that the provision will not favor the defendant[22] and the identification of the role of the PD's Office with criminal matters. The latter results from the observation of a public defender's office that forwards demands that are not criminal matters to the teaching office of a Federal University (Durso, 2021: p. 15)[23]. They all seem to be indications of the involvement of members, new and old, of all institutions of the "justice system" in a process of institutional reproduction of social inequality. And, if we keep considering equality as a purpose of the 1988 Constitution and its normative expectation for the PD's Office, that is, in fact, a problem.

However, at least two questions arise when considering the affinities between the practices of legal institutions to be problematic. Firstly, the fact that the practices or results produced by defenders must be democratic is not a good reason for them to also be different from the practices and results produced by prosecutors and judges, at least not in being democratic. If the criterion is the 1988 Constitution, all institutions of the Republic exist to achieve the same purpose. There is still no constitutional provision for the job of prosecutors to be reduced accusing and of judges to be condemning. Therefore, the fact that legal institutions move in the same direction perhaps should not be a cause for surprise. But a second question arises here. The possibility of identifying a problem in the affinities between institutions depends on accepting the premise, of normative nature, that PD's Offices should function differently from the way they do. I propose, on the contrary, to be careful not to follow, in the analysis, the beliefs of the object analyzed. It is not advisable to start by "discarding all the facts", as they obviously relate to the issue. Enough reasons have already been accumulated as to indicate that an institution is not a building (Emerson, 2006)[24], but, rather, the regular practices of its actors, which, not infrequently, result in something very different from what was originally intended to be established (Hardin, 2008)[25].

[19]"The defendant's version did not seem to affect the PD. It was as if the defendant had not said anything" (Idem: p. 459).

[20]"You should only talk to the judge if he tells you, but in your case…look, honestly, I think it's better if you don't say anything" (Ibidem).

[21]During field work observing hearings, for example, it's not unusual to witness members of the "family" referring to the defendant as "a fucked", a bad language word vulgarly used to designate a poor person: "We need to understand that the defendant is the fucked, this is his situation" (Idem: p. 460).

[22]"Even if the State has all the evidence against it, we can only try to soften the conviction, reduce the sentences, but honestly, acquittal is almost impossible" (Ibidem).

[23]This is an example of the PD's Office of Minas Gerais, in the city of Governador Valadares, where there is the curious practice of exporting the majority of cases that do not have a criminal nature to the school-office maintained by the Department of Law of the advanced campus of the Federal University of Juiz de Fora (UFJF) for the practical training of its students (Durso, 2021: p. 15).

[24]It might be enough to remember that two hundred years have passed since the publication of the American essayist's famous statement: "Every great institution is the lengthened shadow of a single man. His character determines the character of the organization" (Emerson, 2006).

[25]It might be the case to remember that three hundred years have passed since the tradition of modern skepticism presented us with a conception of institution as a social practice, often unintentional: "In the phrase of Adam Ferguson ([1767] 1980, 122), writing a quarter-century after Hume, many of our institutions are 'the result of human action, but not the execution of any design'" (Hardin, 2008).

There are no longer good reasons to forget the political element hidden by the classification of institutions as "legal" or "of justice"[26]. Thus, the problem I have been trying to address can be put in terms of the following research question: if the way legal institutions *are* is distinct from what they *should be*, what is the political meaning of persisting in identifying them with what they are not and expecting what do not do?

In one of the interviews, I asked Philip this very question. His response was not direct, but it was possible to perceive his unequivocal conviction: it is possible to give the PD's Office the identity it lacks. For him, the question that must be asked is about the means capable of achieving it. Philip seems convinced about what these means are. On several occasions, the solution to institutional problems that he associates with that absence of identity imposes the "possible degree" of "standardization" on its functioning.

4. Interview with PD Vivian

The path of any research is very bumpy, whether theoretical or empirical. To the point where no researcher can say that they have never given up on the research, without also giving up on being a researcher. I believe that field research has the peculiarity of depending on a very specific combination of skill and luck. As we know, skill demands discipline and experience. I am very lucky. And despite the dire circumstances during the pandemic of COVID-19, I got to interview Vivian, a PD whose characteristics, experience and disinhibition provided the research with precious means for interpretation.

Vivian is part of the team of PDs of the state of Rio de Janeiro and, although we were geographically close, we also spoke remotely due to the isolation that was being implemented as a measure in the face of the health crisis. During the interview, Vivian defined the PD's Office as "the right arm of the population, its gateway to everything". To this end, she resorted to her representation of the "assisted", the "people", and her attempt to know what they think: "they see the PD's Office as a mother, as affection". Asked about why she became a PD, she revealed "I wanted to be a prosecutor and, in reality, I did EMERJ[27], but I ended up becoming a PD. When I went [to the PD's Office], I didn't know what to do, I was [taken from the Capital and] thrown into the inland [region of the state]. Then we become enchanted, because, after all, there is a very human side [to the PD's work]."

By the time of our interview, Vivian had been a PD for 20 years. She was less than 25 years old when, fresh from a law school of a public and free Federal University, she was approved for the PD's Office of the state of Rio de Janeiro. That was her first and only professional experience. "At the time, the salary

[26]Especially from 2004 onwards, when on what would come to be known as "mensalão" started to be advanced, which inaugurated a period of frank political action by "legal operators" and "legal institutions" and would be central to contemporary [mis]fortune of the Brazilian Republic.

[27]EMERJ is the Judiciary School of Rio de Janeiro, which offers a prestigious and expensive preparatory course for the state Judiciary exam.

wasn't even that attractive," Vivian stated, when talking about the journey that led her to the PD's Office. As we know, although they are free, law courses at public universities tend to approve white candidates from the most affluent sectors of our social organization. In fact, the distance between the material reality she was accustomed to and the salaries offered for carrying out the role for which she was approved was the first point at which Vivian began to outline how she conceived of the PD's Office.

"There was that prejudice against the PD as a defender of criminals", "you're studying and you pass by in a suit and see those people there, it's a shame", said Vivian, pointing out other signs of class that discouraged the candidate to PD and suggesting them as the challenges that she chose to bring upon herself. But the "defensorial activity" would reward her and make sense of her decision to face that "heavy challenge". "Then you see that it's much better, you know, with religion you see. Then, when you talk to the mothers at school [of your children] on WhatsApp, you see that they have no idea", she said suggesting the social enlightenment with which the role of PD had rewarded her challenge. When asked about what the PD's Office is—he only question explicitly addressed to all interviewees—Vivian replied saying that it is "the most important institution in the country, responsible for assisting the people in everything, where they come to find information about anything. Society does not understand the grandiosity of the function".

Despite highlighting that "grandiosity" of her role, Vivian did not recognize a political dimension to it. Her speech suggested that the meaning of the institution is confused with the representation she makes of herself. In this sense, occurrences such as "my district", "my judge", "my employees", "my team", my interns" and "we" to refer to institutional spaces and colleagues seem indicative of a certain identification between the actor and her position. Likewise, they are suggestive of her representation of this position. When asked about her daily work, she spoke in terms of "[...] there are colleagues who say 'I must have thrown stones at the cross'[28], because serving the people is tiring, we are held responsible for everything, for the delays in the Judiciary, for everything. But it depends, you know, if you have a legal network, with the Social Assistance's Office, with the City Hall, if you make this link, they resolve it". Thus, Vivian suggests that her role as PD depends on her personal characteristics, virtues and skills. The availability for heavy—but grandiose—work and her ability to—nonpolitically—establish networks with other institutions are among them. Depending on this skill, "even the city hall makes the job easier", she remarked, suggesting a judgement regarding the availability for work of institutions which, unlike hers, she regards political. The use of "even" as an adverb of inclusion signals Vivian's appreciation of the space of politics, which is regarded, at the same time, as a possible means and as a potential embargo to that grandiose function. This is an interesting occurrence of a very common practice among

[28]An expression commonly used in Brazil when one ironically suggests that a certain negative circumstance is undeserving by affirming it as the consequence of a sin.

legal operator—and among liberals in general—to individualize the causes of the successes and failures of any phenomenon and/or any initiative—in this case, the "great" work of the PD is made possible due to her personal ability to nonpolitically deal with political actors. Next, it seemed interesting to her to point out that his ability to establish collaboration with the municipal executive power has "nothing to do with [a political] party". The correspondence between "politics" and "party" seems automatic in her speech. Her work has "nothing to do" with politics and, therefore, despite any of her skills, "when the mayor changes, there is no more", she pointed out.

Vivian also associated the word "politics" with the notions of visibility, appreciation, and popularity of the PD's activities. When talking about her own activities, she made a point of distinguishing them from "politics", stating that her "day-to-day life is like that of an ant, the inheritance law, the alimony, the repossession of land". However, although the distinction denotes the humility she associates with her work, she then takes care to highlight that "grandiosity" again, by stating that "we see how society is doing with the increasing demands" that arrive at her office. But, according to Teresa, "we don't have big demands". One could conclude that, since demands are small, Brazilian society is doing well. However, the "demands that increase", which are not considered "big demands" and that fills her days with that "little ant's work" are the "non-payment of alimony", "search and seizure of an Uber driver's car [who failed to pay a bank for a loan installment]", "over-indebtedness" and the "confiscation of wage". Although she claims that what she does provides a measurement of how society is doing, she is not clear about the inexorable relationship between property and inequality. This is how the demands for access to land, housing, work and subsistence are placed without distinction alongside those for the hereditary transmission of assets and those that demonstrate the enrichment of financial institutions, without any of them being considered "great" by Vivian. And this is how the equally inexorable relationship between law and politics seems counterintuitive to her.

Asked what would constitute "big demands", Vivian stated "I don't have anything, like, ah, human rights thing, 'quilombolas'[29], a very large invaded[30] area". Her choice of vocabulary to refer to possibly legitimate "occupations" preventively negatively as "invasions" is significant. As well as the fact that, although considered minor, "little ant's work", the demands that reach Vivian reflect themes central to private property. All of them are among the most important causes of material inequality, the very phenomenon that gives cause to the existence of PD's Office and deems it a necessary institution.

Still regarding the matters that could be distinguished from those "of little

[29]Referring to causes regarding the definition of land as reminiscent from *quilombos*, areas where enslaved women and men who managed to escape their oppressors, created communities and organized resistance. *Quilombolas* is the name used to refer to those women and men.

[30]Brazil has never conducted its process of agrarian reform and it is commonplace for elites to refer to the act of occupying unproductive or devolved land as "invasion", not as "occupation", which denotes the elitist understanding of access to land not as a right, but a privilege.

ants", Vivian says that "every now and then a transsexual shows up wanting to change name, but it is very rare". That is a reference to the possibility to rectify the civil registration, which was granted (STJ, 2009)[31] to people who undertook a gender transition process and is among the demands of the population whose violent extermination ranks Brazil as the isolated global champion for the last 14th consecutive years (ANTRA, 2023)[32]. Providing public service to that population is not part of the "basic" activities that Teresa is proud to take care of, to which she identifies, on one hand, the grandiosity of PD's Office's function, and on the other, her own humility and, consequently, her identity as a PD.

Immediately thereafter, Vivian stated: "Family Law is my business". Only an actor well versed in ambiguity could be reminded of family when talking, however briefly, about the demand for adequacy between the name (given by parents) and the existence of a person and state its asymmetric difference from the demands gathered under the rubric of Family Law in such proficient swift manner. The demands for rectification of civil registration are very few and, for the humble defender, "grandiosity" is essential. The volume is very important, as the amount of work is the basic sacrifice. Also, "Family Court law is all the same", "it doesn't challenge you to study, but it's a lot of volume", Vivian added, enumerating other elements of her sacrificial identity.

As she speaks, Vivian's peculiar interpretation of the PD's assistencialist normative identity is projected onto a desert of ignorance regarding the condition of the poor Brazilians people. When she states that in "the practice in the Civil Court where there are issues of possession and property, people think that empty places are theirs to take, it's a huge problem!", she does not seem to consider that the state of calamity regarding housing in Brazil may drive the actors to action and that people may have some reason in thinking that an empty space is necessarily available for occupation. The "Baixada (Rodrigues et al., 2023)[33] is complicated, a lot of land conflict […] but nonviolent", she cared to emphasize, as if warning that her activity is different from those involved in the necessarily violent dimension of social conflict. When I asked her if the issue in Baixada had to do with the property she replied with an alarmed "no!". Before I could follow up, she continued: "the problem is the social function of possession". I was about to ask her whether she meant that the problem was the legal possibility of possession in good faith or the understood its limits when she repeated "people think

[31]The possibility of a transgender person to have his/her correct name registered in documents is still not a right in Brazil, for a law recognizing it has never been approved by Congress. It's not a freedom, therefore, but an authorization that results from a judicial decision in which, in 2009, Brazil's Superior Court of Justice (STJ) allowed a transgender woman to change her name in her birth certificate.

[32]According to the *Report on Murders and Violence against Brazilian Travestis and Transsexuals* of the National Association of *Travestis* and Transsexuals (ANTRA), in January 2023, for the 14th consecutive year, Brazil was ranks as the world's nation with the highest number of transgender people violently killed.

[33]Baixada Fluminense is a region in the Metropolitan area of Rio de Janeiro. Its population of about three million, makes it the second most populous region in the state, one of the lowest in Human Development Index (HDI) and one of the highest in urban violence (Rodrigues et al., 2023).

that empty land is theirs to take". Therefore, to Vivian, the problem is not the inequality which produces the poverty that her Office exists to address; the problem is the poor people in the low-end inequality, who insist in not understanding that property law was not created to assist them. She immediately added that "especially there (Baixada), where there isn't *My house*, *My Life*[34], there's a housing problem". Thus, Vivian's conviction that the "problem" is *a poor understanding* of what is "social function" seems to reveal the basic prejudice to inform how she saw the relation between inequality, property and conflict. Her understanding of that relation as a social problem seemed conditioned to a certain kind of treatment, that is, to measures whose nature she identified with that of her Office.

Vivian's statements about the relationship between the PD's Office and other "justice" institutions are suggestive. In 2021, after several scandalous involving the practices of prosecutors became public, some criticism was directed at the DA's Office even from affluent sectors. Addressing her relationship with the institution, Vivian stated that "nowadays I see the DA's Office wanting to get rid of demands, everything is 'I'm not interested, I'm not going to do it'. We—the PD's Office—are here to embrace, not to exclude from our functions. We are here to seek more attributions and embrace more", she said adding yet another element to her sacrificial self-image and revealed the meaning of naming certain demands as "big". "That's why the possibility of Collective Action was a gift", she stated in reference to the Constitutional Amendment that recognized PDs with the postulatory capacity to initiate Collective Action. But only to immediately problematize it. "Everything will depend on the PD's thinking, what will or will not happen. I can't start a Collective Action and make a gigantic mess, go totally against it. I don't know what is the institutional stance is in these cases". Anyway, it's "a gift", but no thanks.

Our interview was ended due to Vivian's commitments to her children and a subsequent conversation was discouraged with a swift "we're done, right? Great".

5. Notes on Interviews with PDs Occupying Elective Offices

As mentioned earlier, my research took place between the years 2020 and 2022. Therefore, it started during the second half of the administrations of the state and federal executives elected in 2018. Since the *coup d'état* that illegitimately removed the President Dilma Rousseff from her office in 2016, very recessive conceptions had become more loudly vocalized in the public space. Almost all so-called progressive agendas—even basic ones, like promoting democracy, combating inequalities, advancing economic, social, and political development,

[34]*My house, My life* is a public policy program created in 2009, during President Lula's second administration, as an attempt to tackle the housing deficit in Brazil. In 2011, President Dilma Rousseff expanded the program as well as guaranteed that, in case of dissolution of the family unit composed by a woman and a man, the property stayed with the woman, recognizing the statistical fact that in a sexist society, the family household responsibilities fall on the women.

etc.—became object of attack. This movement expanded to the limit of including validity of science among its targets. It is not possible to preemptively single out the main causes for the contemporary expression of the classic relationship between political authoritarianism and moral conservatism, that is, without dedicated research (Pimenta & Andrada, 2021)[35]. But there aren't very good reasons to consider its possibility without the diligent participation of actors and institutions from the so-called world of law (The Intercept Brasil, 2019). Evidence of the effects of their actions is identifiable in the results of the 2018 electoral election. The most eloquent of which is, without a doubt, the "preventive impeachment" (Lessa, 2018)[36] suffered by President Luiz Inácio Lula da Silva, which directly compromised, on the one hand, all candidacies on the left in the political spectrum and, on the other, allowed free passage to the growth in popularity and, subsequently, the lamentable election of Jair Bolsonaro to the highest post in the Republic (Magalhães, 2018). However, another piece of evidence is even more relevant for the purposes of my argument and equally deserves to be preserved from oblivion. I refer to a specific choice made by the "excellent" ministers of the Federal Supreme Court (STF) who, in September 2018, confirmed the decision taken by the just as "excellent" ministers of the Superior Electoral Court (TSE) to cancel around 3.4 million voter IDs under the pretense of absence of biometric registration.

Approximately half of the voter IDs canceled by those decisions belonged to residents of states of the northeast region of the country (Junqueira, 2018), which is notably constituted by a progressive majority[37] and concentrates the largest number of supporters of President Lula. The decision is consistent with the stance taken by the Supreme Court—and by the judiciary in a broader sense—throughout all the episodes suffered by Brazilian democracy since 2004 (Oliveira, 2012). Legal actors and institutions actively participate in political life and produce radical effects on it. Acting as control institutions, this is exactly what is expected of them. However, control is what they rarely practice—most of all, they are incontinent when it comes to self-control. On the contrary, later, when publicly justifying their powerful *contributions* to the republican *débâcle*, they practiced a very curious form of technical lament, which presented their often-arbitrary actions as if they were limited by a contradictory irresponsibility (Jurídico, 2012; Pompeu, 2021). However, not even that was offered by Supreme Court's excellencies to the approximately 1.7 million voters in the northeast re-

[35]In an earlier work, Prof. Andrada and I investigated the meaning of that relationship during the 21 years of civil-military dictatorship (1964-1985) (Pimenta & Andrada, 2021).

[36]"This process begins with the impeachment of President Dilma Rousseff and ends with the preventive impeachment of Lula" (Lessa, 2018).

[37]It is worth reviewing the historic edition of Globo News' Manhattan Conection program from 2014, in which political scientist Alberto Carlos Almeida offered clarifications to commentator Diogo Mainardi about the electorates in the state of São Paulo and the Northeast region of the country (https://www.youtube.com/watch?v=VOU_cW6eZCk). And, shortly after the result of that year's election, Mainardi's statement about the latter (https://www.youtube.com/watch?v=vSDMfbQHdXs&t=24s).

gion of the country who, on September 27th, a few days before the first round of the elections, were deprived of their political rights. Therefore, in the 2018 elections, legal actors were decisive are responsible for the rise to power of Bolsonaro.

In the same election 2018 where Bolsonaro was made President, when President Lula was in prison and politicians were fleeing the Worker's Party (PT), the electorate of the state of Bahia chose a "petista"[38] for governor. The data seems to be of interest is one thinks that Brazil has continental dimensions and representations of the PD's Offices might present a local element, given that they are state institutions. Specifically in the Bahian case (Bahia, 2019). For at least four reasons. Philip, although from Rio de Janeiro, is part of the institution's staff and manifests genuine concern with the normative expectation of his office. In the same way, PDs from Bahia had then chosen progressive General PD in the last 4 biannual elections. The PD who was then President of their Association advocated a progressive public discourse to strengthen the institution's image opposite to other "state careers" and with society. Finally, when the institution began to organize the next exam for recruiting new PDs, several progressive innovations were included to recruit profile of PD that presented elements of that absent "identity". Therefore, the PD's Office of Bahia seemed interesting to research the meaning of the resilient distance between the constitutional expectation and the practices of the actors in an environment where PDs involved both with the end activity and with institutional building didn't seem to shy in the face of the task and, on the contrary, seemed actively engaged in tackling it.

For the last 8 years by the time of field work, PDs in Bahia had repeatedly elected Directors whose mandates showed that concrete and symbolic measures were being taken to promote proximity between the institution and its clientele. When I interviewed Joe, in 2021, he had recently been reconducted as General PD and affirmed his mandate as a continuance of a period of reforms that had been ongoing for the past 3 mandates, which aimed at the promotion of concrete and symbolic proximity of the PD's Office's with the public that seeks its aid in finding access to the judicial provision. They included, for example, 1) The promotion of a culture of prolonged permanence of PDs in districts in the interior of the state; 2) The maintenance of an active Ombudsman's Office to serve as a mediating body between the population and PDs; 3) The prescription that PDs maintain a direct and permanent dialogue with social movements. On a symbolic level, there had been investment in 4) implementing the use of inclusive vocabulary and 5) producing institutional normative instruments to permanently fixate innovations that include, for example, the use of informal attire—jeans and t-shirt—to carry out any activities inside and outside the institution. According to Joe, those measures responded to the diagnosis that the identification between PDs and the other institutions of the "justice system" com-

[38]The acronym of "Partido dos Trabalhadores" is "PT". Hence, "petista" is how a politician, member or supporter of "PT" is referred to.

promised the realization of the normative purpose of the Office.

In one of my early conversations with Philip, in 2020, he had attended one of the meetings that, a candidate for reconduction, Joe held with the regional expressions of the PD's Office to answer questions from PDs about his program for the next two-year mandate. During the meeting Philip addressed him with what he characterized as "a provocation":

"How can the PD's Office fulfil its potential to operate as an instrument of access to justice, be a counter-hegemonic institution and a means of resistance alongside traditionally oppressed groups, when it has no identity, when it has, within its ranks, people who are more concerned with the differences between PDs, judges and DAs, than with the practices that are relevant to for the 'defensorial activity'? What do you propose as a viable means of action for the PD's Office so as not to just be reduced [to a part of the justice] system?"

Philip was in his early 30's and manifested that kind of morally sound and politically irresponsible energy that is so beautiful in those who haven't yet been brutalized by loss that made me wish I could have witnessed it. In any case, the range of his provocation far exceeded his interlocutor. He didn't tell me the candidate's answer but made sure to express his disappointment. He then insisted and proposed that "a measurement must come from the institution, a means of 'standardization' of the conduction of the defensorial duties, perhaps through a 'booklet'". The candidate responded negatively, in the manner of someone running for elections.

Later, Philip contacted me to ask for bibliographical references of Marxian works about law. I thought he was preparing for a Graduate Program exam, until he mentioned that I couldn't be anything too challenging. He finaly told me he had invited to work as part of organization committee of the exam that would make the next process of recruitment of for the career of PD of the state of Bahia. I celebrated that work engagement and pointed out how interesting it could be to take part in such process and learn about a powerful way through which institutions incessantly reproduce themselves. "Yeah, but the promise is that this exam is going to allow room for some innovations, and I want to influence it", he said. When I asked whose promise was it and how he had gotten involved in the organization, he revealed that it was an invitation of the recently reconducted General PD.

Two of my bibliographical suggestions were included in the program, Domenico Losurdo's Counter-History of Liberalism, and Silvio Almeida's Structural Racism. Upon Philip's recommendation, in July 2021, the previous General DP and now Director of the Superior School of that DP's Office invited me to participate in the series of virtual lectures that would be made available to present the bibliography to the candidates, called Pedagogy of Hope. Esdep (2021)[39]. It is important to say that Professor Losurdo's monumental research enterprise is exhaustively dedicated to offering subsidies capable of demoralizing fallacies

[39]Available at: https://www.youtube.com/live/NrBwiYWuwkw?feature=shared

disseminated by the liberal tradition since the 17th century. Its inclusion in the program of an exam of recruitment of a legal institution is probably unprecedented and seems to me to of great importance. Firstly, because the liberal theses he carefully destroys still find an army of heralds and followers willing to advance them today. Secondly, bourgeois law is regarded to have an important role in the fixation of "free institutions" and, as such is itself one of these theses.

Perhaps one cannot ignore the sign and impact produced by the presence of a Marxist author and a work critical of the liberal tradition in the program of an exam for legal careers. Only research dedicated to evaluating its results can assess the meaning of this type of innovation for the recruited profile. But somethings may have already happened. Around 8806 people signed up and 6,608 attended the test sites to take the 1st "stage" of the exam[40] (DP/BA, 2021). Not everyone read the work, certainly. But these people attend "preparatory courses" and buy books. Some impact on the reading horizon of the law graduate, on the material and "preparatory" syllabus and, perhaps, some editorial influence on the circulation of the work may well have resulted from this quality of measurement.

Besides the new bibliographical orientation of the program, the exam of 2021 didn't present substantive alterations when compared to the previous, which took place in 2017. The percentage of reserved vacancies for the black population did not change significantly—approximately 27% vacancies were reserved in the 2021 exam and 30% reserved in the 2017 exam[41]. The phenotypic criteria and the provision of hetero-identification panels for evaluating applications for reserved places were also maintained[42]. Likewise, the 2021 program included "Institutional Principles and Attributions of the Public Defender's Office of the State of Bahia" and "Aspects of the Constitution and Formation of the Population and History of Bahia" as points of to be object of evaluation.

Also, regarding the structure and evaluation criteria, the changes foreseen by the notice were not significant (DP/BA, 2021-2: pp. 12-13). In the 1st "stage", "selective objective test", the minimum of 25% correct answers per "block" of questions and 60% in total for approval for the 2nd "stage" were maintained. As for the subjects and number of questions, only blocks 1 and 3 underwent changes. To block 1, previously composed of 24 questions, two more were added, as well as two new subjects, Environmental Law and Social Security. Block 3 consisted of the same subjects, but presented two fewer questions, going from 32

[40]"3.1 Of the 17 (seventeen) vacancies, eleven correspond to broad competition; one is reserved for candidates with disabilities and five are reserved for candidates who are members of the black population, to be completed in accordance with items 1.1 of Chapter IV and 1.1.1 of Chapter V of this Notice" (DP/BA, 2021-1).

[41]"Ancestry alone is not a sufficient characteristic for belonging to the black population, for this reason any candidate without corresponding phenotypic characteristics will not be considered to belong to the black population" (DP/BA, 2016; DP/BA, 2021-2: p. 1).

[42]"After the results of the last stage of the competition are announced, the special committee will conduct an interview, called in a specific notice, with all classified candidates registered for the vacancies reserved for the population black, with the specific and exclusive purpose of evaluating the phenotype or direct ancestry of the candidates' relatives" (DP/BA, 2021-2).

to 30 questions. Thus, the candidate would be considered "qualified" if he/she gave the correct answer in at least 5 of criminal matters; 6 of the questions pertinent to aspects of the people and history of Bahia; 6.5 issues of human rights and constitutional, administrative, environmental and social security law; and 7.5 for civil matters. In this sense, the notice appears to preserve the orientation of favoring candidates with skills related to the themes of "minorities" and property.

I highlight two measures that were taken during the organization of the 2021 exam. The first of these refers to the "organizing committee", responsible for the program of the exam, which was composed as follows: two PDs—a member of the Association and Philip; the then ombudsman; and a member of civil society linked to the causes of racial equality, the protection of traditional peoples, territories, and cultural/religious forms. The second concerns important changes in the 2021 program of the 1st stage, specifically regarding the questions of Philosophy, Philosophy of Law, Sociology and Legal Sociology. This is evident both by the presence of new themes and by the bibliography chosen by the commission, which includes a much larger number of Brazilian authors[43], two works dedicated to the theme of inequalities, three history books, and three works dedicated to the relationship between political discourse, political theory, liberalism, authoritarianism and democracy[44].

As for the composition of the "organizing committee", this seems to signal the concern with bringing the institution closer to its clientele, in at least two ways. During our conversations, Miguel several times highlighted how important the role of the Ombudsman's Office is in bringing the defense and society closer together. Not just as a mediating instance. Before, it would be up to the Ombudsman's Office to provide defenders with information that would make them capable of identifying the social dimension of problems that only reach the defender's office in the form of individual demands. This would provide an additional element of efficiency to the defense activity, as it would enable the defender to interpret it as a useful device for issues that do not only manifest themselves in isolation, but that affect a community, eventually activating institutions capable of achieving the same scope. Thus, the inclusion of the ombudsman among the members of the "commission" somehow makes it possible for her specific perspective to be reflected in the decisions taken for the notice. It may have been with the same intention that the presence of a member of civil society linked to the causes of racial equality and the protection of peoples, territories and traditional cultural/religious forms was included. Regarding this, it is also important to highlight the importance of two operational categories when

[43]Compared to the 2017 program, which included a single Brazilian author, the 2021 program included five works by Brazilian authors, namely, Racismo Estrutural, by Silvio Almeida, For an Afro-Latin American Feminism: essays, interventions and dialogues, by Lélia Gonzáles, Post-democratic State: neo-obscurantism and management of undesirables, by Rubens Casara, Citizenship in Brazil—the long road, by José Murilo de Carvalho, and Law in primitive societies and Introduction to critical legal thought, both by Antônio Carlos Wolkmer.

[44]I refer to the works of Rubens Casara, already cited, Giorgio Agamben and Domenico Losurdo.

thinking about the candidate profile that was intended to be recruited, namely, the "vulnerable" and the "vulnerable in the State". To this end, a small digression into the conception of equality encouraged by the public defender's office in Bahia, and its importance for the reproduction of the institution, explained by the communication made by the body representing defenders as a professional category.

6. The Episode of an Ill-Fated Innovation in the Recruitment Exam for the PD's Office of Bahia

During the organization works, the new bibliographic references were interpreted both by Philip and Terrence as important measures for the "recruitment of a more critical profile" for the new staff at the PD's Office of Bahia. The impacts and limits of such innovations would be revealed to the actors during the course of stages of the exam. That is because, in the 2nd stage, consisting of the preparation of "procedural documents" and "essay" questions, the "organizing panel", the company responsible for preparing and applying the exam, including a question about the "prisoner's profile" in Brazil. Some of the candidates supported their answers in the bibliography dedicated to the issue of racism that structurally characterizes Brazilian society and, therefore, its institutions, which were included in the exam's program.

However, the answer key provided by the "organizing panel", the Carlos Chagas Foundation, had predicted answers based on a work by the Argentinean jurist Eugenio Raul Zaffaroni, which, however, had not been included in the program made public for the candidates. Now, the program proposed a new bibliography, part of which has a good chance of reaching the public with a degree in law dedicated to exams for the first time. This is certainly the case with the work of Silvio Almeida, which became public in 2019. Given the necessity to "have at least 03 (three) years of legal activity, defined under the terms of the Exams Regulations" imposed on candidates as a requirement for investiture in the position of DP, none of the candidates had access to reading it during graduation. And, as it is not a common bibliography in exams, the chances are considerably high that the 2021 program had given them their first opportunity. The impacts exerted on the reader by a new interpretation reference are not insignificant, especially if such a key refers to a problem with the explanatory power of structural racism. Even more reasonable is its mobilization to answer about the "prisoner profile" in Brazil, where the color and age of the preferential clientele of prison institutions, in addition to being widely demonstrated by science, stands out even to the observer less familiar with the issue of racial inequality. Furthermore, the inclusion of this bibliography in the program had the specific purpose of composing the measures taken with a goal of recruiting candidates closest to the PDs profile and identified with the institution's duty to promote democracy, social justice, etc.

The distinction between "organizing committee", "organizing board" and

"examining board" can provide some clarification. But it also offers perplexity. The first is the group of actors chosen to prepare the competition notice. The second is responsible for administering the tests and preparing questions for the objective and essay stages. And the third is responsible for evaluating candidates in the oral test, the 3rd stage. However, "organizing panel" is the name given to the company hired to apply and prepare the test questions for stages 1 and 2. This means that the institution outsources perhaps the main stages of its recruitment process. This is not a peculiarity of the public defender's office. On the contrary, although there is no normative instrument that requires it, exporting the task of recruiting staff is a common practice for legal institutions. The operative expression here is "legal". Because, even at the University, where academics have the custom of including themselves among those in charge of selecting future colleagues, there is, in law departments, the unusual practice of composing exam and title competition boards exclusively for "external" members. The argument is that this gives greater objectivity and, therefore, fairness to the event. In the world of law, distrust and belief in objectivity form a strange compound and reach the limit of self-denunciation.

It is not unlikely that this reveals the effects of the inquisitorial ethos of systematic suspicion that characterizes Brazilian political institutions, including legal ones. This aligns with the hypothesis of stabilization of ambiguity advanced in the work in which, because the being "does not exist", it is not controlled either explicitly or implicitly in the field of law, or in a comprehensive sense, nor among the members of the University. In any case, outsourcing recruitment necessarily creates some noise between execution and projected intentions for a competition—in this case, the approximation between institutional practices and normative expectations of a legal institution.

In dealing with the issue, the defender's office recalled the ambiguity that it had intended to help overcome. Many candidates were dissatisfied because, in the bibliography indicated for the Philosophy test, relevant to the 1st stage, there were anti-racist authors who specifically emphasized structural racism, but such knowledge was not privileged in the criminal law test in the 2nd stage. The institution interpreted it as a mistake on the part of the candidates, since the bibliography was indicated for the Philosophy test, not the criminal law test. "They wavered, but they wavered in good faith," said one interlocutor. And that a reasonable and, more than that, dominant point of view on the discussion of incarceration was demanded—the perspective of Eugenio Raúl Zaffaroni. Furthermore, it was noted that the evaluator was a specialist in the work of the Argentine criminal lawyer. The candidates' resources were read as an appeal to the "spirit of defense", from which the prevalence of the racial dimension could be deduced.

It turns out that, although it can be questioned that many of the candidates who took care to follow the direction that the institution intended to give to the competition ended up not being recruited, the public defender's office is a legal institution. And, in this sense, he will not hesitate to rationalize the effects of his

most innovative decisions, according to his most regular habits. Thus, the privileged opportunity of the competition would soon be dissociated from the possibility of recruiting "a more critical profile" to join the defense staff. This "profile" would not even change that much due to a notice. This is because the "applicant" would study "simply with strategy", becoming ready to answer what the notice suggests as expected from the answer—which could be mobilized as a tool to better recruit, as in the case of the answers observed the proposed bibliography, to the detriment of what was only supposed. Finally, it was argued that, even if the notice resulted in the recruitment of "qualified" people, its meaning would be nothing more than the recruitment of people with some sensitivity and empathy, but not necessarily able to think about society "critically". This seems to signal that the divergent forces implicitly or even unconsciously present need to be appeased. Managing a legal institution made up of "revolutionaries" is not exactly an easy task.

Final Considerations: Ambiguity, uncertainty, and stability of legal institutions, *bourgeois caritas* and its role in Vivian's acute understanding of the PD's Office

In this essay, I presented part of the results of a research carried out with PDs between the years of 2020 and 2022. I began with two problems. At the institutional level, although derived from an egalitarian objective of the 1988 Constitution, the PD's Office composes and legitimizes a "justice system" that operates as a vigorous reproducer of inequality. At the level of the actors, the problem is that PDs, although aware of numerous factual obstacles that deem their achievement impossible, define their Office according to that egalitarian constitutional goal.

My interest in researching the PD's Office has to do with the recognition of its central importance regarding an essential value of any republic, that is, universal access to justice and its role in universalizing citizenship. Following the tip posed by Prof. Kant de Lima, which I presented in terms of the training in operating in the normative register that jurists receive, I questioned the political meaning of reaffirming a constitutional goal that is known to never be achieved as an *ambiguity*, whose effect of *uncertainty* and reveals the *stabilizing meaning* of discourses and practices in a juridical-political institution that was constitutionally fixed to promote change.

I tried to describe what was said and done by the PDs interlocutors who kindly agreed to grant me research interviews and allowed me to follow their activities. The empirical research work began with two unstructured interviews carried out with DPs Philip, a public defender for six years in the state of Bahia, and Vivian, a defender in the state of Rio de Janeiro for around 20 years. And, while working with other PDs, as a research strategy during isolation, I was privileged to work with PDs that occupied elective offices in the PD's Office, in order to increase the validity of the research's results.

I presented the discourses and practices of PDs from the state of Bahia as manifestations of actors that make an institution that seems genuinely invested in giving the egalitarian constitutional goal a concrete realization. I was lucky

enough to follow the organization of that PD's Office last recruitment process. During that exam, uncertainty allowed the reproduction of the institution in its current terms and favored over the recruitment of actors with a new and more democratic profile.

I also presented the discourse and practices of PD Vivian, in whose understanding of the PD's Office ambiguity seems absent and where innovative measures are object of subtle but assertive criticism. At first, Vivian seemed to me as someone whose class fidelity impeached a complete understanding of that egalitarian goal that was thought of but the 1988 Constitution for her Office. However, as I moved forward in my research, I went back to my notes on her interview and, after the result of the recruitment process of the PD's Office of Bahia, it occurred to me that Vivian's understanding of the PD's Office and the necessity of innovations had an element of clairvoyance.

Vivian's happiness is not in loud innovations, which she didn't seem to identify as institutional victories. On the contrary, she seemed just as reticent about them as she seemed suspicious of those "big" demands. She might have had a point. They exceed the necessary for the reproduction of her identity and that of her Office—which was becoming clearer to be one and the same for a reason. Both actor and the position share important results of their humbly grandiose and constantly reaffirmed sacrifice. It might be challenging to argue against the "work of the little ant" who takes care of what is laborious but needed, however limited its potential to alter the sad circumstance that made it necessary. The same challenge would be faced in arguing against an office created to guarantee that the most victimized by unfairness find access to justice, however, limited its potential to alter that unfairness or grant that access. On the contrary, a case could be made in favor of adhering to Vivian's concept of the work of a PD and preserving the distance between what's expected from the PD's Office and what it delivers. In Brazil, State careers were historically created for and occupied by members of affluent sectors to maintain social structure exactly as it is. Vivian is her historically rightful place. On the other hand, one must wonder what the destiny of the PD's Office would be if its operators suddenly found means to actually impact our stably hierarchical society with concrete reduction of social inequality.

Any glance at the notes from the interview with Vivian indicates that, in that Regional Civil Court of Baixada Fluminense, the PD is as much in the shadows as the municipality in which her office is based is forgotten. Advancing on the voluminous day-to-day of civil law, the responsibility in implementing the egalitarian expectation of the position she occupies is as small as the visibility of the "basic" "ant's work" to which she dedicates herself. In a sort of economy of responsibilities, rewards and identities, Teresa opted for less of everything with suggestive ease. With this, she offered me important research information: the ambiguous relationship between the normative expectations for the PD's Office and practices of its operators may be less conflicting than I expected. The hardships of everyday life can provide a PD believer with enough cognitive comfort

to cover every time he fails to do what he should. Vivian has more clarity than that, she doesn't need it, and she's no failing. In Baixada Fluminense, a region vilified by all forms of expropriation, she selflessly welcomes material inequality and, "embracing" poverty, preserves it in the traditional elitist form of charity.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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