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BETWEEN PUNISHMENT AND DIGNITY: THE CRISIS OF MASS INCARCERATION AND THE LEGITIMACY OF THE BRAZILIAN FEDERAL SUPREME COURT'S STRUCTURAL INTERVENTION IN ADPF 347

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Abstract
The article analyzes prisoner resocialization as a fundamental right under the 1988 Brazilian Constitution, with an emphasis on human dignity and the role of the Federal Supreme Court (STF) in ADPF 347/DF. It is argued that the lack of effective public policies undermines the resocializing function of punishment, reinforcing the marginalization of inmates and encouraging recidivism. The recognition of a state of unconstitutional affairs by the STF represents an attempt to overcome historical institutional omissions through a structural process that breaks with the traditional model of jurisdiction and seeks to guarantee fundamental rights in contexts of systemic violation. The article also highlights the failure of the mass incarceration model, which is largely based on punitive and exclusionary logics that exacerbate social and racial inequality. This qualitative research combines a literature review with an interview conducted with a judge from the Penal Enforcement Court of Ceará. The interview reveals the practical challenges faced by the prison system, such as the influence of criminal factions, overcrowding, and the lack of social reintegration programs. The study concludes that resocialization must be a state priority and requires not only normative changes, but a restructuring of criminal policy grounded in constitutional values such as human dignity, social inclusion, and the strengthening of institutional dialogue.
Keywords: 1. Prisoner resocialization; 2. State of unconstitutional affairs; 3. Prison system; 4. Human dignity; 5. Structural process

Resumo
O artigo analisa a ressocialização do preso como direito fundamental, à luz da Constituição de 1988, com ênfase na dignidade da pessoa humana e na atuação do Supremo Tribunal Federal (STF) na ADPF 347/DF. Argumenta-se que a ausência de políticas públicas eficazes compromete a função ressocializadora da pena, reforçando a marginalização dos apenados e incentivando a reincidência. O reconhecimento do estado de coisas inconstitucional pelo STF representa uma tentativa de superar omissões institucionais históricas, por meio do processo estrutural, que rompe com o modelo tradicional de jurisdição e busca garantir direitos fundamentais em cenários de violação sistêmica. O artigo também destaca a falência do modelo de encarceramento em massa, amplamente baseado em lógicas punitivistas e excludentes, que agravam a desigualdade social e racial. A pesquisa, de natureza qualitativa, combina revisão bibliográfica com entrevista a uma magistrada da Vara de Execuções Penais do Ceará. A entrevista evidencia as dificuldades práticas enfrentadas no sistema penitenciário, como a influência de facções, a superlotação e a carência de programas de reintegração social. Conclui-se que a ressocialização deve ser prioridade estatal e pressupõe não apenas mudanças normativas, mas a reestruturação da política criminal com base em valores constitucionais, como a dignidade humana, a inclusão social e o fortalecimento do diálogo institucional.
Palavras chaves: 1. Ressocialização do preso; 2. Estado de coisas inconstitucional; 3. Sistema prisional; 4. Dignidade da pessoa humana; 5. Processo estrutural

Contents: 1. Introduction; 2. Prisoner Rehabilitation and Social Reintegration as a Fundamental Right and the Challenges Arising from the Lack of Effective Public Policies; 3. The Role of the Constitutional Court in ADPF 347/DF and the Debate on the Legitimacy of the Brazilian Federal Supreme Court's Intervention; 4. Mass Incarceration as a Criminal Policy and the Perspective on the Prison System of the State of Ceará from the Viewpoint of a Criminal Sentence Enforcement Judge; 5. Final Considerations; 6. References.

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1. Introduction

This article aims to analyze the social reintegration of convicted persons as a fundamental right within the Brazilian prison system, with particular attention to the role of the Brazilian Federal Supreme Court (STF) in the Claim of Noncompliance with a Fundamental Precept (ADPF) No. 347/2015, as well as its implications for the implementation of public policies aimed at overcoming mass incarceration. The study is based on the premise that, in a Democratic State governed by the Rule of Law, human dignity constitutes a fundamental principle of criminal policies, particularly regarding the treatment of persons deprived of their liberty.

The first section examines the social reintegration of convicted persons as a fundamental right derived from the principle of human dignity, which is enshrined in the Constitution, the supreme norm of the Brazilian legal system. Thus, by recognizing and emphasizing human dignity, the Constitution establishes a normative commitment and guides the State in implementing policies designed to ensure the effective realization of this right.

Subsequently, the article discusses the role of the Brazilian Federal Supreme Court, as the country's Constitutional Court and highest judicial authority, in declaring an unconstitutional state of affairs within the prison system. It also examines the legitimacy of the Court's intervention when, under the pretext of ensuring the effective protection of fundamental rights, it expands its jurisdictional activity beyond its traditional boundaries and enters spheres ordinarily reserved for the Executive and Legislative branches.

The following section seeks to examine the prison situation in the State of Ceará from the empirical perspective of a judge serving in a Criminal Sentence Enforcement Court of the Court of Justice of the State of Ceará. Through an interview, issues relating to the unconstitutional state of affairs, the State's criminal policy, and the practical consequences of such policies within prison facilities, as well as their broader repercussions for society, were discussed.

The research adopts a qualitative approach, supported by a literature review encompassing specialized legal scholarship, institutional documents, and relevant case law, with particular emphasis on the decision rendered by the Brazilian Federal Supreme Court in ADPF No. 347/2015. This theoretical framework is complemented by a content analysis of a semi-structured interview conducted with a judge serving in a Criminal Sentence Enforcement Court in the State of Ceará, whose testimony contributes to a deeper understanding, grounded

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in practical experience, of the challenges encountered in the daily administration of criminal sentence enforcement.

Throughout the proposed analysis, the article seeks to foster critical reflection on the limitations and potential of neoconstitutionalism in reshaping institutional structures and advancing social justice, particularly in light of the ongoing crisis affecting the Brazilian prison system.

2. Prisoner Rehabilitation and Social Reintegration as a Fundamental Right and the Challenges Arising from the Lack of Effective Public Policies

In a Democratic State governed by the Rule of Law, universal adherence to the principle of legality constitutes one of the foundations of this model, implying that everyone, including the State itself, is equally subject to the prevailing legal order. This premise imposes upon public authorities the duty not only to respect but also to guarantee the fundamental rights of all individuals, including those subjected to restrictions on their liberty within the prison system.

In this context, the social reintegration of convicted persons during the enforcement of criminal sentences, understood as a process of reintegration into society through access to education, employment, and psychosocial support, goes beyond compliance with a normative guideline established by the Brazilian Criminal Enforcement Act (Law No. 7,210/1984), becoming a fundamental right derived from the principle of human dignity. This right finds support in the Brazilian Federal Constitution of 1988, particularly in Article 1, item III; [1] Article 5, item XLVI; [2] and Article 6, [3] which establish, respectively, human dignity as a foundational principle of the Republic, the individualization of criminal punishment, and social rights.

The Brazilian Federal Constitution of 1988 enshrines human dignity as one of the structural principles of the Brazilian constitutional order, granting it the status of a normative

[1] *"Article 1. The Federative Republic of Brazil, formed by the indissoluble union of the States, Municipalities, and the Federal District, constitutes a Democratic State governed by the Rule of Law and has as its foundations:*
(...)
III – the dignity of the human person." (Brazil, 1988, Art. 1, III, our translation).
[2] *"Article 5.*
(...)
XLVI – the law shall regulate the individualization of punishment..." (Brazil, 1988, Art. 5, XLVI, our translation).
[3] *"Article 6. Social rights include education, health, food, work, housing, transportation, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, in accordance with this Constitution." (Brazil, 1988, Art. 6, our translation).*

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principle of the highest hierarchy. This principle not only guides the formulation and implementation of public policies but also imposes substantive limitations on State action by requiring the preservation of the physical, moral, and psychological integrity of convicted persons, even in the exercise of the State's punitive authority. Furthermore, it prohibits the imposition of cruel, degrading, or humiliating punishments, as established by constitutional provisions and international human rights treaties ratified by the Brazilian State (Greco, 2009, pp. 57–59).

Thus, the principle of human dignity encompasses a set of inalienable rights inherent to the human condition, the absence of which entails the denial of the individual's very humanity. Respect for this principle must prevail even in the exceptional circumstances of deprivation of liberty, requiring the State to act consistently with the fundamental values of the legal system (Marreiro et al., 2016, p. 426).

From this perspective, social reintegration constitutes a social right belonging to the category of rights requiring positive State action, which entitle individuals to demand affirmative measures from the State (an obligation to act) aimed at improving their living conditions. This right corresponds to the State's duty to implement effective public policies that ensure the material conditions essential to the full exercise of citizenship and the realization of human dignity. When recognized as a social right, social reintegration transcends the punitive nature of criminal sanctions and acquires protective and educational dimensions, aiming to create opportunities that foster the educational, professional, and personal development of convicted persons (Dimoulis, 2014, pp. 52–53).

Accordingly, the State is legally bound to implement policies that promote the social reintegration of individuals serving criminal sentences and must comply with constitutional guidelines when formulating and implementing such measures. The classification of prisoners' social reintegration as a social right is justified by its purpose of promoting the inclusion and well-being of vulnerable groups through concrete actions aimed at overcoming inequalities and rebuilding life trajectories marked by marginalization (Dimoulis, 2014, pp. 52–53).

The process of social reintegration seeks to prevent or mitigate the stigmatizing effects of criminal punishment on an individual's social identity, that is, both their self-perception and the way they are perceived by others. This transformation in self-understanding arises from the social and psychological consequences of an initial criminal conviction. Labeling individuals who have been through the prison system as criminals contributes to their marginalization and

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may result in their permanent exclusion from society, particularly through the perpetuation of criminal recidivism (Baratta, 2014, pp. 178–180).

The social reintegration of convicted persons therefore constitutes a central objective of criminal sentence enforcement, extending beyond the punitive dimension of criminal sanctions and affirming the State's duty to create conditions for the dignified and harmonious return of convicted individuals to society. This principle is consistent with the foundations of Brazilian criminal policy and the international commitments undertaken by the country, particularly the International Covenant on Civil and Political Rights of 1966, incorporated into Brazilian domestic law through Decree No. 592/1992. Pursuant to Article 10, paragraph 3, of this international instrument, the penitentiary system must have as its essential aim the reformation and social rehabilitation of prisoners, requiring the State to implement appropriate educational, vocational, and social assistance policies that promote human dignity (Prado, 2017, pp. 70–72).

In this regard, criminal sentence enforcement transcends the punitive function of the criminal justice system by assuming an educational and rehabilitative dimension, aimed at enabling convicted individuals to fully exercise their rights and fulfill their responsibilities upon leaving the prison system and reintegrating into society. This approach is therefore grounded in the principles of human dignity and the social rehabilitation of prisoners, which are regarded as essential elements in the implementation of a genuinely humane and democratic criminal policy (Prado, 2017, pp. 70–72).

Nevertheless, it is important to emphasize that criminal sentence enforcement, as a stage of the criminal justice process, gives effect to the sanction imposed by a criminal conviction. Thus, the punitive function in this context refers to the exercise of the State's ius puniendi, that is, its authority and duty to impose sanctions on those who violate criminal law. Within the Brazilian legal framework, Rogério Greco (2009, pp. 24–29) advocates a balanced model of Criminal Law, under which State intervention should be minimal and rational, occurring only when strictly necessary and seeking to prevent mass incarceration from becoming the standard response to public security challenges. Accordingly, the punitive function must not be confused with institutionalized revenge; rather, it must serve the legal order while pursuing the social reintegration of convicted individuals.

Brazil currently faces a situation in which its prison system is severely overburdened. In the absence of adequate investment, prison facilities suffer from precarious structural conditions and overcrowded cells, where individuals held in pretrial detention share the same

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spaces with convicted prisoners considered more dangerous. Such circumstances contribute to violence and insecurity among inmates, while also creating an environment conducive to the development and transmission of criminal practices. This situation exposes prisoners to more serious forms of criminal behavior, generating a vicious cycle characterized by increasing violence and rising recidivism among the incarcerated population.

According to Carlos Amorim (1994, p. 21), the Brazilian prison system, far from fulfilling its rehabilitative function, has become an environment in which criminal practices are refined and intensified. In his words, prison acquires the status of a "postdoctoral degree in crime," insofar as, rather than discouraging recidivism, it contributes to the development of more sophisticated forms of criminal conduct. Individuals who enter the prison system as relatively low-risk offenders, often acting independently, may leave with stronger ties to criminal organizations, greater knowledge of criminal activities, and, in some cases, positions of leadership within more complex criminal structures.

This criticism highlights the failure of the large-scale incarceration model, which, instead of promoting social reintegration, ultimately reinforces escalating patterns of criminal involvement. By bringing together individuals with different levels of criminal involvement and affiliations with criminal organizations within the same environment, the prison system exposes inmates to increasingly violent, hierarchical, and institutionally organized criminal dynamics and practices.

It is evident that the absence of effective social reintegration programs in prisons contributes to a counterproductive cycle of increasing violence and repeated incarceration. Prisoner rehabilitation and social reintegration should constitute a major objective of criminal justice policy, producing tangible and positive outcomes for society. Nevertheless, shortcomings in prisoners' access to education and vocational training continue to prevail, hindering their preparation for life outside prison and their successful reintegration into the community.

3. The Role of the Constitutional Court in ADPF nº. 347/DF and the Debate on the Legitimacy of the Brazilian Federal Supreme Court's Intervention.

In light of the combination of adverse factors affecting the Brazilian prison system, and with a prison population considered the third largest in the world (WPB, 2026), comprising approximately 964,000 individuals in prison or under house arrest (Brasil, 2026, pp. 12, 32,

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177, and 257),[4] the Brazilian Federal Supreme Court (STF), in the Claim of Noncompliance with a Fundamental Precept (ADPF) nº. 347/2015, recognized the existence of an "unconstitutional state of affairs." It is worth emphasizing that the doctrine of the Unconstitutional State of Affairs was introduced by the Constitutional Court of Colombia, based on the existence of widespread violations of fundamental rights, the persistent inability or failure of public authorities to provide adequate responses, and the involvement of multiple public institutions and factors, including ineffective public policies, insufficient resources allocated to addressing the problem, and negligence on the part of the competent public authorities (Brasil, 2023, pp. 14–15).

According to Luís Roberto Barroso, the decision rendered in ADPF No. 347/DF may be considered bold, innovative, and, to a certain extent, revolutionary, as it introduced a new procedural model into the Brazilian legal system: the so-called structural proceedings or structural litigation. This procedural approach breaks with the traditional model, under which the judge, after the evidentiary phase, delivers a judgment that concludes their involvement in the adjudicatory stage, leaving enforcement to the competent authority (Barroso, 2025, p. 1).

Structural litigation is characterized by a distinct procedural dynamic aimed at resolving complex disputes involving systematic violations of fundamental rights and chronic institutional dysfunctions. Unlike the conventional model, its purpose is not to bring judicial involvement to an end with a final decision. On the contrary, this procedural model entails a continuous process, organized into successive stages, allowing the Judiciary to play an active role in overcoming structural problems.

However, from the perspective of the normative framework of Brazilian law, this mechanism faces theoretical and practical objections regarding its procedural foundations. The Brazilian legal system rests upon a normative structure governed by legislation, systematic procedural rules, and constitutional guarantees that establish objective parameters for judicial

[4] A total of 964,668 (nine hundred and sixty-four thousand, six hundred and sixty-eight) individuals in the Brazilian prison system or under house arrest. Of these, 727,301 (seven hundred and twenty-seven thousand, three hundred and one) individuals were held in physical prison facilities within the state and Federal District penitentiary systems; 594 (five hundred and ninety-four) individuals were held in physical prison facilities within the Federal Penitentiary System; 129,810 (one hundred and twenty-nine thousand, eight hundred and ten) individuals were under house arrest with electronic monitoring; and 103,271 (one hundred and three thousand, two hundred and seventy-one) individuals were under house arrest without electronic monitoring. Additionally, on page 32, the report records another 3,692 (three thousand, six hundred and ninety-two) individuals detained in facilities operated by public security agencies, including Civil Police stations and facilities belonging to other law enforcement agencies (Brasil, 2026, pp. 12, 32, 177, and 257).

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action. By contrast, structural proceedings tend to operate predominantly on the basis of open-ended principles, such as human dignity, reasonableness, and efficiency, which may undermine legal certainty.

According to Lima, Leitão, and Sousa (2023), who identify the expanded use of structural proceedings by the Brazilian Federal Supreme Court as problematic, excessive judicial protagonism may compromise the separation of powers and contribute to a form of judicial activism that often lacks a sufficient legal or democratic foundation. Similarly, Humberto Ávila (2009, pp. 10–12) warns that the centrality of constitutional principles, when not accompanied by rigorous balancing criteria and sufficiently detailed legal reasoning, may give rise to arbitrary decisions under the appearance of constitutional legitimacy. From this perspective, the author cautions that when legal proceedings, as in the case of structural litigation, become predominantly grounded in principles, legal determinations may become excessively relative, causing the legal system to lose normative consistency, legal certainty, and predictability.

In Brazil, the adoption of structural proceedings occurred paradigmatically in the response to systemic violations within the prison system, marking a significant innovation in judicial practice. This procedural model comprises three stages. The first consists of an institutional diagnosis, in which the Brazilian Federal Supreme Court identifies the existence of a serious and persistent unconstitutional situation characterized by widespread violations of fundamental rights. At this stage, the Court formally acknowledges the problem and assigns it a legal characterization (Barroso, 2025, pp. 1–2).

The second stage concerns the determination of institutional measures. At this point, the STF establishes guidelines requiring the competent authority, whether belonging to the Executive Branch or another sphere of government, to develop an action plan aimed at correcting the identified unconstitutional situation. In accordance with the principle of separation of powers, the Judiciary refrains from defining the detailed content of the plan but establishes minimum parameters for its formulation to ensure the effectiveness of the State's response. The third and final stage consists of judicial monitoring, during which the Supreme Court oversees the implementation of the plan and intervenes, when necessary, to correct deviations, require compliance with previously neglected obligations, or adapt measures to emerging needs. This continuous supervision seeks to ensure that the outcome of the entire

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process complies with constitutional standards and promotes the restoration of violated rights (Barroso, 2025, pp. 1–2).

This procedural methodology represents an innovation within the Brazilian legal system, insofar as it enables the Judiciary to act more effectively in complex matters involving the protection of fundamental rights and the resolution of structural problems affecting the implementation of public policies. In the specific context of the prison system, structural proceedings have emerged as an important instrument for addressing chronic human rights violations and promoting the alignment of the penitentiary system with constitutional and international legal standards.

According to Pablo Francesco (2021, p. 234), structural proceedings constitute a crucial legal instrument for the realization of fundamental rights as guaranteed by the Constitution. This legal mechanism provides not merely a specific solution to an individual dispute but also the substantive realization of minimum fundamental rights that are frequently neglected in contexts of structural violations. Its procedural dynamics are characterized by cooperative interaction among the various political and procedural actors involved, including the Judiciary, the Executive Branch, the Public Prosecutor's Office, civil society, and other stakeholders, thereby fostering institutional dialogue. The purpose of this procedural model extends beyond traditional litigation by prioritizing the formulation, planning, and implementation of structural measures capable of restoring violated rights to the greatest extent possible.

Nevertheless, this judicial technique introduces into the Brazilian legal system a new form of judicial intervention that authorizes the Judiciary to engage in matters traditionally reserved for politically elected branches of government, thereby promoting a significant degree of interference in the decision-making spheres of the Executive and Legislative Branches. Such intervention is particularly evident in the formulation, implementation, and oversight of public policies, reflecting a form of judicial activism. From this perspective, the Judiciary begins to perform functions that would not ordinarily fall within its institutional responsibilities, assuming a prominent political role by defining and, at times, redefining budgetary priorities, establishing public policy agendas, and supervising or directing the actions of other branches of government (Mamede; Leitão Neto; Rodrigues, 2021, p. 814).[5]

[5] Although this phenomenon has been criticized by some scholars from the perspective of the separation of powers, it has also been justified on the grounds of prolonged institutional inaction and the need to ensure the effective protection of constitutionally guaranteed fundamental rights.

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This expanded role of the Constitutional Court, particularly in contexts of inaction or omission by the Executive and Legislative Branches, may give rise to a phenomenon referred to in contemporary legal scholarship as the "judicialization of politics." This phenomenon is understood as a process whereby issues of significant political, economic, and social relevance, traditionally entrusted to the decision-making authority of democratically elected officials, increasingly become subject to judicial review. However, the judicialization of politics[6] raises concerns regarding the expansion of judicial authority into matters involving complex public policy choices, potentially resulting in activist or even abusive judicial conduct, insofar as judges begin to occupy decision-making spaces that, under the principle of separation of powers, should remain within the deliberative authority and responsibility of elected public officials (Lima; Leitão; Sousa, 2023).

In response to the growing complexity of contemporary societies and the proliferation of social conflicts, constitutional values have progressively extended their influence over increasingly diverse areas of legal regulation. In this context, the Constitution ceases to be merely a political document and acquires full normative force, shaping legislative activity, judicial interpretation, the work of legal professionals, and the decisions of political actors. This phenomenon is known as the constitutionalization of the legal system and finds its theoretical expression in neoconstitutionalism (Barroso, 2006, pp. 57–59). [7]

One of its implications is the possibility of adopting a moral reading of the Constitution, that is, a constructive and purposive interpretation capable not only of recognizing new rights derived from constitutional principles but also of expanding the scope and protection of rights already formally recognized. This approach strengthens the Judiciary's prominent role in the realization of fundamental rights and in addressing State omissions that undermine the effectiveness of constitutional provisions (Rossi; Pamplona, 2013, pp. 16, 21–22).

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[6] According to Pietro Alarcón, institutional crises, particularly those affecting representative bodies, combined with widespread public dissatisfaction, have led to the transfer of debates concerning politics, economics, ethics, social rights, and the protection of vulnerable and disadvantaged populations from the traditional spheres of the Executive and Legislative Branches to the judicial arena. This expansion of the scope of public debate beyond politically elected institutions and into the legal domain characterizes the phenomenon known as the judicialization of politics (Alarcón, 2017, p. 110).

[7] Neoconstitutionalism may be understood as a theoretical and legal response to the central role acquired by the Constitution in the aftermath of the Second World War. This school of thought proposes understanding the Constitution not merely as a set of formal rules but as a system of principles and values endowed with immediate binding force, particularly with regard to fundamental rights. Within this framework, contemporary constitutionalism transforms moral values and political choices into legally enforceable norms, thereby reshaping the institutional roles of public authorities (Ávila, 2009, pp. 1–3).

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In the face of extreme vulnerability and blatant violations of constitutional principles that profoundly affect the political community's understanding of human life and dignity, it is unacceptable to remain passive while institutional boundaries and spheres of competence are called into question, particularly when those entrusted with safeguarding and defending the Constitution fail to act despite the urgent need to overcome a profound crisis. The same State inaction that certain segments of society may interpret as a legitimate form of non-interference with their property or wealth can, from another perspective, represent institutional abandonment and condemnation to marginalization for vulnerable groups historically subjected to social and economic disadvantage. Such omission is not neutral, as it reproduces structural inequalities and perpetuates the exclusion of those who most urgently require the active presence of the State to ensure the protection of their fundamental rights (Alarcón, 2017, pp. 108–109).

Furthermore, the Brazilian Constitution of 1988 is not neutral; rather, it is committed to transforming social reality by establishing a legal order oriented toward freedom, substantive equality, and the consolidation of human dignity, which constitutes one of the foundations of the Democratic State governed by the Rule of Law. Accordingly, neither constitutional interpreters nor judges can be expected to remain indifferent to situations involving serious human rights violations. The normalization of such conditions would contradict constitutional principles and undermine the very meaning of justice within the constitutional framework. In a State whose legal order is guided by democratic values, the principle of legality, and the imperative of effectively realizing fundamental rights, the persistence of inequality, abandonment, and violations of rights cannot be regarded as institutional normality. Instead, it must be understood as an affront to the constitutional project, demanding an active response from public authorities at all levels of government and from their respective officials (Alarcón, 2017, pp. 108–109).

According to Luigi Ferrajoli (2002, pp. 317–319), the legitimacy of the Democratic State governed by the Rule of Law rests upon its capacity to protect the lives, physical and psychological integrity, and other fundamental rights of its citizens. From this perspective, a State that kills, tortures, or humiliates individuals under its custody not only undermines its own legitimacy but also contradicts and calls into question its very reason for existence, placing itself on the same level as those who violate the legal order and legal security. Therefore, the exercise of criminal jurisdiction must remain consistent with the Constitution and international

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human rights treaties; otherwise, the State's punitive power risks becoming an expression of arbitrariness and institutionalized violence.

It should be emphasized that the very legitimacy of the State is called into question when it fails to fulfill the basic responsibilities inherent in its institutional existence, such as safeguarding the lives and physical integrity of its inhabitants, including incarcerated individuals, and creating conditions conducive to their personal and social development.

In this regard, according to Cesare Beccaria (1999, p. 135), it is the State's duty to provide the most reliable means of preventing crime by fostering individual improvement and development through education, understood in its broadest and most profound sense. The promotion of education, including within prisons as an instrument of social reintegration, must no longer remain a neglected field, addressed only by certain segments of the population or by a small number of scholars at isolated moments in history. For crime prevention to become genuinely effective and sustainable, education must be recognized as a fundamental pillar of citizenship, justice, and democratic social coexistence.

According to Claus Roxin (2008, pp. 17–19), the widespread imposition of custodial sentences does not constitute a desirable strategy within criminal policy. The author argues that, in cases involving offenses of minor or moderate severity, which account for the majority of criminal violations, imprisonment proves ineffective in achieving social rehabilitation. This is because individuals cannot be taught how to live in freedom or respect the legal order through the very deprivation of their liberty. Moreover, the adverse consequences associated with incarceration, including job loss, the breakdown of family relationships, and stigmatizing psychological and social effects, contribute to intensifying processes of social exclusion and disintegration, increasing the likelihood of recidivism and undermining individuals' prospects for successful social reintegration.

In this context, Claus Roxin (2008, pp. 19–25) argues that future criminal policies should seek to reduce the centrality of imprisonment, progressively replacing custodial sentences with less severe and more effective sanctions. Among the proposed alternatives are monetary fines, house arrest (which, given modern electronic monitoring systems, would not present significant supervision difficulties while also reducing costs for the State), community service (including activities performed in hospitals, social assistance institutions, or community facilities, such as gardening and the maintenance of public spaces), and mechanisms for the voluntary reparation of harm caused by criminal conduct. In addition to imposing lower

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financial burdens on the State, these measures have greater potential to promote offender accountability and rehabilitation while addressing the objectives of general and special prevention in a more proportionate manner.

4. Mass Incarceration as a Neoliberal Criminal Policy (Punitive and Exclusionary) and the Perspective on the Prison System of the State of Ceará from the Viewpoint of a Criminal Sentence Enforcement Court Judgen

Under the increasingly adverse conditions currently affecting the Brazilian prison system, incarceration contributes to deepening social instability and reinforcing the cycle of poverty, directly affecting families from the most vulnerable segments of society, whose members are frequently deprived of their liberty. Far from promoting justice or social reintegration, imprisonment, as currently structured, operates as an instrument of systematic violations of the law, fostering a culture of mutual distrust, declining confidence in institutions, and rejection of legitimate State authority. The mass incarceration of impoverished individuals, regarded as "disposable" by the productive system or "unsuitable" for market logic, exacerbates the severe social dysfunctions that undermine the consolidation of substantive democracy in Brazil (Wacquant, 1999, pp. 4–9).

According to Michelle Alexander (2017, pp. 151–154), individuals released from prison or placed on parole, once labeled as criminals, are introduced into a parallel world of discrimination, stereotypes, and exclusion, in which they are relegated to the status of second-class citizens. This condition significantly increases the difficulties they face in reintegrating into society, particularly in gaining access to economic opportunities. Such criminal labeling increases the likelihood of recidivism, generating a vicious cycle in which marginalized and stigmatized segments of the population become part of an inferior social caste, or undercaste.

From Loïc Wacquant's perspective (1999, pp. 4–9), the problem of incarceration must also be examined in conjunction with the economic model adopted by the nation. For Wacquant, so-called neoliberal penality reveals a paradox: while weakening the State in its social dimensions through budgetary cuts, the flexibilization of rights, and the reduction of public policies, it simultaneously strengthens the repressive apparatus, relying on a police and penal State as an apparent solution to contain the consequences of the social inequalities that this very

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model has helped generate. It is therefore a model that replaces welfare with control, transferring to the criminal justice system the responsibility for managing the social costs of exclusion produced by an exclusionary economic system characterized by the concentration of wealth.

Supporting this interpretation, Pedro Abramovay (2010, pp. 25–27) argues that, contrary to common assumptions, deprivation of liberty must not be regarded as the only mechanism available to society for addressing criminal offenses. In contemporary society, imprisonment is sustained less by its demonstrated effectiveness in preventing crime than by its ideological connection to the logic of the prevailing productive system. The relationship between the dominant economic model and criminal policy is so profound that examining them separately becomes inadequate. The penal system, as an apparatus of selective social control, performs functions that extend beyond the legal sphere, operating as an instrument for managing inequalities and containing populations considered surplus to the formal labor market.

Thus, in the absence of a declaration of an unconstitutional state of affairs, the Brazilian prison system operates through distorted institutional functions that depart from its original purposes, functioning in practice as a mechanism of social control. This reality contributes to the maintenance of structural inequalities and reinforces the segregation of specific segments of the population, predominantly comprising Black and mixed-race individuals and those experiencing socioeconomic vulnerability.

Consequently, any criticism of the criminal justice system that disregards the reconfiguration of the State's role in the context of increasing social inequalities risks becoming merely another form of legitimization of the existing repressive apparatus. Similarly, movements that challenge the prevailing economic model while paradoxically advocating the intensification of punitive State power and mass incarceration as the predominant foundations of criminal policy ultimately reproduce and reinforce the assumptions of the neoliberal model, which instrumentalizes the penal system as a mechanism of social discipline and exclusion (Abramovay, 2010, pp. 25–27).

In the State of Ceará, prison overcrowding remains a significant challenge to the effective protection of the fundamental rights of persons deprived of their liberty and to the adequate management of the penitentiary system. According to the Penal Information Report (RELIPEN), covering the second half of 2025, the State recorded, as of December 31, 2025, a total of 25,413 (twenty-five thousand, four hundred and thirteen) individuals incarcerated in

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physical prison facilities, while the officially available capacity amounted to only 17,873 (seventeen thousand, eight hundred and seventy-three) places. This situation represents a shortage of 7,540 (seven thousand, five hundred and forty) places, corresponding to an excess prison population of approximately 42.2% above the installed capacity, demonstrating the persistence of overcrowding and the considerable pressure placed on the State's penitentiary infrastructure (Brasil, 2026, pp. 12, 15, 17).

To deepen the analysis of this subject, explore the perspective of a member of the legal community, and gain a practical understanding of how criminal sentence enforcement operates and the challenges inherent in this professional activity, an interview was arranged with Dr. Luciana Teixeira de Souza, a judge serving in the Second Criminal Sentence Enforcement Court of the Court of Justice of the State of Ceará, who is also recognized for her work addressing mental health within the juvenile justice system (Ceará, 2025). The interview was conducted in person on May 29, 2025, in her chambers at the Second Criminal Sentence Enforcement Court. Her account corroborates the precarious conditions of Brazilian prisons, particularly those observed in the State of Ceará, and provides insight into the replication of mass incarceration policies from the federal sphere at the state level. Several aspects of this situation were discussed during the interview.

One of the problems identified by Dr. Luciana Souza (2025) concerns the presence of criminal organizations within prisons, which makes it necessary to separate inmates according to their affiliation with different criminal factions. Those who do not belong to any faction are classified according to the predominant criminal organizations operating in the neighborhoods where they reside. This precautionary measure is implemented in advance to prevent conflicts, the escalation of violence within prison facilities, and potential deaths resulting from rival gang confrontations.

Thus, in addition to prison overcrowding, the separation of pretrial detainees from prisoners serving final criminal sentences, as well as the segregation of high-risk inmates from those convicted of less serious offenses, has become increasingly difficult due to divisions based on criminal organization affiliations. Furthermore, criminal factions seek to recruit inmates so that, upon their release, they will commit specific crimes under threats of being killed or having members of their families harmed. Consequently, in an attempt to protect themselves and their relatives, former prisoners may become involved in new criminal activities, resulting in recidivism and renewed incarceration. Families living in peripheral and

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economically disadvantaged neighborhoods may even lose their homes as a result of pressure and threats imposed by criminal groups (Luciana Souza, 2025).

It is important to observe that individuals released from prison may feel compelled to return to criminal activities because of the influence and coercive pressure exerted by criminal organizations, even when doing so is contrary to their personal intentions. Their actions are therefore driven by coercion and the perceived need to protect their own lives and those of their family members. Under such circumstances, these individuals no longer perceive themselves as being protected by the State.

The judge emphasizes that the social reintegration of convicted persons and the adequate maintenance of prison facilities are issues that have historically attracted little interest from either civil society or public authorities. The effective implementation of social reintegration programs is fundamentally a matter of political choice. In practice, however, this issue has been systematically neglected, whether because of public indifference or the omission of political authorities who deliberately avoid incorporating such matters into their policy agendas (Luciana Souza, 2025).

At another point in the interview, the judge emphasized that the State had adopted mass incarceration as its principal policy for the prison system, an approach that, as previously discussed, has not reduced violence on the streets. By contrast, the Brazilian Constitution is founded upon the principle of human dignity. In principle, public administration cannot, or at least should not, depart from this constitutional orientation. Furthermore, regardless of the seriousness of the crime committed, the State must not act as a vengeful institution; otherwise, it risks placing itself on the same moral level as those who violate the law. State action must instead be guided by and effectively comply with the Constitution to avoid further aggravating an already unsustainable prison situation (Luciana Souza, 2025).

Based on her professional experience, the judge argues that social reintegration policies should be individualized and differentiated, taking into account the diverse profiles of individuals within the prison population and avoiding generalized solutions that disregard the internal heterogeneity of the penitentiary system. Nevertheless, over recent decades, the Brazilian State has deliberately adopted a policy of large-scale imprisonment, aligned with repressive and punitive practices, in clear contradiction with the fundamental principles of the Federal Constitution, particularly the principle of human dignity (Luciana Souza, 2025).

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In this context, it must be emphasized that, even when individuals have committed serious crimes, the State cannot act out of revenge or retaliation without risking the loss of its institutional and moral legitimacy and becoming equivalent to those it seeks to punish. Mass incarceration, far from constituting an effective response to criminality, reproduces historical patterns of social and racial segregation, symbolically recalling the era of slave quarters (*senzalas*) by promoting a form of concealed social cleansing that disproportionately affects Black and mixed-race individuals, people living in poverty, and those with low levels of educational attainment (Luciana Souza, 2025).

The interviewee's statements reveal a convergence with Luigi Ferrajoli's understanding of State legitimacy, particularly in questioning the legitimacy of a State that fails to operate within legal and constitutional parameters and instead reproduces vengeful and aggressive conduct similar to that which it seeks to combat. This criticism is directed especially at the historical and systematic adoption of mass incarceration as the central foundation of Brazilian criminal policy, implemented over several decades without generating concrete prospects for reducing criminal offenses or recidivism rates among the incarcerated population.

From this perspective, it becomes essential to reflect on the limits of the State's punitive power and the risks of eroding institutional legitimacy when the State abandons its commitment to fundamental rights and adopts criminal policies that, rather than promoting rehabilitation and crime prevention, reproduce patterns of exclusion, violence, and social segregation that are incompatible with the principles of a Democratic State governed by the Rule of Law.

At another point in the interview, the judge emphasized that the unconstitutional state of affairs continues to persist, despite having been declared by the Brazilian Federal Supreme Court in 2015 (Luciana Souza, 2025). What can be observed is that, through the National Plan to Address the Unconstitutional State of Affairs in Brazilian Prisons, known as *Pena Justa*, mechanisms and institutional structures aimed at enabling the effective implementation of public policies are being developed. These include the establishment of the National Secretariat for Penal Policies, the preparation of the Penitentiary System Master Plan, prison case review initiatives conducted by the Judiciary, Project BRA 14/011 – Strengthening Prison Management in Brazil, Project BRA 18/019 – Making Justice (*Fazendo Justiça*) and State Executive Plans, as well as the Cooperation Agreement for the Improvement of the Prison System (Conselho Nacional de Justiça et al., 2025, pp. 42–58).

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Thus, addressing the unconstitutional state of affairs in Brazilian prisons represents a major challenge that must be tackled progressively through public policies aimed at fundamentally rethinking the country's criminal justice system, taking into account its complexity and the large number of incarcerated individuals. Furthermore, this process requires a cultural transformation in Brazilian society regarding its perception and understanding of prison-related issues, as prevailing social attitudes toward incarceration are reflected in the inadequate management of the prison system by elected political representatives.

5. Final Considerations

The analysis conducted throughout this article leads to the conclusion that social reintegration, although constitutionally recognized as a fundamental right, remains far from being effectively realized in Brazilian prisons. The persistence of a large-scale incarceration model, characterized by a punitive approach and a conception of social segregation, combined with the historical omissions of the Executive and Legislative Branches, undermines the legitimacy of State action and exacerbates social inequalities.

The decision rendered by the Brazilian Federal Supreme Court (STF) in ADPF No. 347/2015, recognizing the existence of an unconstitutional state of affairs within the national penitentiary system, represents a significant milestone in judicial intervention aimed at protecting fundamental rights in a context of structural State inaction. Nevertheless, progress remains limited in the face of institutional and cultural resistance and the inadequacy of the public policies implemented.

The practical experience presented through the interview with the Criminal Sentence Enforcement Court judge reinforces the understanding that the prison crisis cannot be reduced to overcrowding or inadequate facilities. Rather, it is rooted in a structural logic of social exclusion, characterized by racism, poverty, and a lack of prospects for life after imprisonment, resulting from the failure to effectively guarantee convicted persons' right to social reintegration. Therefore, overcoming this situation requires not merely isolated or incremental measures, but a comprehensive reformulation of criminal policy, centered on the constitutional commitment to human dignity, which must be effectively embodied in criminal sentence enforcement, with education serving as a driving force for social transformation.

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It is important to emphasize that the legitimacy of the Brazilian Federal Supreme Court in declaring an unconstitutional state of affairs and undertaking efforts to enforce constitutional principles should not be called into question when State action, focused on the mass incarceration of the population without providing adequate opportunities for social reintegration through rehabilitation programs, disregards or even contradicts the provisions of the Constitution. Such conduct raises serious questions regarding the legitimacy of the State itself, particularly in light of the degrading conditions prevailing within the prison system, which are the result of decades of inadequate criminal policy management.

Similarly, Rafaella Lopes (2019, pp. 44–50) highlights the chaos and disorder prevailing within the penitentiary system, arguing that there can be no doubt as to the justification for declaring an unconstitutional state of affairs. The author likewise rejects any hesitation concerning the legitimacy of the Supreme Court in issuing decisions aimed at overcoming political and institutional obstacles and compelling the Executive and Legislative Branches to abandon their inertia by fostering institutional dialogue, encouraging the formulation of new public policies, and coordinating and monitoring their outcomes. She further emphasizes that, when addressing the national penitentiary system, the legitimacy of the Supreme Court becomes even more evident and difficult to dispute, considering that the Judiciary plays a central role in criminal sentence enforcement, insofar as the authority to impose criminal sentences and order imprisonment falls within its jurisdiction.

Within the Brazilian criminal justice system, the thinkers examined throughout this article, including Luigi Ferrajoli, Claus Roxin, and Cesare Beccaria, offer fundamental theoretical contributions to the necessary reassessment of the legitimacy of the State's exercise of punitive power, particularly when confronted with constitutional principles and internationally recognized human rights guaranteed by the Brazilian Constitution. Luigi Ferrajoli maintains that State authority is weakened and loses legitimacy whenever it resorts to institutional violence and degrading practices that violate human dignity. Claus Roxin, in turn, presents a forceful criticism of mass incarceration policies, which he regards as ineffective and counterproductive, insofar as they intensify processes of social disintegration and fail to achieve the rehabilitative objectives attributed to criminal punishment. Cesare Beccaria, a pioneer of humanistic criminal law, argues that education constitutes the most effective instrument for crime prevention, rejecting purely retributive approaches and emphasizing the ethical and civic development of individuals.

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Accordingly, it becomes evident that the State's role in criminal justice cannot be limited to the mere imposition of punitive sanctions. On the contrary, it must assume a proactive role in promoting human dignity and facilitating the social reintegration of individuals who have come into conflict with the law. Achieving this objective requires investment in comprehensive and structural public policies that address the social causes of criminality, as well as the adoption of alternative sanctions to imprisonment, guided by restorative justice, the proportionality of punishment, and social inclusion as an essential means of transforming the prison system.

Finally, it is reaffirmed that the effective protection of the fundamental rights of convicted persons requires stronger institutional dialogue, ethical commitment from professionals within the justice system, a cultural transformation in society's perceptions of incarceration, and coordinated action among the different levels of government, with the aim of rebuilding a prison system consistent with constitutional principles and the foundations of the Democratic State governed by the Rule of Law.

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