THE FAILURE OF MECHANISMS 
OF ACCOUNTABILITY 
IN THE BRAZILIAN CRIMINAL 
JUSTICE SYSTEM

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ABSTRACT

This paper examines a central flaw in criminal justice institutions in Brazil, viz, the persistent failure of the mechanisms of oversight and accountability in relationship to police misconduct. Brazilian policy makers and international organizations agree that the problem of securing civil liberties and human rights does not lie in the legal and constitutional guarantees and dispositions which are wide-ranging and progressive. Rather, the main stumbling block is the implementation gap between the letter of the law, and the widespread disregard for the law in practice. ‘A lei não pega’ (lit. ‘the law doesn’t stick’) in large part because those public agencies charged with exercising control over the police, do not or cannot fulfil their functions properly. The paper critiques this failure and engages in current debates about horizontal accountability, building state capacity in new areas, and deepening of democracy in Brazil.

1. DIMENSIONS OF ACCOUNTABILITY

The notion of ‘accountability’ has gained ground in the last two decades in liberal democratic discourse, vested in the garb of both neo-liberal terminology (‘value-for-money, good governance, efficiency) and that of civil rights and human rights. If accountability in public life was previously rather restricted to its chief vertical and horizontal forms (elections and judicial review), now it embraces every facet, including those institutions which are intended to stand apart from the venality of political interactions (the courts) and which exercise considerable autonomy and even secrecy in the maintenance of public order (police).

Accountability in public life has acquired a number of interlinked connotations: delivering on one’s manifesto promises (politicians), performance in relationship to a ‘job description’ (public servants), adherence to the legal and constitutional norms, and proper use of public resources. In Brazil debate since 1985 around issues of accountability has included all these elements, evidenced in the different terms used to convey different aspects of this untranslatable concept: (1) responsibility (responsabilidade), that is, a moral and ethical posture of willingess to accept the consequences of one’s actions (2) internal or external control mechanisms (fiscalização) without which (1) is meaningless and (3) clear rules by which performance is assessed, as well as making the evaluation public (transparência). The focus has inevitably tended to fall on elected and appointed officials engaged in a political field in which public goods have long been appropriated for private gain. The impeachment of President Collor in 1992 was just the tip of an iceberg of increasing public rejection of corruption and embezzlement of public funds.\footnote{There are innumerable examples: the 1993 parliamentary committee of inquiry into the budgetary committee cabal, the 1999-2000 investigations into the administration of Mayor Celso Pitta in São Paulo, 2001 investigations into the leader of the Senate Jader Barbalho. Some state agencies which were a byword for corruption have been closed down: Legião Brasileira de Assistência, SUDAM and SUDENE regional development boards.} The notion of a ‘res publica’ as belonging to everyone, rather than to no one, has been gradually gaining ground in tandem with an evolving consciousness of rights and their universal, rather than privileged, character. (Bresser Pereira, 1997) The construction of a notion of ‘justice’ as a common good owes much to the activities of social actors such as the progressive Catholic church and social movements and their active input in the Constituent Assembly of 1986-88 as well as to the development of wholly novel institutional attributes for the Public Prosecution Service (Ministério Público – MP), which concluded in the 1988 Magna Carta its metamorphosis from an agency of the executive to an
autonomous guardian of the law (fiscal da lei) and of the public good.\textsuperscript{2} Carvalho (1995) argues that Brazil has reversed the Marshallian sequence in which different sorts of rights - civil, political and social – are won. Thus the end of military rule has also seen an incipient process of securing civil liberties for the majority of the population, amongst which the right to redress for abuses committed by the state is fundamental, and the subject of this paper.

2. OVERSIGHT AND THE CRIMINAL JUSTICE SYSTEM

Both accountability and the rule of law are as essential to a properly functioning liberal democracy as free and fair elections and democratic political institutions. The performance – construed in the widest sense - of a country’s justice system makes an indispensable contribution to the quality of citizenship and also to the legitimacy enjoyed by the governing powers. Although initial attention to the desirable characteristics of a successful transition in Latin America focused largely on macro-economic and political-institutional variables, it became clear that as long as a dramatic ‘social deficit’ persisted, the long-term consolidation of democracy would be under threat with the state unable to maintain a monopoly of legitimate force, and eliminate enclaves of lawlessness and of parallel, illegitimate systems of ‘law and order’ operated by paramilitaries, drug barons, and police death squads (Agüero and Stark, 1998; Méndez et al 1999; Huggins, 1991). There is also an enormous opportunity cost involved in neglecting the criminal justice system. The autonomy granted to police (which varies greatly from country to country) inevitably leads them to test the boundaries of liberal guarantees and rights. When the police are left to their own devices, the logic of police activity parts company from the intention of the policy makers and the letter of the law. In Brazil police waste little time on detection, their efforts expended more on the control of ‘criminals’ than of crime. Extortion and police involvement in crime are corollaries of poor results in crime prevention and solving. Fatal police shootings of civilians add around ten per cent to the total number of homicides in São Paulo and Rio states.\textsuperscript{3} Similarly, Brazilian prisons are frequently criticised as ‘schools for crime’, encouraging rather than discouraging re-offending, and are estimated to be ten times more expensive to administer than non-custodial measures.\textsuperscript{4}

For these reasons, justice institutions, particularly the judiciary, have increasingly become the subject of reform initiatives, crafted both by domestic actors and international financial institutions, which focus on two aspects of accountability: horizontal checks and balances (strengthening judicial review), and value-for-money and performance criteria (Domingo and Sieder, 2001). Meanwhile root and branch restructuring of the police in Central America and Haiti following prolonged civil conflict, also with considerable bi- and multilateral technical assistance, has been intended to purge those bodies of the authoritarian practices of past regimes. (Neild, 1999), Latin

\textsuperscript{2} The military regime removed the MP from the aegis of the judiciary and placed it under that of the executive from which it escaped definitively in 1988. The Brazilian authoritarian regime, in common with others, increased the powers of the MP in order to exert greater control over the national state apparatus and public administration. With the return to democracy the institution was ideally placed to serve the interests of citizens and protect their rights against the state.

\textsuperscript{3} OPESP (2000) and Cano (1997)

\textsuperscript{4} The 10:1 ratio is based on data from Rio Grande do Sul, a pioneer in non-custodial sentences. Lemgruber (2000) notes that the individual states do not employ a standard methodology for calculating the cost of imprisonment, therefore a national average is impossible to determine.
American countries have also begun to adopt from other countries a number of external review and accountability mechanisms such as civilian review boards, judicial councils, ombudsmen, inspectorates, and human rights commissions.

However, establishing accountability for the criminal justice system poses a classic problem: ‘quis custodiet ipsos custodes’ (who guards the guardians)? In Latin America this acquires additional complications related to recent history. On the one hand, impunity for gross human rights violations committed by state agents has been enshrined in the various amnesty laws introduced under military rule. Thus redemocratizing polities have been hampered by a structural imbalance by which political institutions were being redesigned to maximise accountability and transparency in the future, whilst justice institutions became initially less, not more, responsive to public demands for accountability relating to the past. Courts were unable to try human rights violators, many of whom remained in post in the police, armed forces or other public offices. This is of particular importance in Brazil, where the military police took a more active role alongside the armed forces in the torture, murder and disappearance of regime opponents than in its Southern Cone neighbours, and never underwent a restructuring in the transition period. The 1979 Amnesty Law has gone entirely unchallenged, by comparison to the referendum in Uruguay and the trickle of prosecutions in Chile and Argentina, culminating in the Pinochet affair. On the other hand, the Brazilian judiciary is proud of the role it played in resisting military manipulation of constitutional guarantees (Osiel, 1995), and emerged in the democratic transition, along with the Ministério Público, with an unprecedented degree of autonomy. This, as we shall see, has left Brazil with a fractured justice system in which the separate institutional components have responded at different speeds to the context of democratization and growing public demands for accountability.

In Brazil it is a commonplace to note the huge gulf between the letter of the law, and the actual practice of the police and other institutions of the criminal justice system. As Brazilians say ‘a lei não pega’ (‘the law doesn’t stick’). As DaMatta (1991) and others have noted, it is not so much that the law is completely ignored and thus irrelevant, rather that it is applied selectively, generally to the benefit of the wealthy and powerful and to the detriment of the majority for whom recourse to the law is a luxury and repressive arm of the law a daily threat. The Brazilian state has excellent formal guarantees for civil liberties expressed in the 1988 Constitution whilst the rights of detainees are additionally protected by the 1984 Sentence Serving Law (Lei de Execução Penal - LEP), and the 1995 Ministry of Justice guidelines modelled closely on the United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Tokyo rules. (Ministry of Justice, 1995) In addition it has signed up to all the major international human rights conventions and instruments (Pinheiro, 2000). However, none of the above has managed to diminish police brutality and abuses which would appear to have increased, not decreased since the return to democracy. The practice of torture in Brazil, which has recently been the subject of domestic and international debate, was outlawed both in the 1988 Constitution and in a 1997 alteration to the penal code. Nonetheless, the UN Special Rapporteur on Torture recently characterised torture in Brazil as a ‘widespread and systematic’ police practice (United Nations, 2001), an analysis uncontested by the Brazilian government. That report appends 348 recent cases of torture from 1999/2000. In August 2001 the Human Rights Committee of the Chamber of Deputies produced a list of 446 new cases. A survey of 18 states by the public prosecution service in November 2000 revealed 241 cases of torture under investigation. However, despite the avalanche of evidence, not a single case of police or prison

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5 Survey carried out by the National Council of State Attorney Generals (Conselho Nacional de Procuradores Gerais de Justiça)
guard torture had been successfully and definitively prosecuted four years after the Torture Law.\(^6\) The universally acknowledged gulf between the *pays légal* and *pays réel* has prompted increasing attention to crafting institutional means of closing that chasm.

This paper analyses the mechanisms of accountability for the criminal justice system put in place since 1984 by a democratic Brazilian state to handle complaints about police misconduct. The focus is here restricted to the police who have direct contact with criminal suspects held in their custody and therefore greatest opportunity to engage in illicit practices and commit gross human rights violations. We are here interested in two processes of accountability: in the first instance, the way in which the system is able to respond reactively to complaints made by victims of abuses or their representatives, in the second, proactive institutional attempts to uncover instances of misconduct and to take both disciplinary and preventive measures.

3. DEMOCRATIC CONTROL OF THE POLICE

In a modern democratic society the state is expected to hold a monopoly on force and to exercise it within the limits of the law for the purposes of upholding the rule of law. Accountability is the means by which citizens enforce the social contract and maintain state power within acceptable limits, the parameters of which are set now by not only domestic but also international law and public opinion. However, even in long-established democracies, the issue of civilian control of the police is a relatively recent one. A number of different formulae have been attempted, all with advantages and disadvantages, depending on the structural and cultural variables affecting police organization and behaviour in each context. In terms of Goldsmith’s (1988) continuum ranging from exclusive police control over complaint investigations, to exclusive civilian control, Brazil has adopted a mix of mechanisms.\(^7\)

**Figure 1: Summary Of Police Oversight Mechanisms**

<table>
<thead>
<tr>
<th>MECHANISM</th>
<th>INSTITUTIONAL STATUS</th>
<th>REMIT</th>
<th>POWERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Military justice</td>
<td>Part of ‘specialised’ court system.</td>
<td>Armed forces and military police except on-duty intentional homicide of civilians</td>
<td>To investigate and try military crimes. Preliminary investigation of intentional homicide</td>
</tr>
<tr>
<td>Prosecutors, courts</td>
<td></td>
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</tr>
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\(^6\) Those cases which have been successfully prosecuted are still under appeals and therefore cannot be considered definitive (*transitado em julgado*). Perversely, the only full convictions have been of *private* individuals (generally for child abuse) not of state agents. This is contrary to the spirit of the international legislation which is intended to hold states to account for their treatment of detainees.

\(^7\) For a discussion of the different models of complaints systems see Lewis (1999).
The police internal affairs department (corregedoria) of the civil and military police in each state corresponds to the ‘benchmark’ model, a traditional bureaucratic, paramilitary approach that excludes all civilian input. This is even more accentuated in the case of the military police. Here police investigate the complaint and discipline and sanctions are determined in-house. The work of the corregedorias is in turn monitored, in some states, by a police ombudsman’s office (ouvidoria) a body which corresponds to Goldsmith’s ‘civilian external supervisory’ category, with civilians monitoring the complaint process. The ouvidorias have no power to direct that charges be laid, and the police carry out the investigation and determine sanctions. Truly external oversight is wielded by the Ministério Público which should not be classified as a civilian ‘external review body’ as it is essentially a judicial institution and as such enjoys institutional independence and powers.

This essentially tripartite system of police control is further complicated in Brazil by the federal system of government and of administration of the criminal justice system. Penal law and procedure are made at federal level and applied across the entire country. However, the institutions of the criminal justice system which enforce the law fall under the aegis of the 26 states and federal district. Each state organises and funds its own courts, prison system and police as established by the federal constitution. The state police force is divided into the uniformed military police, responsible for ‘the preservation of public order’. The civil police have the functions of a judiciary police and are responsible for investigating crimes, with the exception of most military crimes. A bifurcated police force results not only in inefficient and disorganized policing, but also in a fissiparous and ineffective oversight system. De-militarization of the police, which would end this essential dissonance, periodically surfaces on the political agenda, but thus far with no success.

3.1. EXCEPTIONALISM: MILITARY JUSTICE

The most commented-on and fundamental flaw in Brazil’s attempts to control the police is the survival of a parallel system of military justice which has jurisdiction over the state military police, which form 78 per cent of state police. The military police were brought under the institutional aegis of the armed forces as the regime centralised its repressive apparatus. A powerful military police lobby in the Senate, represented by a number of ex-governors, has since strenuously resisted

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8 For example, the constitutional amendments put forward by São Paulo governor Mário Covas and by the national forum of police ombudsmen.
all attempts at re-civilisation of policing. The military courts thus represent an enclave of
exceptionalism that is incompatible with a deepening of democratic values and behaviour within the
police. Misconduct – as defined by a separate military penal code and the military police’s own
regimento interno – is examined in the first instance by a military corregedor. The case will either
result in internal discipline or in a military police investigation which will be passed on to the
military prosecutor and collegiate auditoria militar (military tribunal of first instance) for
prosecution. Only in the case of intentional homicide of civilians committed by on-duty military
police does jurisdiction pass to the civilian justice system which may try the case in a civilian jury
trial. Crucially, military investigators have responsibility for the initial inquiries which would
determine whether the homicide was ‘intentional’. This remains a very effective filter allowing
police to claim that deaths occurred whilst the victim was ‘resisting arrest’. Military prosecutors are
also prone to accepting this version of events and dropping any charges (Cano, 2000). However, in
some cases the civil police, responsible for investigating crimes, will carry out parallel
investigations, thus acting as another layer of control over the military police. Inter-force rivalries
often result in each police force zealously policing the other. This may turn up evidence of gross
abuses but probably does not improve the overall quality of policing in the long run. The military
justice system resists public scrutiny not only due to the corporatist culture of any police force but
also due to the logic of a military establishment accustomed to certain rights and privileges and
suspicious of civilians after twenty years of national security ideology. It also complicates the
system of checks on the police detailed below. The two police forces are governed by separate
disciplinary rules, the military police by its regimento interno and the civil police by the Estatuto do
Funcionário Público, and by separate penal codes. This means, as Zaverucha (1999) points out, that
a misdemeanor committed by both a civil and a military policeman would result in entirely different
internal disciplinary consequences and, more seriously, in terms of the democratic principles of
equality before the law, in different punishments handed down by the courts. The ethos of military
hierarchy would appear to override all other sets of values, and results in administrative
punishments being often worse than the penal sanction. Lower ranks of the military police have
even turned to the newly formed police ombudsman’s office to complain of excessive severity in
minor infractions. This is a world of inverted values, where obedience and discipline are attributed
greater importance than the right to life. Thus military police claims to have a more effective system
of internal review need to be disaggregated in terms of kinds of misconduct punished and the steps
taken to discourage (or encourage) gross human rights violations, such as the shoot-to-kill policies
see in Rio de Janeiro state in the 1990s (Cano, 1997).

3.2. INTERNAL CONTROL: CORREGEDORIA

In each state the civil and military police have their own internal affairs department, or
corregedoria. This department undertakes all initial investigations of complaints against police,
whether received by an ouvidoria, a Disk-Denúncia, or directly by the corregedoria. In the first
instance a fact-finding inquiry (sindicância) is opened. This may result in administrative action and
discipline, or a full police investigation which will then be sent on to the prosecution services to
bring criminal charges. Unsurprisingly, the corregedorias resemble police internal affairs
departments the world over. They are slow, secretive, ineffective, and biased in favour of the police
Bahia reveals them to be ‘a pre-emptive institution’, a filter that protects officers from prosecution

9 In 1992 PT federal deputy Helio Bicudo submitted a bill that would remove military jurisdiction
for all crimes committed by military police. It met stern resistance and was only passed in a very
modified form in response to the military police killings of 19 landless peasants in Eldorado do
Carajas in April 1996. (Zaverucha, 1999)
in the courts. Over half the complaints were levelled at ‘reoffending’ officers, proving that the corregedoria had illegally filed away cases of serious brutality or extortion, under pressure from the police station chiefs and their political protectors. Data from Pará state show that in 1997 and 1998, civil police killed 27 civilians. An attempt by a local human rights groups to chart the internal investigations within the corregedoria and state appeals court (Tribunal de Justiça) revealed that none of the 1997 cases was the subject of an investigation, and seven of the 16 cases from 1998 had been characterised as deaths occurring whilst ‘resisting arrest’.\(^\text{10}\) The court had received no information on any of these cases.

Evidence shows that a number of smokescreen tactics are employed. Serious offences are routinely classified as non-crimes or lesser crimes. Intentional homicide is justified as killing in ‘legitimate self-defence’ (Cano, 1997) or ‘in the line of duty’.\(^\text{11}\) Torture becomes ‘abuse of authority’ or ‘bodily harm’ which carries a shorter jail sentence and consequently a much shorter statute of limitations (three years as opposed to 20 years). (Amnesty International, 2001, United Nations 2001). In the first case, offences become non-offences and are filed away. In the second case foot-dragging allows investigation to exceed the statute of limitations on the offence in question, so that it cannot be prosecuted. Some investigations of torture and homicide in Bahia have taken three to five years to conclude, whilst an incoming head of police in Rio Grande do Sul discovered ten year old cases involving police chiefs.\(^\text{12}\) The internal investigators are also apparently ignorant of new legislation and cling to old habits shaped by now-superseded authoritarian laws. Similarly, both police and internal investigators ignore the provisions of the Penal Procedure Code, making up their own rules and rituals as to the assessment of evidence. Once evidence of criminal wrongdoing is discovered, investigators are obliged to open an inquérito policial which can by law only be shelved by a prosecutor or judge. However, the Bahia civil police corregedoria has for years been illegally shelving its own inquéritos before they reach the courts, in a ritual which combines the superficial appearance of legitimacy with the internal culture of the police as a parallel legal universe. (Lemos-Nelson, 2000).

Disciplinary action is likely to be taken only if there is overwhelming evidence, combined with media coverage. Senior officers are generally exempt from investigation, punishment or prosecution, despite the fact that they are over-represented in the universe of complaints. The Rio ouvidoria notes that in a two year period officials of the military police and civil police station chiefs account for 10.3 per cent and 15.1 per cent of complaints, but only 6 per cent and 4.5 per cent respectively of force personnel. Of 119 internal inquiries into the Civil police, only five resulted in punishment. No police station chief has been punished. In the first six months of 2001 the joint corregedoria in Rio received over 700 complaints on the hotline. In relation to the civil police, 47 per cent involved extortion (extorsão and concussão). ‘Abuso de autoridade’, shorthand for beatings and torture, accounted for 12 per cent of complaints against civil police and 32 per cent against military police. Of all these cases, only two, relating to military police, were passed on to the prosecutor’s office.\(^\text{13}\)

The corregedorias suffer from several structural defects. Firstly the individual corregedores are not sufficiently insulated from the corporation they are investigating. There is no separate career path for them making them very vulnerable to pressure from other officers and they can be sacked or

\(^\text{10}\) In this latter case the police are obliged to fill out a ready-made form (auto de resistência a prisão).
\(^\text{11}\) ‘estrito cumprimento do dever’
\(^\text{13}\) ‘Dados estatísticos da CGU’ on file with the author.
transferred at will.\textsuperscript{14} They may return to work alongside officers they have been investigating. They are also frequently ill-resourced, and housed within police headquarters, making ‘capture’ by the corporation almost inevitable. Several states have only recently set one up and, until June 2000, Sao Paulo state’s \textit{corregedoria} covered only the capital. Staffing levels vary wildly. The São Paulo military \textit{corregedoria} has 100 staff, that is, one per 128 police officers. It also functions 24 hours a day and covers the whole state, compared to others with a skeleton staff which can only cover the state capital. Whilst public pressure and scrutiny probably inclines the \textit{corregedorias} to investigate cases with greater rigor than they might otherwise have done, nonetheless, these are internal bodies subject to corporate loyalties and pressure. By the very nature of the kind of abuses reported, they also tend to focus on the more extreme forms of police malpractice, that is, on summary executions, torture, and extortion, than on milder forms of incompetence which are just as damaging to the force’s performance and legitimacy.

Reliable data are also very difficult to obtain from and even within the \textit{corregedorias}. In Rio de Janeiro a joint internal review office (\textit{Corregedoria Geral Unificada}), headed by a prosecutor, was set up in September 2000 precisely in order to oversee the work of the two \textit{corregedorias}. However, as it is housed in the headquarters of the secretariat for public security, it is physically removed from the civil and police investigators working their own police departments. It, and the \textit{ouvidoria}, have received no data on investigations initiated prior to this date, and therefore are left completely ignorant of the patterns of abuses, the identity of serial offenders and the outcome of some very serious investigations. Lemos-Nelson reports that a notary in the Bahia civil police \textit{corregedoria} set up her own informal ‘log’ on re-offending police (Lemos-Nelson, 2000: section 3.6.1.). This problem has been resolved in Ceará by forming a single \textit{corregedoria única}, headed by a retired judge, bringing all investigations under one roof and one authority.\textsuperscript{15} It may be that this resistance to tracking past cases and keeping proper time series data derives from a bureaucratic mentality, in which staff do not wish to be associated with the ‘problems’ of their predecessors.

The case of Rio illustrates a common tendency in state responses to problematic public policy or services. Where a state institution is seen to be failing, rather than reform it, a new body is frequently set up duplicating the work of the first, which is then left to ‘wither’ rather than being dismantled. Thus there remains in the Rio public security secretariat a \textit{controladoria} (the old \textit{Inspetoria Geral} which oversaw the police apparatus under military rule) which can also receive and investigate complaints in addition to the individual \textit{corregedorias} which are monitored by the CGU which is monitored by the \textit{ouvidoria}.\textsuperscript{16} This replication of efforts serves to splinter and diffuse control, rather than strengthen it.

\subsection*{3.3. CONTROLLING THE CONTROLLERS: OVIDORIAS}

The police ombudsmen’s offices (\textit{ouvidoria da polícia}), for which there is no equivalent in Latin America, were set up in the latter part of the 1990s in order to monitor the \textit{corregedorias} and, as

\textsuperscript{14} A separate career path is one of the suggestions made by the \textit{ouvidoria} in Sao Paulo (OPESP, 2000: 12)

\textsuperscript{15} It has full autonomy within the secretariat of public security, its own premises and staff. The current \textit{corregedor}, José Helder de Mesquita, reports that since 1997 2,212 disciplinary inquiries have been opened, resulting in punishment for 109 civil police and 420 military police. (Governo do Estado do Rio Grande do Sul ibid.). A similar system is in place in Pernambuco and is under consideration in São Paulo.

\textsuperscript{16} Interview with staff 23 July 2001.
such, constitute a form of semi-independent internal control. Although they are generally translated as ‘ombudsman’s office’ they do not possess the independence and wide powers that such entities have elsewhere. In this sense, it is the **Ministério Público** which most resembles a true ombudsman. It should also be noted that they receive all manner of communications relative to the police, including complaints of police omission, as well as complaints of misconduct. Priority is given, ultimately, to serious allegations regarding the right to life, and police corruption.

The first, landmark office was set up in December 1995 under the centre-left PSDB governor of São Paulo state, Mário Covas who passed the relevant decree on his first day in post. More followed, all in states governed by the left or centre left: Rio de Janeiro in March 1999 under Anthony Garotinho (PDT), Minas Gerais in 1997 (Eduardo Azeredo, PSDB), Pará in 1997 (Almir Gabriel, PSDB), Rio Grande do Sul in August 1999 (Olívio Dutra, PT). Others have been set up in Pernambuco, Espírito Santo, Rio Grande do Norte, Mato Grosso, Bahia and Ceará. However, in the last two cases the *ouvidores* are police officers thus depriving them of any true degree of independence.\(^\text{17}\) Some have an additional remit for overseeing the prison system (Rio Grande do Sul and Minas Gerais), whilst that of the Pernambuco *ouvidoria* covers the whole state administration.\(^\text{18}\)

The *ouvidorias* are generally housed in the officers of the state secretariat for law and order, or equivalent, and are therefore part of the executive.\(^\text{19}\) Their brief is to receive complaints from the public, prepare an initial case summary, pass on the complaints to the *corregedorias* and track the progress of the investigation. They may also pass on cases to the *Ministério Público*. The pioneer office in São Paulo operated under a temporary decree whilst a consultative group carefully drafted the definitive law to ensure certain basic principles, such as a permanent staff (of 16) and a separate budget line.\(^\text{20}\) That law became the template for subsequent *ouvidorias*, such as that in Rio Grande do Sul, with certain modifications. For example, the Rio office sets out an obligation to publish a quarterly report, whilst the Rio Grande do Sul office may demands information from any part of the executive branch of government, whilst Sao Paulo may also require the judiciary and prosecution service to provide updates on cases. However, the true degree of independence which they enjoy is more related to their operational conditions. Others have been hostage to fortune: the Pará office took six months to find office and seconded staff, whilst the Minas one got little more than a desk and a telephone.\(^\text{21}\) The National Forum of Police Ombudsmen, set up in June 1999, has recommended to the country’s state governors that all *ouvidorias* should have autonomy, and be free of hierarchical controls, with their own staff and premises. The *ouidor* should have a fixed term of office (and is therefore not as vulnerable as a political appointee), and have no links to the police, or hold any outside jobs or appointments. The first flush of appointments was of human rights activists\(^\text{22}\) although in Pará the police initially proposed an ex-secretary of public security, again missing the point of this additional layer of internal control.

\(^{17}\) Information from Dr Mário Lúcio de Andrade Neves  
\(^{18}\) Interview with *ouidor* Fred Barbosa, 21 June 2000.  
\(^{19}\) Exceptions are Pará which is subordinated to the state council on law and order (CONSEP) and Minas Gerais, linked to the governor’s office.  
\(^{20}\) Those with seconded staff include Minas, Rio and Pará.  
\(^{21}\) It also clashed with the governor’s chief-of-staff (*Casa civil*) and operated under too complex a law.  
\(^{22}\) Benedito Mariano (SP) began his human rights activism under the military. Julita Lemgruber (RJ) ran the prison service in Rio de Janeiro under the second Brizola government (1990-94); Rosa Marga Rothe is a Lutheran pastor, active for many years in Pará’s main human rights groups, the SPDDH (Sociedade Paraense de Defesa dos Direitos Humanos).
The *ouvidorias* have already contributed significantly to breaking the culture of police impunity in Brazil. Complainants are guaranteed anonymity, crucial in overcoming the population’s real and justified fear of police reprisals. Complainants are now increasingly emboldened to make their complaints openly, a shift which must reflect greater confidence in the state authorities. In 2000 most complaints to the Rio de Janeiro *ouvidoria* were made anonymously: from January to July 2001, some 150 complaints were made in person. Rio, in common with around half the states in Brazil, now has a witness protection program for use in such cases. A rise in complaints is also noticeable when certain incidents receive widespread media coverage. The *ouvidorias* have also been able to open the lid on police practices that were previously obscured. The Rio *ouvidoria* revealed that of 2,894 complaints received over one year and nine months, 60 per cent were related to police extortion. The São Paulo office, which provides by far the most detailed report and statistical breakdown, was able to challenge the police argument that their job was life-threatening by publishing data showing that the majority of military police were killed off-duty, in their moonlighting work as private security guards. They were also able to destroy the myth that the military police behaved worse and punished less than the civil police as they showed that proportionately more complaints were received related to the civil police who initiated fewer investigations and disciplinary proceedings than the military police. They also receive complaints from police officers about their conditions of service and treatment by superiors, and have been able to tackle publicly the problems of police job-related stress and suicide. As the service becomes better known, it will also be able to give a more accurate picture of the real level of victimization at the hands of the police than official police department data or newspaper reports. The degree to which the *ouvidorias* have been able to contribute to a more pro-active and structural debate about policing has varied. In this, the São Paulo office has been a pioneer, putting forward suggestions to both the state and national assemblies not just to assist the work of the *corregedorias* but also to tackle underlying causes of police inefficiency and malpractice, for example constitutional amendments that would unify and streamline the police forces into a single force. As the police have traditionally been a closed institution and public consultation on policing is virtually unknown, the *ouvidoria* (from the verb ‘to listen’) is the first government institution to solicit the views of members of the public and performs an invaluable feedback function.

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23 However, individuals with a criminal record are excluded from the program, thus depriving a good number of torture victims of this protection.

24 Between 1990-98 845 military police were killed off-duty, over three time the number killed on duty (249). www.ouvidoria-policia.sp.gov

25 According to February 2000 data from the Ministry of Justice, Pará state had 2,393 civil police and 12,970 military police. Civil police, who make up 15% of the total, committed half of the 1997/98 police homicides and investigated none. Incidents involving the Civil Police made up 46.5 per cent of complaints to the Rio Grande do Sul *ouvidoria* (19 per cent of the combined police force). In Rio de Janeiro 49 per cent of complaints were against the civil police (26 per cent of total police).

26 Under-reporting of crime is a problem in any criminal justice system compounded in Brazil by the paucity of victimization studies. Public perceptions of police malpractice are beginning to shift and behaviour previously regarded as ‘normal’ is now considered deviant. The *ouvidorias* have also noted that a complaint widely reported in the press will prompt others to come forward with similar stories.

27 As a step in this direction civil and military police operational districts are now identical in Sao Paulo, enabling better analysis of crime data and thus of policing strategy. Interview with Ana Sofia Schmidt, 12 July 2001.
One of the chief criticisms made of the *ouvidorias* is that they lack powers and resources to undertake their own investigations. They are therefore hostage to the co-operation and performance of the internal affairs units who are capable of engaging in forms of passive resistance. One tactic is a reluctance to release information. Another is to ignore the *ouvidoria* altogether. After the first nine months of operation, the Rio *ouvidoria* received 1,586 complaints, some involving serious and substantiated allegations of torture and extortion. However, it discovered that not a single police officer had been sacked as a consequence, although the 101 military and 15 civil police had been sacked for misconduct in cases not reported to the *ouvidoria* (Soares, 2000:415). The CGU’s data on complaints received between September 2000 and June 2001 cited only their own hotline and the general hotline as sources: the *ouvidoria* is not even mentioned. By comparison the São Paulo office had a much better working relationship with the *corregedores*, as evidenced by the superior quality of data and larger numbers of cases resulting in a criminal prosecution. There are two main tools at the disposal of the *ouvidores* in the face of bureaucratic inertia or obstruction. The first is recourse to the media, a ‘name and shame’ strategy. The second is to refer cases directly to the state attorney general’s office, a tactic that have given mixed results. It risks antagonising the police by leapfrogging internal procedures. It also relies on the will of the prosecution service to share this risk, which is by no means assured as we shall see. However, opinion is split as to the desirability of the *ouvidorias* having full investigatory powers, including power of subpoena, in a move that would shift them closer to the other end of Goldsmith’s continuum to what he terms ‘civilian external investigatory’. They would be duplicating the work of the MP which conducts its inquiries at one remove from the police with all the problems (lack of expertise and access to information) which that implies.

The effectiveness of the *ouvidoria* also depends on the co-operation of the other parts of the justice system (courts and prosecution service). Rio civil police officers arrested for abducting and decapitating a 16 year old boy were released (although held on unbailable charges), returned to duty and were later rearrested *in flagrante* for extortion. (Soares, 2000: 415). The police, unsurprisingly, are suspicious of the *ouvidoria* and question the reliability of the complaints it receives, despite the careful triage process which eliminates at least half before they are transmitted to the *corregedoria*.

In São Paulo the police made an indirect attempt to muzzle the *ouvidoria* when a state deputy and *ex-delegada* proposed a bill that would have removed its autonomy and the anonymity of complainants. The Pará state *ouvidora*, Rose Marga Rothe, was subjected to harassment when she tried to reopen a torture case. The *delegado* suspected of the offence took out five law suits against her and attempted to have her sacked (Amnesty International, 2001:18).

In the face of such hostility strong links to civil society are crucial in order for the *ouvidoria* to maintain its stance of independence from the administration. The São Paulo ombudsman is appointed from a triple list proposed by the state Human Rights Council, and is backed by a board of leading lawyers and human rights activists. The Pará office is governed directly by the state police advisory committee (CONSEP) and, as noted, the most successful ombudsmen to date have come from a background of human rights activism and hence have high credibility. Political support

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29 ‘Dados estatísticos da CGU’ on file with the author.
30 It is noticeable that Julita Lemgruber and Benedito Mariano’s successors use the media a lot less. The new Rio *ouvidor* rejected what he dismissed as work ‘só para aparecer em jornal’.
31 Benedito Mariano, *ex-ouvidor* of Sao Paulo is an advocate of such a proposal. He now heads the newly-created *Ouvidoria Geral do Municipio de Sao Paulo* to oversee public administration, expressly created with complete administrative, budgetary and staffing independence, and investigatory powers. Interview 12 July 2001.
is also fundamental. The consequences of half-hearted backing for effective complaints handling in the face of powerful lobbies by the police were most eloquently analysed by Luis Eduardo Soares, the ex-unde secretary of Public Security for Rio de Janeiro (Soares, 2000). He and his entire reformist team left the administration in March 2000 when it became evident that the governor was unwilling to purge corrupt civil policemen from the force. In this case the ouvidoria was powerless to force either the corregedoria or the Ministério Público to act.

3.4. EXTERNAL CONTROL: MINISTERIO PUBLICO

One of the notable innovations of the 1988 Constitution was the unparalleled extension of the powers of the public prosecution service (Ministério Público – MP). Unlike other equivalent bodies in Latin America whose remit is limited to the traditional one of initiating and conducting public prosecutions, the Brazilian MP is also tasked with defending the legal order, the democratic regime, public patrimony, and ‘diffuse and collective rights’. Institutionally the MP enjoys an unequalled level of autonomy, constituting a ‘fourth power’ as it is functionally linked neither to the executive nor the judiciary, with individual prosecutors exercising a high level of autonomy and discretion in the dispatch of their duties.

The MP has a responsibility to ensure that the public authorities and agencies respect the rights guaranteed under the Constitution as well as to exercise external control over the police (article 129, para VII). Thus, on paper at least, the MP should be an extremely powerful agency in monitoring and controlling the police. However, despite the optimism these de jure powers created in the human rights community, results have been very disappointing to date. By contrast to the MP’s strong and pro-active performance in other areas of its remit, principally that of rooting out government corruption and embezzlement by public officials, (Arantes, 2000) the organization has to date failed to exercise much consistent and discernible control over the police, particularly as regards curbing gross human rights abuses. A 1997 survey of prosecutors showed that they themselves rated their performance in this area as poor. There is some evidence that the MP is now taking on a more proactive role in relation to the police. As experience is accumulated in specialist police review units, and as internal guidelines are refined and tested, the institution is growing more confident. The recent surge of interest in the practice of police torture following criticism by the United Nations has prompted a sharp rise in investigations and criminal charges. What, however, accounts for the institution’s overall inertia on this front?

Firstly, there is considerable debate as to what is meant by ‘external control’ The MP has two distinct and potentially conflicting remits in relation to the police. The first and more traditional concern is related to the MP’s role as the sole initiator of public prosecutions. The MP needs to control the quality of the police inquérito as it forms the predominant basis of any eventual prosecution. The second is the MP’s new, expanded responsibility as the guardian of ‘diffuse and collective rights’ and upholders of constitutional rights. This gives them jurisdiction to examine the treatment of detainees, as well as to examine all manner of aspects of police performance in relation to the letter of the law. For example, if a detainee has been tortured to make a confession, the MP

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32 Articles 127 and 129 of the Federal Constitution
33 33 per cent characterised it as ‘OK’, 39 per cent as ‘bad’ and 14 per cent as ‘really bad. (Castilho and Sadek, 1998:21).
34 Although the MP may conduct its own inquiries and a great deal of the police inquiry may be duplicated at the ‘judicial’ stage, involving the judge and prosecutor, in reality it is very cumbersome for a full duplicate inquiry to be carried out. Therefore the MP relies greatly on the police inquérito.
might wish to intervene as this police abuse invalidates the entire basis of the prosecution case. On the other hand, the MP might intervene to stop torture as a gross human rights violation, regardless of whether the torture is related to a confession of guilt in a court case. Most police, and many prosecutors, hold a minimalist view of the MP’s remit, restricting it to the *atividade-fim* of the police, that is, a ‘technical’ review of the construction of evidence in the police *inquérito*. An activist minority adheres to the maximalist ‘ethical’ position that in effect places no aspect of police activity out of bounds.

The constitutional provision on external control of the police was fully fleshed out in complementary legislation only in 2000, leading the police to assert that the MP had no legal basis for its actions in this area. However, state-level MPs have passed their own legislation and guidelines. State *Leis Orgânicas Complementares* vary as to the detail and reach regarding this function. That of Rio de Janeiro gives the MP power to inspect both police stations and jails and prisons, combining both aspects highlighted above. The most complete is an internal regulation of the Sao Paulo MP which establishes wide-ranging powers to inspect documentation, speak to prisoners and the verify the destination of apprehended weapons, money, drugs, vehicles and other ‘tradables’ within the flourishing police micro-economy. Goiás, now an ‘activist’ state, last year published similarly detailed procedures on police oversight, which includes powers to monitor the *corregedorias*.

There is, however, no necessary correlation between the existence of detailed ‘activist’ legislation and the performance of the MP in controlling the police. Even in São Paulo, prosecutors refer and defer more to the national legislation than to their internal guidelines. The structure of the *Ministério Público*, with its specialist units and high degree of autonomy for prosecutors, has resulted in activist ‘cells’, relatively insulated from their colleagues and superiors and from other justice institutions. The federal system also results in striking differences in orientation from state to state. The existence of special units, such as the *Promotorias de Investigação Penal* and *Central de Inquérito*, set up in Rio in 1991, appear to make more difference that the laws. Minas Gerais has a special human rights division which, although terribly understaffed, is cited as having received 600 accusations of police violence, and to have prosecuted 2000 officers for human rights violations (United Nations, 2001:para 140). Bahia’s special unit, with only five staff, has been relatively more active in clamping down on police misconduct than on political corruption, reversing the pattern of states such as São Paulo, due to the power of the local political elite. In one year they charged 204 military police and 145 civil police including 20 police chiefs. (Sanches Filho, 2000). Goiás state’s attorney general has taken an radical stance on eradicating torture in the police service after

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35 See for example the article by Kfouri Filho, ex-president of the national association of police station chiefs.
36 For example, Ceará’s Lei Complementar Estadual No. 9 23 July 1998
37 Article 43 (X) ‘inspeccionar os Distritos Policiais e demais dependências da polícia judiciária, requerendo ao juiz o que for pertinente ao interesse processual penal e à preservação dos direitos e garantias individuais, e representando ao Procurador Geral quanto às irregularidades que verificar’ and (XI) ‘inspeccionar as cadeias e prisões, seja qual for sua vinculação administrativa, promovendo junto ao Juízo as medidas necessárias à preservação dos direitos e garantias individuais, da higiene e da decência no tratamento dos presos, com o rigoroso cumprimento das leis e das sentenças’
38 Ato 098/96 issued by the Special Body of the College of Prosecutors in order to complete the provisions of the Constitution (article 129, para VII) and the *Lei Orgânica* of the state MP (Lei Complementar No. 734 of 26 Nov 1993, article 103, para. XII)
coordinating a nation-wide survey of the institution’s performance in this respect. In April 2001, Goiás removed 21 civil and 47 military police from duty pending court cases.40

The MP’s zeal, or lack of it, in combatting police misconduct is conditioned by inter-institutional conflict in several dimensions. In any criminal justice system a certain degree of territoriality and inter-agency rivalry is normal. However, this is exaggerated in the Brazilian case due to the peculiar features of the country’s criminal procedure, characterised as a ‘dual investigation’ (dupla instrução) system in which two phases of police investigation and prosecution are strictly separated, and conducted according to the logic of two opposed legal traditions. The first phase is the civil or judiciary police investigation (inquérito) carried out within an ‘inquisitorial’ framework, associated with a ‘civil law’ tradition, that is, in secrecy, with no right of defence (contraditório) of the accused (Lima, 1995). The second phase, initiated with the MP bringing formal charges against the accused, in which the judge may re-interrogate the accused and repeat procedures already completed by the police, obeys the logic of an ‘accusatory’ system, more often associated with an Anglo-Saxon common or case law tradition. This is conducted in public, with a right to a full defence and the judge acting as an arbiter between the two parties. From the above it should be clear that any interference by the MP in the way in which the police conduct the inquérito is regarded by the police as a violation of the principle of this two-stage process. In their view, the MP contributes very little to the investigative process: they are mere bureaucrats who do not get their hands dirty. The prosecutors, on the other hand, view the police as corrupt and incompetent and blame the very low rate of completed and usable police inquéritos for the very high attrition rate in the criminal justice system, that is, the miniscule number of offenders who are actually apprehended and successfully prosecuted.41 In reaction to the contentious and closed character of the police inquérito, a number of attempts have been made to remove the police’s exclusive and discretionary powers. During the 1987-88 Constituent Assembly the National Public Prosecution Association (Confederação Nacional do Ministério Público – CONAMP) in their Curitiba Charter proposed that the MP should supervise investigatory proceedings, and be able to take them over it necessary. This was defeated by the lobby of the Association of Police Stations chiefs (Kerche, 1999:249). New proposals from the Forum of Police Ombudsmen follow a similar line (OPESP, 2000).

Another factor is the relatively high level of autonomy of both actors. Since 1988 the MP as an institution has been functionally independent of both executive and judiciary. It may also initiate criminal investigations in a case of police misconduct if there is sufficient prima facie evidence. Therefore, it can bypass altogether the internal review process and proceed without waiting for the corregedoria to finally pass on the inquérito policial, a procedure which generates great friction with the police. 1988 also saw the creation of the Civil Police as a national institution, although the powers of the delegado date back much further. The Civil Police in Brazil is not merely an investigatory force, as in other countries, but has a quasi-judicial function. As noted, the police investigation mirrors that conducted by the courts, thus making the delegado – who must have a law degree - a de facto investigating magistrate, and the police station a ‘registry’ office staffed by a legal ‘clerk’. Such ‘lawyerization’ of the police (Cerqueira, 1998) puts the police in competition with the judiciary and MP for control of the criminal investigation.42 Since 1871, when the inquérito policial was created and exempted from judicial control, the Brazilian criminal justice

40 Correio Braziliense 6 April 2001
41 Jornal do Brasil ‘Polícia ruim, justiça lenta: Inquéritos malfeitos são devolvidas a delegacias por promotores’ 25 May 1998
42 Cerqueira (1998) views this as a parallel problem to that of ‘militarization’ of the military police
system has suffered from fractionalisation in which the phases of arrest, police investigation and prosecution proceedings proceed in hermetic spheres.

Unsurprisingly, resistance from those sectors of the civil police most embroiled in the interlinked practices of violence, extortion, corruption and criminal activity has been fierce. Stories abound of prosecutors being illegally refused entry into police stations. In October 1998 prosecutors from the specialist unit were alerted by an escaped prisoner that a torture session was underway at a notorious police precinct, the Theft and Robbery department, in Belo Horizonte. The police attempted to prevent the prosecutors entering, harassed them whilst they were taking prisoners’ testimony and recording evidence of torture, forced them to through a gauntlet of catcalls when they left and vandalised their official vehicles.

Where relations are not hostile, MP inactivity may be explained by a contrasting dynamic of cooption. Capture theory, which ‘explains poor performance in regulation with reference to techniques by which the groups being regulated subverts the impartiality and zealousness of the regulatory’ would account for the overall inertia of the institution in this area (Prenzler, 2000: 662). Institutionally, both the prosecution service and the police share the task of investigating and prosecuting crime, and need to co-operate. Frequent contact produces shared values. Political pressures may mean that the priority of the state attorney general (the head of each state prosecution service, who is appointed by the state governor) is a reduction of crime, rather than a possibly counter-productive clash with the police over their questionable methods.

4. SYSTEMIC DUALISM

We have considered the specific difficulties encountered by each one of the currently existing mechanisms of police accountability, both in their internal design and performance, and in relation to one another. However, complaints handling procedures are not only the end stage of a complex set of practices, enshrined explicitly in law and in public policy and implicitly in shared values and institutional rituals, but are also part of a feedback loop which either disrupts or reinforces these practices. As we have seen, the corregedorias have tended to legitimise residual authoritarian attitudes by their failure, or refusal, to punish serious human rights abuses. Their entirely internal control function makes them extremely vulnerable both to ‘capture’ by these still dominant police values, and to influence by local politicians, tending to undermine the efforts of even those corregedores committed to the new, democratic principles of equality before the law, and the right to life. The external control mechanism, the Ministério Público and has delegated this responsibility to an often marginalised and under-resourced unit that has not yet impacted on the operations of the whole institution. Of the three mechanisms examined, only the ouvidores are wholly committed to the enforcement and construction of new conceptions of civil liberties, accountability and effective, transparent policing. Their effectiveness depends on political will, on the level of resourcing and institutional autonomy they are accorded.

In order to understand the overall failure of the current system of police accountability (despite the individual successes highlighted) we need to understand the system as a chain in which inter-institutional relations are conflictive and uncoordinated. The corregedorias filter out cases of police misconduct before they reach more independent elements of the system. Oversight of the internal review process has been attempted in several ways but none has yet completely broken open this ‘black box’. The most ‘external’ element of control in this system is not truly independent, for the MP’s responsibility for criminal prosecution lead it into both conflict and connivance with the
police, neither of which are conducive for impartial oversight. The *ouvidorias* have the independence but not generally the powers to enforce improvements in internal review processes. There is also very little non-governmental oversight of the police\(^{43}\) although in a few places ‘law and order councils’ (*Conselhos de Segurança Pública* - CONSEGs) have been set up.\(^{44}\)

At root, however, the present mechanisms of police oversight will continue to be ineffective as long as the justice system is underpinned by a essentially dualist set of values, reflected in both police behaviour and public attitudes to police misconduct. Getúlio Vargas’s comment ‘for my enemies, the law, for my friends, anything’ underlines the contingent aspect of the law in Brazil. As Zaluar puts it, the police in their repressive role have a ‘preferential option for the poor’. In Brazil, crime fighting is not synonymous with law enforcement. A number of anthropological studies on the police (Muniz, 1999; Mingardi, 1992; Lima, 1995) reveals the distinct universe of values which guide their day-to-day activities. This is universe of social hierarchy, of citizens and ‘non-people’, of personalism not universalism, of negotiation not rules, of ‘criminals’ and ‘decent people’, of favours and paybacks.

When two opposed sets of values come into conflict, then the new values need to be rooted in rules, procedures and close monitoring. Expectations of a change in behaviour have to be made clear and enforced. If not, then a grey area is created in which police cling to old values and practices and, moreover, find means of bending and moulding new laws intended to modify their behaviour, thus perverting their sense and undermining their effectiveness. For example, in 1988 it became illegal to pick up suspects ‘on spec’ (*prisão para averiguação*) yet police continue with this practice, which derives from the inquisitorial approach of the police in which their interest in establishing the essential guilt of those individuals regarded by the police as pathologically ‘criminal’.\(^{45}\) The anti-Torture law has also made no impact whatsoever on police conduct. Lesser charges are brought by the *corregedoría* and, crucially, police explanations/justifications for use of torture (the victim is a ‘known criminal’, need to get a confession, or to ‘teach him a lesson’) continue to be acceptable within their own moral universe, and thus naturalise torture as normal police practice. Superiors, when challenged, allege ignorance of the abuses committed by their inferiors precisely because all share a tacit understanding of ‘normal’ procedure which is passed down in an oral tradition from generation to generation. When faced with concrete evidence of abuses, police offer excuses (‘the prisoners’ beat themselves up’) that are entirely ritualistic, seemingly ignorant of the disbelief they would engender in inhabitants of this unfamiliar moral sphere of universal civil liberties and accountable police.

Very little has been done to tackle this police domain of informality and subjectivity. In both the police force and the prison service, studies demonstrate the virtual non-existence of detailed procedures which would put the principles of the law into effect (‘sair do papel’). Thus law enforcement officials continue to enjoy great latitude to operationalise their own interpretations of crime and punishment. Federal government policy suffers fundamentally from a lack of

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\(^{43}\) Those civil society entitities such as the Community Councils (*Conselhos da Comunidade*) and Catholic church’s Prison Ministry (*Pastoral Carcerária*) involved in prison visiting and inspection have also attempted to extend their remit to police lock-ups in which detainees are held (illegally) in long-term pre-and post-trial custody.

\(^{44}\) Pará state’s CONSEG was set up in 1996 and was the main force behind the setting up of an *ouvidoria*. For an analysis of São Paulo’s CONSEGs see Luiz E. Pesce de Arruda’s chapter in Mendes et al (2000)

\(^{45}\) Police reportedly use torture to get criminal suspects to confess to a more serious crime than the one they have already owned up to, for example, robbery rather than theft (United Nations, 2001).
accumulated capacity and interest in the operational details of law and order agencies. During the
two authoritarian periods, in which policing was centralised, notions of national security and
exceptionalism predominated, excluding all notion of accountability, whilst in democratic periods,
policing has been decentralised and fragmented, serving the interests of local elites. The federal
government’s ignorance and lack of interest in the performance of local criminal justice system is
evidenced in the extremely poor quality of its databases in all relevant areas: homicide rates,
victimization, crime clear-up rates, prison administration. Government guidelines or ‘policies’
tend to be generic often more a shopping list of disparate ideas and not underpinned by clear criteria
of evaluation.

Until this changes, the current mechanisms of police accountability will continue to operate in a
political vacuum and will retain a primarily reactive and partial character. They will also be unable
to develop unless the standards against which police performance and conduct are measured
become much clearer and more objective. The persistence of essentially authoritarian values
protected within the police by the military justice system on the one hand, and the corregedorias on
the other, is a major hurdle in a deepening of democratic values and practices in a dimension that
impacts on a daily basis on the life quality of the majority of Brazilians, that of law enforcement.
Accountability also needs to be conceived of in broader terms. The three mechanisms above share
an essential reactive, post facto, incident-oriented function. There is an increasing consensus that
mechanisms designed to control police conduct must combine elements both of ‘oversight’, i.e.
complaint handling, and of ‘review’ a broader, more proactive and interventionist practice. (Lewis,
1999:82; Goldsmith, 1991). Only the ouvidorias have most integrated both elements.
Democratization and the application of forms of ‘horizontal accountability’ to the coercive agencies
of the state are still partial and contradictory as both politicians and civil society seek better ways of
casting a light on the masmorras of the police.

46 For example, no national data are available on deaths in custody, or, until very recently, the
prevalence of torture in police custody. Brazil’s first report on torture to the United Nations, an
obligation under the international Convention, was submitted ten years late, and only then in
response to the setting up of a campaign by national and international human rights groups
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