



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

The scream before the sentence: Public lynching and the failure of penal legality.

The cry before the sentence: Public lynching and the failure of criminal legality

Douglas Bruno Silva - 10th semester student of Law at the Facimp Wyden University Center – UNIFACIMP WYDEN -
douglasbrunotab@gmail.com

Khayam Ramalho da Silva Sousa - Master's student in Law at the FIEO University Center - UNIFIEO.
Specialist in Constitutional Law from Faculdade Legale – FALEGALE. Specialist in Criminal Sciences from Centro
Universitário União das Américas – UNIAMÉRICA. Bachelor of Laws from Instituto de Ensino Superior do Sul do Maranhão
– IESMA/UNISULMA. Professor of the undergraduate Law course at Centro Universitário Facimp Wyden – UNIFACIMP
WYDEN. Lawyer, OAB/MA no. 21.680.
khayamramalho@hotmail.com

SUMMARY

This article investigates public lynching in Brazil as a complex sociological and legal phenomenon, in order to understand how this practice reflects the population's deep distrust of the penal system and what its implications are for the constitutional order. The study starts from the premise that the collective perception of impunity and ineffectiveness of public security and criminal justice institutions acts as a catalyst for society to assume the monopoly of punishment (vigilante justice). Methodologically, it employs critical bibliographic review and document analysis to trace the origins of the phenomenon in the culture of violence and discuss its implications in the context of the Democratic Rule of Law. The results demonstrate that lynching not only violates fundamental constitutional principles (human dignity, due process of law), with serious implications for social order, but, above all, reveals the weakening of state authority in its duty of formal social control. It is concluded that confronting this collective violence requires more than individual penal repression; it demands the urgent implementation of intersectoral public policies focused on social and legal education, essential for restoring institutional trust and reaffirming the principle of legality as the non-negotiable basis of justice.

Keywords: Lynching. Criminal Justice. Social Distrust. Democratic Rule of Law.

ABSTRACT

This article investigates public lynching in Brazil as a complex sociological and legal phenomenon, aiming to understand how this practice reflects the deep distrust of the population in the penal system and its implications for the constitutional order. The study starts from the premise that the collective perception of impunity and ineffectiveness of public security and criminal justice institutions acts as a catalyst for society to assume the monopoly of punishment (taking the law into its own hands). Methodologically, it employs a critical bibliographic review and documentary analysis to trace the origins of the phenomenon in the culture of violence and discuss its implications in the context of the Democratic Rule of Law. The results demonstrate that lynching not only violates fundamental constitutional principles (human dignity, due process), with serious implications for social order, but also reveals the weakening of state authority in its duty of formal social control. It is concluded that confronting this collective violence requires more than individual criminal repression, demanding urgent intersectoral public policies focused on social and legal education, essential to restore institutional trust and reaffirm the principle of legality as a non-negotiable basis of justice.

Keywords: Lynching. Criminal Justice. Social Distrust. Democratic Rule of Law.

1. Introduction

Public lynching persists as a deeply rooted social phenomenon in

Brazilian society, constituting a serious and direct violation of the principles of the Democratic State.



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

of Law. These acts of collective violence, usually motivated by popular outrage in

In response to the feeling of impunity and the perceived inefficiency of security and justice institutions,

They constitute a form of "vigilante justice" that challenges the state's monopoly on coercion.

legitimate. The contemporary dissemination of these events is largely facilitated by the advancement

digital media and social networks, which turn them into public spectacles, expanding their

social, legal and moral consequences.

The relevance of this study therefore lies in the urgency of understanding how the crisis of confidence...

The Brazilian penal system encourages the adoption of violent behaviors that culminate in...

weakening of the social contract. When society engages in private justice, it reveals a

A clear breakdown of state legitimacy and its mechanisms of control and punishment. Thus, when investigating

Lynching, from a legal-critical perspective, seeks not only to understand its causes.

sociological implications and their immediate effects, but also to reflect on the constitutional values at risk,

such as human dignity, due process of law, and the presumption of innocence. Understanding

This duality is fundamental to supporting actions aimed at restoring society's trust in...

institutions and to curb the acceptance of violence as a means of conflict resolution.

Given this scenario of institutional and social crisis, the central problem that guides this

The work consists of the following question: in what way does public lynching, as a phenomenon...

Socially, it reflects the population's distrust in the penal system, and what are the legal implications and

What are the constitutional implications of this act for social order and state authority in Brazil?

The main objective of the study is to examine public lynching as a reflection of a lack of...

of social trust in the Brazilian penal system, determining its legal consequences and

constitutional. To achieve this goal, the article seeks to: (a) understand the historical and social context of

lynching in Brazil; (b) to debate the penal and constitutional principles that prohibit lynching.

private; (c) analyze the State's actions in response to these events and its limitations; and (d) indicate

Possible pathways for rebuilding trust between society and the justice system.

Methodologically, the approach is qualitative and bibliographical, based on the analysis of

Legal doctrines and relevant legislation, with particular emphasis on the Penal Code and the Federal Constitution.

from 1988, in addition to scientific articles and reports that address the topic. The method of approach is...

deductive, starting from general concepts about violence and the crisis of confidence in institutions to

to arrive at a specific analysis of lynching as an extreme manifestation of this disbelief. The research

It is organized into sections that address the phenomenon from different perspectives (historical,

social, penal and constitutional), resulting in considerations about possible solutions to reduce

These actions will strengthen the justice system.



2. An analysis of lynching in history and in the present day.

Lynching is a phenomenon that, although it seems recent, has historical roots. profound, which are directly linked to the absence or weakness of the State in exercising its functions. Their functions include ensuring public safety for all and administering justice. The term lynching has... Derivation of the name Charles Lynch, who was a farmer known for leading groups. People punishing individuals accused of committing crimes without due process. Okay. (Martins, 2015).

Practices such as these were initially related to acts of community punishment in a context Due to the non-existence of formal justice structures, it has come to designate, over time, any action. violent practice aimed at taking justice into one's own hands, a practice that spread from the use The term was used in the United States in the 18th century, becoming especially prevalent in subsequent centuries. In the 19th and 20th centuries, it was a brutal tool of social control, used to oppress minorities. racial groups, such as the black population of the southern United States (Natal, 2012).

In Brazil, historical records show that acts of lynching have occurred since... colonial period, in communities where the state's presence was minimal and even inefficient. During the Empire and the First Republic, these acts were frequently motivated by revolts. popular movements against political oppression, lack of access to justice, or even in situations of great... Social outrage. Over the years, the practice here in Brazil has ceased to be necessarily... linked to political conflicts, and from there it became primarily associated with crime. urban, and came to be seen as a response from the population to the perception of impunity (Martins, 2015).

According to a survey by the network of security observatories, nowadays, the number of Cases of lynching on Brazilian streets increased by 64% in one year, among the main causes. One of the reasons for this violence is the feeling of injustice. Between 2023 and 2024, cases of Lynchings increased from 137 to 214, meaning that last year Brazil... He recorded a lynching every two days.

Therefore, based on a videographic analysis of lynching cases in Brazil, Oliveira (2010, (p. 10-11) identified and systematized the following sequence of events:

1. The crowd gathers around the accused and verbal aggression begins. An individual, perceived as the instigator, starts chanting slogans that tend to accuse and humiliate the alleged criminal with insults; 2. The lynched person tries to defend himself, shouting words that attempt to deny his guilt, but he is not heard by the crowd; 3. The accused has already been thrown to the ground and is partially immobilized. The insults from scene 1 continue, lasting throughout the lynching, and someone delivers the first kick to the accused from a distance; 4. One after another, people begin the sequence of aggressions, which, after the kicks, are followed by punches to the body (usually ribs and back) and slaps to the face; 5. The longer the police take to arrive, the more vigorous the aggressions become. They begin to intensify, and the lynchers begin to use utensils, mainly pieces of wood and stones; 6. The surrounding population increases, most do not participate in the lynching, only shouting during the event, whether offensive words



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

against the accused, there are celebrations after each attack; 7. Bloodstains begin to be noticed, and it is usually at this point that the police arrive or intervene (in a few cases they are present but take no action), and, noticing the severity of the injuries, rescue the lynched person and take them to the police station – this is where most videos end; 8. When the police are not present, the attacks continue and the lynched person begins to show signs of fainting; 9. The crowd intensifies the attacks, mainly with blows; 10. The lynched person dies; 11. The crowd celebrates, and even after witnessing the death, continues to deliver spaced kicks to the body.

As has been well highlighted, this phenomenon is also amplified by the media and social networks, which currently play a central role in spreading information that often

These claims are false and end up inciting hatred and encouraging collective action. A prime example...

It occurred in 2014 in the municipality of Guarujá, located in São Paulo, when Fabiane Maria de Jesus was lynched by a mob after rumors spread on social media accusing her of being unethical.

There is no basis for kidnapping children for black magic rituals. This case generated great interest, national and international repercussions, highlighting the risks of disseminating misinformation.

without fact-checking and also the destructive power of “popular justice” in digital times (Petry, 2014).

From a sociological perspective, lynching can be understood as a form of action.

A disorganized and limitless collective, resulting in the weakening of institutions and also of lack of trust in formal justice mechanisms. According to (Durkheim 2010), in contexts

In a state of anomie, that is, a weakening of social norms, individuals tend to act in a way...

Impulsive and violent, breaking with institutional rules. From this perspective, the act of lynching

It represents an immediate response to feelings of fear, insecurity, and distrust in the State.

functioning as an attempt to symbolically restore a social order perceived as

absent. According to Godinho Neto, the phenomenon of lynching in Brazil reflects “the feeling of abandonment of state institutions and the pursuit of immediate and morally legitimized justice by group” (Godinho Neto, 2021).

From the point of view of legal doctrine, Gomes (2014) emphasizes that “some humans

They grant themselves a license to kill people (almost always with impunity, because the police Brazilian authorities only investigate 8% of homicides in Brazil). However, Bitencourt (2022) points out that “The State, even in so-called actions of exclusively private initiative, is the holder of the *ius puniendi*, which It clearly has a public character. One of the main characteristics of modern Criminal Law is Its fragmentary nature, in the sense that it represents the ultimate ratio of the system.”

Therefore, lynching represents a civilizational setback, as it replaces the legal system.

and institutional through a collective act that threatens the physical integrity and lives of individuals, without any legal legitimacy. Respect for the state monopoly on jurisdiction and the authority of the state.

It is, therefore, an essential condition for maintaining democratic order, public safety, and... effectiveness of fundamental rights.

At the same time, public lynching, as a violent social phenomenon, represents



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

a direct affront to the constitutional and legal principles that underpin the Democratic State of Law. Its legal consequences are broad and complex, encompassing both liability. individual agents involved in relation to state action in the face of rights violations fundamental.

Historical and social analysis demonstrates that, even when presented in distinct forms... Over time, lynching remains a very strong structural problem in society. Brazilian. This practice not only directly affects the victim but also violates their rights. fundamental rights enshrined in the federal constitution, but it also represents an attack on state authority. and to the principles of the Democratic Rule of Law, insofar as practice replaces due process. legal process for collective violence. Thus, understanding its origins and forms of manifestation in Current events are essential to support the legal and constitutional discussion that will be developed. in the following chapters.

2.1 The feeling of impunity and the crisis of confidence in the penal system as a cause of lynching

Impunity and a crisis of confidence in the institutions of the penal system appear as important elements for understanding the growth of lynchings in Brazil. In several In these situations, citizens perceive that the State fails to investigate, prosecute, or punish crimes in a way that... efficient, which fuels this feeling of institutional abandonment.

In this sense, research shows that, in urban contexts with high crime rates, the The slowness of the judiciary and the deficiencies of the police generate widespread distrust, motivating the The emergence of "popular justice" practices has taken over the social environment, leading groups... of people mobilizing to carry out immediate punishments, often without evidence or contradictory arguments. or broad defense.

Thus, a study analyzed some cases in working-class neighborhoods of São Paulo and It was identified that lynchings occur as an alternative conflict resolution method in the face of disbelief. and urban insecurity and distrust in the formal security and justice mechanisms of the state. (Sinhoretto, 2009).

The feeling of impunity stems, to a large extent, from the structural inefficiency of The Brazilian criminal justice system. Procedural delays, prison overcrowding, lack of... the effectiveness of penalties and the recurring feeling that criminals "are not punished" or "return" "Quickly taking to the streets" contributes to fueling popular indignation. As Nucci (2000) observes, "Impunity is the state of those who escape punishment and are not held accountable for the crime committed."

In addition to the feeling of impunity, there is a crisis of confidence in public institutions. encompassing the Judiciary, the Public Prosecutor's Office, the police, and the prison system. Furthermore, Recent research from the Datafolha Institute (2024) indicates that 51% of Brazilians claim to have more



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

Fear of the police outweighs trust in them, and only 29% of the population trusts the judiciary.

Therefore, the police and the judiciary are the institutions with the lowest credibility ratings.

This lack of trust leads the population to seek their own alternative ways of resolving conflicts.

culminating in manifestations of collective violence, such as lynchings.

In turn, from a sociological perspective, lynching can be understood in light of the concept of anomie, developed by Émile Durkheim. For the author, anomie occurs when there is weakening of social norms and absence of effective institutional mechanisms to regulate the collective behavior, thus creating an environment in which individuals can act impulsively (Durkheim, 2010).

In this context, the population, faced with the perception that the State does not guarantee effective justice, tends to resort to forms of immediate punishment, often violent and irrational, such as Lynchings. Recent sociological studies show that such practices are a direct reflection of fragility of state institutions and the pursuit of justice perceived as legitimate by the group social (Godinho Neto, 2021).

The lack of credibility in institutions is not just an emotional issue, but... also structural. According to Silva (2017), the widespread perception of the ineffectiveness of justice institutions It fosters a sense of impunity among the population, encouraging an increase in reckless behavior. Violent practices and acts of vigilante justice. In this context, lynching appears as a social response. motivated by a lack of faith in the formal system's ability to resolve conflicts and ensure... Punishment of those responsible.

Thus, a prime example of this context occurred in the case of Cleidenilson Pereira. da Silva, 29, who was brutally lynched by a mob in the city of São Luís, in the state from Maranhão, in July 2015. The case gained significant national attention due to its extreme violence. and by the way the population decided to take "justice into their own hands". According to the Investigations revealed that Cleidenilson and a 17-year-old were accused of attempting to rob a bar. located in the Jardim São Cristóvão neighborhood. During the attempt, locals managed to restrain him. Cleidenilson, who ended up being tied to a lamppost, stripped, and assaulted with Kicks, punches, stones, and pieces of wood. The attacks continued even after he was... Unconscious. The young man was taken to the hospital, but he did not survive his injuries and died on [date missing]. resulting from multiple traumas (Santana, 2020).

The brutality of the episode caused national outrage and sparked debates about the growing The practice of lynching in Brazil reflects the social distrust in public institutions and the feeling... of impunity. Despite the robbery charges, Cleidenilson had no criminal record and, According to the investigations, there was no concrete evidence that he had actually... The crime that motivated the assault was committed. The case was investigated by the Civil Police of Maranhão, and



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

Nine people were indicted for the crime of aggravated homicide. In 2020, one of the accused, Ivan Santos Figueiredo was sentenced to 13 years and 9 months in prison under a closed regime for the death. Cleidenilson's case involves others who are still awaiting trial or have been acquitted. lack of evidence (Santana, 2020).

The episode came to symbolize an emblematic example of the barbarity and risk of what is called "Popular justice," where collective impulse replaces due process. Cases like this They highlight the seriousness of the crisis of confidence in the formal justice system and reinforce the urgency of policies. Public initiatives aimed at preventing collective violence.

Therefore, the feeling of impunity and the high level of distrust in institutions are factors. determinants for the occurrence of large-scale lynching. When the population realizes that When the state fails to guarantee justice and security, it tends to organize itself in an informal and violent manner. to fill this void, even if it means violating fundamental rights and principles. constitutional. This relationship between state ineffectiveness and collective violence will be fundamental for In the following chapters, we will understand the legal and constitutional implications arising from this. phenomenon.

2.2 Lynching as an expression of “private justice” and its opposition to state justice.

Lynching can be understood as an extreme expression of so-called justice. private, that is, the application of punishments directly by the population, without the intervention of the State and without due legal process. This practice occurs when individuals or groups assume, on their own initiative, that they are responsible for actions taken to commit crimes. proper, the function of investigating, judging and punishing people accused of committing crimes, disregarding Thus, the constitutional guarantees that govern the Brazilian legal system.

In this sense, Martins (2015, p. 105) says that:

It is not uncommon for participants in lynchings to have a vague notion that mob crime is lawful, and they say so. They are probably referring to the fact that the Penal Code considers participation in collective crime a mitigating circumstance. They thus reconcile the formal justice of the Code with the justice of revenge, with vigilante justice. Even victims of attempted lynchings, when questioned, justify the legitimacy of the violence they suffered. Therefore, we are facing a culture of popular justice, a complex code of actions for restoring order where it has been violated.

Therefore, in accordance with the provisions contained in article 345 of the Brazilian Penal Code, under the The classification of the crime of arbitrary exercise of one's own rights, which consists of "taking justice into one's own hands." "With one's own hands, to satisfy a claim, however legitimate, except when permitted by law." Thus, still that the agent believes he is acting in defense of a legitimate right, the use of violence without State authorization constitutes a criminal offense. Lynching, in turn, represents a form collective and more serious aspect of this practice, in which punishment is immediate and irreversible, many sometimes being fatal.

This direct involvement of the population in the administration of justice reveals a structural flaw in the system.



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

The state, which should be the sole holder of the power to investigate, prosecute, and punish offenses.

According to Weber, the modern state is characterized by the legitimate monopoly on the use of force, that is, only it...

has the authority to exercise physical coercion in an institutionalized manner on behalf of the community.

(Weber, 1978). When this monopoly is challenged by private justice, as occurs in

Through lynchings or other forms of extrajudicial punishment, state authority is weakened.

generating insecurity, social instability, and a perception of institutional failure.

In Brazil, faced with the slow resolution of legal processes, the population frequently resorts to legal action.

to immediate and violent measures, assuming for itself the role of punishing those accused of crimes. This

This action reflects not only a response to crime, but also the fragility of institutions.

state-owned entities, which cease to be recognized as legitimate entities for the administration of justice (Godinho Neto,

2021). Situations in which individuals resort to direct punishment representing a breach of the pact.

social, demonstrating that the population no longer trusts the authority of the State and opts for mechanisms

primitives of justice.

Furthermore, the practice of lynching jeopardizes fundamental rights and guarantees.

such as due process of law, the right to a full defense, and the presumption of innocence, all provided for in article

Article 5 of the Federal Constitution. By summarily punishing someone, the community assumes a role.

incompatible with the Democratic Rule of Law, which is based on the protection of human dignity.

human person (Brazilian Constitution, art. 1, III). This type of action not only violates the rights of the victim, but also

It weakens the legal system itself, causing a continuous cycle of violence.

Therefore, the opposition between private justice and state justice is at the heart of the discussion about...

Lynching. When the State fails to fulfill its essential functions of protecting society and

To punish offenders fairly and efficiently, the population tends to act autonomously, however.

That's illegal. This substitution of formal justice with collective violence compromises public order and...

It challenges the constitutional principles that underpin democracy.

3. Lynching from a Criminal Law Perspective

Lynching, although not specifically classified as a crime under the legal system,

In Brazil, it constitutes a set of criminal behaviors that violate physical integrity and life.

human rights, which may include crimes such as homicide, bodily harm, affray, and arbitrary exercise of power.

for their own reasons. Depending on the outcome of the collective action, lynching is generally framed

aggravated homicide, as defined in Article 121, § 2, of the Penal Code, when it results in death or injury.

corporal punishment, which is legally defined in article 129 of the Penal Code, when it causes physical harm to the victim.

This substitution of state authority by popular will constitutes a direct violation.

This is in accordance with the principle of legality in criminal law, since no one can be punished without a prior conviction.

judicial. As Romano (2023) observes:



Lynching occurs outside the bounds of the existing legal system, where the accused has no means to defend themselves. Lynching is "justice done by one's own hands." As such, it is not justifiable in the fully functioning democratic state governed by the rule of law in which we live. These actions are an affront to justice. "Street tribunals" are constitutional rights and guarantees that provide for the right to defense and state protection. There is no judge or appeals court.

We agree with the opinion of Virgílio Afonso da Silva (Folha de São Paulo, May 16, 2014) who states that "in cases of lynching, there is no polarization between right and left. The opposition is between civilization and barbarism." Indeed, as scholars point out, the civilizational achievement of not being judged by one's neighbor, of not being stoned in the street, of not being tied to a post cannot be destroyed simply because the State, to some extent, fails in its task of guaranteeing public safety and judging. Care must also be taken regarding the so-called "copycat effect," where lynchings are filmed and shown in the press or on the internet, causing an increase in the number of such cases.

The Penal Code, in its article 345, also provides for the crime of arbitrary exercise of power.

for one's own reasons, defined as "taking justice into one's own hands, to satisfy a claim, although

legitimate, except when permitted by law." This provision accurately reflects the essence of

Lynching, which arises from the collective desire to punish immediately, without resorting to other means.

institutional justice systems.

As observed in sociological studies on the phenomenon of lynching, this

The practice can be understood as a form of "mob justice," when the collective

assumes the role of judging and executing summary sentences, in clear usurpation of the state monopoly on

force. Such behavior breaks with the social contract that assigns to the State the legitimate application of

criminal sanctions, while ignoring fundamental guarantees such as the presumption of innocence and the right to...

full defense and due process of law (Martins, 2015, pp. 105-107).

Therefore, the legal framework for lynching is established through the analysis of

different types of crimes, depending on the circumstances and the outcome of the action. In all cases, there are...

A violation of state authority and individual guarantees enshrined in our constitution.

federal, making the phenomenon doubly reprehensible: from a legal-penal perspective and

constitutional, highlighting the impossibility of self-help in the Brazilian legal system.

There is no specific crime for lynching in the Brazilian Penal Code. However,

The conduct practiced in such episodes falls under existing legal definitions, homicide (article 121 of the law).

(CP) and bodily injury (art. 129 of the CP), depending on the outcome of the aggression. Thus, the classification of

Crimes resulting from lynching depend on an analysis of the outcome and the participation of those involved.

In cases where the victim dies as a result of the assault, the participants in the act are held responsible.

They are charged with aggravated homicide, especially due to the aggravating circumstances of a frivolous motive and...

use of cruel means, since the action is motivated by irrational feelings of revenge and

It involves intense suffering for the victim. In situations where death does not occur, the aggressors

They are liable for bodily harm, which may result in serious or very serious injury, depending on the consequences.

physical and psychological suffering.



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

From another perspective, the 1988 Federal Constitution, in its article 5, *caput*, guarantees that "everyone are equal before the law" and ensures the inviolability of the right to life and physical integrity (articles 5, III and IV). These rights are absolute and inalienable, meaning they cannot be relativized by reason of of the victim's own conduct. The mere fact that the victim committed a crime or offense does not It transfers legitimacy to third parties to commit violence against her.

Thus, the Penal Code reinforces this idea clearly, as provided for in article 29, the which intensifies the collective responsibility of those involved, so that all participants in In a lynching, those considered co-perpetrators or accomplices are regardless of who actually participated. committed the lethal blow or initial aggression. This demonstrates that the law punishes uniformly those who... aggressors, not admitting any argument that the "victim's guilt" would diminish the criminal liability of those who participated in the crime.

Therefore, lynching demonstrates the negation of the rule of law, replacing what is due. Legal process for arbitrary collective action. Brazilian criminal law is clear: the alleged guilt of The victim's actions never justify, mitigate, or exclude the punishment of the aggressors, thus reinforcing its legal irrelevance. of the victim's conduct for the purposes of criminal liability.

4. The legal and constitutional implications of lynching

The dignity of the human person constitutes one of the foundations of the Federative Republic of Brazil, according to Article 1, item III, of the 1988 Federal Constitution. This principle is the core of A democratic rule of law guides the creation, interpretation, and application of legal norms. Therefore, any conduct that disregards the intrinsic value of the human person is an affront not only to human beings, but also to the very existence of the human being. It is a constitutional principle, but also the very structure of the Brazilian legal system.

Lynching, by subjecting the victim to public humiliation, physical violence, and death without... any form of defense or contradiction directly violates the principles of human dignity and... due process of law. Such a practice represents the denial of institutional justice and the replacement of... The State, acting through collective arbitrariness, in complete disregard of Article 5, item LIV, of the Federal Constitution, which ensures that "no one shall be deprived of liberty or property without due process of law". Benevides (1983, p. 229) points out that:

Lynching is any violent collective action aimed at the summary punishment of individuals allegedly or actually accused of a crime – from simple theft to murder – or, in certain regions, identified with movements or stigmas of a political or racial nature. Lynching is characterized by its vengeful nature, as well as punitive 'justice' (usually accompanied by methods of torture), outside of legal trials or norms. Even when under clear leadership and some kind of planning, lynching is considered an explosive and spontaneous phenomenon, associated with the 'pathology of crowds'. In popular terms, lynching is the 'act of taking justice into one's own hands'.

Therefore, lynching is clearly incompatible with the foundations of the State. Democratic rule of law, because in addition to violating human dignity, it represents the suppression of due process of law, replacing institutionalized justice with acts of barbarity and



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

collective irrationality.

Indeed, the monopoly of jurisdiction is intrinsically linked to the concept of the State of Right, as stipulated by the Federal Constitution of 1988. Article 5, XXXV, in turn, It guarantees that "the law will not exclude from the consideration of the Judiciary any injury or threat to a right." However, Article 5, sections LIV and LV, ensures due process and the right to a full defense, principles that make it unlawful. Any attempt at carrying out a criminal act outside of the judicial system. Thus, lynching violates... directly contradicting these constitutional provisions, by replacing the investigation, trial, and application... punishment by popular discretion.

Lynching, therefore, is not only an individual criminal offense, but also a This is an institutional attack on the rule of law, as it challenges the authority of the State on two levels: 1) Denial of state authority: by acting outside the control of public power, the aggressors reject the 1) the State's competence to investigate and prosecute criminal conduct, and, 2) subversion of the monopoly of Jurisdiction: the application of criminal law is exercised by the group, and not by the Judiciary, which It undermines the legality, proportionality, and impartiality of the sentence.

Within this framework, Brazilian jurisprudence has repeatedly affirmed that... Lynching finds no justification under Brazilian law, and the conduct is irrelevant. prior to the victim's death. The Superior Court of Justice, in turn, has emphasized that the application of Taking justice into one's own hands represents a direct violation of the state's monopoly on jurisdiction. In this regard, there are several precedents: REsp No. 1,860,791/DF, rapporteur Minister Laurita Vaz, Sixth Panel, decided on 9/2/2021, published in the Official Gazette on 22/2/2021; Habeas Corpus No. 292.987/PA, rapporteur Justice Nefi Cordeiro, Sixth Panel, judgment rendered on 11/18/2014, published in the Official Gazette on 12/4/2014; and, Habeas Corpus No. 48,618/RO, rapporteur Justice Gilson Dipp, Fifth Panel, decided on 2/21/2006, Official Gazette of 3/13/2006, p. 351.

Thus, the role of Public Authorities is important in prevention, repression and Reparation for these actions. Therefore, the most immediate legal consequence is criminal liability. of the perpetrators of the lynching. This criminal accountability expresses the need to reaffirm the state monopoly of criminal jurisdiction, an essential principle for maintaining legal order and Trust in justice. Beyond the criminal sphere, there are civil repercussions that affect both the perpetrators and the criminals. Materials as well as the State itself. The State can be held liable when its omission contributes to The occurrence of lynching, particularly in situations of public security failure or inefficiency. during the police intervention.

Nevertheless, the 1988 Federal Constitution enshrines the dignity of the human person (art. 1st, III) and the right to life (article 5, *caput*) as fundamental principles and guarantees of the Republic. Thus, the omission State intervention in the face of lynchings represents not only an administrative failure, but a violation of fundamental rights. Furthermore, from an international perspective, Brazil could be held accountable. before the Inter-American Court of Human Rights, because the State has a positive duty to guarantee



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

the life and integrity of citizens under its jurisdiction. (Araújo Júnior, 2022).

According to Oliveira (2023), state accountability must be accompanied by Public policies that combat the culture of violence and strengthen trust in the justice system. Furthermore, as Luz (2025, p. 263) aptly points out:

Institutional dysfunction leads to regression; the non-applicability of laws or the duty of justice represents the cultural stagnation of applying sanctions with one's own hands, without any sense of proportionality or reasonableness, depriving the victim of the fundamental aspects of human rights, freedom, and even physical integrity.

Finally, the legal consequences of lynching also reflect the weakening of... State authority is paramount, because when the state fails to guarantee justice, citizens resort to violence. private, eroding institutional legitimacy. Thus, an effective legal response must combine Exemplary punishment of the perpetrators, reparations for the victims, and policies to rebuild public trust. Therefore, strengthening the State as a guarantor of justice is an indispensable consequence and necessary for social pacification.

4.1 Social and legal education as a factor in breaking the cycle of violence and rebuilding trust in the justice system.

The lack of social capital and the persistent cycle of violence, manifested by the repetition Crime and social vulnerability exacerbate the crisis of confidence in justice institutions. demanding an intervention that transcends repression. In this sense, it is postulated that education Social and legal frameworks operate as an indispensable vector for breaking this vicious cycle, insofar as which equips citizens with the knowledge necessary for the full exercise of citizenship, for a correct understanding of *due process of law* and, consequently, for the reaffirmation of Legitimacy and effectiveness of the judicial system.

As already mentioned, the act of lynching symbolizes the symbolic transfer of state punitive power. into the hands of the community, which directly violates the principle of legality and the monopoly of jurisdiction. In other words, the citizen ceases to recognize the State as the legitimate enforcer of Justice, and he begins to exercise, on his own initiative, what he believes to be a "just" response to crime. Such However, this conduct triggers a continuous reproduction of violence, fueling the idea that Law can be replaced by force.

According to Baratta (2002), institutional violence and social violence are expressions of a same system of domination, in which the absence of an effective state response leads to the search for Revenge as a form of moral compensation.

Thus, lynching is part of a context of structural injustice, in which the failures of Legal institutions and the slowness of legal processes reinforce the desire for immediate punishment. Therefore, No public security policy or institutional reform will have lasting success without a Solid investment in civic and legal education. Ignorance about rights and duties.



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

Fundamental issues, coupled with a culture of impunity, create fertile ground for the acceptance of lynching as...
a form of "legitimate justice".

Containing the phenomenon of violence requires action from the Public Authorities, which must...
to transcend mere penal repression, requiring a comprehensive approach that prioritizes policies.
preventive and educational measures. It is the State's responsibility not only to strengthen institutions of
public safety and justice, but also the active promotion of human rights education and the
promoting civic awareness campaigns. In this arrangement, the Legislative Branch has the duty to
to improve the regulatory framework to cover social and penal gaps, while the Executive Branch
must implement security and social inclusion policies that directly reduce
Social and economic factors that reinforce the practice of so-called "taking the law into one's own hands."

Paulo Freire (1996) teaches that "education is a political act of liberation," and in the context
In legal terms, it has the role of emancipating the citizen from ignorance and conformity in the face of violence.
Educating for the law means teaching that justice is not achieved by taking matters into one's own hands, but through...
of respect for institutions and the conscious exercise of citizenship. Thus, popular legal education,
through schools, universities, social projects and public campaigns, it should be an instrument
of cultural transformation, bringing society closer to the justice system and demystifying the idea
that this only serves a privileged few.

Thus, the implementation of educational programs focused on a culture of peace, in
The peaceful resolution of conflicts and respect for human dignity is essential for...
breaking the cycle of violence and consequently restoring symbolic value and legitimacy.
of state justice. Given this, the promotion of legal education is seen as an instrument
of constitutional concreteness, translating abstract principles into empowering knowledge and,
thus ensuring the effective realization of human and fundamental rights.

5. Final considerations

The main objective of this study was to examine the phenomenon of lynching.
public in Brazil, understanding it as a direct manifestation of the crisis of legitimacy and of
growing public distrust of the penal system and the institutions responsible for it
to guarantee justice. The analysis, which unfolded along four thematic axes, confirmed the premise of
that lynching stems from a complex social process fueled by a sense of impunity,
due to procedural delays and perceived governmental inefficiency, leading society to assume responsibility.
violent self-help.

Historical research has shown that manifestations of "taking the law into one's own hands"
They persist as a cultural legacy of colonial and slave-owning practices, challenging the monopoly.
State coercion is legitimate. Following this, an analysis of the structure of the criminal justice system will be presented.



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

It highlighted the disconnect between the state apparatus and social demands, coupled with selectivity.

Criminal law contributes to legitimizing, from the perspective of part of the population, the adoption of informal punishments.

which seriously undermines the foundations of the democratic rule of law. Finally, the discussion

Regarding the legal implications, he emphasized that lynching represents not only a crime.

Not only is it an individual act, but a direct violation of human dignity and an affront to state authority itself.

In light of the above, it is possible to categorically answer the research question: the

Public lynching directly reflects the failure in law enforcement and protection, exposing its fragility.

of state authority in the face of social demands for justice. The solution to this crisis does not lie

not only in the penal repression of lynchers, but fundamentally in the reconstruction of the social pact.

This requires the implementation of intersectoral public policies focused on social and legal education.

that value legality and strengthen trust between citizens and the State.

However, to combat public lynching, it is imperative that the State act rigorously in

Law enforcement and transparency, while investing in restoring credibility.

institutional. Only through effective collaboration between the Public Authorities, civil society and the

Educational institutions will be able to overcome the mentality of revenge and establish a system of

Justice that ensures everyone, without exception, the fundamental right to life, dignity, and security.

References

ARAÚJO JÚNIOR, Carlos Ferreira de. *Lynchings in Brazil: on the possibility of the Brazilian State being held accountable in the Inter-American Court of Human Rights*. UEPB, 2022. Accessed on: October 6, 2025.

BARATTA, Alessandro. *Critical Criminology and Critique of Criminal Law: an introduction to the sociology of criminal law*. Translated by Juarez Cirino dos Santos. 3rd ed. Rio de Janeiro: Editora Revan: Instituto Carioca de Criminologia, 2002.

BENEVIDES, Maria Victoria. Popular responses and urban violence: the case of lynching in Brazil (1979–1982). In: PINHEIRO, Paulo Sérgio (org.). *Crime, violence and power*. São Paulo: Brasiliense, 1983.

BRAZIL. Decree-Law No. 2,848, of December 7, 1940. Penal Code. Official Gazette of the Union, Rio de Janeiro, December 31, 1940. Accessed on: October 10, 2025.

BRAZIL. Constitution (1988). *Constitution of the Federative Republic of Brazil*. Official Gazette of the Union, Brasília, October 5, 1988. Accessed on: October 7, 2025.

BRAZIL. Superior Court of Justice. Special Appeal REsp No. 1,860,791/DF. Rapporteur: Justice [Name of Justice]. Laurita Vaz. Sixth Panel, judged on February 9, 2021.

BRAZIL. Superior Court of Justice. Habeas Corpus HC No. 292.987/PA. Rapporteur: Justice Nefi



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

Cordeiro. Sixth Panel, judged on November 18, 2014.

BRAZIL. Superior Court of Justice. Habeas Corpus HC No. 48,618/RO. Rapporteur: Justice Gilson Dipp.

Fifth Panel, judgment rendered on February 21, 2006.

BITENCOURT, Cezar Roberto. *Treatise on Criminal Law – General Part*, v. 3. São Paulo: Saraiva, 2022.

BIZARRIAS, Isabela Silva. *Due Process of Law and Thirst for Revenge: The Instrumentalization of the Judiciary as a Means of Self-Help*. 2023. Monograph (Specialization in Civil Procedural Law)

– Pontifical Catholic University of São Paulo, 2023. Accessed on: November 17, 2025.

CAMPELO, Flavianne Damasceno Maia; FORTE, Elaina Cavalcante. Justice system, impunity and lynchings. In: CONGRESS OF THE LATIN AMERICAN SOCIOLOGICAL ASSOCIATION (ALAS), 31st, 2017, Montevideo. *Proceedings of the XXXI ALAS Congress*. 2017. Accessed on: November 17, 2025.

CARVALHO, Salo de. *Antimanual of Criminology*. São Paulo: Saraiva, 2015.

DATAFOLHA. 51% of Brazilians say they are more afraid of the police than they trust them. *O Globo*, December 23, 2024. Accessed October 4, 2025.

DURKHEIM, Émile. *Suicide: A Study in Sociology*. 4th ed. São Paulo: Martins Fontes, 2010.

FREIRE, Paulo. *Pedagogy of Autonomy: Essential Knowledge for Educational Practice*. São Paulo: Paz e Terra, 1996.

GODINHO NETO, Jorge. *CPF Cancelled: a sociological study of lynching in Manaus –*

Brazil. 2021. Dissertation (Master's in Sociology) – Federal University of Amazonas, Manaus, 2021. Accessed on: October 5, 2025.

GOMES, Luiz Flávio. We murder people like we kill cockroaches. *Viomundo*, July 18, 2014. Accessed November 17, 2025.

GOMES, Luiz Flávio; BIANCHINI, Alice; DAHER, Flávio. *Course on criminal law*. v. 1, General Part. 2nd ed. Salvador: JusPODIVM, 2016.

MARTINS, José de Souza. *Lynchings: popular justice in Brazil*. 2nd ed. São Paulo: Contexto, 2015.

MARTINS DA LUZ, Maria Aparecida. Lynching: an extrajudicial punishment practice. *Revista da Defensoria Pública do Estado do Rio Grande do Sul*, v. 1, n. 36, p. 248–265, 2025. Accessed on: Oct. 4, 2025.

NATAL, Luana Carolina Pereira Rhenius Giovanella. *Lynching: (in)justice in the democratic rule of law*. 2012. Accessed on: October 4, 2025.



Year V, v.2 2025 | Submission: 11/24/2025 | Accepted: 11/26/2025 | Publication: 11/28/2025

NUCCI, Guilherme de Souza. Alternative punishments and impunity. *Folha de S. Paulo*, November 14, 2000.

Accessed on: November 18, 2025.

OLIVEIRA, Letícia Müller de Abreu. The violent social reaction to the collective feeling of impunity generated by the inefficiency of the public security system. *Avante Magazine*, July–Dec. 2023.

PETRY, André. Lynching in Guarujá: fake news, rumor or truth? *Veja*, Dec. 14, 2014. Accessed on: Oct. 4, 2025.

ROMANO, Rogério Tadeu. Arbitrary exercise of one's own reasons and lynching. *Jusbrasil*, May 9, 2023. Accessed on: November 4, 2025.

SANTANA, Valquíria. Those accused of lynching are being tried in the 2nd Jury Court of São Luís. *Court of Justice of Maranhão*, December 1, 2020. Accessed October 5, 2025.

SANTOS, João; SILVA, Camila. Informal justice and collective violence in contemporary Brazil. *Brazilian Journal of Social Sciences*, v. 36, n. 108, p. 1-20, 2021.

SINHORETTO, Jacqueline. Lynchings: insecurity and popular revolt. *Brazilian Journal of Public Security*, v. 3, n. 1, p. 72-81, 2009.

UOL. Brazil recorded one lynching every two days in 2024. *UOL Culture*, 2024. Accessed on: October 4, 2025.

WEBER, Max. *Economy and society: foundations of comprehensive sociology*. 3rd ed. Brasília: Editora UNB, 1978.