



Structural racism and penal selectivity: how the criminal justice system reinforces inequalities

Structural racism and criminal selectiveness: how the criminal justice system reinforces inequalities

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SUMMARY

The research analyzes how structural racism and penal selectivity manifest themselves in the Brazilian criminal justice system, reinforcing historical and social inequalities. The study addresses the relationship between the law, racial structure, and mass incarceration, highlighting that the penal system, far from being neutral, acts as a mechanism of control and exclusion of the Black and peripheral population. Based on a theoretical review, it was possible to identify that institutional racism is present in police practices, judicial decisions, and penal policies, configuring a pattern of structural discrimination. The analysis highlights the need to rethink legal practices and promote anti-racist training among legal professionals to ensure effective compliance with the constitutional principles of equality and human dignity. The study concludes that the Brazilian criminal justice system still reflects the racial hierarchies that structure society.

Keywords: structural racism; penal selectivity; criminal justice; social inequality; incarceration.

ABSTRACT

This research analyzes how structural racism and criminal selectivity manifest themselves in the Brazilian criminal justice system, reinforcing historical and social inequalities. The study addresses the relationship between law, racial structure, and mass incarceration, highlighting that the penal system, far from being neutral, acts as a mechanism of control and exclusion for Black and peripheral populations. Based on a theoretical review, it was possible to identify that institutional racism is present in police practices, judicial decisions, and criminal policies, configuring a pattern of structural discrimination. The analysis highlights the need to rethink legal practices and promote anti-racist training among legal professionals to ensure effective compliance with the constitutional principles of equality and human dignity. It concludes that Brazilian criminal justice still reflects the racial hierarchies that structure society.

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1. INTRODUCTION

The Brazilian criminal justice system has historically presented a selective profile that reflects and reinforces the social and racial inequalities present in the structure of society.

Understanding this phenomenon requires an analysis that transcends the legal sphere, reaching sociological, historical, and political dimensions. Structural racism manifests itself in practices

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institutional and public security policies, revealing that punishment in Brazil is not applied equally, but reproduces patterns of exclusion and social control over certain groups, especially the black and peripheral population (Andrade, 2025).

Criminal selectivity, therefore, is not a coincidence or a mere malfunction of the system, but an intrinsic mechanism for maintaining racial and economic hierarchies. The mass incarceration of black people, unequal treatment in police approaches and the differentiated application of the law shows that the penal system operates as an instrument of control and segregation. This reality exposes the racial bias and partiality of institutions, which reproduce social stigmas and reinforce the historical marginalization of subalternized groups (Herculano, 2023).

The discussion on structural racism and penal selectivity is part of the context of a society marked by colonial heritage, where power relations were shaped by slavery and patriarchy. The process of formal abolition of slavery did not mean the end of racial subordination, but the reconfiguration of mechanisms of domination and exclusion. The criminalization of poverty and the stereotype of the “enemy within” have become instruments of legitimization of state violence, directed at racialized bodies (Santos, 2023).

The selectivity of criminal policies can also be observed in the way in which the State defines which behaviors should be criminalized and which individuals should be punished. The unequal application of the law is the result of political and institutional choices that privilege certain social groups to the detriment of others. Selectivity acts from the moment of primary criminalization, including investigation, criminal prosecution and application of the sentence, revealing a systematic pattern of discrimination that permeates all stages of the process criminal (Valle, 2021).

From a theoretical point of view, the concept of structural racism understands that racial prejudice is not only manifested in individual attitudes, but is institutionalized in social norms, practices and values. In the legal field, this structure manifests itself in selective action by the police, in the formulation of criminal laws and in the selectivity of incarceration. The black population is disproportionately surveilled, approached, accused and condemned, while white-collar crimes and offenses committed by privileged groups rarely receive equal attention (Bello, 2022).

This configuration highlights a paradox between the ideals of equality and practice concrete form of criminal justice. Although the 1988 Federal Constitution enshrines formal equality among all citizens, reality demonstrates the persistence of a punitive model exclusionary. The justice system, far from acting as a mechanism for correcting inequalities, often reproduces them, legitimizing them under the cloak of legality and institutional neutrality (Costa, 2025).

Thus, the study of structural racism and penal selectivity transcends the field of criminal law, reaching ethical and social dimensions. It is about understanding how justice penal system, instead of neutralizing inequalities, contributes to perpetuating them. This reflection is indispensable for the development of public policies that reconcile security, citizenship and equality, breaking with the historical legacy of exclusion and racial discrimination (Dos Santos, FN, 2025).

Thus, the present research is justified by the need to understand the functioning of the criminal justice system from the perspective of race and structural inequality. The topic is of extreme legal and social relevance, as it questions the role of the State in reproduction racism and the legitimization of institutional violence. A critical analysis of punitive practices becomes essential to promote truly egalitarian justice, committed to the constitutional principles and human rights (Andrade, 2025).

2. THEORETICAL FRAMEWORK

2.1 Structural racism: foundations and historical continuities

Structural racism is configured as a form of social organization in which racial inequalities are not exceptions, but constitutive elements of the system. This conception understands that racism is not limited to individual acts of prejudice, but manifested in institutions, public policies and everyday practices, reproducing privileges and exclusions. In Brazil, this structure has roots in the colonial and slave-owning period, perpetuating a social model that naturalizes racial hierarchies and marginalizes black bodies in the economic, political and legal spheres (Andrade, 2025).

Slavery, although legally abolished in 1888, left deep marks on Brazilian social and institutional relations. The absence of reparatory policies after abolition consolidated a model of restricted citizenship, in which the descendants of enslaved people were systematically excluded from access to land, education and formal employment. This exclusion, over time, was replaced by institutional mechanisms of control and criminalization, such as selective penal policies and the discourse of racial dangerousness (Santos, 2023).

In the contemporary context, structural racism manifests itself in subtle ways, but persistent, through inequality of opportunities and selectivity in access to justice. Discriminatory practices are reproduced by institutions that should ensure equality, but which operate in a biased manner, reinforcing privileges and naturalizing racial exclusion. The Brazilian social structure, therefore, sustains a system of privileges

whites, legitimized by a legal discourse that presents itself as neutral and universal, but which serves to maintain the racial hierarchy (Bello, 2022).

Understanding structural racism requires recognizing that law is not a neutral instrument, but a field permeated by power relations. Legal norms and institutions of the justice system reproduce historical inequalities by treating unequal racially marked groups. This reproduction occurs both due to the absence of policies anti-racist and the legitimization of selective punishment and surveillance practices. Thus, the structural racism acts as an ideological basis that supports criminal selectivity, naturalizing the association between blackness and criminality (Herculano, 2023).

From this perspective, it becomes evident that tackling racism cannot be reduced to the moral or individual sphere. It demands a profound review of the structures institutional and legal practices that perpetuate racial inequality. Recognition racism as a structuring element of the Brazilian State is a fundamental step towards reformulation of public policies and the implementation of the principle of substantial equality provided for in the Federal Constitution. The challenge is to break the historical cycle of exclusion and build a truly emancipatory and inclusive justice (Dos Santos, 2025).

2.2 Criminal selectivity and the role of the justice system

Criminal selectivity constitutes one of the most evident phenomena of inequality structural in the Brazilian criminal justice system. It reveals that, although criminal law is formally equal for everyone, its concrete application falls disproportionately on certain social groups, mainly black and poor. The actions of institutions those responsible for criminal prosecution demonstrate that the criminalization process is not random, but guided by class and race criteria that reflect the existing power structures in society (Valle, 2021).

The penal system, when selecting who should be punished, operates as a mechanism of social control aimed at maintaining hierarchical order. The police, the Public Prosecutor's Office and the Judiciary reproduces discriminatory practices that associate criminality with racial and territorial characteristics. This selectivity manifests itself from the police approach until the execution of the sentence, creating a cycle of exclusion and incarceration that affects mostly young black people from urban peripheries. Thus, the criminal law, instead of promoting justice, becomes an instrument for perpetuating inequality (Herculano, 2023).

Selectivity is not limited to the punishment phase, but permeates all stages of the process criminal. In primary criminalization, the legislator chooses which behaviors should be classified



as a crime and which behaviors are tolerated or ignored. In criminalization secondary, the control institutions exercise discretion in identifying, investigation and punishment of alleged offenders. In both instances, selectivity reflects the structural logic of racism and inequality, reinforcing the criminalization of poverty and impunity of privileged groups (Andrade, 2025).

A critical analysis of the justice system shows that criminal selectivity is deeply linked to the concept of legal neutrality. Under the pretext of impartiality, the State legitimizes punitive practices that unequally affect racialized individuals. The application of laws such as the Drug Law (Law No. 11,343/2006) exemplifies this process, allow subjective interpretations that distinguish users and traffickers based on stereotypes racial and social. In this way, selectivity transforms criminal law into an instrument of maintenance of institutionalized racial inequality (Dos Santos, 2024).

This dynamic reveals that the criminal justice system acts not only as a reflection, but as an active agent in the reproduction of inequalities. Mass incarceration, violence police and the absence of public policies for social reintegration demonstrate that the punitive logic prevails over the principles of human dignity and resocialization. Selectivity, when rather than being a deviation from the system, it is its constitutive element, sustaining the racial hierarchy and social through targeted punishment and selective impunity (Costa, 2025).

Therefore, understanding criminal selectivity is understanding the political role of the system. of justice in the perpetuation of inequalities. The analysis reveals that the role of criminal law goes beyond the punishment of crimes — it acts as a symbolic mechanism of group control marginalized and reinforcing the exclusionary social order. Thus, confronting this problem requires a structural review of institutional practices, legal training criticism and strengthening of an anti-racist culture that questions the unequal use of punishment and of the law (Dos Santos, 2025).

2.3 Criminalization of poverty and mass incarceration

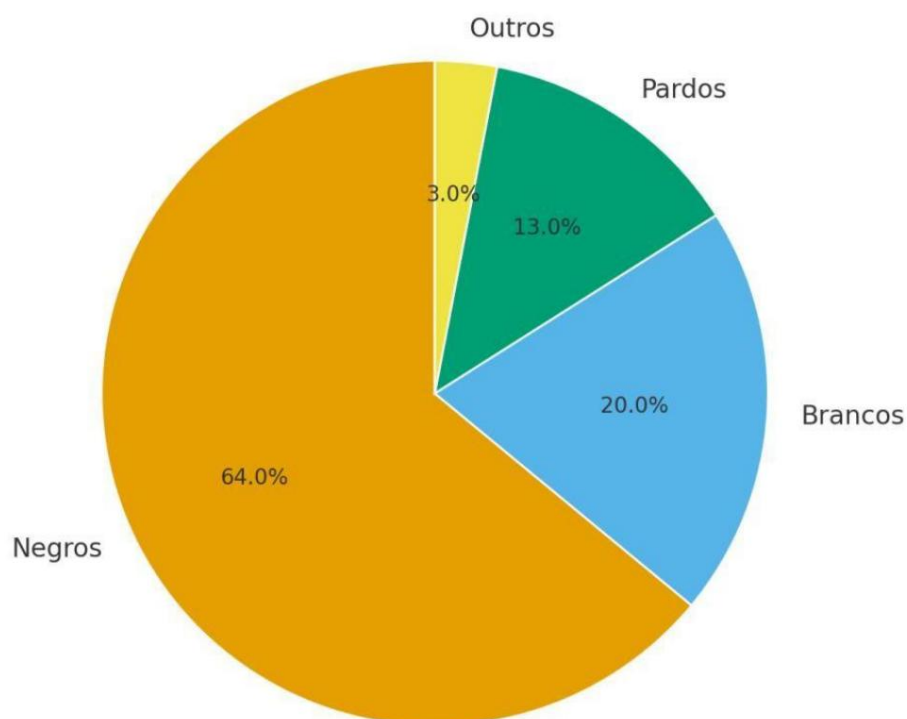
The criminalization of poverty is one of the most obvious expressions of penal selectivity and constitutes a central element in understanding mass incarceration in Brazil. The system of justice, instead of combating the structural causes of inequality, acts as a instrument of social control aimed at economically vulnerable groups. This dynamic history dates back to the post-abolition period, when policies of repression and surveillance replaced the old mechanisms of slavery, transforming economic marginalization under permanent suspicion. Thus, the State began to direct its coercive forces towards

punishment of racialized and impoverished bodies, reaffirming the logic of social exclusion (Bello, 2022).

In the contemporary context, mass incarceration has become a feature structure of the Brazilian penal system, which is among the largest in the world in terms of number absolute number of prisoners. The composition of the prison population shows that prisons are mostly young black people, with low levels of education and from the outskirts urban areas. This profile reveals that prison is not a space of legal neutrality, but a direct reflection of social and racial inequality, functioning as a human repository of failures public policies and the State's inefficiency in promoting social justice (Valle, 2021).

The criminalization of poverty is directly associated with the selectivity in the application of laws. While low-level crimes committed by people of higher classes rarely result in deprivation of liberty, property crimes and offenses related to drugs, often attributed to poor individuals, are severely punished. This punitive asymmetry reinforces the idea that the penal system is not intended for everyone, but for a specific portion of the population, considered dangerous and unwanted by the current social model (Dos Santos, 2024).

Figure 1 – Estimated composition of the Brazilian prison population (relationship between race and incarceration).



Source: Adapted, Bello, 2022; Andrade, 2025.

The phenomenon of mass incarceration is also related to the expansion of punitive power of the State and the adoption of public security policies based on repression and in fear. The “war on drugs” discourse exemplifies this process, by justifying the increase surveillance and police violence in peripheral communities under the guise of combating trafficking. In practice, this policy reinforces the criminalization of poverty, transforming vulnerable territories in areas of exception and their inhabitants in preferential targets of state repression (Andrade, 2025).

Prison, which should have been an exceptional measure, has become a control policy social and an instrument for managing inequality. The Brazilian prison system not only fails in its resocializing function, but deepens the marginalization of incarcerated individuals, depriving them of fundamental rights and hindering their reintegration into society. The cycle punitive is perpetuated when the ex-convict, stigmatized and excluded from the job market, returns to the penal system due to the lack of legitimate alternatives for survival (Herculano, 2023).

In this sense, mass incarceration cannot be analyzed in isolation, but as part of a social and political project to maintain racial hierarchies and economic. By prioritizing punishment over prevention and repression over inclusion, the State legitimizes an exclusionary justice model that operates selectively and racially. Prison, thus, it is not just a space of physical containment, but a symbolic mechanism of silencing and neutralization of historically oppressed subjects (Dos Santos, E., 2025).

In this way, the criminalization of poverty constitutes the link between structural racism and criminal selectivity. By assigning the black and peripheral population the role of social enemy, the criminal justice system reaffirms the stigma of crime and naturalizes inequality. The deconstruction of this logic requires a profound reorientation of criminal and public safety, with a focus on promoting social justice and reducing violence institutional and in guaranteeing fundamental rights for all citizens (Bishop, [sd]).

2.4 Institutional racism and its impact on the criminal justice system

Institutional racism refers to discriminatory practices that manifest themselves in systematically in the structures and procedures of institutions, resulting in inequality of treatment and violation of rights for certain racial groups. In the justice system Brazilian criminal justice, this form of racism is evident in police approaches, in persecution criminal and judicial decisions that disproportionately affect the black population. Such

practices are not sustained by isolated acts of prejudice, but by a structural logic that naturalizes racial exclusion and the association between blackness and criminality (Costa, 2025).

Institutional racism acts silently, masked by the discourse of neutrality and impartiality of legal institutions. The belief that the justice system is governed only by technical and objective criteria ignores the impact of historical inequalities that shape perceptions and decisions of legal practitioners. The lack of racial representation in the Judiciary and the Public Prosecutor's Office contribute to the reproduction of views stereotypical and selective practices that negatively affect black people at all stages of the criminal process (De Souza et al., 2024).

Racial selectivity in police action is one of the most obvious examples of this phenomenon. Studies show that approaches are preferentially directed at black individuals, based on subjective criteria of suspicion that reinforce stigmas social. This practice results in arbitrary arrests, police violence and criminal prosecutions based on flimsy evidence. The symbolic criminalization of these subjects is legitimized by a system that, instead of correcting inequalities, reproduces them, giving the appearance of legality to racial discrimination (Dos Santos, 2024).

In the judicial sphere, institutional racism manifests itself in disparity in treatment between white and black defendants. Court decisions tend to be more severe when they involve black defendants, especially in property and drug-related crimes. The selectivity is reinforced by the difficulty of accessing quality technical defense and by socioeconomic inequalities that limit the full exercise of the right to adversarial proceedings and broad defense. The result is a system that punishes the vulnerable more harshly, perpetuating racial inequality under the guise of formal legality (Valle, 2021).

In addition to the punitive dimension, institutional racism impacts recognition and implementation of public policies aimed at racial equity. The lack of racial data consistent, resistance to the adoption of affirmative measures and the invisibility of the racial issue in justice bodies are examples of institutional practices that maintain the exclusionary structure. This scenario demonstrates that institutional racism is not a deviation, but a component structuring the organizational culture of legal institutions, sustained by centuries of social and racial inequality (Santos; Góes, 2024).

Deconstructing this situation requires effective measures to address it, which go beyond the declaratory level and reach everyday institutional practices. It is necessary to promote anti-racist training of legal professionals, ensuring greater racial representation in decision-making spaces and strengthen control and transparency mechanisms in institutions

criminal. Only with structural measures will it be possible to break the cycle of discrimination and build a justice system committed to the constitutional principles of equality and human dignity (Dos Santos, 2025).

3. Conclusion

The analysis carried out showed that the Brazilian criminal justice system operates in a selectively and structurally racist, reinforcing historical inequalities that permeate social formation of the country. From the understanding that racism is a constitutive element of institutions and not an anomaly, it becomes possible to understand how legal practices and criminal laws contribute to the maintenance of racial and economic hierarchies. The law, which should guarantee equality and justice, it often acts as an instrument of legitimization of exclusion and social control over black and poor bodies.

The study demonstrated that criminal selectivity is not a deviation of conduct of institutions, but an integral part of a system that defines who should be punished and who should be protected. The criminalization of poverty, mass incarceration, and racism institutional are concrete expressions of this process, which perpetuate marginalization and invisibility of the black population. Thus, the justice system, instead of promoting equality material, ends up reproducing the inequality it should combat.

It was also found that legal neutrality is an illusion that hides reality discriminatory nature of criminal practices. The unequal application of the law and the treatment differentiated from defendants, according to their racial affiliation or social class, demonstrate that the ideal of universal justice remains distant from everyday practice. The absence of representation and anti-racist policies in legal institutions reinforces the continuity of a model of exclusion and silencing.

Thus, addressing structural racism and selective criminal justice requires more than isolated reforms. A profound transformation of structures is necessary. institutional and cultural factors that support the justice system. The critical training of operators of law, the review of criminal policies and the strengthening of anti-racist legal education are fundamental steps to break the cycle of inequality and build justice truly democratic and inclusive.

It is therefore concluded that the implementation of the constitutional principle of equality depends the recognition of racism as a structural problem and the adoption of practices that promote real equity in access to and application of justice. Only with this commitment

ethical and political it will be possible to transform the penal system into an instrument of emancipation social, and not the perpetuation of exclusion.

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