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Older adults deprived of liberty: "their pain hurts more"

Maria Cecília de Souza Minayo (https://orcid.org/0000-0001-6187-9301) [1]
Patrícia Constantino (https://orcid.org/0000-0001-5835-0466) [1]

Abstract *This essay reflects on the incarceration of older adults in the United States (USA) and Brazil and mainly aims to observe how the situation is consistent and differs in the two countries. The bibliography on the subject is much more affluent and consolidated in the USA. Several discrepancies are noted among scholars between data and authors' views. However, they all agree regarding (1) the increased number of incarcerated older adults, (2) the inadequacy of prisons to house them, (3) the accelerated aging due to lack of healthcare, (4) the experiences of physical, musculoskeletal, and mental comorbidities, and (5) the high costs of treating them adequately. Most senior prisoners are poor Black and brown men and people with some specific social fragility. A positive factor underscored by Brazilian and North American researchers is the cultivation of spirituality, which helps older adults in prison keep some well-being. However, incarcerated older adults require much other care, and few initiatives consider the specific needs of this social group. The time has come for Brazil to face this issue, whether out of social responsibility or human solidarity.*

Key words *Older adult, Person deprived of liberty, Physical health, Mental health, Prison*

[1] Departamento de Estudos sobre Violência e Saúde Jorge Careli (Claves), Escola Nacional de Saúde Pública Sérgio Arouca (ENSP), Fundação Oswaldo Cruz (Fiocruz). R. Leopoldo Bulhões 1480, Manguinhos. 21041-210 Rio de Janeiro RJ Brasil.
maminayo@terra.com.br

Introduction

This essay reflects on the incarceration of older adults in the United States and Brazil and mainly aims to observe how the Brazilian situation aligns with and differs from what occurs in the USA, whose bibliography is the most affluent. We should know that older adults are deprived of liberty in almost every society, but America ranks first and Brazil fourth regarding their numbers. The elderly population has been growing under significant upward trend with increasing longevity.

In the United States, studies underlying prison demography agree that the age threshold to consider a person deprived of liberty as an elderly is 55 years. For example, Greene *et al.*[1] and Kaiksow *et al.*[2] point out that a 50-year-old incarcerated corresponds to a 75-year-old free man. Patterson and Wildeman[3] and Berg *et al.*[4] consider that each incarceration year translates into two biological aging years.

In the Brazilian case, the studies are still based on the thresholds described by IBGE. Therefore, differences begin with considering the age of 60 or older to distinguish people incarcerated as older adults in the country[5], with other legal delimits. The provisions of any benefit due to the advanced age for the accused or convicted senior defendant remain unchanged under the 1940 Penal Code, which considers only people aged 70 and more[5].

This essay specifically focuses on the health of older adults deprived of liberty, with or without geriatric conditions. "Geriatric conditions" refer to functional, mobility, hearing, multimorbidity, urinary incontinence, falls, and mental and cognitive disorders problems experienced by older adults. Functional disability is defined as the difficulty in performing one or more activities of daily living (ADL), such as bathing, dressing up, eating, going to the bathroom, and mobility, or difficulties in performing instrumental activities of daily living (IADL) such as going out alone, going to the bank, shopping, crossing the streets, and driving. Multimorbidity is defined by two or more medical conditions (hypertension, diabetes, cancer, heart and kidney diseases, falls, arthritis, HIV and hepatitis C, urinary incontinence, and mental and cognitive disorders)[6]. In the Brazilian case, the 2019 PNAD[7] found 17.5% of the elderly population in this condition. According to Munday *et al.*[8], 20% of the population over 55 in US prisons is dependent.

Incarcerated older adults in US and Brazilian prisons do not receive any lenience due to old age. Several types of vulnerability intersect in the imprisonment of older adults: pre-incarceration vulnerability, aging-related vulnerability, and vulnerability experienced in daily prison life under the punitive logic[9]. Brazil also does not recognize the mandatory precepts of the Elderly Statute[10] by the Penitentiary Administration. However, this Statute mentions that: "Older adults enjoy all the fundamental rights inherent to the human person, without prejudice to the full protection referred to in this law, ensuring all the opportunities and facilities to preserve their physical and mental health and their moral, intellectual, spiritual, and social improvement in liberty and dignity" (art.2)[10]. According to Ghiggi[5,11], the fact that this statute regulates the rights of people aged 60 or over, makes it exceed any other law, as it protects them comprehensively. However, it is silent on elderly offenders.

This essay ponders the most current references on older adults serving a deprivation of liberty sentence in the United States and Brazil, showing some standard situations and specificities in both countries.

About American and Brazilian older adults deprived of liberty

Scholars from both countries show that the higher incarceration levels of older adults follow the increase in life expectancy. They point out that prisons built to accommodate young offenders have no architecture and infrastructure to accommodate them. All consider that policies or practices to meet their needs have not yet been formulated in both societies. In the United States, the health expenditures of older adults are much higher than those expected with other groups, at US$ 2,000 for younger people and US$ 10,000 for those who are 55 or older.

The United States case

The United States has the world's largest population deprived of liberty. However, it declined from two million to 1,204,300 during the COVID-19 pandemic period, consisting of 1,120,973 men and 83,349 women (7%), according to a statistical survey by Carson[12]. The same author found that 16% of all male and 10% of all female inmates are 55 and more. However, according to Skarupski *et al.*[13], although the number of young prisoners started to drop, that of inmates over 55 grew 79% from 2000 to 2009 and 282% from 1995 to 2010, representing more

than 200,000 individuals. In 2000, 3% of people aged 55 or older were deprived of liberty in the United States. In the last survey in 2022[12], this group represented 15% of the total. According to the most recent official data, between 2020 and 2021, including during COVID-19, the follow-up of prisoners over 55 grew by 24%, more than any other age group.

According to Wacquant[14], Berg *et al.*[4], and Sawyer and Wagner[15], poor older adults, African American, Latino, immigrant, alcoholics who use drugs, and homeless people are incarcerated the most and are the most disproportionately targeted by the police. Wacquant[14] titles his reflective book about this universe as "The prisons of misery". Wildeman[16] comments that homeless people are incarcerated 11 times more often than those with homes, especially older adults. The number of senior drug users detained doubled from 2000 to 2018. Several authors examine the high cost of keeping so many impoverished people in prison, almost all of them suffering from health problems, and consider this a counterproductive punishment process, including economically.

Several authors affirm that the environmental conditions in American prisons are utterly unhealthy for older adults. The units' architecture is unsuitable for their physical and cognitive conditions, as with bunks or tri-beds, the lack of accessible bathrooms, and some places with no beds. Also, older people have to walk long distances, climb up and down stairs to access the cafeteria, with a lack of elevators or ramps for those who use a wheelchair or suffer from imbalance. Also, some mandatory activities of daily living are hard for older people, such as standing in line to receive medication or food or throwing themselves on the floor when alarms sound. The inability to perform the daily activities required by prison has been associated with depression and suicidal ideas, particularly in men[17].

An example of older adults' hardships is mentioned in the Department of Justice's report through the Office of the Inspector General[18], when it refers to the negative impact of imprisonment and criticizes the system's inability to provide security, cost-benefit, an appropriate environment, and assistance for people over 50 serving sentences in a closed regime, and provide them with the minimum conditions when they return to their communities. Although the Department of Justice proposes alternative programs for serving sentences at home for those aged 65 and over, the 2016 report shows that only two people benefited from 2009 to 2013. In 2020, 30% of prisoners serving life sentences were aged 55 or over, and 61,400 were sentenced to death[19].

A cohort study conducted by Patterson and Wildeman[3] showed that of older adults released from prison to serve the rest of their sentence at home, those who had spent at least five years in prison had a 78% lower life expectancy. The time spent in a closed regime was directly correlated with the years of life lost, authors said.

Regarding health conditions, two reviews and an empirical study show the current situation in detail: an article by Skarupski *et al.*[13] that analyzed 21 studies from 2007 to 2017; one by Munday *et al.*[8], who worked with 26 articles and included 93,864 people aged 50 or over; and research by Greene *et al.*[1], which shows vast empirical material and allows comparing chronic conditions and diseases of older adults living in the community with those incarcerated.

The first issue that the authors mentioned above (and other authors) point out is that confinement, lack of access to care, and situational stress create a situation in which a year spent in prison takes two years of an individual's biological life away[3]. Thus, according to Wildeman[16], mass imprisonment in the United States has been partly responsible for the drop in American life expectancy of at least two years. From 2001 to 2018, 30,500 people aged 55 or over died in prison, and 97% were due to some illness[19].

Several of the studies cited show that 90% of the total number of prisoners aged 55 or over have some chronic health condition. Many authors highlight that keeping them in a closed regime requires a different level of care than what is offered to young people because of the comorbidities that plague them and their frequent physical and cognitive problems. Munday *et al.*[8] highlight that, compared to younger people, older adults report high rates of diabetes, cardiovascular problems, kidney diseases, and mental disorders such as anxiety, death wish, depression, and cognitive problems. These authors argue that 20% of senior prisoners in the US struggle to perform activities of daily living.

Skarupski *et al.*[13] also point out the most prevalent physical health problems in the elderly prison population: arthritis (30.5%), hypertension (29.5%), cardiovascular diseases (13.1%), tuberculosis (13.0%), diabetes (12.1%), and hepatitis (9.8%). Munday *et al.*[8] add to this list respiratory illnesses, particularly asthma (18%), musculoskeletal injuries (23%), and neurological disease (14%). Both mention that women complain more

about illnesses than men. They report, on average, four chronic conditions and take around five medications daily. The main illnesses mentioned are arthritis (61%), hypertension (53%), menopause issues (30%), digestive problems and ulcers (29%), cardiovascular diseases (26%), and hearing (66%) and vision diseases (84%).

The studies by Greene *et al.*[1] compare the situation of older adults living in the community with those incarcerated. Their research shows prisoners have a much higher burden of chronic and geriatric conditions than the former. Authors argue that someone aged 59 in prison is similar in terms of health to one aged 75 or over in freedom. They comment that the geriatric conditions of those inmates are closer to the situation of the Black American and poor immigrant population. Still, prisoners are at a more significant disadvantage. Hypertension, kidney disease, arthritis, and stroke rates are higher than those of all population groups. The authors also found that prisoners have high rates of hepatitis C (50%), HIV (12%), severe mental illness (56%), and recent drug use (64%). They add a typical indicator of this group of prisoners: 45% did not have housing.

Regarding mental problems, according to Dilton[20], 8% to 19% of older adults incarcerated in the United States have some psychiatric disorder. We should add that the criminalization of mental illness in older adults is quite common in the country, where, according to Widra[21], one in nine people aged 65 or over has Alzheimer's, and this disease is one of several forms of dementia. More recent data reaffirm that the segment of older adults with cognitive disorders serving prison sentences in closed regimes is overrepresented in prisons: 31% of older adults incarcerated in 2016[22].

Several authors claim that the police always target older adults with cognitive disabilities. Torrey *et al.*[22] consider that the penitentiary system is the country's largest consumer of mental health products. Barry *et al.*[23] report that pre-incarceration alcohol dependence and poor health conditions are also associated with frequent suicidal ideas. Studies by Devoren *et al.*[24] and Gate *et al.*[25] affirm that poor physical and mental health of senior inmates is associated with high anxiety regarding death and the perception of indifference by prison officers regarding their suffering.

Aday and Farney[26] found high rates of depression (46%), anxiety (43%), interpersonal susceptibility (42%), signs of hypervigilance, disbelief in life, and post-traumatic stress in this population (40%). The same symptoms were reported by Baidawi[27] and Patrick and Lane[28]. According to Dilton[20], the American prison population is the country's main client of mental health services.

Half of incarcerated older women (50%) report a history of sexual and physical abuse; 78% fear getting sick and dying in prison, and 64% report poor health conditions. Using data from the Bureau of Justice Statistics, Leigey and Hodge[29] found that 11.5% of female prisoners needed help performing activities of daily living (ADL), compared to 8.7% of men. The main problems they highlighted were difficulty listening to orders from agents (59%), running when alarms sounded (57%), getting up and eating independently (35%), accessing the cafeteria (31%), and mobility difficulties (30%). All these women and men were taking several medications.

According to the Department of Justice's Federal Bureau of Prisons[18,19], it is clear that the cost of keeping so many older adults incarcerated is dramatic. A growing trend of 25% per year has been observed since 2013, when 19% of this body's expenses – US$ 881 million – were for this purpose, while incarcerating people from other age groups is gradually decreasing. Therefore, most authors emphasize that, for many reasons, but starting with excessive public expenditure, it does not make sense to outlay so much money to place people in places that are dangerous to their health, especially when they offer a low risk of recurrence and of pummeling the population[29,30].

We should highlight that the scholars report several discrepancies regarding the percentages and types of problems. However, all agree on (1) the increase in the number of people in prison, (2) the inadequacy of prisons to house them, (3) the accelerated aging due to lack of healthcare, (4) experiences of physical, musculoskeletal, and mental comorbidities; and (5) the high costs of treating them adequately. For example, Munday *et al.*[8] calculate that these costs would be 250% higher than the State's spending on young people. A positive factor pointed out by some authors is the cultivation of spirituality by many senior inmates, which helps them preserve some level of well-being[31].

The Brazilian case

Based on a survey on the topic, we can affirm that research on older adults deprived of liberty was concentrated in the second decade of this century and began to emerge in universities through master's dissertations[32-38], a systemat-

ic review[39], a census analysis of senior inmates in Ceará[40], a specific article on the post-prison expectations of incarcerated older adults[41], an executive summary containing results from a census study in Rio de Janeiro state[42], and some texts with contributions from local research, using preferably qualitative approaches[35,43-47], and reflections on older adults in Brazilian criminal law[5,10,34,39].

While quite diverse, when looked at together, the Brazilian collection of studies on elderly prisoners allows for some convergent conclusions among themselves and with international references. With greater longevity, always seen by the stereotype of frailty, older adults also begin to appear as violence and crime perpetrators.

The National Penitentiary Information Survey[48] shows that the number of people deprived of liberty aged 60 or over has significantly increased in recent years. In 2005, they were 1,350; in 2009, 4,076; in 2016, 6,895. In 2019, the total hiked to 10,273, representing a 660% increase over 14 years. This follow-up of older adults is part of a system that accounts for 682,100 inmates of all ages. However, prisons have a capacity for only 440.5 thousand people. Therefore, we have a deficit of 241.6 thousand slots, leading to an overcrowding of 54.9%, of which older adults are victims along with other inmates. These data do not consider semi-open regime prisoners or those in police stations, which would give a total of 750,000. With 322 people deprived of their liberty per 100,000 inhabitants, Brazil is 26th in the ranking of countries that incarcerate the most globally. To get an idea of the significance of the prison system for the country, according to Santos[37], only 8% of Brazilian municipalities have a larger population than it houses.

While the Brazilian Constitution[49] in articles 229 and 230, the National Elderly Policy of 1994[50] and the Elderly Statute of 2003[9] propose the rights and protection of all Brazilians aged 60 and over, the Penal Code[51], the Criminal Execution Law[52], and the Criminal Procedure Code[53] either contradict or are ambiguous regarding the legal treatment that must be offered to senior offenders. Article 115 of the 1940 Penal Code[51] in force still needs to update the age cutoff established by the Statute[9], as it grants prescription benefits of half the sentence only to people aged 70 and over. Article 26 makes older adults with mental illness, dementia, or inability to answer for their actions unaccountable.

We should underscore that, according to INFODEN[48], 84% of incarcerated older adults are between 60 and 70. Therefore, the benefits in the Penal Code do not cover this contingent. While this expiry of the law occurs in the country, the more socially developed world already considers the age of 50 to 55 years as a milestone of aging for incarcerated older adults due to the adverse conditions of incarceration, aiming to treat them differently. The Criminal Execution Law[52] attempts to mitigate the harsh Penal Code[51] when it says that women and men over 60 must be detained in their establishment adequately to their condition. However, it contradicts itself in Article 117, when it mentions that convicted senior felons can only have their sentence reduced when they are 70 or older or suffering from a severe illness. In turn, Article 318, Chapter IV of the Criminal Procedure Code[53] provides that the judge can replace preventive detention with home detention if the individual is 80 or older. These considerations are part of the studies by Ghiggi and other authors[5,10,32,34,39].

Due to the strict laws and the elitist training of their operators, the authors mentioned above show that it is insufficient to train good managers and prison officers. The judicial system and society need to become aware and act regarding what is happening to elderly inmates, especially with their degenerate health. The bottom line is that, like in the United States, almost all elderly inmates are poor, black/brown people with little power to defend their rights and health conditions, living to their own devices.

Regarding crimes committed by older men, the bibliography consistently shows that they are predominantly against the person, and homicide and sexual abuse are the most common offenses[42]. Much of them consist of domestic violence, mainly committed by men when drunk, and sexual crimes that older adults tend to naturalize. Sexual abuse is not exclusive to Brazilians. It needs to be carefully addressed, as it is more widespread than one might assume. In the United States, Brazil, and other countries with studies on this segment, they are the main reasons for the imprisonment of older adults[42].

Regarding excessive sexual crimes, in Brazilian references, only Monteiro[33] formulated some explanatory hypotheses explained as follows: psychological: regression to primitive stages of development, related to unconscious conflicts; biological: physical weakness in finding an adult woman and having a relationship with her; and neurological: having early-stage dementia, which can alter libido and exacerbate inappropriate behavior. Such hypotheses arise in the face of a void

observed in national and international studies on the topic.

Among women, the most common crimes are drug trafficking or association with this type of crime and homicides. The incarcerated population aged 60 and over is, therefore, very diverse. It is even divided between recidivist prisoners, those detained for a long time, and those who recently entered the system. Unfortunately, Brazilian studies are still quite descriptive and prevent us from delving deeper into this geronto-criminology.

Black and brown people also struggle more to obtain provisional release (27.4% compared to 30.8% for white people) and suffer more attacks from the community and the police who detain them (40% compared to 34.5% for white people). In a recent study by the Institute for the Defense of the Right to Defense[54], public defenders in São Paulo and Rio de Janeiro confirmed differences in police approaches to black and white suspects. According to the study, Black people are 4.5 times more likely to be approached than white people. Therefore, this structural vulnerability that begins before birth accompanies the person until the end of their life, especially when the penitentiary system captures them.

Practically, all Brazilian authors refer in greater or lesser depth to the prison environment, highlighting that older adults cannot find an adequate space for themselves. They are lost among young people, complain about excessive noise, do not adapt to their interests, and some are victims of bullying. Notably, they need more space and mattresses in the cells. They struggle with bathing and having privacy for their physiological needs. They are generally inactive, without adequate occupation, leisure, exercise, and sunbathing. The food and quality of the water they drink are repeatedly complained about due to the nutritional inadequacy of the meals offered.

From the viewpoint of physical health, Brazilian references coincide with international research data: diabetes, hypertension, sexually transmitted diseases, tuberculosis, leprosy, syphilis, brain failure; posture instability and fall; immobility caused by traumatic incidents or circumstances of sedentary aging or illness, urinary or fecal incontinence, vision and hearing issues and tooth loss[41]. From a mental viewpoint, sadness, depression, resentment, hopelessness, memory and communication skills failures, suicidal ideas and attempts stand out. Several authors highlight melancholy, anguish, loss, and impossibility regarding the future. All studies coincide with the literature, stating that prison accelerates physical and mental decay, reduces social interaction, and exacerbates the feeling of being tired of living[42].

Several works show differences between men and women, highlighting the double incompatibility of prison for women: because it is designed and prepared for men and because they are older adults. Women complain more about illnesses, miss their families, and suffer or verbalize the emotional consequences of imprisonment. Men take an average of three continuous medications; women take five.

We observe diverse perceptions regarding the services offered by the penitentiary system. Many senior men and women are resigned and accept their condition; some try to adapt to the circumstances, including having a good relationship with young people. However, others are outraged and find this experience unbearable: they think about dying or getting rid of it as soon as possible. Few know and demand their rights. Several authors point out that their most significant issues are not biological but social (poverty, misery, lack of expectations, and family and social abandonment). Although they do not give the guards cause for concern due to their good behavior, when incarcerated, guards terrify them, as they are used to imposing discipline and do not know how to take care of those who need attention and care.

Only one of the articles in the Brazilian bibliography deals specifically with post-prison[41], and it is a very incipient study. However, it shows the diverse desires of older adults regarding their future in liberty. Some expect to receive support from their family, want to make up for lost time, and generally uphold their belief in divine strength. However, some feel hopeless, which is almost always associated with the severe health issues that affect them, which deteriorate in prison. Resilience in these problematic circumstances depends significantly on how older adults face life before and during incarceration. For many, as mentioned by a man interviewed by Minayo and Constantino[42], prison "is a hell that swallows us".

This reflection would not be complete if it did not mention how Brazilian society perceives the incarceration of people aged 60 and over. It is an absent topic that only arises when there is some scandalous event, such as the excessive deaths of seniors due to COVID or when the situation of a long-lived, wealthy criminal or famous politician who believes that he/she can get away with anything and behaves with impunity becomes known.

Below is a concrete example, published in the newspaper "*Causa Operária*"[55] with statements from the São Paulo Public Defender's Office, denouncing the situation of the elderly population trapped in the face of the risks and reality of COVID-19. The text "Thousands of older adults may die from coronavirus in prisons" informed the public that the Public Defender's Office had filed a collective habeas corpus at the Superior Court of Justice (STJ) to "guarantee the freedom of 3,089 older adults who are hostages of the State's inhumane prison system of São Paulo"(p.2)[55]. According to the request, there was no minimum condition to keep them imprisoned, as there was a lack of basic supplies, hygiene items, drinking water, and health professionals to care for them. The document mentioned the report by the National Council of Justice (CNJ), according to which there had been an exponential increase in COVID-19 in prisons from May to June 2020, and 90% of deaths were of older adults.

On July 23, 2020, the STJ president denied the request filed by the public defenders with the following argument: "... it is important to highlight that the lack of concrete demonstration of the risks inherent to each patient and the generic allegation that prison establishments are in a calamitous situation hamper the analysis restricted to the requirements inherent to granting the injunction request". The denied request exposed the Justice operator's insensitivity towards people who had nowhere to turn to because most were poor. However, the issue cannot be individualized only. Several authors cited in this work consider it is not enough to provide new training to managers and prison officers, as the entire criminal justice system is alienated regarding old, illiterate, or less educated Black or brown prisoners.

Concisely, there is no social awareness about the incarceration of older adults in Brazil. Knowledge and practices concerning them are restricted to legal and criminal apparatuses. Studies critical of the system's inadequacy to house them are still in universities and research centers and are limited to law, psychology, sociology, social work, and health.

Conclusions

The aim of reflecting on older adults deprived of liberty in the United States and Brazil is to contribute to an analysis of how these two societies view the issue, considering that the number of people in this segment is increasing in the prison units in both nations. The literature shows much in common regarding how harsh and degenerative the system is in both countries, which does not socialize and triggers illness and early death of people with low offensive potential although they have committed crimes.

There remains some perplexity with the unprecedented growing number of senior offenders. We should point out that both managers and prison officers interviewed in the most diverse surveys in both countries consider themselves prepared to receive and adequately respond to this social segment. On the contrary, the presence of an older adult in prison is uncomfortable, especially when he/she is in a declining state of health. Agents need to assist them, but they need to learn how since they were not prepared to provide care, but rather to ensure discipline and order.

The need to review punishment methods and consider the incarceration conditions for this population segment is clear. In the United States, the exorbitant costs that older adults, almost all of whom have severe health issues, place on the system have begun to move the authorities for much more than humanitarian reasons. The light on the problem has not yet been turned on in Brazil, but the time has come to face it, whether through social responsibility or human solidarity.

Collaborations

The authors participated equally in all stages of preparing the manuscript, read and approved the final version.

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