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Privatization through Financialization of the Brazilian Prison System: Illegality, Inefficiency, and the Enhancement of Organized Crime

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Abstract

The present article analyzes the process of privatization through the financialization of the prison system in Brazil, based on recent policies that have incorporated public security and prison management into the sphere of private investment, and compares it with the broader Latin American context. It argues that this model is illegal in its foundation and ineffective in addressing the structural and contemporary challenges of public security, particularly organized crime. The analysis shows that privatization not only reproduces historical forms of delegating the state's punitive power to private actors but also creates institutional arrangements that facilitate the strengthening of criminal organizations, which thrive in environments marked by fragmented authority, profit-oriented management, and reduced state oversight.

Keywords

Neoliberalism, Punitive Populism, Prison Privatization, Organized Crime

1. Introduction: Punitive Populism in the Ruins of Neoliberalism

In Brazil, virtually all contemporary legislative production in the field of public security is directed either toward penal hardening or toward the promotion of corporate agendas of security forces. In the first case, initiatives predominantly expand the catalogue of criminal offenses, increase sentences, or restrict procedural benefits; in the second, they strengthen institutional privileges, labor pre-

rogatives, and mechanisms of corporate self-protection.

This orientation reflects the absence of a coherent and sustainable public security policy across both the right and left of the institutional political spectrum, with few exceptions—among them Constitutional Amendment Proposal No. 18/2025 and the Anti-Faction Bill, both recently advanced by the current administration and under discussion within the Brazilian Congress.

Constitutional Amendment No. 18/2025 represents a relative step forward by proposing a reorganization of the powers of national police forces in the fight against organized crime, although it does not confront the structural problems of the justice system nor the social and economic roots of violence. The Anti-Faction Bill, in turn, was introduced only just after a police operation that left more than 120 people dead—the most lethal of its kind, surpassing even the 1992 Carandiru massacre—and rests primarily on increasing criminal penalties and restricting sentence progression and procedural guarantees for individuals associated with criminal organizations. Although not limited to these measures, its core structure is built around them, thereby reinforcing the punitive consensus that permeates the entire Brazilian political spectrum.

Thus, state action in the field of public security continues to be guided more by politically oriented emotional reaction than by strategic and sustained planning. This dynamic corresponds to what specialized literature identifies as punitive populism, whereby criminal policy is increasingly shaped by public opinion rather than grounded in expert knowledge or empirical evidence (Roberts, Stalans, Indermaur & Hough, 2003: p. 15). This is a logic observed in other countries of the region as well, where punitive power expands and becomes instrumentalized for political and electoral purposes in what has also been called a punitive moment (Sáenz-Solís, 2023).

Concretely, statistics from 2019 show that the number of people imprisoned in Latin America doubled in two decades, reaching 1.4 million inmates (241 per 100,000 inhabitants), with a particular concentration in Brazil, Mexico, and Colombia, which together account for roughly 70% of the total (Vilalta & Fondevila, 2019).

As Wendy Brown (2019) argues, neoliberal rationality corrodes the social and democratic foundations of the state, hollowing out its capacity for collective provision while intensifying inequality and social abandonment. Within this decomposed terrain, an elective affinity emerges between neoliberalism and punitive populism: the punitive turn does not stand apart from neoliberal restructuring but arises as one of its surviving political logics. In the ruins of the neoliberal project, punitive populism becomes a compensatory mode of governance, offering order, moral clarity, and political affections where structural solutions have been foreclosed.

The legislative inflation that emerges as a consequence of these dynamics intensifies the demand for incarceration in contexts where penitentiary structures are already on the brink of collapse. The overproduction of criminal laws has nei-

ther improved public safety nor reduced recidivism; instead, it has saturated judicial and prison systems, fueling a self-perpetuating cycle of mass incarceration, institutional overload, and recurrent human rights violations. Among its most visible effects is the strengthening of organized crime, which thrives in overcrowded and under-resourced penal environments where the state's capacity for governance is structurally weakened.

That said, the challenges of the Brazilian penal system are not an isolated phenomenon but part of a broader regional process. Contemporary transformations of punishment in Latin America must be understood as a consequence of the influence of neoliberalism on state reorientation (Dardot & Laval, 2016), which has promoted the expansion of imprisonment (Wacquant, 2008), the strengthening of policies for controlling the poor (Wacquant, 2009), and the progressive delegation of punitive functions to private actors (Galinato & Rohla, 2020). In this context, neoliberalism abandons its normative form to become a punitive system that scapegoats historically marginalized groups (Davies, 2016), not only defining the economy but also reshaping the ways poverty is governed and exclusion is administered, reproducing colonial patterns of inequality and subordination (Sozzo, 2023; Kilduff, 2010).

The region faces a structural crisis of criminal justice, in which mass incarceration substitutes for social and preventive policies. Instead of promoting reforms grounded in human dignity and restorative justice, most Latin American countries have responded with harsher criminal penalties and the privatization of punishment. This reality reinforces the argument that the Brazilian case not only reproduces a national logic of inefficiency and illegality but also follows a regional pattern of punitive expansion and outsourcing of state responsibility.

Within this context, the state's inability to guarantee minimum conditions of dignity in penitentiary establishments has created space for proposals for privatization and prison co-management, presented as technical solutions to a deep political and social problem. Thus, the contemporary debate on the participation of the private sector in prison management is embedded in a regional dynamic of punitive expansion that exacerbates—rather than resolves—the structural causes of violence.

The discussion on prison privatization in Brazil is not new. As Borges de Oliveira et al. (2024) note, the official narrative associating private participation with improved penitentiary management and resocialization reproduces a market logic applied to a field in which the public function of the state should prevail. Although these authors conclude favorably regarding private financing, their argument illustrates how the discourse of economic efficiency has become the main political justification for a model that, in reality, distorts the very meaning of resocialization and legitimizes the commodification of imprisonment.

In contrast, the present article adopts a critical perspective on such claims, examining the state of the art of prison privatization in Brazil—particularly in its most recent development through financialization—to demonstrate its unconsti-

tutionality, its incompatibility with international obligations, and its inefficiency, especially with regard to controlling organized crime.

In this article, the term "financialization" is understood as a distinct stage beyond conventional prison privatization. While the first refers to the delegation of prison-related functions to private operators, financialization encompasses delegation but also denotes the integration of the penitentiary system into financial markets through instruments such as incentivized debentures and investment funds backed by state guarantees. In these arrangements, the incentives for financialization are directly provided by the State through tax benefits, public guarantees, and privileged financing conditions, thereby shifting the burdens of investment risk from private actors to the State and ensuring predictable returns.

The process does not reflect a simple withdrawal or weakening of the State. Rather, it reveals a reconfiguration of state authority, in which public power is actively mobilized to enable, regulate, and guarantee the operation of market logics within the penal sphere. Through legal reforms, executive decrees, fiscal incentives, and contractual arrangements, the State does not abandon punishment but restructures it, transferring operational responsibilities while preserving strategic control over coercion, financing, and legal authorization. In this sense, privatization and financialization should be understood not as forms of state absence, but as modes of state action that reorganize punitive power in accordance with market rationalities.

The central objective of this study is to demonstrate the illegality and inefficiency of this ongoing privatization approach, which violates constitutional and statutory provisions as well as international conventions to which Brazil is a signatory. Further analysis shows that the model is also politically and socially ineffective, as it not only fails to confront the phenomenon of organized crime but tends to aggravate it by strengthening illicit networks operating inside and outside the penitentiary system.

To demonstrate our hypothesis, the article is divided into three sections, aside from the introduction and conclusion. The first is a shorter section that develops a legal analysis focusing on the unconstitutionality and incompatibility of prison privatization in Brazil, based on national and international normative frameworks. The second is a sociological analysis aimed at revealing the material and administrative inefficiency of co-management models, given their potential to exacerbate human rights violations and their specific incapacity to address organized crime. Our third section incorporates Brazilian case studies that empirically illustrate the structural risks of the model.

Before proceeding, however, it is important to recognize that from any perspective the public administration of the Brazilian penitentiary system has failed—at least when considering its declared aims of resocialization and crime prevention. It must be acknowledged that Brazilian prisons are spaces of systematic human rights violations, where a "state of unconstitutional affairs" prevails, as recognized by the Federal Supreme Court (Castro & Gabriela Cavalcante, 2023).

Nevertheless, from this diagnosis one cannot conclude that private initiative is capable of offering better outcomes. Delegating the management of deprivation of liberty to the private sector undermines the possibility of public and democratic oversight of prisons, consolidating incarceration as a commercial practice that contaminates the entirety of public security policy.

2. On the Unconstitutionality and Unconventionality of the Current Legal Form of Prison Privatization in Brazil

As noted above, the privatization of the Brazilian penitentiary system is not a recent phenomenon. Since the 1990s, successive governments have experimented with mechanisms for partially delegating penitentiary functions to the private sector—initially through service contracts and, later, through so-called Public-Private Partnerships (PPPs). These contractual arrangements, formalized by Law No. 11,079/2004, marked a shift from a fragmented outsourcing model—up to that point limited to the supply of food, cleaning, or surveillance services—to a comprehensive co-management scheme that combines construction, maintenance, and even the provision of essential services within prisons.

Within this framework, in April 2023, the Lula III administration issued Decree No. 11,498/2023, establishing mechanisms to incentivize financing for infrastructure projects with environmental and social benefits. The decree broadened the criteria established in previous regulations governing the approval of investment projects considered priorities in these areas. Following this change, investments in public security and the penitentiary system began to be classified as priority areas, thus becoming eligible for financial incentives operated through so-called incentivized debentures (tax-benefit bonds).

It is noteworthy that the process of privatization via financialization of the Brazilian penitentiary system—already underway under previous administrations—has not been interrupted by a government identified with the left. Although it does not promote the process with the same discursive pride displayed by conservative sectors, it has likewise not halted its practical advance. This continuity reveals that there are no substantial differences between the institutional right and left in the treatment of this issue and exposes a punitive consensus, reflecting both the absence of viable alternatives in criminal and penitentiary policy and the positive electoral returns generated by measures of penal hardening and securitization in societies permeated by fear and institutional distrust.

Henceforth, the persistence of these policies under a left-leaning administration can be explained by a combination of political, economic, and institutional factors that sustain this punitive consensus. Politically, public security remains one of the most electorally sensitive issues in Brazil, where fear of crime and demands for punitive responses cut across ideological lines. Economically, fiscal constraints make public-private partnerships and financialized models attractive to governments seeking to cut public budgets. And institutionally, the absence of consolidated alternatives in penal policy and the dependency on existing regulatory

frameworks entrench these models, even among administrations formally committed to human rights and social inclusion.

In fact, the enactment of Decree No. 11,498/2023 represents a new stage in the process: by incorporating public security and the penitentiary system among the priority sectors for investment, the federal government institutionalized the financialization of punishment, opening the door to the participation of private funds and investment banks in the management of prison infrastructure. This regulatory framework—approved without substantial parliamentary debate or public consultation—significantly expands the scope of penitentiary PPPs and consolidates market logic within a sphere traditionally reserved for public authority.

This section examines the legal architecture that enables this modality of privatization (subsection 2.1) and demonstrates its incompatibility with the Federal Constitution and with the international human rights treaties to which Brazil is a party (subsection 2.2). Based on an analysis of legal texts, active contracts, and institutional statements, it argues that the private management of prisons violates the principle of the non-delegability of coercive power, contravenes the United Nations Mandela Rules, and distorts the resocializing function of criminal punishment.

2.1. The Current Legal Form of Privatization in Brazil

In Brazil, pursuant to Law No. 11,079/2004, Public-Private Partnerships (PPPs) constitute a modality of administrative concession contracts. The statute defines these contracts as agreements between the public and private sectors, in which the latter, in exchange for remuneration from the former, undertakes the provision of specified services. The principal difference between a PPP and an ordinary concession is that, in PPPs, the State assumes part of the service costs, whereas in traditional concessions the concessionaire's remuneration derives exclusively from user fees.

The law divides PPPs into two modalities: sponsored and administrative. In the former, in addition to collecting user fees, the public contracting authority makes complementary payments; in the latter, the entirety of the remuneration comes from the State. Thus, in sponsored concessions, the granting authority supplements revenue derived from users, while in administrative concessions, the private partner receives no payment from users but exclusively from the State. The latter is the modality used in PPPs within the penitentiary system.

Meanwhile, Decree No. 8874 of October 11, 2016, regulated the conditions for approving investment projects considered priorities in areas of infrastructure or in production activities intensive in research, development, and innovation. Subsequently, Decree No. 11,498 of April 25, 2023, amended this framework by adding item X to §1 of Article 2, thereby incorporating public security and the penitentiary system among the priority sectors.

In simple terms, Decree No. 11,498/2023 amended Decree No. 8874/2016, which regulates the criteria for approving priority investment projects in Brazil—

that is, those eligible to receive financial support and tax incentives from the State. The 2023 amendment added public security and the penitentiary system to the list of sectors considered priority.

In practice, this means that projects related to the construction, maintenance, or modernization of prisons have become eligible for private financing with tax incentives sponsored by the Brazilian State, under the framework of Public-Private Partnerships (PPPs). As a result, activities traditionally understood as intrinsic to the exercise of the State's punitive power were incorporated into the investment and profitability logic characteristic of the private sector, marking a qualitative leap toward the financialization of the Brazilian penitentiary system.

The inclusion of public security and the penitentiary system in this list represents, in effect, a normative authorization for the privatization of activities that constitute core elements of penal governance, adopted through an Executive Decree characterized by significant opacity and an absence of public debate or civil society participation.

It is necessary, from the outset, to refute the argument that the decree does not imply "outsourcing" or incentivize the "privatization" of penitentiary management on the grounds that it would cover only infrastructure aspects and not the essential activities of the system. However, the wording of §1 is sufficiently broad and ambiguous in referring to the "implementation, expansion, maintenance, restoration, adaptation, or modernization" of penitentiary infrastructure.

Such wording opens space for interpretations that allow the delegation of a wide range of functions related to the penitentiary system to private actors, including tasks that go far beyond mere engineering or the construction of physical spaces.

In practice, therefore, the decree may serve to incentivize the outsourcing or privatization of various penitentiary services: from cell access control and the provision of water and food, to the management of judicial records and the issuance of release orders. This risk is aggravated by the near-total lack of transparency that characterizes the private management of these facilities, as will be discussed below.

Furthermore, the decree asserts that partnerships with the private sector to implement, maintain, or modernize the infrastructure of the system would be capable of generating relevant social benefits (Article 2, item II). However, evidence from prior experiences with private penitentiary management suggests precisely the opposite.

Accordingly, the Joint Technical Note Against the Privatization of the Penitentiary System—issued by several Brazilian civil society organizations with recognized expertise in human rights and in monitoring public security and criminal justice policies—warns that the decree creates or reinforces "a significant incentive for the execution of PPPs in this sector". The document emphasizes that the measure allows private companies to raise market-based funds to finance penitentiary infrastructure projects, including through tax incentives for investors, which deepens the commodification of incarceration and the delegation of the State's punitive power to economic actors.

In this way, the decree expands market logic across the penitentiary system, oriented toward profit maximization. Inevitably, this logic promotes higher occupancy rates in privately managed prisons and encourages the construction of new prison units.

Outsourcing contracts typically establish long-term commitments and minimum occupancy clauses to guarantee the profitability of these ventures. This is not a theoretical supposition: comparative experience demonstrates the existence of powerful lobbying efforts in favor of building more prisons, with strong influence on legislative bodies (Smith, 2004).

Moreover, prison infrastructure cannot be separated from the substantive activities that take place within it. The architectural design of penitentiary facilities shapes the quality of life of people deprived of liberty and the management models implemented. Social reintegration is hindered when adequate spaces for social interaction, education, and work are absent. Consequently, prison architecture becomes an instrument of oppression that reproduces structural inequalities—an issue that private actors are structurally ill-equipped to address (Calderoni, 2021).

Indeed, by declaring investment projects in infrastructure related to public security and the penitentiary system as priority projects, the decree allows investors to access various tax incentives to finance companies operating in these sectors.

The penitentiary PPPs currently in force in Brazil operate through the division of functions between the government and private actors and are structured through a single contract with two distinct components: one for the construction of the physical facility and another for its management (Reis, Assis, & Fernandes, 2016).

The contractual design itself, which unifies construction and management, reveals the intrinsic connection between these two domains. Put differently, interventions in the physical structure necessarily influence the administration of the facility. In particular, the terms "adaptation" and "modernization" present in the decree allow for substantial interventions in the day-to-day organization of prisons.

There is, therefore, an evident risk that adopting the PPP model for the construction and administration of prisons may entail a process of commodification of incarceration and penitentiary services.

The concession contract for the Ribeirão das Neves Penitentiary Complex illustrates how the Public-Private Partnership model, from its inception, penetrates essential State activities, allowing for the delegation of functions characteristic of the State's police power, in clear violation of the principle of the non-delegability of coercive authority.

The contract expressly establishes a series of obligations for the concessionaire that go far beyond the construction and maintenance of infrastructure. Among these obligations are the duty to execute all construction works; to assume responsibility for water, sewage, and electricity connections, ensuring the immediate functioning of the unit; and to provide services in the legal, psychological, medical, dental, psychiatric, social assistance, pedagogical, sports, social, and religious

areas, for the development and monitoring of incarcerated persons in accordance with the Law on Penal Execution. The concessionaire is also required to install all equipment and facilities necessary for the provision, continuity, and modernization of the activities and services under concession; to carry out internal monitoring of each penal unit, control surveillance posts, and supervise incarcerated persons according to their respective sentences; to execute release orders, subject to prior authorization from the Public Security Director of the penal unit; and to organize and maintain records containing the identification and movement of incarcerated persons, as well as the information systems used for prison management, under the supervision of the Public Security Director.

The contractual text demonstrates that the penitentiary PPP model inevitably invades essential areas of State activity, allowing the delegation even of the most typical penal services established by the Law on Penal Execution, such as legal and health assistance.

The contractual provision requiring the concessionaire to provide legal services is, in itself, flagrantly unconstitutional, as it allows a private entity to hire lawyers to represent persons deprived of liberty, improperly substituting the Public Defender's Office, the institution constitutionally responsible for guaranteeing this fundamental right (Article 134 of the Federal Constitution and Article 61, VIII of the Law on Penal Execution). Moreover, this arrangement generates serious conflicts of interest, since lawyers employed by the company may be required to litigate against the interests of their own employer.

Likewise, the outsourcing of services such as unit monitoring, record management, or the control of inmate movements creates gray areas in defining the exercise of punitive power. It is therefore possible that even the custody of detained persons may, in practice, fall under the management of private entities—an outcome that amounts to an abdication of the State's police power.

Even if administrative law scholars may debate the precise contours of police power, there is consensus regarding its minimum core: it consists of the State activity of conditioning individual liberty and/or property in pursuit of the collective interest (Mello, 2014). Put differently, the administration of legitimate physical force belongs exclusively to the State and is non-delegable.

Having described the legal avenues through which penitentiary privatization is carried out, it is now necessary to emphasize the illegality and unconventionality of these practices, both under domestic and international law.

2.2. On the Illegality of the Legal Form of Privatization

As previously argued, the implementation, maintenance, or modernization of penitentiary infrastructure by the private sector directly affects the State's ability to exercise its authority within these spaces. Moreover, it involves the delegation of pedagogical, labor, social, and family support services—all of which constitute State duties and rights of persons deprived of liberty.

For this reason, these activities cannot be delegated to private actors. The pro-

hibition encompasses both coercive powers and assistance services, the latter of which produce essential information for granting rights such as progression of regime or parole. Delegating such functions to private companies directly undermines the right to liberty and the principle of legality.

At the international level, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) provide that penitentiary administration must directly select its personnel, who should act as public officials, with employment stability and in accordance with principles of integrity, humanity, and professional competence (Rules 74.1 and 74.3).

These provisions make clear that prison management is an essential State function, incompatible with corporate logic. Delegating such responsibilities violates not only the Brazilian Constitution but also the country's international human rights obligations.

Similarly, outsourcing legal and social assistance services within prisons is unconstitutional, as the Constitution assigns the Public Defender's Office the responsibility for defending individuals deprived of liberty. The coexistence of private actors exercising coercive authority creates broad possibilities for arbitrariness and violations of fundamental rights, especially in internal disciplinary proceedings, where the discretion of those who exercise control predominates.

Consequently, the privatization of prisons in Brazil not only represents a regression in terms of human rights but also constitutes a direct affront to the republican principle and to the State's monopoly on the legitimate use of force—the very pillars of any democratic state governed by the rule of law.

3. Prison Privatization and Organized Crime in Latin America and the United States: The Lost War on Drugs and the Restructuring of Punitive Power in the Region

Beyond the legal arguments presented in the previous section, the privatization of prisons also constitutes an inadequate public policy, not only because it fails to achieve the results it promises, but also because it tends to aggravate the structural problems of the Brazilian and regional penitentiary systems—particularly regarding the potential strengthening of organized crime.

To understand this point clearly, it is essential that the debate on the privatization of the penitentiary system does not take place in the abstract. Indeed, it is unproductive to discuss which model would be rationally more appropriate under ideal conditions of institutional functioning. On the contrary, the analysis must begin from the concrete reality of the penitentiary system and consider how the proposed reforms operate within that context—rather than in a hypothetical scenario of administrative efficiency or full State control.

In the Brazilian case, this means that the analysis must begin with the current diagnosis of the penitentiary system, marked by overcrowding, structural precariousness, and the penetration of organized crime, a situation characterized by the Federal Supreme Court as a state of unconstitutional affairs (Castro & Gabriela

Cavalcante, 2023). Only from that point is it possible to evaluate the advisability of transferring—totally or partially—penitentiary management to private actors, taking into account the foreseeable impacts of such a measure.

The relationship between prison privatization and the strengthening of organized crime is not merely incidental but operates through identifiable institutional mechanisms that tend to intensify under private management, as will be demonstrated through the comparative bibliographic review developed below.

First, privatized and co-managed prisons introduce multiple layers of authority and fragmented chains of command, diluting accountability and weakening the state's capacity for direct oversight. This fragmentation creates governance gaps that criminal factions are well-positioned to occupy, particularly in overcrowded and resource-constrained prisons.

Second, private operators are structurally oriented toward cost reduction and operational stability, which may incentivize informal arrangements with incarcerated groups to minimize conflicts, riots, or disruptions. In such contexts, tacit agreements can emerge as pragmatic strategies to ensure "order", effectively transferring day-to-day governance to criminal organizations.

Third, the opacity that characterizes private contracts, proprietary management practices, and performance-based remuneration reduces transparency and public scrutiny, facilitating corruption, bribery, and the capture of internal prison functions by illicit networks.

The institutional dynamics described above are not specific to the Brazilian case. They recur consistently across comparative experiences in Latin America and in the United States, where private management consolidated itself as a structural response to overcrowding and socially constructed fear. In this broader context, the expansion of imprisonment in the region is inseparable from what has been described as the "long neoliberal night" (Antillano, 2022: p. 134) and from the importation of penal policies inspired by the U.S. model, in which privatization emerged as a central instrument for managing mass incarceration rather than addressing its underlying causes.

Arriagada (2012) locates the beginning of this phenomenon in the 1980s, amid the explosion of the U.S. prison population during the Reagan era, when neoliberalism promoted the privatization of State functions. Following De Giorgi (2006), she argues that prison privatization forms part of the transition from the welfare State to the penal State, in which incarceration becomes the central instrument for containing the poverty and marginality produced by neoliberalism itself. In this context, prison privatization was exported as a public policy—first from the United States to the United Kingdom and later to Latin America—where it was adopted under the discourse of administrative efficiency and modernization, without addressing the structural causes of mass incarceration (Arriagada, 2012: p. 16).

The exportation of this model to Latin America unfolded under the paradigm of the so-called war on drugs, which profoundly shaped penal and security policies

in the region. Promoted by the United States under a militarized logic of social control, this strategy structurally transformed Latin America's penitentiary systems. Since the 1970s, the prohibitionist strategy has legitimized the expansion of military and police forces, fostered the criminalization of the poorest and most racialized sectors, and produced exponential growth in incarceration for minor drug-related offenses (Rodrigues, 2012).

More recent literature on incarceration in Latin America has emphasized that prison privatization not only redefines the State's role in the management of punishment but also empowers criminal factions operating inside and outside prisons by fragmenting State control, generating parallel illicit economies, and consolidating forms of co-governance between private actors and criminal organizations.

In Venezuela, Andrés Antillano (2022) documents self-governed prisons dominated by gang leaders known as pranes, who exercise total control over daily life, economic resources, and the internal dynamics of violence. This phenomenon, resulting from the progressive withdrawal of the state, has produced a system of criminal co-governance in which internal hierarchies replace formal authority and administer everything from security to internal markets. Antillano describes how these groups impose an order combining armed coercion, economic management, and moral regulation, constituting a "de facto privatization" of punishment. In this arrangement, the state relinquishes control of penitentiary management to criminal actors while maintaining an institutional façade.

Similarly, Lina Ariza and Mauricio Iturralde (2022) offer a detailed overview of the reconfiguration of prisons in what they call "the narco era", with an emphasis on the cases of Colombia and Mexico. Their study shows how narcotrafficking has become a structuring actor of incarceration, transforming both prison governance and the role of the State. According to the authors, the U.S.-driven "war on drugs" triggered a profound transformation of Latin American penitentiary systems, reinforcing their hybrid and porous character. The narco emerges as a paradigmatic figure—economically, militarily, and symbolically powerful—capable of imposing its own rules and reorganizing prison spaces, displacing State authority. This process reflects broader structural transformations in which illegal and capitalist markets replace the State in the provision of goods and services—including security—giving rise to a "political economy of confinement" marked by informality and organized violence.

José Miguel Cruz (2022) examines the impact of mano dura policies in El Salvador and their relationship with the rise of maras as de facto power structures within prisons. He shows that the strategies of massive repression and indiscriminate imprisonment implemented since the early 2000s did not neutralize gangs but instead consolidated them as penitentiary co-governance actors. Salvadoran prisons became centers of organization, recruitment, and logistics, where leaders of MS-13 and Barrio 18 operate with high levels of autonomy, control internal illicit markets, and coordinate extramural actions.

Cruz highlights that this situation severely undermines State governability, to

the point that penitentiary authorities depend on informal arrangements with gang leaders to maintain stability inside the facilities. In many cases, negotiations between the State and the maras extended beyond the prisons, constituting a form of "criminal pact" that reveals deep institutional fragility. The author concludes that punitive escalation and the militarization of the penitentiary system did not reduce violence but instead strengthened the organizational and political power of the gangs—a phenomenon now replicated in multiple countries in the region.

In the Brazilian case, Nunes Dias, Adorno, and Misse (2022) provide an exhaustive portrait of the rise and consolidation of the Primeiro Comando da Capital (PCC) as a paradigmatic form of prison co-governance. They show that the PCC emerged in the 1990s in response to institutional violence, overcrowding, and state abandonment in São Paulo's prisons. From there, the group expanded by occupying the vacuum of authority left by the state, establishing an internal regulatory system based on its own codes of conduct, mechanisms of conflict mediation, and a hierarchical disciplinary structure that ensured stability within penitentiary facilities.

According to their analysis, this criminal governance was not only tolerated by penitentiary authorities but was also functional for the state itself, as it reduced riots and uprisings, providing a precarious and violent stability that substituted for effective public administration. Over time, the PCC expanded its influence beyond prison walls, organizing external criminal networks and becoming a political and economic actor of national scope.

The authors argue that the growth of mass incarceration—particularly after punitive policies and harsher penal regimes were implemented during the 2000s—fueled the expansion of the PCC and other factions, strengthening their organizational and financial power. In this sense, they show that Brazilian prisons are not spaces of containment but rather laboratories of criminal reproduction and governance, where the absence of effective state control gives rise to a "shared sovereignty" between the state and the factions that dominate prison wards.

It is therefore clear that such dynamics are not isolated but reflect a regional tendency to delegate punitive power to private or para-State actors. In this regard, the Brazilian experience is situated within this same neoliberal logic, while also demonstrating the structural incapacity of privatization to contain organized crime, which grows precisely in contexts of fragmented State control and commodified punishment. This diagnosis acquires a regional dimension, as narcotrafficking constitutes a structural problem throughout Latin America, as the recent Venezuelan case shows the current relevance of the issue, since it has become the focus of a concerted U.S. strategy to delegitimize and overthrow the Maduro regime by labeling the Cartel de los Soles (allegedly led by Maduro) a "foreign terrorist organization" (Reuters, 2025). In this context, the discourse of the "war on drugs" continues to operate as a geopolitical instrument of pressure, transforming criminal-justice rhetoric into a tool for regime change.

Conversely, defenders of prison privatization frequently deploy the efficiency

argument to overcome legal objections. They claim that private-sector participation would allow the State to achieve the same or even better results at a lower cost, reducing public spending and improving administrative management. This reasoning, however, confuses the purposes of the penal system with its financial profitability, transferring to market logic a domain that, by its nature, requires public control, accountability, and direct State responsibility.

Throughout this work, it is shown that such a premise is untenable, especially when considering the relationship between the penitentiary system and organized crime in Latin America. Rather than dismantling these networks, privatization tends to reinforce them by introducing economic intermediaries and weakening the State's supervisory and control capacity.

However, this is not a case of poor implementation in peripheral spaces of a good idea developed in central contexts. It is necessary to acknowledge that even in the United States—the cradle of the prison privatization model—no socially positive outcomes have been achieved. On the contrary, the U.S. experience reveals high costs, recurrent human rights violations, and profound ineffectiveness in reducing recidivism or improving public safety. These effects are not evenly distributed: they fall disproportionately on Black and Latino communities, producing what Michelle Alexander (2010) has described as a new Jim Crow, i.e., a racialized system of social control in which mass incarceration operates as a mechanism for reproducing historical hierarchies under the guise of criminal justice.

Since the expansion of private prisons in the 1980s, there has been no evidence of significant improvements in management or detention conditions. Rather, Department of Justice reports have shown that inmate-on-inmate violence is 28% higher in private facilities and that assaults on staff are nearly double those in public units. The presence of weapons, drugs, and medical deficiencies is also more frequent. Emblematic corruption scandals, such as the "Kids for Cash" case in Pennsylvania (Ecenbarger, 2014)—where judges received bribes from private juvenile detention center operators in exchange for harsher sentences—illustrate the structural conflicts of interest inherent in the model. It is no coincidence that, The White House (2021) issued an executive order to eliminate the use of private prisons in the federal system and that the American Bar Association formally recommended their abolition to Congress (ABA, 2021).

Beyond corruption cases, the most notable result of U.S. prison privatization has been the exponential increase in incarceration. For five decades prior, the U.S. prison population hovered around 200,000 people. However, beginning in the late 1970s, it entered a sustained upward trajectory, surpassing two million inmates—a 500% increase in 40 years—making the United States the world's largest incarcerator. Moreover, this was not a neutral process: it was profoundly racialized, reproducing historical hierarchies through new forms of social control (Alexander, 2010).

A national study found that between 1989 and 2008, states that adopted private prisons saw an average increase of 178 inmates per million inhabitants per year,

establishing a clear correlation between the growth of incarceration and the expansion of the private prison sector (Galinato & Rohla, 2020). The same study confirmed that privatization also influences sentence length, a finding consistent with research by Dippel and Poyker (2020), who demonstrated that the private model affects judicial processes by promoting longer and harsher sentences.

The correlation between the war on drugs, the commodification of the penitentiary system, and racialized incarceration is now widely accepted in the specialized literature and was acknowledged by U.S. authorities themselves, leading to the abandonment of the private model at the federal level in 2021.

In sum, there is no empirical evidence demonstrating improvements in efficiency, transparency, safety, or human rights compliance in privatized penitentiary systems. On the contrary, the data reveal higher levels of violence, abuse, and corruption.

As Dolovich (2022) concludes, the U.S. penal system suffers from chronic regulatory failure: institutional actors across legislative, executive, and judicial branches routinely align with prison administrators instead of enforcing oversight, leaving incarcerated people exposed to pervasive neglect, violence, and rights violations.

The U.S. experience demonstrates that prison privatization increases incarceration rates without improving management or social outcomes, and that its implementation in countries with high levels of racial and social inequality—such as Brazil—tends to produce even more perverse effects within penitentiary systems that are already structurally racist (Duarte, 1998; Medrado, 2025; Oliveira, 2024).

This scenario shows that even in a more institutionally stable context and with greater supervisory capacity, prison privatization does not deliver the promised results. Instead, it reproduces dynamics of mass incarceration, human rights precarization, and punishment commodification—a dynamic that, once imported to Latin America, tends to worsen in contexts characterized by structural inequality, weak State presence, and the consolidated power of criminal organizations that already co-govern the penitentiary system.

Therefore, the privatization of the Brazilian penitentiary system is not only incapable of correcting the unconstitutional state of affairs; in light of national and international experience, it may strengthen organized crime, deepen corruption, and further weaken state control. In other words, the logic of profit applied to the administration of punishment fuels mass incarceration, which in turn strengthens the power of criminal factions inside and outside prisons.

The loss of the State's monopoly over the administration of punishment opens the door to abuses, violations, and the exercise of power by non-State actors—particularly criminal organizations that dominate daily life in prisons through their own rules and hierarchies. According to comparative experience, privatized facilities are especially vulnerable to capture by such factions, whether through tacit agreements with managing companies or through the direct infiltration of criminal interests in bidding processes.

This analysis does not deny the difficulties that the State itself faces in maintaining public order within penitentiary centers; however, private management tends to be even less capable of confronting the power of organized crime, as it fragments authority among multiple actors with divergent interests. Worse still, the logic of profit may incentivize transactions between managing companies and criminal groups: in exchange for relative stability within facilities, concessionaires may tolerate privileges, bribery, or tacit arrangements that reinforce institutional corruption and the influence of criminal factions.

4. Contemporary Brazilian Experiences with Prison Privatization

Having analyzed the illegality of the legal mechanisms that support prison privatization in Brazil, as well as a comparative regional landscape that strongly discourages the model, we now turn to the examination of current national experiences. The reconstruction of these cases is based primarily on official reports from the National Mechanism for the Prevention and Combat of Torture (MNPCT), documents from the Pastoral Carcerária and other civil society organizations, as well as journalistic investigations and public audits. Taken together, these sources reveal a stark contrast between the discourse of administrative efficiency and the empirical reality of Public-Private Partnership (PPP) projects, which are marked by contractual irregularities, cost overruns, structural deficiencies, and systematic human rights violations. Far from representing innovations in penitentiary management, these experiences reveal the historical continuity of delegating punitive power to private actors and confirm that privatization and financialization deepen the structural problems of the Brazilian prison system.

Before discussing these cases themselves, it is necessary to consider—albeit briefly—the comparative costs within the public and private penitentiary systems. A 2019 survey identified 32 privately managed penitentiary units in 21 cities across eight Brazilian states, most under co-management arrangements and only one operating as a PPP in the strict sense (Brembatti & Fontes, 2019). Although these projects present themselves as more efficient alternatives, the data indicate the opposite: the cost per incarcerated person in privately managed units tends to be considerably higher than in the public system, with no verifiable gains in social reintegration or reductions in violence. A comparison with public spending in other areas exposes the profoundly antisocial nature of this policy. According to another survey, Brazil spends nearly four times more on the penitentiary system than on basic education: approximately R$ 1800 per month per prisoner, compared to R$ 470 per student (Botelho, 2022). In other words, the State invests more resources in punishment and social disintegration than in education, reaffirming the primacy of a criminal policy guided by exclusion rather than prevention or social justice. This contrast shows not only that the private system is more costly and opaque, but also that it is incapable of producing better results than the public system.

The occasional and partial positive outcomes reported in these facilities are themselves a product of privileged conditions—such as new infrastructure, the selective admission of less conflict-prone inmate profiles, and limited state oversight—which potentially distort the comparison.

Within this broader panorama, the case of the Ribeirão das Neves Penitentiary Complex (MG) stands as the first and most emblematic laboratory of prison privatization in Brazil under the PPP model. Inaugurated in 2013 as a pilot project designed to demonstrate the feasibility of private participation in prison management amid the collapse of the state penitentiary system, it was implemented through Concession Contract No. 083/2010, signed between the State of Minas Gerais and the GPA Consortium (Gestores Prisionais Associados). The complex has a capacity of 3040 incarcerated people distributed across five autonomous units and operates under a 27-year administrative concession. A defining characteristic of this model is the absence of overcrowding, not because of improved conditions, but due to contractual clauses establishing minimum and maximum occupancy rates, thereby preventing new admissions once the limit is reached. The contract also filters inmate profiles, excluding members of criminal factions and individuals convicted of sexual offenses, among others. These restrictions create a structural bias that distorts the results presented by the concessionaire and facilitates a narrative of administrative success.

Despite this curated inmate population, Ribeirão das Neves has faced extensive academic, institutional, and judicial criticism. The concessionaire is remunerated through fixed monthly payments, adjusted according to inflation and performance indicators, and a minimum occupancy guarantee of 90% obliges the State to pay even if units are partially empty. This mechanism—borrowed from private risk contracts—creates an incentive to maintain or increase incarceration rates, transforming deprivation of liberty into a financial asset.

Even under these conditions, inspections have documented severe failures: a 2016 visit by the Public Prosecutor's Office of Minas Gerais (MPMG) identified overcrowding—although not at the same rates found in the public system –, deficient medical and psychological care, security failures, and undue restrictions on family visits. The MPMG also found noncompliance with social reintegration goals and inadequate provision of education and work activities. Reports highlight high staff turnover, insufficient training, and reduced accountability compared to public employees. Oversight by the State Secretariat for Social Defense (SEDS) is hindered by understaffing and contractual complexity, while the State Court of Accounts of Minas Gerais (TCE-MG) has recorded financial inconsistencies and poorly defined performance indicators.

Finally, a 2017 journalistic investigation revealed that the concessionaire received more than R$ 2700 per inmate per month—much higher than public units—despite delivering equivalent or inferior services. These irregularities have generated judicial and administrative challenges to the model, though contractual opacity and the economic power of the companies involved have hindered mean-

ingful review.

Another emblematic case, but one that reveals structural collapse rather than functional operation, is the Itaquitinga Penitentiary Complex (PE). Conceived in 2009 as a PPP and announced as an innovative solution to the penitentiary crisis, Itaquitinga instead became a symbol of failure. The SPE Reintegra Brasil Consortium signed a 30-year administrative concession for a facility with a capacity for 3126 incarcerated persons. Construction began in 2010 but was halted in 2012 after it was discovered that the consortium had completed less than 40% of the work despite receiving nearly full payment. Subsequent investigations revealed ties between the consortium and companies implicated in corruption. The State rescinded the contract in 2013, and although the facility was partially inaugurated under public management in 2017, much of the infrastructure remains unused or precarious. Reports by the Pernambuco Court of Accounts (TCE-PE) condemned the project's lack of transparency, cost overruns, and failure to deliver promised benefits, describing it as a substantial loss to the public treasury without any social return.

Despite these negative precedents, other states proceeded with expanding privatization. In Bahia, the government launched a project in 2014 for the construction and administration of the Feira de Santana Penitentiary Complex under an administrative concession. As in Minas Gerais, the model includes private participation in legal, health, and educational services. Human rights organizations, including the Brazilian Bar Association (OAB), warned of the project's unconstitutionality and its deepening of opacity and perverse incentives for mass incarceration. Nevertheless, it advanced without a social impact assessment or public consultation and currently remains in the phase of financial structuring.

A similar pattern emerged in Santa Catarina, where in 2019 the state government announced plans to adopt the PPP model for three new penitentiary units. The Brazilian Development Bank (BNDES) provided technical assistance for financial modeling but itself warned that concession projects do not guarantee improved services or reduced costs and that contractual complexity increases the risks of corruption and litigation. The expansion of the PPP model in the penitentiary sphere—without rigorous evaluation of its social, legal, and economic impacts—reveals a troubling trend: the supremacy of corporate efficiency discourse over human rights and democratic oversight. Across the country, prison privatization has proceeded without public debate, with limited transparency, and under the strong influence of private consulting firms, investment banks, and construction companies—including many implicated in corruption scandals.

Finally, the academic literature converges on the diagnosis that Brazil's 2000s punitive turn—marked by mass incarceration, exceptional disciplinary regimes, and the erosion of social guarantees—has paradoxically reinforced the very criminal organizations it sought to suppress. As Feltran (2010) demonstrates, the expansion of incarceration and the institutionalization of a more severe penal regime in São Paulo did not weaken organized crime; rather, it enabled the PCC to

consolidate a dual system of governance that regulates conduct, adjudicates conflicts, and structures illegal markets inside prisons and throughout peripheral urban territories. Punitive hardening, in this sense, became a constitutive element of criminal power, not its antidote.

This pattern is not restricted to São Paulo. As illustrated, experiences across Latin America and Brazil show that privatization tends to reproduce and magnify the same structural effects: fragmentation of state authority, weakening of public oversight, multiplication of opaque contractual interfaces, and the creation of economic incentives that align neither with public safety nor with democratic accountability. Privatization under financialization is particularly prone to producing governance vacuums, spaces of delegated sovereignty, and blurred lines between public and private authority—precisely the institutional gaps in which criminal organizations have historically thrived.

If punitive expansion within a fragile public system already contributed to the strengthening of organized crime, the risks inherent in a privatized and financialized penitentiary model become even more acute. In a context where criminal groups operate through increasingly sophisticated and transnational networks—coordinating activities across borders, leveraging financial infrastructures, and governing complex illicit markets—the delegation of punitive power to private actors introduces vulnerabilities that the state may be unable to monitor or control.

The question that emerges is therefore urgent: what happens when a prison system that already sustains organized crime becomes embedded in private financial logics that further erode transparency, accountability, and sovereign oversight?

5. Conclusion

This article examines the contemporary process of prison privatization through financialization in Brazil, situating it within broader regional and international transformations of penal governance. By analyzing the legal architecture that enables Public-Private Partnerships and market-based financing instruments, and juxtaposing these with comparative experiences in Latin America and the United States, the study demonstrates that the current model is not only unconstitutional and incompatible with international human rights law but also structurally incapable of addressing the core challenges of public security in the region.

The findings show that privatization—particularly in its financialized form—does not represent a retreat of the State, but rather a fragmentation and reconfiguration of punitive authority that subordinates the administration of punishment to market rationalities. By dispersing decision-making across private operators and financial intermediaries, this model weakens unified surveillance, creating governance gaps that are readily exploited by organized crime. Rather than reducing crime, these institutional conditions foster environments in which criminal networks consolidate power both inside and beyond prison walls.

Furthermore, the financialization of punishment embeds incentives for the in-

definite expansion of incarceration. When deprivation of liberty becomes a financial asset supported by state-backed guarantees, such as fiscal privileges and long-term contractual commitments, the system becomes structurally oriented toward growth. In contexts marked by extreme social and racial inequalities, this dynamic reinforces mass incarceration as a mechanism for managing exclusion, reproducing patterns of structural violence, and simultaneously strengthening the organizational capacity of illicit networks.

Comparative evidence underscores the persistence of these dynamics. In multiple Latin American countries and the United States, privatized and co-managed prisons have systematically failed to deliver efficiency, transparency, or enhanced public safety. Instead, they have deepened human rights violations and contributed to the reproduction of criminal governance within penal institutions.

The political salience of punitive security was recently made evident in the region, in Chilean electoral dynamics, where the right-wing candidate José Antonio Kast secured a decisive victory campaigning for the presidency on law and order, public security, and crime control—despite relatively lower levels of violent crime compared to other countries in the region. His success reflects how punitive rhetoric can become a dominant electoral force, shaping public debate and constraining alternative policy agendas. At the same time, left-of-center competitors also foregrounded security issues, illustrating how a punitive consensus has become hegemonic across the political spectrum in contexts of social anxiety and institutional mistrust.

In this sense, the persistence and expansion of financialized punishment should not be understood as a technical or inadvertent policy failure, but as a political outcome embedded in a broader democratic and social crisis. As long as social inequality is managed through punitive governance, and punishment is reorganized around market imperatives, prison privatization will continue to strengthen organized crime, erode democratic oversight, and expand the reach of the penal state precisely where its social costs are most devastating.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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