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**Colonial Legacies and Marginalization:
Children Deprived of Liberty in Brazil's
Socio-educational System.**

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*“Aos quinze, foi mandado pro reformatório
Onde aumentou seu ódio diante de tanto terror
Não entendia como a vida funcionava
Discriminação por causa da sua classe e sua cor
Ficou cansado de tentar achar resposta
E comprou uma passagem, foi direto a Salvador”*

*“At fifteen, he was sent to a juvenile detention centre
Where the terror he endured only deepened his hatred
He could not understand how life worked
Discrimination because of his class and the colour of his skin
He grew weary of searching for answers
Bought a ticket, and headed straight to Salvador.”*

(Author's translation)

- Renato Russo, *Faroeste Caboclo*
(Legião Urbana, Que País é Este, 1987)

To those who inspired it but will not read it.

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Abstract

This thesis examines how colonial legacies shape the contemporary socio-economic inequalities and social hierarchies present, not only in the Brazilian society as a whole, but in the penal selectivity concerning children deprived of liberty in Brazil's socio-educational system. The study argues that the overrepresentation of a specific population in confinement units is not a coincidence, but an expression of a colonial logic of social control. The study uses an interdisciplinary theoretical framework that brings together decolonial thought, history and sociological analysis, particularly based on authors like Aníbal Quijano and Michel Foucault.

It addresses this theory through data and documentary analysis of national sources, together with interpretation of secondary academic literature in history, sociology and law, as a way to validate the argument. It traces a historical timeline from the colonial formation of the country to the contemporary legal instruments that serve as protection for children's rights in today's Brazil.

The research analyses data that show the disproportionate representation of black and *pardos* (mixed-race) youth in the system, and how the conditions inside the facilities are marked by continuous failures of the normative framework that governs the system. Throughout an analysis of the historical formation of the country, this thesis further analyses how penal selectivity operates through multiple mechanisms that reinforce the colonial logic and reproduce racialised outcomes across the stages of the justice process.

The findings contribute to the understanding that addressing the crisis of the socio-educational system requires the confrontation of the structural and historical dimensions, as not merely fixing administrative problems, and that the data analysed here shows how the colonial logic of control remains in power.

Keywords: colonial legacies, socio-educational system, penal selectivity, juvenile justice, Brazil, coloniality of power, children's rights, racial discrimination.

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List of Abbreviations

- CNIUPS** - Cadastro Nacional de Inspeções em Unidades e Programas Socioeducativos
(National Registry of Inspections in Socio-Educational Units and Programs)
- CNJ** - Conselho Nacional de Justiça (National Council of Justice)
- CNMP** - Conselho Nacional do Ministério Público (National Council of the Public
Prosecutor's Office)
- CONANDA** - Conselho Nacional dos Direitos da Criança e do Adolescente (National
Council for the Rights of Children and Adolescents)
- CRC** - Convention on the Rights of the Child
- ECA** - Estatuto da Criança e do Adolescente (Statute of the Child and Adolescent)
- FEBEM** - Fundação Estadual do Bem-Estar do Menor (State Foundation for the Well-Being
of Minors)
- FUNABEM** - Fundação Nacional do Bem-Estar do Menor (National Foundation for the
Well-Being of Minors)
- IBGE** - Instituto Brasileiro de Geografia e Estatística (Brazilian Institute of Geography and
Statistics)
- SINASE** - Sistema Nacional de Atendimento Socioeducativo (National System of
Socio-Educational Assistance)
- UN** - United Nations

1. Introduction

When a young person arrives at the door of a socio-educational confinement unit in Brazil, in the majority of cases (as will be demonstrated throughout this thesis), this adolescent has a profile: he is probably a male adolescent black or *pardo* (mixed-race), he did not complete middle or high school, and he is in the age range of 15 to 17 years old. Most likely, he was born and raised in a peripheral area of his city, or a *Favela* (which is an informal urban community, characterized by self built-housing in a context of economic inequality), probably he comes from a family that is in a situation of socioeconomic vulnerability. Most of the time he had to leave school early, maybe to help his family economically, and for that he either had to start working informally from a young age, or maybe he found on criminality a way to escape his reality of poverty. Maybe he experienced violence in his home or his community way before he ever encountered it in the justice system. And now that he has arrived in the institution, he was probably stopped before, he was approached and processed by other institutional actors, like police officers, prosecutors and judges. The research will later on demonstrate that, most likely, these actors exercised their power in a way that was influenced by race, class and marginalization. And in that sense, we will analyse why that happens. Maybe this boy was failed by other systems many times before getting face-to-face with the socio-educational one. This scenario description is based primarily on the study organised by Professor Elionaldo Fernandes Julião's, from the Universidade Federal Fluminense, called “Life and educational trajectories of young people in situations of risk and social vulnerability accused of committing juvenile offences” (Author's translation), where it is examined the factors that contribute to these adolescents involvement in the system.¹ It is also predominantly based on the finding and data that will be drawn throughout the thesis.

This young boy is now incarcerated, and as data will demonstrate over the course of this thesis, he will face overcrowding, violence from staff, inadequate access to education and health services, he will encounter degrading treatment, and conditions that are incompatible to which Brazil is formally committed, like it will be evidenced further in the research. Even if he is protected by the normative framework of the country, or the international standards of

¹ Flávia Alt do Nascimento and Liliane Irencio Brotto, 'COVID-19 e Medidas Socioeducativas: Breve Análise a partir da Experiência de Assessoramento Técnico no CAO Infância e Juventude/MPRJ' in Elionaldo Fernandes Julião (ed), *Adolescentes e jovens em conflito com a lei: diálogos interdisciplinares sobre situação de risco e vulnerabilidade social* (1st electronic edn, Navegando Publicações 2023) 72–74.

the Convention on the Rights of the Child, even if they should guarantee his dignity, his physical integrity, his right to education and to health. Unfortunately, that is probably not the reality that he will face in the system.

For this reason, this study aims to clarify why there are so many inconsistencies in the Brazilian Socio-educational system, to analyse the gap between the norm and the reality, and how it still persists - and mostly, how this relates to the way Brazil was formed and its historical roots. This thesis focuses on understanding why the actual reality these kids face in the socio-educational system is far from what is expected in the normative description, considering that Brazil is a democratic country and has a constitution that was adopted in 1988, has a landmark statute on children's rights since 1990, and is reinforced by international monitoring mechanisms and commitments. The profile of the adolescents in the system remains racially and socioeconomically defined, and the conditions they face are still far from what is defined and protected by law. We aim here to understand the gap between norm and reality, to understand how that applies as a continuity of a colonial logic of control that has never been dismantled, and why it still persists.

1.2 Research Questions

The central research question of this thesis is: How do colonial legacies and contemporary socio-economic inequalities shape the social hierarchies present in penal selectivity for children in the socio-educational system in Brazil? This question was formulated as an intersection of some fields of research: decolonial studies, the sociology interpretation of race and poverty in Brazil, along with the analysis of children's rights law and international mechanisms to support it. And for that, we analysed through an overlap of historical, theoretical and empirical considerations. This question is significant because Brazil has one of the largest number of children in detention centers in the world: Latin America and Caribbean in 2024 had 34,000 children between the age of 5 and 17 in the system², of those, 12,506 were in Brazil according to the SINASE data collection of 2024.³ As the research will

² United Nations Children's Fund (UNICEF), *Children in detention: Estimating the number of children deprived of liberty* (UNICEF 2021)

<https://data.unicef.org/wp-content/uploads/2021/11/Children-in-detention_Estimating-the-number-of-children-deprived-of-liberty_2021.pdf> accessed 18 May 2026.

³ Ministério dos Direitos Humanos e da Cidadania and Universidade de Brasília, *Levantamento Nacional do SINASE 2024* (Ministério dos Direitos Humanos e da Cidadania 2025)

demonstrate in further chapters, the vast majority of these adolescents are black, poor and from the periphery. In that sense, this question aims to understand why a country like Brazil, and like so many others in Latin America, faces this reality, and how this connects to the exploitation of colonialism in the continent.

To support this thesis, three other specific questions were used to structure the analysis: How did the colonial structures, racial and social, influence the penal system in Brazil? How is the profile of children deprived of liberty in Brazil shaped? In what ways does the structural disproportion of these profiles contribute to the human rights violations of the system? They also have raised further questions around the relationship between the historical structures of oppression and the contemporary institutional practices, along with questions about the nature of Brazilian democracy, to help understand how the system was built and how it is still structured.

1.3 Theoretical Framework and Literature Review

This thesis relies on three interconnected theoretical approaches to build its analytical framework.

Firstly, decolonial thought; particularly the theory developed by the Peruvian sociologist Aníbal Quijano and his concept of the coloniality of power. Quijano argues in his works, through a Latin American point of view, that the colonial domination, formed with the conquest of the American continent, did not end with the formal independence of the nations, instead, it established a global pattern of power relations that was organized around the category of race. Those power relations were also perpetuated in categories like knowledge, economy and social organisations, categories that also did not end with the formal end of the colony societies, instead, they persisted, and still do, long after the end of colonialism. In this sense, he understands that race is not constructed as a biological reality but as a social construction that was produced during colonialism with the intention of legitimizing the power relations, and to classify populations into social hierarchies.⁴

⁴ Aníbal Quijano, 'Coloniality of Power, Eurocentrism, and Latin America' in Edgardo Lander (ed), *The Coloniality of Knowledge: Eurocentrism and Social Sciences. Latin American Perspectives* (CLACSO 2005).

The second theoretical approach is the Brazilian social historiography and sociology, particularly the contributions of Florestan Fernandes, Clóvis Moura, Vera Malaguti Batista, Oracy Nogueira, Darcy Ribeiro and Boris Fausto, along with other intellectuals that have analysed the dynamics of race, class and power in the Brazilian society. Florestan Fernandes analyses the integration of former enslaved into the free society after the abolition of slavery, which provides a crucial framework to understand the historical production of marginalization of classes in the Brazilian context, in that sense demonstrating how the abolition did not represent a rupture with the racial hierarchy, but rather, a reconfiguration of it.⁵ Clóvis Moura analyses the slave system and how it was configured, also serving as a framework to understand many social constructions that persist nowadays, as well as the social structure of marginalisation.⁶ Vera Malaguti Batista works on analysing the criminalisation of poverty and the use of fear as a weapon of social control.⁷ Oracy Nogueira deepens the racial relations in Brazil, as for racism and social identity; he compares the prejudice that exists in Brazil and in other countries, like the United States, and explains why the construction of race is seen in different ways across different realities of social formation.⁸ Darcy Ribeiro analyses the effect of colonisation and its inequalities in the indigenous sphere, how it shaped the Brazilian people and their culture, which is also very important to understand the social formation of the country as a whole and how it connects to the way the Brazilian society sees itself and its relations.⁹ Boris Fausto, as a historian, political scientist and writer, deepens the historical contextualization of Brazil, which was needed to build the base of arguments for this thesis.¹⁰

Lastly, the third theoretical approach is critical criminology, particularly the Foucauldian analysis of disciplinary power and penal institutions. Michel Foucault's work in *Discipline and Punish* demonstrates how the modern penal institutions are not primarily shaped to the suppression of crime but rather to the management and classification of certain populations, as a form of social control - in ways that reproduce and reinforce existing social hierarchies. Foucault analyses the penal system as a transformation on the exercise of power,

⁵ Florestan Fernandes, *A Integração do Negro na Sociedade de Classes* (vol 1, Ática 1978)

⁶ Clóvis Moura, *Rebeliões da Senzala* (Mercado Aberto 1981)

⁷ Vera Malaguti Batista, *O medo na cidade do Rio de Janeiro* [*Fear in the City of Rio de Janeiro*] (Revan 2003).

⁸ Oracy Nogueira, 'Prejudice of Mark and Prejudice of Origin: A Proposal for a Framework for the Interpretation of Material on Race Relations in Brazil' (2007) 19(1) *Tempo Social: Revista de Sociologia da USP* 296.

⁹ Darcy Ribeiro, *Os índios e a civilização* (Rio de Janeiro, Civilização Brasileira 1968)

¹⁰ Boris Fausto, *History of Brazil* (University of São Paulo Press 1999)

if shifts the penal intervention of the body from before (like public torture and execution), to the soul (discipline and surveillance). The relevance of this analysis for the Brazilian case will be explored throughout the thesis, focusing on how the formal idea of the units are based on educational and rehabilitation, but instead, it reproduces many of the structural characteristics existed in carceral institutions, like the ones that are criticized by Foucault.¹¹ The analysis also relates to examples, like the Scandinavian countries, that do not follow those structures.

1.4 Methodology

The methodology of this thesis is qualitative and interdisciplinary. It synthesises and analyses existing documentary and secondary sources to build an analytical argument to engage with the historical context. The methodology used is a critical documentary analysis, as a systematic reading, along with interpretation, of sources through the theoretical lenses from postcolonial theory to understand and interpret contemporary patterns.

The sources analysed include, firstly, the national legislation and constitutional provisions relevant to children's rights, which includes the 1988 Federal Constitution, the 1990 *Estatuto da Criança e do Adolescente (ECA)*, and the *SINASE* legislation - The ECA being the Statute of the Child and Adolescent (the child rights legislation) and the *SINASE* being the National System of Socio-Educational Assistance, which complements the framework by regulating the implementation of the socio-educational measures and establishing national standards for the units. Throughout the research, it was analysed official reports and surveys produced by Brazilian governmental bodies, mainly the 2024 *SINASE* reports, as well as international human rights bodies like the Concluding Observations of the UN Committee on the Rights of the Child, as well as reports produced by civil society organisations on the conditions of the facilities, among other reports of inspection. The secondary sources include academic research in history, sociology, law and human rights bodies, as expressed above.

¹¹ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan tr, Penguin Books 1977).

This thesis does not aim on providing an empirical study on every dimension of the Brazilian socio-educational system. The ambition here is analytical and argumentative: to demonstrate how the system's failures are deeply connected to structural and historical facts, rather than just administrative points. The aim to do that is through analysing existing evidence of this correlation, which requires engaging with the colonial legacies that continue to shape Brazilian social organization. Disclaimer: generative AI was used to assist with OSCOLA formatting and grammar corrections.

2. HISTORICAL CONTEXT, THEORY AND LEGACIES

2.1 Racial hierarchies and the structure of society

In colonial and postcolonial societies, racial hierarchies play a fundamental role in the organization of systems of control and power relations. Since the first social organization of the lands now called Brazil, race was a category of differentiation that justified the colonial domination of the white European over – firstly – native indigenous, and later on, black people originated from the African continent. All the following history will be based in this context of the white versus the black, which will give base to the racial social order that is still present in the modern society of the country. To understand these dynamics, there is a need for a deep historical retreat. This chapter will propose a historical contextualization of Brazilian history, in order to understand where the core problem of penal selectivity lies – encompassing colonialism, structural racism, historical poverty and geographical marginalization. The contemporary social hierarchies determine which bodies are punished, controlled and institutionalized, and that determination does not come from a void, they are a product of centuries of power relations. As argued by Aníbal Quijano: “In this way, race became the fundamental criterion for the distribution of the world population into ranks, places, and roles in the new society’s structure of power.”¹²

Race has been shaping the structure of the world for many centuries all around the globe. Together with the reproduction of capitalism, the world we live in today was shaped to follow a social working division that is mainly based in marginalization, this including race and poverty, directly linked to exploitation, to the hierarchical division of north and south. Developed and underdeveloped. Rich and poor. When referring to colonial relations, the

¹² Quijano (n 4) 535.

modern social organizations are built to follow those thought processes – the old relations among colonies and colonized are now reformed to re-shape the perspective into a new process of domination. Everything we live under today is ruled under the politics of distribution of power. And the power still lies in the hands of race.

Anibal Quijano is indispensable to understand the colonial structures and how they are reproduced contemporarily, since he developed the theoretical framework that consists in a pillar for the latin-american decolonial thought, which is one of the reference points for this research. Quijano demonstrates, through his research, that the conquest of the Americas raised the new social identities, the Indians, the blacks, and the *mestizos* – which was not only a product of description, but rather an instrument of domination¹³. And before continuing, it is important here to clarify what is understood by race in this work – since the concept operates in distinct forms in contexts of European x Brazilian (or Latin) tradition, which in this case is politically significant.

In the European context, race tends to be treated along two predominant forms: either as a straight biological category, or as a synonym with bigger proximity to ethnicity, connecting culture, language and ancestry. There is also a tendency to treat race as a variable among others. In Brazil, and the Latin-American decolonial tradition, the definition lies in different means. Quijano defines that race is not only a biological reality, but neither a cultural or identity category. He believes that race is a social construction created during colonization to organize and legitimize power relations.¹⁴ It was an instrument that allowed the Europeans colonizers to classify socially who held the power based on their phenotypes, and subsequently, who would be doomed to control, for the same reason.

This distinction is important to understand the Brazilian case. In Brazil, race is a category determined fundamentally by the colour of the skin and physical traces, which differs from many European contexts that defines it by nationality, religion or language. Oracy Nogueira is a central point to understand this distinction. He proposes a comparison, in that case between Brazil and the United States, in terms of intensity and criteria that classify and organize the social discrimination based on race. Nogueira defines racial prejudice as being a culturally conditioned attitude towards members of the society, and he separates them into two categories: *prejudice of mark* and *prejudice of origin*. He explains that the first one, the

¹³ ibid 534.

¹⁴ ibid

one present in Brazil, relates the prejudice to questions of phenotypes, physical traces. While the American case, prejudice of origin, is ancestry-based. So in the American case, even if the person has Caucasian traces, they could still suffer discrimination¹⁵. It is important here to clarify that this distinction does not make one racism more severe or tolerable over the other, both are distinct mechanisms of racial discrimination that bring structural consequences to the society, even if in different forms.

“Thus, in Brazil, the intensity of prejudice varies in direct proportion to negroid traits; and such prejudice is not incompatible with the strongest bonds of friendship or with undeniable expressions of solidarity and sympathy”¹⁶ (Author’s translation). It is in this logic that lies the *prejudice of mark*: it neutralizes the racial hierarchy present in the structural racism by framing them as individual appearance, denying its structural character. While the *prejudice of origin* operates in a different form accordingly to Nogueira, it determines a social exclusion of people as a whole, as a group, grounded in ancestry – it does not matter much how the person looks like, but where they come from in genealogical terms – based even more in segregation. This difference is important to analyse the Brazilian case: the penal selectivity will not operate as a formal and declared exclusion, but as a systematic neglect that accumulates during the whole institutional chain. From the policing to the sentencing, and then from the sentence to the fulfilment of the socio-educational measure. But of course, both countries went to distinct historical processes of colonializations, the difference then lies also on this.

2.2 The colonial making of Brazil: shift from indigenous to African exploitation

Colonialism can be understood as a constitution of a political, social and economic system composed by mechanisms of oppression and exploitation, with the use of psychological and physical violence – and the looting of natural goods from those territories. As Sachs analysis about colonisation argues:

European colonialism has been busy destroying place-centred cultures and imposing upon them space-centred values. In ever-renewed waves and across all five continents, colonialists have been terribly

¹⁵ Nogueira (n 8) 291

¹⁶ Ibid 296

inventive in robbing peoples of their gods, their institutions and their natural treasures.¹⁷ (Author's translation)

The Portuguese Crown arrived in Brazil in 1500 to a territory that was already inhabited by a society that was already organized with their own languages, beliefs and political organizations. The colonizers arrived and took all from the native people: they were robbed of their culture, their identity and all the reality known to them. The Portuguese imposed a new order, racially hierarchized, that - they would later on find out - start to define all the country's social structure for many centuries to come, imposed by one society to another. Professor Enrique Dussels explains how that new system that was being imposed, not only in Brazil of course, but in many other lands, was a system that placed Europe as the centre of everything, according to him:

If one understands Europe's modernity – a long process of five centuries – as the unfolding of new possibilities derived from its centrality in world history and the corollary constitution of all other cultures as its periphery, it becomes clear that, even though all cultures are ethnocentric, modern European ethnocentrism is the only one that might pretend to claim universality for itself. Modernity's Eurocentrism lies in the confusion between abstract universality and the concrete world hegemony derived from Europe's position as center.¹⁸

For a long period, native and black people were not considered humans, or considered a sub-human species, and for that reason, they could be explored – like animals – or re-educated in the name of civilization. The society that calls themselves as civilized, had to create an image of the others as being “selvages”. The indigenous were seen as unethical, with an absence of values, and in that sense even evil.¹⁹ To have that vision of them, to unhumanise them, puts them in a place of disposable. Posteriorly, provoking a systematic exploration and an erasure of the culture and identity of native people. Time goes by and this reality, although in a different form, is still present in the Brazilian society.

¹⁷ Wolfgang Sachs (ed), *Diccionario del desarrollo: Una guía del conocimiento como poder* (PRATEC 1996) 389.

¹⁸ Enrique Dussel, Javier Krauel and Virginia C. Tuma (trs), 'Europe, Modernity, and Eurocentrism' (2000) 1:3 Nepantla: Views from the South 471

¹⁹ Frantz Fanon, *The Wretched of the Earth* (Civilização Brasileira 1968) 31

According to Dean Warren, when the Portuguese first arrived in Brazilian lands, back in 1500, one of their first acts – which marks colonialism in its most symbolic sense – was of cutting a tree and from its trunk make a cross, representing for them the symbol of “human society’s salvation”.²⁰ This act has deep meanings, specially connecting with all that was to come: nature exploitation, religion imposition and the psychological torture that would be faced in the upcoming times. In that sense, since the beginning of colonialism, the Portuguese imposed a relation of extractivism, being it by land or by its people, at the cost of slave work: firstly by the native people of the lands and later on by bringing the black people from the African continent. The European and colonizer mentality, firming the Eurocentric supremacy, raped our forests, first with the intention of exploitation and later turning all into a capitalistic process of economic accumulation. Manuela da Cunha asserts that:

Indigenous peoples disappeared from the face of the earth as a consequence of what is now euphemistically referred to as the “encounter” between societies of the Old and New Worlds. This unprecedented slaughter resulted from a complex process whose agents were both humans and microorganisms, but whose ultimate driving forces can be reduced to two: greed and ambition—cultural expressions of what has come to be known as mercantile capitalism. Petty motives, rather than a deliberate policy of extermination, achieved the astonishing result of reducing a population that numbered in the millions in 1500 to the mere 200,000 Indigenous people who inhabit Brazil today. (Author’s translation)²¹

Native people were politically, economically and culturally oppressed throughout the years, and this system of elimination of the people as a whole has been happening in the name of a supremacist system that until the present time, although in different forms, have been erasing the native people from their own lands. It is important here to comment on the deep relation the Portuguese Crown had to the Catholic church, an institution that had a huge impact in the making of Brazil as a country and is still to this day, very present in our society, which will be addressed more focusfully later on.

Eventually the working exploitation source had a shift: from the indigenous forced labor, the Portuguese then decided to bring and exploit the workforce of the black African

²⁰ Warren Dean, *A ferro e fogo: a história e a devastação da Mata Atlântica brasileira* (Cid Knipel Moreira tr, Companhia das Letras 1997) 59

²¹ Manuela Carneiro da Cunha (ed), *História dos índios no Brasil* (São Paulo, Companhia das Letras/Secretaria Municipal de Cultura 1992) 12.

people, and treat them as slaves. But why did that happen? Boris Fausto, a Brazilian historian specialized in political and social history of Brazil, argues that the reasons for that replacement are organized in a set of factors: those being economic, social and political.²² Fausto says that among the factors, the difficulty in controlling the indigenous population was one of the main reasons. The native people knew their territory, and frequently they would resist being slaved. Additionally, the diseases brought by the Europeans had a huge impact on the population, and of course the Jesuit missions also contributed to that demographic collapse of the indigenous people. It is estimated that from five to ten million native people – before the arrival of the Portuguese in the XVI century – the indigenous population declined to approximately 300 thousand in the beginning of the XX century. The mass extermination of indigenous people in Brazil had a huge impact when it comes to the epidemiologic effect of the disseases brought from Europe to the Americas, who had no prior immunity to these pathogens, making the epidemics catastrophically lethal. What contributed to limiting indigenous enslavement in some regions. Darcy Ribeiro stated:

Diseases have always represented the primary factor in the decline of Indigenous populations. The history of our relations with Indigenous peoples is, to a large extent, a chronicle of massacres and, above all, epidemics. Every Indigenous group that came into contact with European settlements and their descendants over these four centuries had to pay a heavy toll in lives to the diseases brought by civilization. The case of the Jesuit missions in Bahia is well known: within a few years, their catechumens were reduced from forty thousand to two thousand Indigenous people due to various factors, but above all smallpox epidemics. (Author's translation)²³

As the limitations of the indigenous labor became evident, Boris Fausto explains that the Portuguese Crown turned to Africa, where they already had established trading routes – and started bringing them to the new lands. Nevertheless, he states that it is wrong though to think that the indigenous people opposed to enslavement while the Africans passively accepted them, Fausto explains that there were a lot of escape attempts, aggressive opposition, and resistance since the beginning. To understand the structural racism still present in Brazilian society, it is important to understand how the black African people were treated and seen in colonial times, which will be addressed in the next section.

²² Fausto (n 10) 49.

²³ Ribeiro (n 9) 187.

2.3 The consolidation of African Slavery in Brazil

The transition from the exploitation of indigenous to the African work force in colonial Brazil was more than a simple logistic reconfiguration by the Portuguese Crown – it represented a whole shift in the colonial racial order, which echoed to the modern Brazilian society. Boris Fausto points out that between the sixteenth and nineteenth centuries, the Brazilian ports received approximately four million enslaved people coming from Africa, that was the largest forced migration in the history of transatlantic slave trade.²⁴ In his work, Fausto also explains how the Portuguese Crown deliberately brought the African people from different regions of the continent, in order to have a strategy of preventing the formation of organised resistance, because the people came from different cultural backgrounds, with different languages, different traditions, and different ethnicities. But despite all these actions, the resistance still made its way through, from individual actions of sabotage or fight, to the formation of *quilombos* – which are autonomous communities of enslaved people who were able to escape.²⁵

As commented above, in order to sustain a system like that, there was the need for the society to view the black African people as inhuman, in that sense they were not deserved of rights, they were seen as objects – with no juridical personality. Clóvis Moura, a Brazilian sociologist and historian, demonstrates in his work that this dehumanisation was not only a formal classification, it was a social construction in which the enslaved constituted the base of the productive force of the colonial society, in that sense the most destabilising political force as well.²⁶ Moura suggests that the social practices of both polar opposites, and the tension among them, was what made the formation and characterization of Brazilian society. As each side developed reactions to each other actions that were all based in the conditions imposed by the slave system. There was resistance because there was control. There was escape because there was repression. And so on. These interactions only existed because of how the system was structured in the first place. Although this contradiction formally persisted until the *Lei Áurea* (abolition law) Moura argues that the abolition itself was not a definite solution. It represented a political failure to solve the social organization of the

²⁴ Fausto (n 10) 51.

²⁵ Ibid 52.

²⁶ Moura (n 6) 13.

society; it just allowed the effects of the whole situation to endure way beyond the formal end of slavery. That system that initiated decades ago, though the society, across generations, associates blackness with subjugation, to danger, to control.

It is important here to also understand the role of the church. In colonial times, the Catholic Church and the State were interconnected, as Boris Fausto explains in his work, and so there was no such thing as the concept of citizenship – of a person who had rights and duties outside of religion.²⁷ In that sense, if the State was catholic, so should be their residents. As said above, from the very first moments of Portuguese presence in these lands, the cross-made in the Brazilian tree trunk in 1500 was the declaration of the belief presence in the lands to be Brazil. As also commented before, the Jesuit missions were a strong mark in colonial history in relation to the treatment the indigenous people received once the Portuguese arrived – they wanted to turn the native people into ‘good Christians’. Fausto explains that the Portuguese had two different approaches when it came to indigenous colonization: firstly by pure and simple enslavement, and secondly by religious orders. The idea to transform the ‘selvages’ into ‘good Christians’ laid in the process of teaching them the catholic morals and overall to insert them in the European working habits.²⁸ The Jesuits, however, had no respect for the indigenous culture either. For them, the traditional indigenous ways of living were seen as inferior, as uncultural, selva. The missions were a way for cultural erasure and can be seen equally as violent as physical domination, even if in a different form.

This connection between the Catholic Church and the colonial State is fundamental for the understanding of the racial structure that still is a reality in Brazil. As Boris explains in his text, in the contrary to the indigenous enslavement, neither the Church nor the State were against the enslavement of the black African people. Boris states many arguments to justify that choice, even scientific theories of the time to consider the black people as being an ‘inferior race’: “The size and shape of Black people’s skulls, the weight of their brains, and so on, ‘demonstrated’ that they were a race of low intelligence and emotional instability, biologically destined for subjugation”²⁹ (Author’s translation). These justifications served as an ideological base for the racial colonial order, because it was by dehumanizing the black

²⁷ Fausto (n 10) 59-61

²⁸ *ibid* 28

²⁹ *ibid* 30

people through a moral framework that the racial hierarchy started to be built. The Church, in that sense, was one of the architects in the making of Brazil's racial structure hierarchy.

The institutions that were built and framed to control, classify, and discipline bodies were never fully dismantled in our society. They were adapted, reformed and reproduced. So understanding the role of both the Church and the State in colonial times, is essential to understand the penal selectivity present in today's society.

2.4. The Historical production of poverty and marginalization

The hierarchization of a society that marginalizes the black and puts them mostly in a position of poverty, in Brazil can be analysed as its starting point in colonial times, and to understand that is important to clarify how society was organized in those times. Boris Fausto makes that explanation in his works. To start understanding the division, we should highlight the fundamental legal division: people (free) and non-people (slaves) - the second one being considered as *things*. In the slave category, there were different names to refer to criteria of adaptation and nationality: *Boçal* for the newly arrived from Africa, that did not know the Portuguese language or the manners; the *Ladino* for the ones that were relatively adapted, those who could speak and understand the language; and lastly the *Crioulos* for the black people who were already born in Brazil. *Caboclos* were born from white and indigenous. *Cafuzos* born from black and indigenous. And so on. There was also another division based on phenotypes, based on how dark the skin was: *Mulatos* had a lighter skin so they were preferable for house work, or lighter work; African or *Preto Retino*, those who had a darker skin, so they were destined for heavier work, like in the fields or in the mines. This theory was reinforced by the *Pureza de Sangue* (blood purity): a racial instrument that ranked people by the degree of ancestry and relation to christianity. Boris explained that the 'impure' were the new-christians, the black (even if free), the indigenous and the mixed. He follows to explain that these people could not occupy government positions, receive noble titles or be part of prestigious groups³⁰. The purity of blood logic resonates directly with what Nogueira calls "prejudice of mark" as explained above.

The social organization of that time, operated who had access to labour, to property, and mostly to civic life and rights. Before being cultural, the hierarchy was built to be also

³⁰ ibid 38

economic - to have African and indigenous explorations and slave work as the center of the colonial economy; the racial order existed to naturalise the distribution of power and poverty in the new capitalized society. The wealthy were white; while the poor, exploited and disposable were black and indigenous - and this was the content of the racial ideology that built the base for the Brazilian society to grow on. The question that is important for the analysis of this topic now is: what happened *after* slavery? And the answer will bring more understanding for the contemporary issue faced in our society regarding race: the formal end of slavery through the *Lei Áurea* in 1888 did not produce integration. It produced abandonment.

The *Lei Áurea* officially Law No. 3,353 signed on May 13, 1888 by Princess Isabel, made Brazil the last country in the western world to abolish slavery. The law consisted of only two articles:

Art. 1º: Slavery is hereby declared extinct in Brazil.

Art. 2º: All provisions to the contrary are revoked³¹

No article addressed compensation. No article addressed land redistribution. No article addressed any type of social or economic integration. All the people that were freed by the law were released to a society that had been organized around exploiting them for the last centuries. They took no responsibility in introducing them into society in the right way. Also, it is important to note that their destiny took a different turn depending on which state they were living in: some continued working for the big land owners, some were responsible for taking care of the cattle. Others opted for mass escape, and ended up having to settle for poorly paid jobs - according to Boris Fausto in his work.³² Which also helps to explain why the regions in Brazil have different presence of white or black people nowadays.

Florestan Fernandes in his work entitled *A Integração do Negro na Sociedade de Classes* (*The Negro in Brazilian Society*) offers a sociological approach for this transition. He states that abolition was carried out without accompanying social policy of reintegration: the formed slaves were just released into a capitalistic labor market that they were unprepared for and excluded from³³. The white and newly arrived European immigrant workers occupied

³¹ Lei Áurea (Law No 3,353) 1888

³² Fausto (n 10) 220-221

³³ Fernandes (n 5)

mostly all the emerging positions in the industrial economy and the black former slaves were left excluded from the social order. He explains that the role of the slaves for the disintegration of the slave system was not an autonomous revolutionary movement - instead, their actions served as a force for a system that was already in crisis. This happened, according to Fernandes, because the structural conditions of the system were of extreme dependency and social control, and so there was no space for a collective political organization among the enslaved population. As a consequence, abolition was mediated by the white elite that did not have any interest in dissolving the framework of social domination. Which explains why in Brazil abolition was not a rupture, but a reconfiguration of the racial hierarchy.

As argued by Florestan Fernandes, the system was not prepared for a transition in free labour by the formerly slaved, neither incorporated to the economic society. As said before, there was no policy of integration, land redistribution or any access to education, which left the black community in a condition of marginalisation - confining them to poverty and precarious labour while preserving the dominance of the white elites.

2.5. Power relations and social control

To understand the hierarchies that are present in the contemporary Brazilian penal system, it is necessary to understand the power relations present in a postcolonial society. The historical production of poverty and the marginalisation of black people detailed in the last sections, is not just a legacy, it is an active structure that is still present in our institutions and social practices. The theory developed by Quijano's coloniality of power allows us to understand how colonial racial hierarchies operate and still persist even after the formal end of colonization.

To the extent that the social relations that were being configured were relations of domination, such identities were associated with the corresponding hierarchies, positions, and social roles, as constitutive of them and, consequently, of the pattern of colonial domination that was being imposed. In other words, race and racial identity were established as instruments of basic social classification of the population. (Author's translation)³⁴

³⁴ Quijano (n 4) 202.

Quijano's theory establishes that the end of colonialism did not mean the end of colonial structures. He understands that the social and racial classifications made during the colonial times did not dissolve when the countries got independent - which means that who organized labor, citizenship, and mainly who had access to resources was still the same organization set out as before. He states that race is not a biological reality, rather, it is a mental construction to legitimize the power relations. In his theory, he also explains how the economic capitalistic structure also based these relations when it comes to work - as it being slaved or not. The theory explains how the Eurocentric thought did not allow the colonial states to go through a social democratization, considering that in those times modernity was reserved for European countries, since the non-Europeans were classified as early or primitive, therefore they did not have historical identities needed for that development.

According to his work, in Latin America, the nations did not go through social democratization because of the *coloniality of power*, and since the societies did not go through any form of transitional justice to grow from a colonial society to an independent country - they did not keep up with the development of the capitalistic rhythm. After independence, the white elites still maintained dominance over indigenous and black populations as a form of control, so to understand the penal selectivity in Brazil and the whole context of exclusion of these populations, is important to understand what Florestan Fernandes describes as double exclusion of the black population: excluded from the slave system and then excluded again from the capitalistic society that replaced it.³⁵ The institutions that today punish bodies in Brazil are a reformulation of the same structure from that past. The following sections will cover how this structure is reproduced and how the juvenile justice system exists in Brazil.

3. PENAL SELECTIVITY AND THE NORMATIVE FRAMEWORK

3.1. Penal Selectivity in the Juvenile System

The historical process addressed in the previous chapter concerning colonialism, enslavement and the consequence of producing marginalization and racial hierarchies did not disappear after abolition of proclamation of the republic, as we were able to analyse. These

³⁵ Fernandes (n 5)

processes were reformulated into new structures, one which can be analyzed in the criminal justice system, and in this case, in the juvenile one, or socio-educational system. The Brazilian socio-educational system is the institution responsible for the application of socio-educational measures to adolescents that were attributed infractions. This next chapter will serve an analysis of the institution based on the recent complete report of *SINASE (Sistema Nacional de Atendimento Socioeducativo) Levantamento Nacional 2024* - a Brazilian framework that regulates how adolescents who committed offenses are treated in the juvenile justice system, with the intention of prioritizing rehabilitation over punishment.³⁶

To understand how selectivity is formed in the penal system, it is important to understand the sociological approach behind it. Georg Rusche and Otto Kirchheimer address this thought in their work *Punishment and Social Structure*, when they explain how punishment as a social fact is inseparable from an economic and political structure.³⁷ If we take this perspective into account, it is possible to analyse how the management of populations that are considered ‘dangerous’ to the social order is not a failure of the system, but rather a feature of it. In the Brazilian context, the historical constitution of the ‘dangerous class’ was inseparable from the model of poverty and criminalisation that the formerly enslaved population and their descendants were thrown into, which will be addressed again later on.

Michel Foucault’s work also serves as a complementary analytical lens, with his work developed in *Discipline and Punish*.³⁸ For Foucault, the modern prison model institutions are not oriented towards the suppression of crime, but rather towards the idea that the delinquency can be managed and instrumentalised; as an instrument of political power that model bodies for a capitalistic society, failing in its main purpose and only generating more delinquency. The disciplinary approach identifies, classifies and controls specific populations, reinforcing the social hierarchies that already exist in the society. The relevance of this analysis in the Brazilian society is extremely important when considering that the system identifies these adolescents as delinquent, whose racial and class profile is consistent all the way through history.

³⁶ Ministério dos Direitos Humanos e da Cidadania, *Levantamento Nacional do Sistema Nacional de Atendimento Socioeducativo (SINASE) 2024* (n 3)

³⁷ Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (Columbia University Press 1939).

³⁸ Foucault (n 11)

The concept of the criminalisation of poverty addressed by many authors, emphasises how the criminal justice system in Latin America, or in this case Brazil, operates as a selective filter that systematically chases the same targets. The penal system in Brazil determines the structural selectivity among the marginalized, poor and mainly black, they are the ones surveilled, arrested, prosecuted and punished - in a corrupted country where money can buy you freedom.

3.2 Penal selectivity: Concept and Mechanisms

The concept of penal selectivity refers to a systematic process in the criminal justice system that disproportionately targets specific social groups - from policing to prosecution, to sentencing and to incarceration. This selectivity is a structural feature of how the system is formed and how it operates. The formal equality proclaimed by criminal law - the principle that the same rule applies to all - in reality is subverted by many filters. Who is actually policed? Who is more likely to be found guilty? Who receives the harsher punishments? For each of these questions, the answer is not randomly chosen, it reflects and reproduces power relations of a society that has a deeper history for it.

Yet, this concept is not unique to Brazil or Latin American countries only, it can be found across different national contexts as well. In the United States for example, the War on Drugs has a clear racial target as well, and they also have an additional of ethnic disparity, which is not common to the Brazilian context, as explained before.

African-American adults are 5.9 times as likely to be incarcerated than whites and Hispanics are 3.1 times as likely as of 2001, one of every three black boys born in that year could expect to go to prison in his lifetime, as could one of every six Latinos—compared to one of every seventeen white boys.³⁹

In this sense, the American context also suffers from the wealth inconsistency between the societies, and this same research argues that there are two different criminal justice systems: one for wealthy people and one for the poor - very similar to the reality found in Brazil. In France, for example, data shows that young male foreigners coming from North-African

³⁹ Marc Mauer, 'Addressing Racial Disparities in Incarceration' (2011) 91(3_suppl) *The Prison Journal* 87S, cited in [The Sentencing Project](#) accessed 8 May 2026.

countries are way more likely to be stopped by the police and to be arrested than white boys. “In a self-reported delinquency survey, 22% of male offenders of North African origin said that they had at least three friends who had been arrested by the police for theft (vs. 7% of French origin)”⁴⁰.

These comparative findings are very important for many reasons. Firstly, it represents that the black and marginalized youth, each with their own particularities, have an overrepresentation in the system, and that this is not an exceptional overcome, but rather a global pattern in which racialised populations are disproportionately represented in the criminal justice system. Yet, even with similarities, it is important to point out that the operative violence that exists in all these contexts do not come from the same core problem as Latin American countries. Scholars like Zaffaroni illustrate how there is a big gap when talking about the realities faced by global north and south countries: they were built in contexts where capitalism is the core, with structures of marginalization very distinct from the latin ones. The penal selectivity that happens in Brazil, for example, is not just a system dysfunction, but a continuity of the colonial project to control marginalized societies. Zaffaroni also stresses how, through the dependency theory, Latin America occupies (inside of global capitalism) the place of “proletarian societies” with almost 50% of marginalized population for industrial production - which also differentiates how we compare the problem from global south societies and northern countries contexts.⁴¹

In the Brazilian context, there are many features to be analysed: penal selectivity operates through many mechanisms there. Firstly, there is the geographic configuration - policing is concentrated in the urban peripheries, the favelas, or poor neighbourhoods. This spatial selectivity means that the same behaviour (for example, drug possession) is way more likely to result in arrest than if it were to happen in a middle-class neighbourhood, which does not mean that these types of crimes do not exist there, they are simply less policed. The second mechanism to consider is the intersection of race and poverty. The racial stereotypes that associate blackness with poverty and thereafter, to criminality - stereotypes with deep roots in the colonial and post-abolition period of Brazil. And third, the selectivity operates

⁴⁰ Jerry Kang and Kristen Lane, ‘Seeing Through Colorblindness: Implicit Bias and the Law’ (2010) 58 *UCLA Law Review* 465, 466, cited in [The Sentencing Project](#) accessed 9 May 2026.

⁴¹ Nicolás García and Máximo Sozzo, ‘For a “Marginal Criminological Realism”: Zaffaroni and the Birth of a Critical Perspective on the Criminal Question from the Global South’ (2023) *Justice, Power and Resistance* 1, 1–19 <<https://doi.org/10.1332/EFGH3919>> accessed 9 May 2026.

through the different availability of legal representation offered for each reality that these adolescents are part of. In a society as economically unequal as Brazil, there is a big eco between those with access to resources, like for example private lawyers, social networks, and other supplies that are necessary to navigate the institutions. These kids will be way ahead and better positioned to avoid the penal destination if we compare to those who have less to zero access to these resources. This also systematically borders the class dimension of penal outcomes.

Research conducted in Salvador, Recife and Fortaleza (Brazilian capital cities in the northeast region of the country) illustrates how the criteria used by the police officers are not neutral, but rather shaped by the intersection of racial phenotype, territorial belonging and socioeconomic status. The authors of *"Hands up!": Police stop-and-frisk, racism and structural violence among black youth from three capitals in the Brazilian Northeast*, identify in their work the main criteria that police use to determine who qualifies as suspect, those being: phenotype, emphasis in dark skin, afro hair and black features; territorial belonging to peripheral or favela communities, style of dress, and so on.⁴² This process corresponds to a term called *racial profiling*, when the identification of suspects use the skin colour as a determinative factor for the police to decide who to approach.⁴³ The consequences are measurable: the self-declared black youth who participated in the study had all declared that they have been stopped at least once in their lives. "The ones who can really speak about police stops are us here, because being stopped is part of our daily lives. There isn't a single day we're not stopped; not a single day we're not afraid; not a single day we don't come face to face with the police."⁴⁴

These mechanisms produce cumulative effects: the same adolescents that are more likely to be stopped, are also the ones more likely to be detained and more likely to serve longer periods of confinement and also more likely to suffer worse treatments in the facilities. This is a result of a system that is organised to produce these outcomes.

⁴² Diana Anunciação, Leny Alves Bonfim Trad and Tiago Ferreira, "'Mão na cabeça!': abordagem policial, racismo e violência estrutural entre jovens negros de três capitais do Nordeste' (2020) 29(1) Saúde e Sociedade e190271, 6.

⁴³ *ibid* 3, citing Paulo Amar, 'Táticas e termos da luta contra o racismo institucional nos setores de polícia e de segurança' in Silvia Ramos and Leonarda Musumeci (eds), *Elemento suspeito: abordagem policial e discriminação na cidade do Rio de Janeiro* (Civilização Brasileira 2005) 236.

⁴⁴ *ibid* 8

3.3 Race, Poverty and Marginalisation

The Brazilian ideology of ‘racial democracy’ addressed by authors like Gilberto Freyre - as the idea that Brazil is a racially harmonious society - has historically served as an obstacle in the understanding of Brazil as an actually racist nation and served to reproduce racial inequalities in the country. Freyre argued that the miscegenation between Portuguese colonisers, indigenous native people and enslaved people brought from Africa, reproduced a mixed and multiracial society. In his work *Casa-Grande & Senzala*, he argues that the Brazilian society had a high tolerance on race relations and therefore, even harmonique.⁴⁵ The Getúlio Vargas regime also made that notion of society more accepted in daily life, through football, samba and carnival.⁴⁶ While subsequent scholars like Florestan Fernandes and other authors have demonstrated systematically that the post-abolition period did not represent a straight rupture in the racial hierarchies, like cited in previous chapters. All these structural inequalities of race and class can be seen as a reflection in the profile of the adolescent population that exists in the Brazilian socio-educational system. This next part of the research will be an analysis of the profile of the children in order to understand that difference.

The most recent data from the *Ministério dos Direitos Humanos e da Cidadania* (Ministry of Human Rights and Citizenship) in partnership with the University of Brasília provides an extensive data collection on the population incarcerated. They explain in the document that the process of data collecting was divided into 5 stages. The first stage was to align terms and nomenclature among every federative unit before the instrument to collect the data was even developed. The second stage was to build drawing on previous national surveys from other national bodies and organizations resulting in a preliminary version for collective review. The third stage was a pilot test conducted with five states selected randomly, one from each Region of the country - they carried in-person visits in order to cover data from May 2024 - this phase’s feedback led to the final version of the instrument. The two final stages covered the official data collection and data analysis and consolidation from all 26 states of the country and the Federal District. Whiting this study, it was registered

⁴⁵ Freyre, *Casa-Grande & Senzala*

⁴⁶ Hoyoon Jung, 'Building the Brazilian Nation through Futebol-Mulato: Racial Democracy, Visual-Aural Capitalism and the Rise of Cultural Citizenship in Twentieth-Century Brazil' (2021) 20(1) *Social Evolution & History* 146.

a total of 12.506 adolescents in the system or deprived of liberty, in August 2024. The profiles analysed were divided into age, gender identity, sexual orientation, race and ethnicity, adolescents *quilombolas*, immigrants or with disabilities, and by family income.⁴⁷ For closure: *Quilombolas* adolescents come from traditional afro-brazilian ethnic communities, descendants from formerly enslaved and who have specific relationships to the land, ancestry and their own specific culture and tradition.⁴⁸

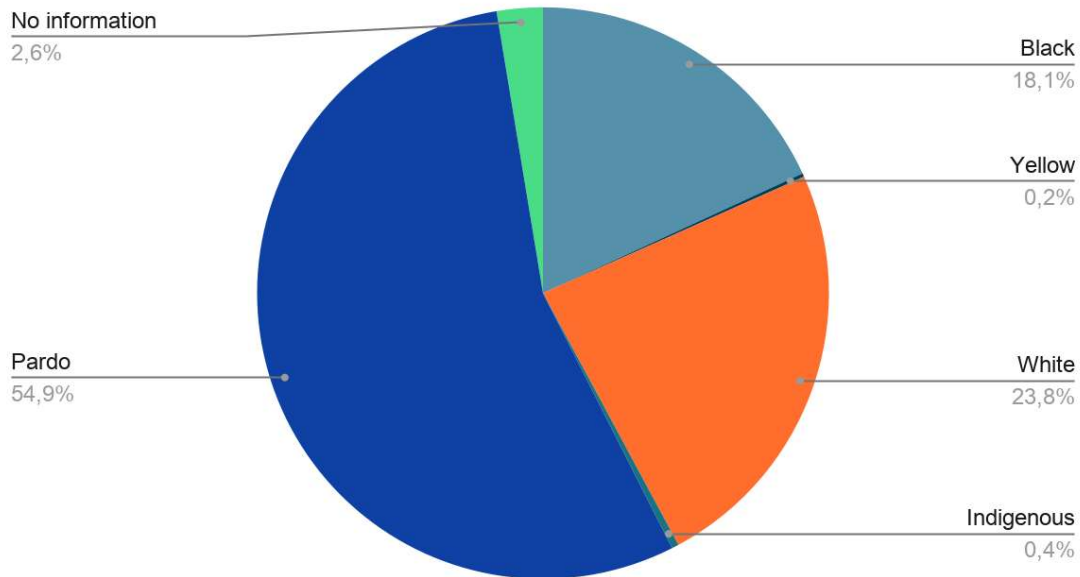
The data reveals significant disparities among the analysed groups, mainly the patterns in race and ethnicity. Analysing the profile of *Race/Color/Ethnicity* it is possible to see that 54,8% of the adolescents are self-declared as *Pardos* (mixed race) and 18,1% as Black; while 23,8% as White; 0,4% as Indigenous and 0,2% as Yellow (Asian descendants). The racial categories that exist in Brazil, are part of a self-declaration classification that was established by the IBGE (Brazilian Institute of Geography and Statistics) which has documented the categories of race and colour for decades in the national census. They follow a methodology where race is constituted with self perception rather than an imposed classification.⁴⁹

⁴⁷ Ministério dos Direitos Humanos e da Cidadania and Universidade de Brasília, *Levantamento Nacional do SINASE 2024* (n 3)

⁴⁸ National Institute for Colonisation and Agrarian Reform (INCRA), 'Quilombolas' (Gov.br, 27 May 2026) <<https://www.gov.br/incra/pt-br/assuntos/governanca-fundiaria/quilombolas>> accessed 9 June 2026.

⁴⁹ Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira (Inep), 'Mostre sua raça, declare sua cor' (gov.br, 22 November 2010, updated 30 June 2025) <<https://www.gov.br/inep/pt-br/centrais-de-conteudo/noticias/censo-escolar/mostre-sua-raca-declare-sua-cor>> accessed 12 June 2026.

Adolescents according to race/color/ethnicity, in 2024 (Brazil)



The significance of these data becomes even more apparent when compared with the racial composition of the Brazilian population as a whole; according to the 2022 Demographic Census, 45,3% of the Brazilian population declared themselves as *pardos*, while 43,5% white and 10,2% black.

Adding Black and mixed-race (*pardos*) individuals together, the proportion of the Black population in the general population is around 55.5%, which is lower than the percentage of the same group in the national socio-educational system, where they account for 72% of all adolescents involved.⁵⁰ (Author's translation)

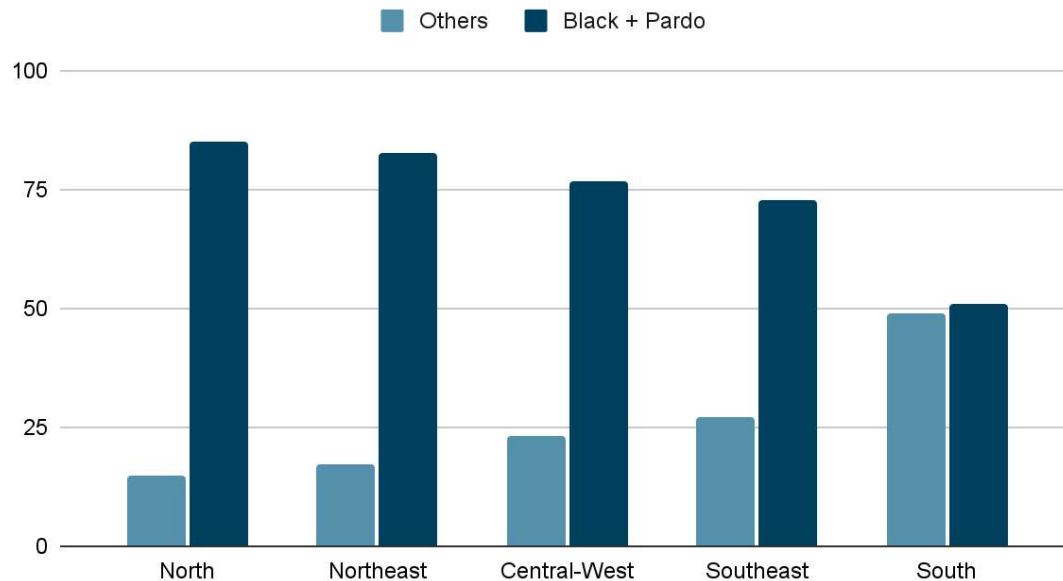
Conversely, the proportion of white adolescents in the socio-educational system (24,3%) is way lower than the general population of people self-considered white (43,5%). As the report itself notes, this over-representation cannot be interpreted as evidence of greater dangerousness among the black youth, rather, is evidence for the historical process of

⁵⁰ Ministério dos Direitos Humanos e da Cidadania and Universidade de Brasília (n 3), 48

criminalisation of black adolescents and young people in the Brazilian society, as noted by Oliveira, Zamora and Yokoy.⁵¹

The regional disaggregation of racial data also illustrates the disparity:

Incarcerated population by region of Brazil



*Others: White + Yellow (Asian) + Indigenous + No information

According to this data, in the Southeast region which concentrates the larger number of adolescents in the socio-educational system: 7521 - 72% of them being black or *pardos*. In the South, black and *pardos* represent 49,1% of the population, despite the region having the highest proportion of white population nationally - 72,6% of the population is white according to the 2022 Census. This represents that racial over-representation in the system is not just regional, it is a nationwide structural pattern.⁵² The ideology of 'whitening' that happened in the region during colonial times illustrates that idea: the Brazilian elite wanted to gradually 'erase' the black and indigenous populations with the intention of

⁵¹ *ibid*

⁵² *ibid* 49-50

making the white phenotypes prevail in the society, which resulted in the majority of the population in southern Brazil being white nowadays.⁵³

Researchers note in the analysis that the structural racism in the system produces profound psychosocial impacts in the black youth, both before and during the socio-educational measures. They also note that these adolescents' trajectories are frequently crossed by other personal, family and community vulnerabilities; including rights violations, racial discrimination in environments like schools or other public institutions. The socio-educational system, instead of interrupting this reality, often only reproduces and amplifies them.⁵⁴

Another point of attention to add to this analysis is the gender dimension. The SINASE data show that 93,1% of the adolescents in the system are identified as cisgender male: 11648 adolescents. While cisgender girls represent 4% of the total. This analysis also shows how the disparity is a product of the penal selectivity, the criminalising of the justice system is majorly directed to young males, particularly young dark-skin men from peripheral areas. Although the presence of the girls in the system is small, it still deserves attention, mainly their experiences within it, considering the rights violations they face in the system being distinct from the ones faced by the boys.

According to the SINASE data, the reality faced by the girls inside of the units is marked by a huge invisibility and by many forms of institutional violence. In states like Rio de Janeiro or Paraíba, for example, there is a lack of information regarding gender identification of 23,6% of adolescents.⁵⁵ One of the most alarming data regarding the girls in the report, is about mental health or excessive medicalization. The system shows to be more 'sickening' for the girls, considering that 35,1% of cis girls and 37,5% of trans girls started to use psychotropic medication after entering the socio-educational units, while for the boys that number is 18,6% for cis boys but 47,2% for trans boys.⁵⁶ Analysing those numbers, the adolescents that started medication after coming into the system, 38,0% were black or pardos, while 23,5% were white. "It can be observed that the experience of serving a

⁵³ Giralda Seyferth, 'Colonização, Imigração e a Questão Racial no Brasil' (2002) 53 *Revista USP* 117, 130

⁵⁴ Ministério dos Direitos Humanos e da Cidadania and Universidade de Brasília (n 3), 48

⁵⁵ *ibid* 45

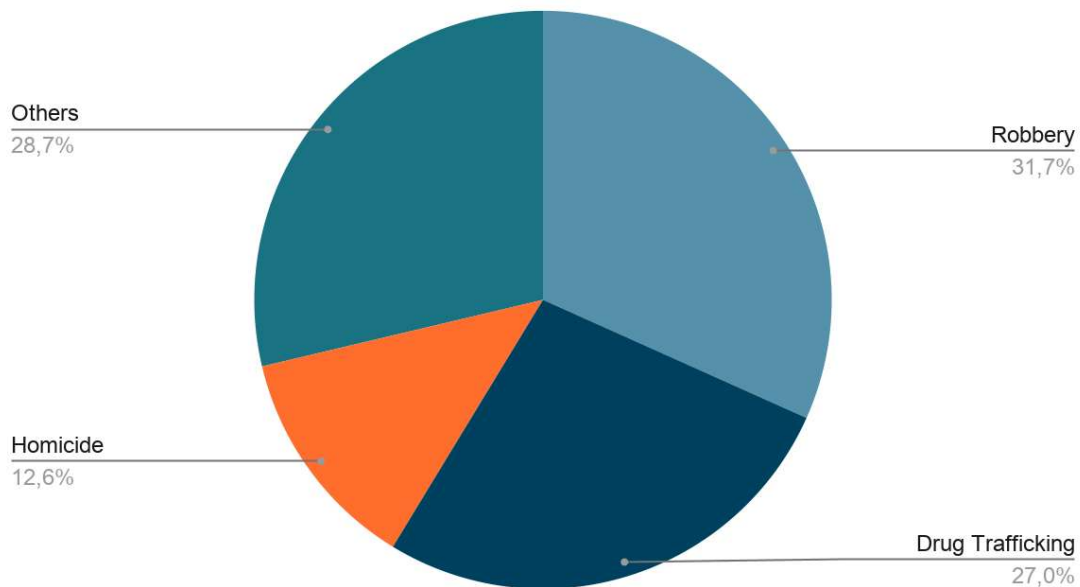
⁵⁶ *ibid* 90

socio-educational measure is more detrimental to the well-being of one group of adolescents than to another, due to the intersecting forms of inequality that shape their experiences.” (Author’s translation)⁵⁷

3.4 The Infractional acts and the Logic of Penal selectivity

The analysis of the types of acts that led these adolescents to be incarcerated is also important to take into account on how the system processes them. According to the SINASE report, the three most common acts are firstly robbery with 31.7% of cases, followed by drug trafficking with 27.0% and homicide with 12.6%. Together, robbery and drug trafficking sum approximately 58% of all infractions registered in the research.

Types of infractions



⁵⁷ ibid 91

The prominence of the crimes cited above is particularly significant for any analysis of penal selectivity. The fact that the enforcement of drug laws in Brazil is very racial and territorially unequal, young men in peripheral areas are disproportionately arrested like commented before - and for that there are many reasons. Vera Malaguti Batista analyses this phenomenon in her work *O medo na cidade do Rio de Janeiro (Fear in the City of Rio de Janeiro)*, she states that the social fear works as a feature of public management of the 'dangerous class' - the term that is commonly used to refer to poor, black and residents of urban peripheries. The fear would be not only an emotion, but it's produced and targeted to justify how they intervene and punish certain groups of people. In this analysis, the city of Rio de Janeiro serves as an experiment of setting terror and criminalizing poverty even before criminalizing the behavior itself.⁵⁸

In this perspective, the type of crimes in this sense also have to be analysed with the social intersection as a starting point. The adolescent that commits robbery and drug trafficking, most of the time, does not start doing it out of nothing, he does it from a context of lack of opportunities, failure of public policies, precarious housing and of coming from a reality that has been framed in a context of structural violence. In that sense, historically, the young black youth coming from the periphery have not been offered many other pathways; so when they occupy the space that has been left for them, the penal system is ready to frame it.

The overrepresentation of robbery and drug trafficking among the infractions must be interpreted alongside with the literature of the criminalisation of poverty. Like Foucault stresses, the idea of 'dangernesses' emerges alongside in disciplinary societies, which represents that what matters is not only what the individual did, but what he can potentially do. It becomes an instrument of disqualification that states that depending on a certain nature (poor, black, resident of periphery, etc) one can commit dangerous acts, or enter the path of criminality.⁵⁹

Batista also evidences how the drug issue only becomes a matter of security (instead of public health problem) when addressed in the periphery. So the selectivity of the system

⁵⁸ Batista (n 7)

⁵⁹ *ibid* 2-3

can be noticed not only with who is arrested, but also with the ones that are free: the consumption of drugs in higher classes is not seen as a security matter, nor produces the same number of incarceration. So whatever defines the act as criminalized, is not the act itself, but where it happens and by whom, it is about the position this youth occupy in a social system that pushes them to the edges and then punishes them for being there.

This difference can be evidenced, for example, when we look at Law 11.343/2006, known as *Lei de Drogas*⁶⁰ (Drug's law), the law that makes the distinction between the drug dealer (*traficante*) and the user. Drug trafficking, as defined by Article 33 of the law, carries the prison sentence of five to fifteen years along with financial penalties. While for users, the sanctions are non-custodial in nature, consisting of formal warning, community service, and mandatory participation in educational programs. So in theory, the legislation appears to humanize the distinction between both. The problem, however, lies in the criteria used to differentiate both of them. The law grants judges discretion to assess criteria like the quantity of drugs, the location of arrest, and the defendant's background and criminal history when determining whether they classify as user or trafficker. And in this sense, none of these criteria is objective or measurable, which leaves a lot of room for extralegal factors; in this context of race or socioeconomic class, which can influence the judicial decision-making, which transforms the neutral law into an instrument of racial selectivity.⁶¹

An investigation by *Agência Pública* (Public Agency) analysing over 4 thousand first-instance drug-trafficking sentences in the city of São Paulo in 2017 reveals this racial disparity. Black defendants were convicted for 71%, while white defendants for 67%; considering that the white defendants were nearly 50% more likely to have their charges downgraded from trafficking to personal use. Black defendants were also prosecuted for trafficking with systematically smaller amounts of drugs than the white defendants - in cases involving cannabis, for example, black defendants were convicted with a median of 145 grams, while white defendants with a median of 1.14 kilograms, almost eight times more. In cases comparing the possession of up to 25 grams, 66% of the black defendants were convicted compared to only 43% of the white. This shows with data how the “formal

⁶⁰Lei nº 11.343, de 23 de agosto de 2006 (Brazil), art 33

⁶¹ Nicolás García and Máximo Sozzo, 'For a "Marginal Criminological Realism": Zaffaroni and the Birth of a Critical Perspective on the Criminal Question from the Global South' (2023) Justice, Power and Resistance 1, DOI: 10.1332/EFGH3919.

neutrality” actually works: the classification is not determined by the substance itself, but by all the other factors surrounding the person who was found carrying it.⁶²

Analysing the data it is also important to bring light to the territorial dimension of confinement. According to the survey, 49.1% of confined adolescents are serving their time in a municipality different from the one they reside. This geographic displacement is also a form of punishment itself, considering that the young people get distanced from their families and network supports, which can also complicate the access they have to legal representation, which makes the reintegration even more difficult.⁶³

3.5 Comparative Perspectives

In different countries, racial and socioeconomic disparities also shape the likelihood of contact of these children with the system, and also the severity of treatment inside the institutions. This section will make a comparison between justice institutions among countries like the United States and Scandinavian countries, which come from very different backgrounds.

Both Brazil and the United States exhibit profound racial disparities, coming from contexts of colonialism and slave eras as well, but each with their own historical particularities, like explored in the first chapters of this thesis. Similarly to the Brazilian case, as observed, in the United States, although black youth represent approximately 15% of the overall youth population, they represent 35% of the delinquency cases in 2019 and 41% of youth placed in residential facilities. Also, black American adolescents are nearly three times more likely to be referred to juvenile courts than the white adolescents, as analysed in the technical and statistical report produced by the National Center for Juvenile Justice, together with other national organs, to provide data on youth demographics and the American justice system.⁶⁴

⁶² Thiago Domenici and Iuri Barcelos, 'Negros são mais condenados por tráfico e com menos drogas em São Paulo' (*Agência Pública*, 6 May 2019) <<https://apublica.org/2019/05/negros-sao-mais-condenados-por-trafico-e-com-menos-drogas-em-sao-paulo/>> accessed 9 May 2026.

⁶³ Ministério dos Direitos Humanos e da Cidadania and Universidade de Brasília, *Levantamento Nacional do SINASE 2024* (n 3) 60.

⁶⁴ Charles Puzzanchera, Sarah Hockenberry e Melissa Sickmund, *Youth and the Juvenile Justice System: 2022 National Report* (National Center for Juvenile Justice 2022)

The racial disproportionality in the United States connects to a broader socioeconomic reality of inequality faced by racial minorities. The report indicates that these disparities emerge from the intersection of structural, legal and social factors, in which poverty plays a central role, which is very similar to the Brazilian case. The inability to meet basic needs, combined with other factors like limited access to education, psychological and social support, creates a condition that is strongly associated with youth offences. In 2019, in the United States, Black, Indigenous, and Hispanic youth were more than twice as likely to live in poverty, when compared to white and Asian youth, as indicated in the same report.

Histories of abuse, neglect, and institutional violence are also facts that shape the involvement of these children with the justice system. Black children in the United States are disproportionately represented within the foster care system as well: although black youth represented 15% of the youth population in 2019, they were 23% of children placed in the foster care system.⁶⁵ These overlapping forms of social vulnerability contribute to a context in which these children are more likely to be detained and sentenced in the future.

Bringing the Scandinavian countries to the analysis, a major structural distinction between them and the Brazilian and American case lies in the structure and organization of the justice system itself. Scandinavian countries do not maintain a separate and specialized juvenile justice system, like the ones found in the Brazil and US cases - which consists of a challenge for the Nordic countries, considering that the Article 37(c) states that “Every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so...”⁶⁶. Instead, the Nordic models integrate the young offenders into systems that prioritize social assistance over penal intervention. In those countries, young people who commit offences are generally referred to child welfare authorities, and their decisions focus on the needs the children have rather than the offences they have committed. The Nordic systems also emphasize preventive and transprofessional cooperation between schools, social services and police institutions, with the intention of preventing criminalization before judicial intervention becomes necessary.⁶⁷ Although the backgrounds

⁶⁵ *ibid*

⁶⁶ United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 37(c).

⁶⁷ Anette Storgaard, 'Juvenile Justice in Scandinavia' (2005) 5 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 188

in those specific countries are very different, it is important to note how the system operates in those contexts as well, the Nordic models share a common foundation: robust social protection networks, low levels of socioeconomic inequality and a political culture that does not criminalise poverty as such like in the Brazilian context, which helps to explain why even with normative reforms, the changes as not suffices to produce comparable outcomes, because they come from very different historical backgrounds and paths of socioeconomic evolutions.

3.6 Vulnerabilities and limits of socio-education

The data examined in this chapter reveals that the socio-educational system in Brazil operates beyond an isolated case of social inequality, but as one concentrated expression. The acknowledgement of an official government document is very significant to understand that there is a great tension between the formal mandate of the system of protection and human dignity and the actual social reality it encounters in the system. This tension can also be noticed when considered along with the socioeconomic profile of the families. The SINASE data reveals that many families suffer from structural poor conditions, which can be analysed as rooted in Brazil's historically unequal distribution of wealth, with many of these families facing demands related to food insecurity, child labour and lack of access to public programmes. There is also a share of adolescents that face a system with incomplete basic education, which points to another failure of the state's social protection network, that could be a way of preventing infraction acts in the first place, if dealt in a different way.

From a Brazilian constitutional point of view, it is notable that there is a systematic non-fulfilment of rights. Considering the Federal Constitution of 1988, in Article 227, it is established that is an absolute priority - duty of family, society and the State - of ensuring the right of Children and Adolescent to life, health, food, education, leisure, professionalization, culture, dignity, respect, liberty, family and community coexistence, free from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression.⁶⁸ The ECA (*Estatuto da Criança e do Adolescente*), Brazil's main legal framework for the protection of children and adolescents, operationalises these regulations through the Doctrine of Integral Protection,

⁶⁸ Brazil, *Constitution of the Federative Republic of Brazil 1988*, art 227.

that means that children (under 12) and adolescents (12-18 years old) are not seen as objects of control, but as objects of rights, expressly rejecting the previous paradigm of the FUNABEM era, which will be approached more deeply later on.⁶⁹

From the perspective of International Human Rights Law, the standards are also clear. The United Nations Convention on the Rights of the Child (CRC), ratified by Brazil in 1990, establishes in Article 40 that any children in conflict with the law must be assured of their sense of dignity and worth, and to reinforce their fundamental rights.⁷⁰ The Convention further prohibits torture, cruel treatment and arbitrary deprivation of liberty.⁷¹ The UN Committee on the Rights of the Child has also expressed concern about conditions in the Brazilian Juvenile detention facilities before, the high rates of detention and the racial discrimination of the system.⁷² The Concluding observations raised a number of concerns that are relevant to the dynamic that was analysed in this chapter. Regarding the administration of child justice, the Committee expressed concern over the growth of the use of police custody, also the excessive use of force and violence inside of the socio-educative centers, and the lack of experts of child-specific relations.⁷³ The previous Concluding Observations, issued in October 2015, had already raised concerns about racial discrimination in the administration of the socio-educational system in Brazil, with the overrepresentation of black and *pardo* children in the detentions, and the conditions of the facilities.⁷⁴ The persistence of the same concerns in two cycles is a significant acknowledgement. It shows how the structural dimensions of the problem are not being solved.

What can be interpreted from the SINASE report, when read together with the normative frameworks that already exist, is that there is a structural abandonment of the children in the Brazilian context. The kids that arrive in the system are, in most cases,

⁶⁹ Brazil, *Statute of the Child and Adolescent (Law No 8.069/1990)*.

⁷⁰ United Nations Convention on the Rights of the Child art 40.

⁷¹ United Nations Convention on the Rights of the Child art 37.

⁷² Office of the United Nations High Commissioner for Human Rights, 'UN Child Rights Committee publishes findings on Brazil, Indonesia, Iraq, Norway, Qatar and Romania' (5 June 2025) <<https://www.ohchr.org/en/press-releases/2025/06/un-child-rights-committee-publishes-findings-brazil-indonesia-iraq-norway>> accessed 30 April 2026.

⁷³ UN Committee on the Rights of the Child, *Concluding observations on the combined fifth to seventh periodic reports of Brazil* (CRC/C/BRA/CO/5-7, 30 May 2025) <<https://docs.un.org/en/CRC/C/BRA/CO/5-7>> accessed 9 May 2026.

⁷⁴ Committee on the Rights of the Child, *Concluding Observations on the combined second to fourth periodic reports of Brazil* (CRC/C/BRA/CO/2-4, 3 March 2015) paragraph 87

children that have already been failed by the national policies, the educational institutions, by the justice system and by their families. For the chapter that follows, an analytical question can be used as base: how was the system built and what logic organises it? To understand the gap between the ECA's normative idea and the system's actual reality.

4. THE INSTITUTIONAL ARCHITECTURE OF THE BRAZILIAN SOCIO-EDUCATIONAL SYSTEM

4.1 From Repression to Rights

The Brazilian socio-educational system, just like many other institutional frameworks existed in the country, is a reflex of historical tensions. It reflects a punitive logic inherited from colonial and authoritarian periods (even if it does not aim to do so) and the rights-based promises of the 1988 Federal Constitution together with the 1990 Statute of the Child and Adolescent (ECA). To understand this system, it is important to analyse not only its legal and institutional evolution, but also the disciplinary mechanisms that frame the institution itself. Based on Michel Foucault's analysis of the modern penal institutions, transforming punishment from a public spectacle to an institutional confinement does not eliminate the power over the bodies institutionalized, it just shifts the form of control to a normalized and publicly accepted one. In this sense, Foucault focus in the transition from the 18th century of public torture, to the modern disciplinary methods that target the mind: "the expiation that once rained down upon the body must be replaced by a punishment that acts in depth on the heart, the thoughts, the will, the inclinations"⁷⁵

The Foucauldian lens are very important for the analysis of the institutions that house children and adolescents, because the socio-educational system occupies a position in which the legal framework is not punitive, and is legally framed as pedagogical and protective (in theory) yet the conditions of confinement reproduce many disciplinary mechanisms that Foucault associate to carceral institutions. The spatial organizations, the regulation of bodies, the hierarchical positions of staff and inmates, among others. There is a concept developed by Jeremy Bentham, and later framed by Michel Foucault as well, called *panopticon*, which is

⁷⁵ Foucault (n 11) 16.

used to describe the structural plan of a facility that has an observation center or unit in the middle of the building, with the intention of observing all sides.⁷⁶ The concept of panopticon also fits here: the possibility of constant visibility, even if not occurring, produces a dynamic of self-regulatory instinct, to internize the norms of the institutions. In this socio-educational context, it not only fits to the physical structure, like cameras or bars, but through the concept of resocialization, that forces a pattern of how the adolescent are accepted to behave.

The intention of this next chapter is to map the development of the socio-educational system in Brazil throughout the years. To analyse the development in the state intervention over children and adolescents in the country, focusing on the transition of the authoritarian times of FUNABEM to a more democratic transition of the era inaugurated by the ECA. Also, to examine the modern and current institutional framework, how its architecture works and the structure of the socio-educational measures. At last, to analyse how (beside the rights-based rhetoric) the system still continues to reproduce a logic of selectivity and discipline, and how this can be analysed by a lens of Foucault's ideas.

4.2 From ‘Minors’ to Rights-Bearing Subjects

4.2.1 The colonial and Imperial Period: to control without protection

To analyse the history of treatment of children in Brazil, we need to take a step back to colonial times. When approaching the Jesuit missions, as addressed before, the missions served as the primary institution of ‘civilising’, and this of course also expanded to indigenous children. It was a process of culture erasure, forced labour and the dismantling of indigenous social structure, the only one known to those kids. The child in this context was not a subject of rights, the same as adults, they were objects of discipline to be Christianised, to mould them so they would fit and be incorporated into the colonial order and behave the way the Europeans expected them to. This is the first contact to analyse the controlling of children’s bodies in Brazilian history, not as subjects of rights, but as objects of control.⁷⁷

⁷⁶ Philip Steadman, 'The Contradictions of Jeremy Bentham's Panopticon Penitentiary' (2007) 9 *Journal of Bentham Studies* 1

⁷⁷ Irene Rizzini and Francisco Pilotti (eds), *A Arte de Governar Crianças: A História das Políticas Sociais, da Legislação e da Assistência à Infância no Brasil* (2nd edn, Cortez 2009) 17-18.

Turning to when the Brazilian economy relied heavily on enslaved African labour, the reality was not much different for children, they still were considered objects, now even more, treated merely as economic property. Economically, it was not interesting to raise a slave child, it was found better to import from the African territory already grown people. Besides, the mortality rates for children in those conditions were very high due to the bad living conditions.⁷⁸ Following also the christian morality of those times, abandoned children were mainly those born outside of marriage, or those who faded to poverty because of their families. They were often left at churches or random houses, and many were even eaten by animals.⁷⁹

In the imperial period of Brazilian history (1822-1889), the state's relationship with children (disproportionately the poor, afro and indigenous) was organized on the concept of moral danger. The 1890 Penal Code held children criminally responsible from the age of nine, with no distinction of a child's understanding of the act or criminal responsibility.⁸⁰ The law in this regard was not designed to protect children, but to manage them as a social problem. As mentioned before, the abolition of slavery produced a new social crisis for the state (that was not prepared or willing to address) when the former enslaved and their descendants were left without land, wage or any recognition at all, 'thrown' into the cities. When pushed into the urban centers, it created a superplus population, one that bothered the elite only by existing. So the 'problem of abandoned minors' that emerged from the way the state dealt with the situation, was a problem of surplus population post-abolition that was produced by the politics of the time and then also criminalised by them. The abandonment of children on the streets of the big Brazilian cities was also a consequence of the state's failure to address the post-abolition society. The way this period dealt with the children that were in the streets was also an instrument of social control that had as its target the poor.⁸¹

The concept of 'moral danger' in this reality operated as a way to allow the state to intervene over the children but not necessarily because they committed an act, but because of

⁷⁸ ibid 18

⁷⁹ ibid 19

⁸⁰ Ricardo Westin, 'Crianças iam para a cadeia no Brasil até a década de 1920' (Senado Federal do Brasil, 7 July 2015)

<<https://www12.senado.leg.br/noticias/especiais/arquivo-s/criancas-iam-para-a-cadeia-no-brasil-ate-a-decada-de-1920>> accessed 1 May 2026.

⁸¹ Rizzini and Pilotti (n 77) 21-23

who they were: their race, social class, and the spatial presence where the elites found threatening.

“Children and young people were meticulously classified according to their state of abandonment and degree of dangerousness. [...] A mere suspicion, a certain distrust, a young person’s biotype or clothing could be enough grounds for them to be summarily and arbitrarily apprehended.”⁸² (Author’s translation)

The response of the State to the social anxiety was of containment. Many children were sent to institutions, not because of committing any crimes, but for the profile of “dangerousness” tied to them, built by the society of the time.

4.2.2 The first Republic and the Minor Code

In the first decades of the Brazilian Republic the concern around the social ‘disorder’ had an intensification in the public debates: poverty became more visible, as the rapid industrialisation and urbanisation of the cities made the social inequalities and the precarious working conditions even more evident, particularly among the populations that were already marginalised. In this context, the poor children that were living in the streets became a central target of the hygienist discourse of the time, a discourse that framed poverty as a ‘disease’ that required the intervention of the state, which operated closely with the medical ideal within the institutions. The perspective of improving the care of children and youth, and ‘rehabilitating’ them, was framed as a form of social salvation, because those kids that were considered physically and morally abandoned, were believed to be prone to developing delinquent tendencies. In this sense, the hygienist discourse aligned closely to the political interests of social control of that time.⁸³

The Code of Minors, also known as the Mello Mattos Code, from 1927, was the first legal instrument dedicated for children and adolescents in Brazil. It established a clear distinction between a child and a minor: a legal-administrative category that was applied to

⁸² Irene Rizzini, *O Século Perdido: Raízes Históricas das Políticas Públicas para a Infância no Brasil* (2008) 18, cited in Camila Nunes de Oliveira, ‘Juventudes e Violência: Vidas Não Merecedoras de Vida’ (2022) 5(1) *Revista Serviço Social em Debate* 168, 170

⁸³ Rizzini, (n 82) 169

the abandoned and ‘delinquent’ children, usually poor and marginalized. The code gave the state authorization to intervene in any situation they found as irregular, even poverty itself was a justification for institutional confinement.⁸⁴ Like many scholars in Brazil noted, the doctrine of irregular situation, or *situação irregular*, was a way that the state found to criminalise poverty, under the justification of protection, either of the child or the society itself. “In the Brazilian context, the induction of fear has always occurred with the objective of the legitimate the adoption of strategies for neutralizing and disciplining the people”⁸⁵ (Author’s translation)

The institutions that these kids were sent into were another sequence for the problem, frequently referred to as reformatories, these children went through physical punishment, forced labour, and of course, isolation - all in the name of “protection” of the minors. The Minors Code remained in force until 1979, when a new code came into force, but without many changes to the doctrine’s idea. The second one came into power in a context of military dictatorship that the country went under from 1964 to 1985, a moment when social control was explicitly a political objective. The 1979 Code maintained the same logic of the irregular minor situation, and deepened the state’s way of managing the children.⁸⁶

4.2.3 FUNABEM and the Military Period

The military regime that governed Brazil for many years to come reorganised the institutional framework for children and adolescents. It was divided into two main key institutions: the FUNABEM (National Foundation for the Welfare of Minors), that was created in 1964, and the state-level foundations called FEBEMs (State Foundation for the Welfare of Minors). These institutions, firstly, served as instruments of national security, were built under the discourse of controlling the poor youth as of maintaining the social order - the ‘minor problem’ was a threat to national security, they saw it as a risk to the public and moral order, linking poverty to delinquency that this institution could fix. This discourse was based on how the dictatorship created an imaginary that portrayed Brazil as a nation that was destined for greatness, and in this context, FUNABEM came as a promise to achieve that.

⁸⁴ Brazil, *Código de Menores* (Decree No 17.943-A, 12 October 1927).

⁸⁵ Camila Nunes de Oliveira, ‘Juventudes e Violência: Vidas Não Merecedoras de Vida’ (2022) 5(1) *Revista Serviço Social em Debate* 168, 174

⁸⁶ Brazil, *Código de Menores* (Law No 6.697, 10 October 1979).

The regime then was supported by a social fear that framed the military as a force of moral and social “cleansing”, that included the redemption of childhood. However, the idea to manage through institutionalisation these vulnerable families, proved to be structurally infeasible. In 1976, in a population of over 93,000, 52% of them were children or adolescents, and one-third of them were considered marginalised.⁸⁷

The concept of the minor in an ‘irregular situation’, from the Code of Minors of 1927, served as a legal basis to justify the actions of FUNABEM. The ‘minor’ was seen as an object of suspicion, but also of guardianship, to be controlled and corrected. The Foundation of FUNABEM operated subordinated to the Presidency, that would radiate its guidelines to state foundations, the FEBEMs. Regarding the regional ones, the FEBEMs, operated as institutions of confinement.⁸⁸ They were characterised by systematic violence, by overcrowding structures and by the violation of the most basic rights of the children and adolescents. The institutions are full of histories of riots, rebellions and mass escapes. There are many reports of beating, torture, sexual abuse, among other rights violations, inside of these institutions, which will be addressed and analysed more closely later on.

Benedito explains in *‘Uma visão crítica da política do menor’ (A critical view of child policy)* that inside of the institutions, in Rio de Janeiro, they created a program called *Brasil Jovem* (or Brazil’s Youth) in which they had the objective of forming “new adolescents” (inspired in the fascism regime) with very rigid disciplinary norms, military style, to be later on used as disciplinary function. During these times of military dictatorship, a lot of money was invested in these facilities and programs, but in the 70s, with the weakening of the military era and the international critiques on the regime, there was a ‘transition’ in the Foundations, replacing the ‘national security matter’ discourse to a way of modernizing the institutions and humanizing them. The transition was not all true though, the

⁸⁷ Camila Serafim Daminelli, ‘A ditadura militar entregou o estigma da menoridade’ (História da Ditadura, 3 April 2024) <<https://www.historiadaditadura.com.br/post/a-ditadura-militar-entregou-o-estigma-da-menoridade>> accessed 3 May 2026.

⁸⁸ Humberto da Silva Miranda, ‘A FEBEM e a assistência social em Pernambuco no contexto da Ditadura’ (2015) VI(10) *Revista Angelus Novus* 159. 161

same model of segregation and control remained central to the foundation's structure, and the State was still treating the adolescents as objects of tutelary policies.⁸⁹

Foucault's analysis of modern prisons, as mentioned before, illuminates the logic of these institutions. As argued above, he explains how the emergence of prisons was more of a logic of punishment in modern societies than about humanising the organizations, it was about holding the power over certain bodies. The FUNABEM and FEBEM followed this logic: they did not aim to rehabilitate the children and adolescents that ended up in the system, they wanted to hold power over them, to discipline this part of a society that looked at them as being dangerous. There was a socio-educational cover to put in practice their real intention of targeting the poor and marginalized. Through the final years of the military regime, the crisis in the Foundations became visible, with overcrowding, allegations of torture or rights violations, rebellions, and many more. These facts combined, all over the media and the accusations of researchers and social movements, contributed to delegitimize the model, which a year later, resulted in the ECA (*Estatuto da Criança e do Adolescente*).

4.2.4 The Democratic Transition and the ECA

With the end of the military period and the promulgation of the 1988 Federal Constitution, there was a rupture with the authoritarian order that ruled the country for many years, which also includes the approach the state had to children and adolescents. Article 227, cited before, established for the first time how children and adolescents were now subjects of absolute priority in state policy. This constitutional mandate received legislative form in the 1990 *Estatuto da Criança e do Adolescente* (ECA, Law 8.069/1990), which still is the main legal instrument concerning children's rights in Brazil.⁹⁰

The ECA represents a shift in the legal framework of the country. Disconsidering the doctrine of irregular situation mentioned before and adopting a doctrine of protection, seeing the children and adolescents (without any distinction of class, race or family situation) as subjects of rights, instead of objects of control. It establishes a system of legal rights as applicable to those in adult criminal proceedings, the process, legality, proportionality and

⁸⁹ Benedito Adalberto Boletta de Oliveira, 'Uma visão crítica da política do menor' (1988) 8(1) *Psicologia: Ciência e Profissão* 7.

⁹⁰ Estatuto da Criança e do Adolescente, Lei no 8.069/1990 (Brasil).

most important, the shortest possible duration of confinement.⁹¹ But distinguished from the adult criminal sanctions, the system has an educational propose, with socio-educational measures, which ranges from formal warning or community service to partial liberty or semi-liberty, and in the most serious cases, institutional confinement - with the maximum period of duration being of three years, and it is available only when the infractions committed by the adolescents are really serious infractions.⁹²

The formal architecture of ECA did not transform overnight. Many institutions that had operated under FUNABEM and FEBEM continued operating throughout the 90s and beginnings of the 2000s, facing crisis, riots and many human rights condemnations, that will be also approached more carefully later on. The gap between the ECA and its language based on rights vs. the punitive reality of the institutions that were supposed to act on them, was a great tension in the policies concerning children's rights in Brazil for years following the democratisation of the country.⁹³

4.3 The Current Institutional Framework

The National Socio-educational System (*SINASE, Sistema Nacional de Atendimento Socioeducativo*) was approved by the resolution number 119 in 11 December 2006 of the National Council for the Rights of Children and Adolescents (CONANDA) and was later regulated by Law number 12.594/2012.⁹⁴ Is a public policy framework aimed at promoting, protecting and safeguarding the rights of the adolescents that have been held accountable for criminal offences. It operates as a coordinated national system designed for adolescents serving socio-educational measures, integrating federal, state and municipal levels. The National Secretariat for the Rights of Children and Adolescents performs executive and administrative functions, while the CONANDA exercises normative, deliberative, supervisor

⁹¹ *ibid* ch III

⁹² *ibid* ch IV

⁹³ Human Rights Watch, *World Report 2001: Brazil* (Human Rights Watch 2001)

<<https://www.refworld.org/reference/annualreport/hrw/2000/en/23024>> accessed 30 June 2026.

⁹⁴ Conselho Nacional dos Direitos da Criança e do Adolescente (CONANDA), Resolução nº 119 de 11 de dezembro de 2006 (Brazil).

and evaluative roles. SINASE also incorporates regulatory mechanisms, coordinating action across multiple areas of governance.⁹⁵

The socio-educational measures that are established by the ECA and regulated by the SINASE formally classify the measures imposed in the systems as measures with an educational purpose, not as criminal punishments, yet they do still involve some significant restrictions on liberty, or full deprivation of it. This ambiguity can reflect how the tension among the design of the system and the punitive logic has never been fully resolved in the country. In theory, under the ECA, institutional confinement is reserved for infractions that were committed with high levels of violence, for repeated infractions, or for cases where other measures have been repeatedly violated. But in practice, some of these decisions have been subjected to judicial interpretation - which can sometimes be influenced by other factors that go beyond the only legal criteria, like all the issues cited before: race, class, absence of legal representations, among others. The formal neutrality of the legal categories in the socio-educational measures coexist with an informal selectivity that can determine whether the adolescent enters or remains in the system.

Foucault's analysis of the modern penal institutions provides a theoretical framework that can be applied here to understand the Brazilian Socio-educational system and how it actually operates, even if it is opposed to what they formally declare as an idea. As said before, in *Discipline and Punish*, Foucault sees the creation of prisons as a transformation in the exercise of power, in that sense how to manage and form bodies and subjects. Transforming violence into an institutionalised idea, surrounding it with the discourse of correction and education. The Socio-educational system precisely represents this arrangement, when declaring that its purpose is educational, with pedagogical measures and individual plans, to fall away from the idea of the adult criminal justice system. Yet in reality, the conditions of confinement, the analysis of the population involving it, and the patterns of violence that have been documented tells us a different story. The organization of the institutions, the surveillance, the spatial organization, the classification, only legitimizes this argument.

⁹⁵ Ministry of Human Rights and Citizenship (Brazil), 'Sistema Nacional de Atendimento Socioeducativo (SINASE)' <<https://www.gov.br/mdh/pt-br/navegue-por-temas/crianca-e-adolescente/acoes-e-programas/sistema-nacional-d-e-atendimento-socioeducativo-sinase>> accessed 4 May 2026.

Foucault argues a concept that he calls ‘normalising judgement’, in which he explains that institutions, like schools or prisons, do not punish the individuals by big acts, but by correcting the small deviations, with the purpose of training the individual to fit a normative ideal.⁹⁶ In the Socio-educational context, this applies by psychological and social assessments that are conducted when the adolescent enters the system, and persists with ongoing evaluations to determine the progression of the kids. These instruments build a case around the adolescent but many times it operates against a whole structure of assumptions of the background these kids come from. It is also possible to notice Foucault’s ideas when we analyse the process of penal selectivity before the confinement, when they identify these adolescents as being part of a social type - to fit a ‘marginal’ youth, fitting them into a box of dangerousness, or irregularity, that needs correction from society.

4.3.2 Reality between the norm and the practice

The gap between the normative framework of ECA and SINASE and the reality that exists in the socio-educational system is deep and well-documented. Despite being a very democratic country, unfortunately, Brazil suffers - very often - from not applying many of the good normative background it has. In the socio-educational system, for instance, despite violence being formally prohibited within the units, the system is still characterised by the patterns of violence against the adolescent in the units, just like it also suffers from overcrowded facilities, understaffed and precarious conditions. The data produced by monitoring bodies show the structural disconnect, the National Council of the Public Ministry (CNMP) has consistently documented overcrowding, insufficient pedagogical staff, inadequate health services and the persistence of physical violence within the units. The 2019 *Panorama da Execução dos Programas Socioeducativos de Internação e Semiliberdade nos Estados Brasileiros* (a report of how socio educational programs are implemented across the country) published by the CNMP offers the whole diagnoses of how the system operates in reality. The reports show conditions of severe imbalance in the state's levels: Pernambuco reported an occupancy rate of 209,25%, Acre of 192,99%, Sergipe of 170,30% and Rio de Janeiro of 160,07%.⁹⁷

⁹⁶ Foucault (n 11) 177–184

⁹⁷ Brazil, Conselho Nacional do Ministério Público, *Panorama da Execução dos Programas Socioeducativos de Internação e Semiliberdade nos Estados Brasileiros* (CNMP 2019). 24

Although structural failure in the system exists, and will be covered more deeply in the next chapter, the paradigm shift did not fully dislodge from an institutional culture whose formation was shaped around a punitive logic that has a reflection in the modern system till

the present days. The staff of these units can still be configured as some of the same ones that were trained under the FUNABEM or FEBEM institutions, so even if the structure of the socio-educational system itself has changed, some continuous actions are still found within the units - since their work assumptions were shaped around those former ideals. This also illuminates the idea of not only that the units violate the law, but that the institutions still reproduce a form of power over bodies that have been thrown to the edge of the society since colonial times and have been reinforced in authoritarian regimes. The structural conditions of the whole society have to change in order to have a positive shift in the socio-educational system - the racial composition of the confined population, the socioeconomic vulnerability of the children and their families, the absence of political resources...

The Brazilian socio-educational system mirrors a Brazilian society that has deep structural inequalities. The whole path covered along this chapter shows us how the historical development of the country led its society to what is the reality nowadays. From the colonial control of indigenous and enslaved children, to how they were 'discarded', through the Mello Mattos Code's, through the FUNABEM and FEBEM era's, to the ECA's rights-based paradigm - it all traces to a continuous treatment to how the state intervenes in the lives of children and adolescents, and how these interventions have systematically been directed to the poor and marginalised children of the society.

5. HUMAN RIGHTS VIOLATIONS IN THE BRAZILIAN SOCIO-EDUCATIONAL SYSTEM

5.1 An overview about the distance between Rights and Reality

The previous chapters focused on analysing the historical development of Brazilian society and to connect to what will be analysed in this chapter: the reality faced by how the system failed the children in the country, and how this is a consequence of many years of

abuses. From the social hierarchies that were consolidated during colonisation and slavery, throughout the structural marginalization that was formed by the abolition, without any plan of social integration, to the penal selectivity already analysed in the Brazilian youth. This chapter will analyse what happens to the children and adolescents once they arrive in the system. Through this analysis, together with what was studied in the previous chapters, it will be argued that the violations documented inside the facilities are not only an administrative failure, but a whole expression of the colonial logic of control.

This analysis will be divided into three main sectors; firstly, it will be analysed how the transition for democracy took place and in what sense the failures of the system were a continuous reality. Secondly, there will be an evaluation on the patterns of neglect and human rights violations through the reports that are available of the reality of the conditions on the facilities, including the national inspection bodies, the international mechanisms and the official surveys conducted inside the facilities. Last, an analysis of how the first chapters that talk about the historical structures connect to the present reality of the institutions.

5.2 From FEBEM to ECA: the Democratic reality

To understand the failure of the democratisation promise, it is necessary to understand both the normative framework shift and how the institutional patterns of abuse persisted beneath it. As commented before, the promulgation of the Federal Constitution in 1988, represented not only the most significant rupture in the democratization period, but together with the *Estatuto da Criança e do Adolescente* (ECA) in 1990 also represented the rupture in the history of Brazilian child policy. For the first time, children and adolescents were no longer legally seen as objects of control, but now, as subjects of rights.

The institutions that existed before, FUNABEM and FEBEM, as analysed in the previous chapter, were not institutions that served as instruments of care - they operated as a cast for the poor youth to be shaped into the social order, under the national security framework established by the military dictatorship of 1964. Then - before the ECA - Brazil operated under the Code of Minors, as also explained before, children were placed under the framework of state tutelage, objects of state intervention instead of holders of independent rights. Brazil, between the 1930s and the 1980s had a model of “regulated citizenship”,

during this period, the recognition of citizenship was tied to the formal labor participation, in that sense to hold a citizenship depended on holding a formal work permit - so children and adolescents were excluded from the citizenship sphere.⁹⁸

After 1990, there was the formal recognition of children and adolescents as citizens, but despite that, scholars argue that Brazilian society kept on experiencing what Teresa Caldeira and James Holston describe as “disjunctive citizenship”. This concept refers to a paradox of citizenship expanded in certain dimensions but remained systematically violated in others. So, the inclusion of marginalized groups in the formal framework of citizenship in practice had not guaranteed equal access to the rights.⁹⁹ In this framework, some rights, like the access to education or healthcare became more accepted and institutionalized. But at the same time, civil rights like those related to liberty, integrity or protection, continued to be violated by certain groups. In that sense, the formal legal recognition of rights coexist with practices of exclusion. An important aspect of this contradiction is what Caldeira explains as the notion of “uncircumscribed body”. Although adolescents that are in conflict with the law are legally recognized as subjects of rights, their bodies are often still under the reality of physical intervention or punishment - especially when they are labeled as delinquents (poor, black, marginalized). Under the legal discourse the adolescent is recognized as a citizen, while simultaneously remaining vulnerable to institutional violence.¹⁰⁰

The institutions - FUNABEM and FEBEM - were characterised by systematic acts of violence. One of the most recurrent forms of violence involved physical punishment operated by the staff. Physical aggression was used as a mechanism to impose submission of adolescents that were considered to be problematic or disobedient. The document analysed by the author describes cases of punches causing visible hematomas or nasal fractures. Physical pain was justified as a “pedagogical” instrument, with the belief that violence was necessary to correct behavior or impose discipline. The document also references torture, mistreatment, and other violent practices inside the units. Another form of institutional violence was a practice named “*reflection room*”, where the adolescents were forced to “reflect” on their behavior in isolation, removed from social contact and confined (as a

⁹⁸ Liana de Paula, ‘Cidadania, corpo e punição: expansão e violação de direitos civis de adolescentes internados na antiga Febem/SP’ (2019) 34(3) *Revista Sociedade e Estado*. 722

⁹⁹ *ibid* 723

¹⁰⁰ *ibid* 726

punishment for misconduct). After the shift, when the FUNAMBEM became *Fundação Casa*, the terminology for the “*reflection room*” only changed names to “*placement in an appropriate separate location*”, with the same punitive logic of isolation.¹⁰¹

The author reflects on the transition to democracy as a paradoxical process. The ECA is presented as a product of Brazil’s transition and it represents democracy aligned to childhood and juvenile legislation. The statute also represents an important rupture with the previous Code of Minors. However, the text argues that the democratic transition remained incomplete when we compare how the formal legal changes coexisted with the violence and injustice of the system, with the reality still being far away from the project. The ECA coexisted with an institutional culture that the law could not change.

5.3 Monitoring of Measures

The socio-educational measures are formally monitored by a framework of the union of the Judiciary, the Public Prosecutor’s Office, the Public Defender’s office, oversight bodies and in cases of persistent violations, international human rights mechanisms. The monitoring mechanisms include periodic judicial review of measures, inspection of the institutions, information systems, and the oversight activities carried by public bodies. Under the SINASE Law (Law No. 12.594/2012) and the ECA, measures of deprivation, such as detention or semi-liberty, must be revised by the judicial authorities every six months.¹⁰² In addition, another mechanism of monitoring are the ‘Concentrated Hearings’, that serve as periodic reviews procedures in which the adolescents have their situations individually evaluated with the participation of legal actors, professionals and family members, with the aim of assessing the possibility of release or to consider less restrictive measures.¹⁰³

The National Council of Justice (CNJ) also conducts inspections through the CNIUPS (National Registry of Inspections in Socio-Educational Units and Programs), while the SINASE system centralizes data of the adolescents in the system and monitors compliance

¹⁰¹ *ibid* 732-740

¹⁰² National Council for Human Rights (CNDH), Federal Human Rights Defender (PFDC), and National Council for the Rights of Children and Adolescents (CONANDA), *Report of the Monitoring Mission on the Fulfillment of Precautionary Measures* 60-15. 63

¹⁰³ Ministry of Human Rights and Citizenship and University of Brasília, *National Survey of the National Socio-educational Attendance System - 2024* (MDHC 2025). 121

with individual assistance plans.¹⁰⁴ The Public Prosecutor's Office is responsible for supervising if the measures are being executed and to investigate the allegations of violations within the units, while the Public Defender's Office provides legal representation, visits and inspections.¹⁰⁵

Even though there are many resources and many bodies responsible for the monitoring and ensure of protection of these adolescents, the reality is that there are still persistence of structural deficiencies in the system and in the facilities, which will be addressed closely in the next section.

5.4 Patterns of Neglect and Rights Violations

As already analysed throughout the text, the violence existed in the socio-educational institutions in Brazil are not isolated cases, but rather a pattern of systematic model that prioritizes punishment over discipline. One of the most common patterns of violence within the institutions is the use of physical violence and torture. Reports document the abuse coming from the agents and military officers, including punches, kicks, strangulation, and beatings with other objects, like wooden bars or iron. Torture has also been used as disciplinary mechanism - in Ceará (a state from the northeast region), for example, adolescents reported being suspended by handcuffs attached to ventilation grilles for long periods of time without their feet touching the ground.¹⁰⁶ In Pernambuco (another state in the northeast region), reports documented cases that involved electric shocks and even violent deaths of adolescents that were burned alive. The use of pepper spray is also recurrent, to “suppress resistance”, resulting in asphyxiation.¹⁰⁷

Another feature cited in the reports analysed above is the abusive use of handcuffs, which should be an exceptional measure - both under domestic and international standards - but are commonly used for routine procedures. The reports have also identified adolescents

¹⁰⁴ *ibid* 122-125

¹⁰⁵ State Mechanism for the Prevention and Combat of Torture of Pernambuco (MEPCT-PE), *Theme Report: An Analysis of Socio-educational Attendance Units for Detention and Provisional Detention Measures* (2015). 25

¹⁰⁶ National Council for Human Rights (CNDH), Federal Human Rights Defender (PFDC), and National Council for the Rights of Children and Adolescents (CONANDA), *Report of the Monitoring Mission on the Fulfillment of Precautionary Measures 60-15*. 40

¹⁰⁷ *ibid* 17

with injuries on their wrists that were caused because of the excessive use of the handcuffs. The reports also include humiliating and degrading procedures, such as strip searches involving total nudity and squat, imposed to the adolescents and to their family members, including children and elderly visitors. Solitary consignment is also a punitive mechanism very common in the institutions - isolated for many days, confined for up to twenty-four hours a day without basic materials, such as mattresses or hygiene, and equally without access to legal defense in most of the cases.

Collective punishments are another type of punishment found in the reports analysed, such as the suspension of electricity for entire housing units as a punishment for infractions that were committed by one or two adolescents. Besides that, the reports note commonly the use of verbal abuse, including racist and homophobic language used by the staff, as a form of violence aimed at dehumanizing the kids and reinforcing the hierarchies that exist in these institutions. Negligence is also a strong feature cited in the reports. The access to healthcare is very ineffective and frequently irregular, the adolescents report that they have to bang on the bars repeatedly in order to call attention to medical emergencies. Unsanitary living conditions, those including overcrowded and bad ventilated units for sleeping, infestation of animals like rats or scorpions, along with the little access to potable water or to hot showers - all of those features that resemble degrading treatment and are incompatible to human dignity.

The gender dimension of these violations is also another different feature of analysis, since the violence faced by boys inside the system is different from the ones faced by the girls, even if they only represent 4% of the adolescents in the socio-educational system - because of the low percentage, the structure many times is built around the male public, which generates a form of institutional violence because of negligence, like cited above. The SINASE data documents that additional to the poor conditions that they faced the same as the boys, they are also subjected to vulnerabilities related to sexual violence, reproductive rights, and other impact related to specific incarceration on their roles as mothers, since there is a significant number of girls incarcerated that have children themselves. There is an invisibility around the dominant narrative around the figure of the young black male from the periphery -

that of course is very significant - but it does not exclude the violence faced systematically underreported by the girls as well.¹⁰⁸

Even with all the reports of violence and poor treatment, there is an impunity that sustains the institutional violence inside the units. The cases of violence are widely undocumented and even if submitted to authorities, many times the use of violence is normalized and justified as ‘necessary use of force’. Which only illustrates the persistence of hierarchies and reproduction of rights violations inside of the system.

5.5 Colonial Continuities and the Reality of the Present

The argument that was developed across all the chapters of this thesis, allows us to read the reality of the present socio-educational system of Brazil as an expression of a continuous social control that has the colonial times as a starting point. The production of marginalization can be established as a first connection to analyse the situation of the continuous racial order that was set in Brazil Colony - and the geographical exclusion of this marginalization as an expression of centuries of this order. This spatial dimension connects directly to Quijano’s theory of the *coloniality of power*, the global structure of domination that emerged in the process of colonization, which has the foundation in racial classification of populations, with the intention of legitimizing the social hierarchies in a capitalistic reality of authority and paid labor - and precarious forms of work, as covered in the first chapter. He also notes that the white elites kept the racial hierarchies that existed before, so the recently independent Brazil of the time kept a society that remains colonized in its power relations. In that sense, relating to what Quijano explains, the institutions of the republic served as a continuity of dominance, and the socio-educational system is one of those institutions.¹⁰⁹

To relate with the concept of penal selectivity, developed in Chapter 2, it is possible to analyse, as did through the chapter, that the selectivity is not a dysfunction of the criminal justice system, but rather a feature of it - of how it was formed and operated to the present days. As documented in the previous sections, the adolescent that arrives in the units had, in

¹⁰⁸ Ministry of Human Rights and Citizenship and University of Brasília, *National Survey of the National Socio-educational Attendance System - 2024* (MDHC 2025).

¹⁰⁹ Quijano (n 4)

most cases, been already subjected to multiple layers of selectivity - policing, prosecution, sentencing, and in the execution of measures. The connection between historical structure and present reality is also well analysed through the lens of Florestan Fernandes when he describes de double exclusion, as cited before, and as analysed throughout the previous sections, the children in the system are descendants of this double exclusion: that have been subjected to institutional violence across generations, and failed by other institutions - by the school system, the social protection network, family support many times - with the lack of structure because of the lack of resource. A recurring cycle.

What makes this pattern more significant from a Human Rights perspective is the systematicity of it. As addressed in previous chapters, the UN Committee on the Rights of the Child, in the Concluding observations on Brazil, both in 2015 and again in 2025, raised the same concerns: the overrepresentation of Black and *Pardo* children in the detentions, the conditions of the facilities, the use of force inside the units. The persistence of the same concerns is not evidence of slow progress - they were separated by a decade - its evidence of how the structural dimension of the problem is not being addressed, and that this structure remains intact, reinforcing that cycle.

5.6 The lack of a Transitional Justice

The concept of Transitional Justice, as defined by the United Nations:

Transitional justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.¹¹⁰

Although usually applied to situations of post-conflict or authoritarian contexts, in this case, transitional justice could be extended to address other historical injustices, like colonialism

and slavery. These forms of violence have continuously been shaping the institutions and social relations until the present days in Brazil. As observed throughout this thesis, the

¹¹⁰ United Nations, 'Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice' (March 2010) 2.

Brazilian socio-educational system would not be able to overcome all its complexities if it does not confront the colonial legacies that still haunts it.

In the context of slavery, for example, transitional justice does not focus on punishing the individuals, considering that it would be impossible since they are already dead, rather it focuses in relation to approaching the contemporary responsibilities of reparation, when regarding historical abuse suffered by the former enslaved population.¹¹¹ The same applies to the indigenous population in that sense. One example would be how the UN recognized the slave trade as a crime against humanity in the Durban Declaration of 2001, which allows the descendent to seek reparation for all the human rights violations faced by the ones alive then.¹¹²

Another strategy would be transitional justice to transformative justice, like addressed by Nicole L. Immler in her text. Immler observes in the Dutch case, which we can interpret and apply here (while acknowledging the differences), that reparations in these cases are less about apologies or monetary reparations, and more about structural transformation. While the first one focuses on instruments like trials or historical commissions, the transformative justice seeks to challenge bottom-up the uneven power relation and the structures of exclusion in a society, as argued by scholars like Gready and Robins.¹¹³ Applying this idea to the Brazilian framework would require more than only procedural changes, like reducing the overcrowding, it would require a deeper transformation in the culture and logic of the country. Such as the logic of dangerousness or class-based assumptions. It would mean to question who is criminalised, why and how that happens. It would mean making the voices of these adolescents heard as a central point, and not seeing them as objects of intervention.

Lisa Laplante, cited in the text, identifies four types of justice that can be applied to comprehend what lacks from the Brazilian system. She brings this model as a way to have more awareness on the type of justice aimed, and how that manages de expectations and effects. Firstly, the *restorative justice* that would focus on restoring the dignity of this youth, not treating them as merely infractors. Then she talks about *civic justice*, that we could apply

¹¹¹ Joanna Burch-Brown, 'Should Slavery's Statues Be Preserved? On Transitional Justice and Contested Heritage' (2022) 39(5) *Journal of Applied Philosophy* 810.

¹¹² *ibid*

¹¹³ Nicole L Immler, 'What is Meant by "Repair" when Claiming Reparations for Colonial Wrongs? Transformative Justice for the Dutch Slavery Past' (2021) 5 *Esclavages & Post-esclavages* 2.

here to repair the relationship between the youth and the State, to guarantee that they could have an active voice in this process that affects them. And lastly, she cites socioeconomic justice, bringing to this context, in order to invest in education and infrastructure, as a way to cover the failure in distributing the historical resources.¹¹⁴

Immler also mentions the transition of narratives, from ‘trauma’ to rights bearing citizens. In the Brazilian context, that would apply as treating the black youth not in a sense of social pathology, and to recognize them as citizens that demand rights that have been historically denied to them.¹¹⁵ “This shift from the trauma to the revolution narrative meant that alongside ‘victims asking for recognition’ we also see ‘citizens demanding their rights’.”¹¹⁶ Immler proposes that the reparation should not be a ‘product’, but a social process of relations construction.¹¹⁷ In the socio-educational system context, that would imply to deal with structural racism as a collective responsibility, to reach a more just and equal society.

CONCLUSION

This thesis set out to understand how colonial legacies shape the contemporary socio-economic inequalities and social hierarchies present in penal selectivity for children deprived of liberty in Brazil’s socio-educational system. The analytical perspective across the chapters, analysed through historical facts, empirical data and theoretical frameworks, led us to understand that the crisis of the socio-educational system for children and adolescent in Brazil, is not merely a failure of the institution - it is rather, a product of racial hierarchies of the colonial period, in a reformulated form, but never dismantled, of racism and criminalisation of poverty that has served as based for many parts of the Brazilian society, and the penal system included, and in this case, the socio-educational one.

The first part of this research established the historical facts as a foundation for the main argument, mostly the theory developed by Quijano, the construction of race as a social category, and in this case specially, in Brazil Colony.¹¹⁸ This construction was designed to

¹¹⁴ *ibid* 4.

¹¹⁵ *ibid* 7.

¹¹⁶ *ibid* 8.

¹¹⁷ *ibid* 13

¹¹⁸ Quijano (n 4) 535.

legitimize a discourse of domination of the indigenous people, at first, and then later, the African people brought from their continent to be used as base to the colonial economy drawn around exploiting bodies - which formulated the product of a racial hierarchy. That mentality and social organisation did not end with the formal abolition of slavery, since we analysed that when slavery ended, there was no policy of social integration with the former slaves to the Brazilian society; there was no land distribution, no access to rights, nor any type of incorporation into the society. As Florestan Fernandes demonstrated, the abolition of slavery was not a rupture in the racial order, it was a reconfiguration of it.¹¹⁹ The history tells us how the formerly slaved population, after the signature of the *Lei Áurea* in 1888, was thrown into a capitalistic society that had a labour market structured around excluding them. They were ‘double excluded’, expelled from the slave system that exploited them, and then excluded again from the society that they were added to.¹²⁰ This sequence of facts produced a marginalization among the black newly-free community, throwing them into poverty and formulating a structural condition of exclusion that would last decades.

The second part of the analysis brought this historical and structural context into the juvenile justice system of Brazil. The data from the 2024 SINASE National survey showed us with clarity the disparity among the incarcerated adolescents: 72.9% of the population inside of the units are black or *pardos*.¹²¹ The concept of penal selectivity here becomes clear, the criminal justice system does not operate as a neutral instrument, but as a filter that targets those at the margins of the society, specially when data also shows us how the white adolescents are not being policed in the same way. When we look at the data of the most common infraction acts - those being robbery, drug trafficking and homicide - it must be read as an intersection of structural vulnerability that those kids suffer for generations, vulnerability, absence of social protection, unequal enforcement of laws, the *Lei de Drogas*, for example, which distinguishes the user from the trafficker that can systematically produce a racial outcome, since is analysed through a subjective criteria, like observed in chapter 3.¹²² Another point that deserves further reflection is the territorial displacement of confined adolescents noted in the data presented by SINASE - 49.1% of the children serving their measures in a municipality different from their place of residence: operating as a mechanism

¹¹⁹ Fernandes (n 5)

¹²⁰ *ibid*

¹²¹ Ministério dos Direitos Humanos e da Cidadania and Universidade de Brasília (n 3), 48

¹²² Lei nº 11.343, de 23 de agosto de 2006 (Brazil), art 33

of exclusion again.¹²³ This territorial dimension of punishment has received little attention in the policy literature but it is deeply related to the colonial logic of displacement that has historically ruled the relationship between the state and the marginalised societies, from the forced dislocation of African populations brought for slavery, to the urban peripheralisation that followed the abolition, and finally to the geographic distribution of confinement units that make them even more excluded from the support they should receive.

The third dimension of the analysis was referred to the institutional history of how the state intervened over the children and adolescents in Brazil, from a historical perspective, starting in the colonial and imperial times, through the Jesuit missions and the concept of ‘moral danger’, as well as analysing the punitive logic of the *Mello Mattos Code*, and the organizations of the FUNABEM and FEBEM institutions during military dictatorship, all the way to the democratic promise of the ECA. All that trajectory reveals how the state always had to intervene over the children and adolescent bodies, not to protect them, but to manage them as a social problem. Although the ECA represented a normative rupture, as argued in the previous chapters, the formal architecture of the system proves how there is a whole institutional culture that has been shaped over decades of punitive logic and social control. As analysed, the staff, the spatial organizations, the hierarchies inside the units and outside of them, the reproduction of patterns of violence - those are all the same logic of classification and control, only dressed in a language of resocialisation and reeducation, more accepted to the contemporary society.

At last, the fifth chapter is an analysis of the reality that emerges from all this contradiction. It shows in a concrete way how the rights violations that exist inside the units are not exceptional, they are systematic patterns. The violations exist and they are being documented across decades - by national bodies, by organisations, and by international human rights mechanisms. The fact that the UN Committee on the Rights of the Child had to raise, not once, but twice the same concerns about racial representations and the conditions of treatment inside the units only shows us how the dimension of the problem is structural and is not being addressed.

¹²³ Ministério dos Direitos Humanos e da Cidadania and Universidade de Brasília (n 3), 60.

Taken all the findings together, it allows us to answer the central question of this research: the social hierarchies existed in the penal selectivity for children in Brazil's socio-educational system is, indeed, shaped by colonial legacies - and as a consequence of those legacies, as by contemporary socio-economic inequalities existed in the Brazilian society. It became a snowball effect. The historical production of poverty along with the marginalization it created, added with the way the state dealt with every condition along the way, generated the conditions of vulnerability that led these adolescents to the system in the first place - that is structural. When looking at the operational level, the selectivity acts through racial profiling, selected policing, and different access to resources. The institution itself also operates through a logic of classification and punishment which was also inherited from colonial and authoritarian periods, that nowadays is prohibited by the formal normative framework existing in the country, but it still persists in being a reality. The ideology of Brazil not having racism also makes it difficult to name and address those situations, because it has entered the structures of the society as a whole.

When stressed that the Brazilian socio-educational system, like many other institutional organizations in the Brazilian society, will not be fully reformed without confronting the roots of the problem, one feature that we analysed through this thesis was the transitional justice process that was never addressed in the country. Since it is not possible to punish individual perpetrators of historical crimes, the focus of finding a solution for justice in this case could be reflected in reparation processes. Like cited in chapter 5, drawing in Immler's work, aiming on transformative justice for the dismantling of the structural power relations and patterns of exclusion would be the path for a significant change. Addressing the lacks in the Brazilian system, like enforced by Laplante's, such as restoring the dignity that these adolescents deserve, encouraging their active participation in decisions that affect them, and most important of all, investigation on their education: before, during and after the system.

As addressed in the introduction of this thesis, the adolescent that arrives at the door of a confinement unit in 2026, in most cases, is the same adolescent described then: male, black or pardo, from a favela, poor and marginalised, already failed by many other systems that should be protecting him, and now he will face conditions that violate his dignity and fundamental rights. This reality will not change until Brazil faces the colonial structures that

shape, not only the penal system, but many institutions in the society. Until there are policies that are designed under the recognition of the historical injustice that places these people, generation after generation, at the very end of the society. There should be meaningful investment in education, to start - like stressed before. The state has to create paths to facilitate housing, food security and social protection, so these kids (besides having good access to education) will actually be able to stay educated, and not have to drop out of middle school to help their mothers to put food on the table. There should be a meaningful transitional justice process, or transformative like cited before, one that never existed in the country, in which there is a recognition and address the historical dispossession of black and indigenous communities. Of course, there should also be a genuine transformation of the socio-educational institution itself, for a model that takes it seriously the educational mandate, one that actually invests in human resources and one that actually cares about these adolescents - to create a better society for the future, is to certify that the one that is already here is a good society as well.

As Quijano stated, the formal end of colonialism did not end coloniality itself in most countries of Latin America. Coloniality of power classifies, disciplines and controls bodies in Brazil, it was reformed, but never gone. Understanding it requires understanding the history that produced it, the ideology that justifies it, and the structures that feed it. This thesis was an attempt to understand that. To name the colonial roots is a necessary step to bring justice to all people who suffer from these chains.

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