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14th World Congress of Sociology
Montréal (Québec), University of Montréal, Canada
26 July / 02 August 1998

Research Committee 29
Sociology of Deviance

<p>The Judicial System and Human Rights Violations (São Paulo, Brazil, 1980-1990)*</p>
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São Paulo, setembro de 2003

*Draft version, please do not quote.

The Judicial System and Human Rights Violations¹

This paper is based on an ongoing research project that has as its main objective to examine the role that continued gross human rights violations play in the democratization process in Brazil. How can a democratic citizenship prosper and the universal rule of law become a reality with then persistence of human rights violations? What is the impact of these violations in the political culture? The research tries to answer these questions. One of the focus of the research is the role that agencies and actors in charge of applying the laws play in the continued gross human rights violations. In Brazil we are experiencing a democratic reconstruction that is much broader than previous ones. This coexists with a deep social economic inequalities, moreover large sectors of the population live as “second rate” citizens and face tremendous obstacles in their access to justify often enduring human rights violations. As result large sectors of the population experience a much limited form of citizenship. The research examines the hypothesis that this limited citizenship is part of a political culture that is marked by an informal resolution of social conflicts that does not exclude the use of violence and that reproduces authoritarian forms of power relations. All these aspects interact in a perverse vicious cycle that different social movements do not seem capable of breaking.

To answer the questions and to examine the hypothesis, the research was designed to cover three aspects: a) the role of the state in the investigation and punishment of the gross human rights violations: to examine whether the state provides dissuasors to stop the violations or whether it connives with the violations; b) the political culture of communities that have witnessed gross human rights violations- what are the possible effects of witnessing such violations on their concept of justice, violence, the police and whether this experience has an impact on their support to democratic values or whether it fosters some form of moral exclusion; c) the role that human rights organizations play in the consolidation of democracy.

The actual research consists of the reconstructions of a number of high profile gross human rights violations cases: killings committed by the police, deaths by “vigilante”/death squad groups, lynchings and deaths in the rural areas. The cases took place throughout the 80’s, during the democratic transition. The research thus covers gross human rights violations caused by agents of the state and by the population. This reconstruction uses as sources official documents, police inquiries, transcripts of the penal process, newspaper clippings, and human rights reports. Interviews were carried out with the policemen in charge of the investigations, with the public prosecutors who took the case before judges and with the judges. People living in the communities where the cases occurred are being also interviewed as are members of human rights organizations that intervened in the cases.

¹ This paper is based on the ongoing research project *Continuidade Autoritária e Construção da Democracia (Authoritarian Continuity and the Construction of Democracy)* at the Núcleo de Estudos da Violência (NEV/USP), in a joint coordination by the authors of this paper and Dr. Paulo Sérgio Pinheiro. It has the financial support of the Fundação de Amparo à Pesquisa do Estado de São Paulo - FAPESP, the Conselho Nacional de Desenvolvimento Científico e Tecnológico - CNPq and from FORD Foundation, Brazilian Office. Helena Singer, Yolanda Maria Alves Évora e Wânia Pasinato Izumino, coordinate fieldwork; Glauber Silva de Carvalho, Marcelo Gomes Justo, Maria Inês Caetano, Petronella Maria Boonen, Jacqueline Signoretto, are researchers and Adriana Alves Loche, Helder Rogério Sant’Ana Ferreira, Vilma Aparecida da Silva, are research assistants.

In this research we have adopted an interdisciplinary approach to establish the multiple causal networks that involve the state, the political culture and civil society.

In this paper we will be presenting some data concerning the role that the state plays in the persistence of gross human rights violations. We start with a presentation of the data from the Gross Human Rights Violations database that was produced in order to identify and select the high profile cases. We describe two of such violations in the state of São Paulo during the 80's and the role that the state played, according with the press. We situate the cases within the broader picture of the growth of violence in São Paulo. The growth of gross human rights violations take place in a democratic transition that coincides with a dramatic shift in the role that the state plays in the economy, with an economic crisis that resulted in budget cuts that affected every aspect of collective life. This picture provides the background against which the role of the state is examined.

The growth of urban violence

Violent criminal offenses are rising in São Paulo since the beginning of the 80's² (Adorno, 1993; Caldeira, 1989 e 1992; Costa & others, 1995; Feiguin & Lima, 1995). In the city of São Paulo alone violent crime grew by 10% within the overall crime rate. According with Feiguin & Lima (1995) this growth accelerated after 1988. At that moment violent crime came to represent 28, 8% of all reported crime. Violent crime had been on the rise at intervals throughout the 80's. Caldeira (1989) identified two peaks of growth between 1982-83 and between 1983-1984. There was a decline until 1987 when the numbers started to grow again. Despite this decline numbers were still very high with a rate of 747 violent crimes per 100 thousand inhabitants, while in 1981 the rate was 686 per 100 thousand inhabitants. After 1988, Feiguin & Lima (1995) observe that the growth is faster and there was a jump: in 1988 the rate was already 945,1 violent crime per 100.000 people and 1993 this rate was in 1.119,2. In six years violent crime grew by 18,4 %. This kind of growth more than justifies public's fears and feelings of insecurity. This growth was not limited to the municipality of São Paulo but was repeated in the Metropolitan area as well.

Armed robbery and assault are the most often forms of violent crime. Since 1983 armed robberies represent 50% of violent crime (Caldeira, 1989). Feiguin & Lima (1994) identified the same trend for the years between 1988 and 1993. In 1988 the rate of armed robberies or attempted robberies was 544,48 per 100.000 inhabitants. By 1993 this rate was 715,07 per 100.00 inhabitants, that is it grew by 31,3%. This kind of growth took place also in the metropolitan area where the most often form of violent crime used to be physical assault. Assault remained stable while robberies grew. (Caldeira, 1989; Feiguin & Lima, 1995).

² The analysis of the growth of violent urban criminality was extracted from the theses : Adorno, S. *A gestão urbana do medo e da insegurança (Violência, crime e justiça penal na sociedade brasileira contemporânea)*. Tese de Livre-Docência. São Paulo: FFLCH/USP, 1996. (The urban management of fear and insecurity: violence, crime and penal justice in Brazilian society)

Rape and attempted rape oscillate slightly but overall the rates of reported rape have declined slightly between 1981 and 1987. They remained stable between 1988 and 1993³. Similarly robbery followed by murder remained stable. Offenses such as drug use and traffic show an irregular pattern: they grew between 1981 and 1985, declined between 1986 and 1987 (Caldeira, 1989) Such variations may be more the result of changes in police policies than to changes in the pattern of drug use and or dealing. Since 1988 there has been a growth in drug related offenses specially in the municipality of São Paulo. (Feiguin & Lima 1995)

Tables 1 and 2, illustrate the growth of violent crime in the municipality an in the Metropolitan area of São Paulo, between 1981 and 1993.

Table 1

Violent crime rates by type
Municipality of São Paulo
1981-1993

Violent crime	(per 100.000 inhab.)					
	Homicide*	Grave bodily assault	Armed Robbery	Robbery followed by death	Rape	Drug Trafficking**
Year						
1981	14,59	341,13	312,76	3,22	13,97	21,82
1982	14,69	342,99	284,43	2,55	13,39	26,58
1983	22,88	360,19	466,43	2,56	12,14	29,09
1984	26,67	340,80	722,90	3,32	10,33	28,20
1985	27,10	323,86	593,00	2,12	11,11	30,03
1986	28,32	339,98	508,17	1,94	13,90	23,78
1987	30,84	305,47	495,38	1,86	13,50	19,78
1988	29,77	308,92	544,48	2,00	12,83	26,47
1989	35,77	337,09	528,79	2,81	12,01	27,62
1990	35,09	304,62	633,58	3,39	12,31	26,77
1991	34,64	278,62	669,55	3,68	12,53	28,80
1992	29,08	271,70	661,44	3,12	11,14	34,14
1993	33,66	287,65	715,07	2,47	10,79	33,07

Source: Anuário Estatístico - SEADE

Research: Authoritarian Continuity and the Construction of Democracy (NEV-USP, 1993-1997)

* the numbers refer only to first degree murder and grave bodily assault.

** Excluding offenses reported by the state Drug Investigating Department - Denarc

³ It must be kept in mind that the rates do not reflect the reality but the victim's willingness to report to the police. Despite campaigns started by the feminist movement and despite the rapid increase in the number of Women's police stations specially in São Paulo unreported offenses must be high due to prejudice and the reticence of women to publicize the cases.

Table 2
Violent Crime rate by crime
Metropolitan area of São Paulo
1981-1993

(per 100.000 inhab.)

Violent crime	Homicide*	Grave bodily assault	Armed robbery	Robbery followed by murder	Rape	Drug Trafficking**
Year						
1981	14,62	321,72	269,05	2,79	13,56	18,85
1982	13,93	327,68	233,00	2,33	14,17	23,96
1983	21,32	350,44	390,63	2,46	12,50	25,90
1984	26,25	342,46	584,29	2,99	11,04	26,90
1985	27,27	334,72	513,45	1,86	11,34	30,50
1986	29,21	368,86	451,83	1,89	14,39	24,29
1987	31,13	324,34	436,66	1,61	13,21	19,41
1988	30,16	336,48	468,13	1,87	12,44	25,27
1989	37,06	361,53	461,54	2,56	12,20	23,54
1990	37,22	326,45	545,50	2,92	12,22	22,74
1991	36,50	304,10	562,63	3,07	13,16	24,38
1992	30,20	307,25	552,93	2,76	11,68	28,31
1993	33,92	320,68	594,47	2,08	11,90	26,91

Source: Anuário Estatístico - SEADE

Research: Authoritarian Continuity and the Construction of Democracy (NEV-USP, 1993-1997)

* the numbers refer only to first degree murder and grave bodily assault.

** Excluding offenses reported by the state Drug Investigating Department - Denarc

This scenario becomes more bleak when we examine what has happened to homicide. Death caused by external causes is rising for the past two decades as revealed by a number of studies (Adorno, 1994; Caldeira, 1989 e 1992; Costa & outros, 1995; Mello Jorge, 1981, 1982 e 1986; Soares & outros, 1996; Yazabi & Ortiz Flores, 1988; Zaluar, 1993). This growth has become greater in the past years and the main cause is violence⁴. Camargo & others (1995) noted that throughout the 80's while the overall mortality rate grew by 20% deaths caused by violence grew by 60%. According to the same authors in 1979 homicides led to the loss of 3.483,4 life years per one million inhabitants in the state of São Paulo. By 1991 this loss corresponded to 10.337,1 years per one million. In 1940, homicide was the cause of death of 1,2 male youth between 15-24 years of age. By 1989, this rate was 35 for 100 youngsters in that age group (*apud* Adorno & Pinheiro, 1993). In the '60s 52% of the victims of homicide were 30 years old or more, by 1991 64,5% of homicide victims were under 30 years of age. Young people became the majority of the victims of homicide in 1984. The highest rate of homicide today is for adolescents between 15 and 19 years of age.⁵. By 1995 the death rate by homicide for the age group

⁴The sources to measure deaths by external causes present an array of problems. It is estimated that only 75% of such deaths are registered as such. Figures for the country are more precarious still since it is suspected that people do not inform the registrar office all deaths and or the registrar does not inform the Ministry of Health. To further complicate matters there is a very high number of deaths by undefined causes within "external causes" Cf. Camargo e outros (1995). There are also difficulties in integrating data from different sources. Cf. Feiguin & Lima (1995).

⁵ For more information see: Souza (1994) and Camargo and others (1995).

20-24 years was 250 per 100.000 inhabitants (Prado Jorge, 1996). Homicide is the cause of death for 85% of the males between 15-39 years of age. (Prado Jorge, 1995)

Homicide has been growing not only in the Municipality of São Paulo but in the greater São Paulo area as well. Between 1985 and 1987 the rate was 35 per 100.000 thousand (Cf. Caldeira, 1989) This rate was more than double the national average 16,86 per 100.000 inhabitants (1988, cf. Souza, 1994). By 1995, the rate in São Paulo was estimated to be 49,8 per 100.000 inhabitants again much superior to that of the country estimated to be 24 per 100.000 inhabitants, by Luis Ratinoff, [1996]). It is likely that in São Paulo as well as in major cities of Brazil such as Rio de Janeiro part of these deaths may be related to conflicts between gangs whether or not related the drug trade⁶.

This growth in violent urban crime had an impact in the agencies in charge of public security. It has put pressure on the judiciary police and on the police in charge of preventing crime. It has forced them to alter routines and to improvise. Since this was happening at a time when the controls on society were being reduced by the “slow political opening” these agencies were also confronted with the new challenge of public demand for services. On the one hand we had pressure from organized sectors or powerful sectors of society for more and better policing and on the other hand the demands for cuts in government expenditures further reducing depleted resources. Rationalization and re-equipment of the polices were key demands of the polices and these demands were partially satisfied by 1984 when São Paulo was being governed by the first elected governor in nearly 20 years. At that time investments were made in contracting more personnel as we can see from table 3. Despite this investment the per capita expenditure with public security and the state judiciary declined throughout the 80’s (Caldeira, 1989).

⁶ The lack of studies similar to those produced by Zaluar for Rio de Janeiro prevents reliable conclusions.

Table 3
Civil Police Personnel
Rate of growth
São Paulo State
1987-1996

Civil Police Technical Positions	Rate de Growth
Chief of station	65,65
Medical examiner	29,63
Criminal examiner	245,82
Clerk	136,07
Investigator	64,74
Technical photographer	179,34
Communications expert	133,96
Medical examiner assistant	156,76
Technical Draughtsman	110,26
Fingerprint expert	84,60
Jailer	77,52
Agents	79,03
Assistant at the Morgue	63,29
Assistant fingerprint expert	416,27
Administrative Positions	
Secretariat of Public Security	-11,90
Other institutions	22,44

Source: Secretaria de Segurança Pública - Polícia Civil

This pressure on the police agencies has repercussions along the criminal justice system. The judiciary and the jail system were all pressured by the growth of the number of prisoners and criminal cases. These agencies were forced to review their procedures, when they failed to do so they entered a crisis with echoes along the judicial system as a whole. Since the different agencies have different functioning modes and internal logic and since one of their main quest is to ensure an autonomy in relation to the other agencies, the growth in pressure led to a growth in the conflicts between the institutions and in the fragmentation of the system. This has resulted for instance in an increase in police selectivity. Pressured by the growth of criminal offenses and lacking the resources to deal with the cases, the police becomes more selective in what it chooses to investigate. Investigative resources are used only in cases they define as “more serious” or as “major” cases that have attracted the attention of the public or that are of interest to powerful group. Legal considerations are forgotten and the clearance of criminal offenses are treated as privileges. As such they can be an arena for different interests to compete. This enhances

conflicts between the legal agencies of the judicial system, between the public and the agencies and moreover between victims and aggressors. (Fischer, 1985, cap. II, pp. 17-60).

The conflicts do not necessarily move to creative forms of solution since despite the democratic transition these agencies remain very much closed to the public in that that is substantive. The authoritarian practices resist change and one of the indicators of this survival is the opposition that these institutions have to any form of external control. They are not open to discuss with society their role, resources or performance. There is no openness regarding their processes of internal control. The public, academics and even other branches of government are not granted access to vital information to decide for instance how to allocate resources, or what priorities to establish.

The failure of the state to provide resources for public security or administer existing resources in a more productive way also has an impact in the relations between social groups and in the reproduction of violence. The scarce resources are not democratically administered, i.e. police resources are not distributed across the municipality according to a rational need, but according to the balance in power relations. Thus those groups that have more voice, more access to the decision makers have more policemen, more police cars, better equipped police stations. The poorer areas of town were most violent crime and the majority of homicides occur have less or no police resources. The same extends to court houses and public prosecutors. These are located in central areas or in more fully serviced neighborhoods. A study commissioned by the Brazilian Ministry of Justice⁷ in 1996 showed that while the wealthier, more equipped areas of the city have 40 policemen and 4 cars per 10.000 inhabitants in the poorer areas of São Paulo there is on average less than 10 policemen and one car per 10.000 inhabitants to patrol a much wider area than the wealthier consolidated ones.

This growth in violent crimes described above is not unique to Brazil. Neither is the crisis in the judicial system. Violent crime has grown in the past decades in many industrialized countries as well. Crisis and reviews of the judicial system have been taking place in many countries. The need to redefine the role of the police, of the judiciary and discussions on the role of imprisonment as a form of reparation and a dissuasor to further crime are themes that have mobilized many countries and voters in the past decades. Where Brazil differs is that some of this growth in violent deaths are not just homicide cases they are also cases of gross human rights violations perpetrated by agents of the state who have sworn to obey the law and to protect citizens and by the population when abandoned by the state and left to its own devices to achieve “security”.

This is the broad context in which gross human rights violations not only continued to take place but also grew. This growth is clear in the database organized and developed to identify the high profile cases to be re-constructed. The emphases on high profile cases was due to our assumption that such cases had greater potential to have produced an impact in the public’s perception and trust in the criminal judicial system and in non-violent means of solving conflicts. It is a world wide phenomenon that the police pages of newspapers are not only more attentively read but also the content more remembered. Cases chosen by the press to be printed also have a high probability of been used by other media such as radio and television and thus of reaching a much wider public. High profile cases had to our view

⁷ Mapa de risco da violência-cidade de São Paulo, (1996) CEDEC Centro de Estudos da Cultura Contemporânea.

greater potential to resocialize the public in terms of the expected efficiency of the criminal judicial system.

The database

Using the press as our source was not without its problems but access to the newspapers was much easier than to other sources⁸. The analysis of the cases identified in the press revealed some interesting facts: - the so called national press -*O Globo, Jornal do Brasil, Folha de S.Paulo e O Estado de S.Paulo* - is not so national and concentrates its foci in the area between Rio and São Paulo.

- gross human rights violations do not disappear from the pages of newspapers all through the decade, despite multiple Congressional hearings, investigative commissions, press outcry and pressures from human rights organizations and from relatives of the victims or international condemnation. We identified 3458 cases through the decade involving the police and the population as aggressors.

- it is very difficult to identify “pure” cases, i.e. that meet exactly our definition of the different phenomena. Often police violence appears so muddled that it is mistaken by death squad actions and with lynchings; death squad groups act like a lynching mob, that is gross human rights violations perpetrated by agents of the state mix with those perpetrated by society. What must be stressed is that it is very difficult to clearly separate the types of violation especially in certain circumstances, when police action copies that of death squads.

- the profile of the violations is very similar to that identified in other studies: such as the one on lynching by Benevides, 1981; Martins, 1989 and Souza e Menandro, 1991; on police violence by Pinheiro, 1991; and death squad/vigilante groups by Fernandes, 1989; and Bicudo, 1989. It is very interesting that some of the studies we refer to did not have the press as its main source. This suggests that if the press does not give an accurate picture of the frequency of the violations at least the profile of the violations is accurate.

⁸ We could not have access to the cases through the judicial system because criminal cases do not filled according to the circumstances in which they happened. We would have to look at all cases involving homicide to detect which referred to lynchings and to police killing or else to the action of death squads. This would demand an Herculean effort of sorting through a minimum of 6.000 cases a year.

Profile of the gross human rights violations in the state of São Paulo, Brazil (1980-1989)

Death Squads/Vigilante groups- executioners

A review of the literature on death squads and vigilante groups allowed us to define such groups as: a) the association of individuals or actions of isolated individuals “vigilantes” systematically organized to execute people suspected of having committed some offense in the poor areas of the periphery of the large cities; b) the existence of contractual bonds- agreements, contracts and complicity through which they count on the financial support of small shopkeepers, tradesmen and professionals; c) the actual composition results from multiple forms of groupings- it can include only policemen, ex-policemen, a mixture of policemen and citizens, have only citizens.

The database about death squad/vigilantes contains 463 cases involving adults plus 68 cases in which the victims were children and adolescents for the decade. Most of the cases refer to Rio de Janeiro 222 cases of adults and 40 cases were the victims were children and adolescents. São Paulo follows Rio with 184 cases of adults and 28 cases of children and adolescents⁹. Action of vigilante/death squad groups in other states of Brazil are less frequently present in the national press. There are only 57 references in the ten year period covered by the database, to cases outside the São Paulo and Rio de Janeiro area.

We will concentrate our presentation on the cases from São Paulo, since the reconstruction of cases was limited to the São Paulo area, except for the “rural violence” violation.

During the period covered by the initial database¹⁰ the action of the death squad in São Paulo resulted in 184 cases of homicide of adults and 28 cases of young people. Those cases may involve more than one death. In one of the cases were the victims were children, six boys were killed in one single death squad action. The analysis of the cases through the decade has revealed that there changes in the frequency of cases reported, in the composition of the groups, in the areas of the city that they act, in the profile of the action, and in the response of the state to their activities.

Death squad and vigilante cases are more frequently found in the press in São Paulo in the following years: 1983, 1984, 1985, 1987 and 1988. Since we cannot attribute the variations to real changes in frequency the changes in the interest and space the press has could be related to two actions by the then governor of the state Franco Montoro. He created a special investigative commission to examine the actions of the death squads. This commission was very active between 1983 and 1985. By 1987 the new state governor Orestes Quércia created another group to investigate the activities of the so called “Justiceiros” (vigilantes). This last group functioned until 1989 and as we will see it did have an impact at least in how the press reacted to these cases. What the numbers show is that the greater frequency of cases involving death squads and “justiceiros” coincide with greater action from the state government to refrain their activities. The press not only

⁹It is necessary to highlight that despite the fact that in Rio we did not have access to a “popular” tabloid type newspaper as we did in São Paulo, news items about death squads and vigilante groups are far more frequent in Rio than in São Paulo.

¹⁰The database became an ongoing activity of the Center for the Study of Violence and is updated daily.

covers the executions but also the prison and trial of the accused as well as the results of the trials which is something quite extraordinary when compared with the attention the press pays to other violations.¹¹

The actions of the death squad groups was more intense in other municipalities of the Greater São Paulo area than in the city of São Paulo considering that the city of São Paulo has the larger share of the population. In the city the death squads and justiceiros were more active in the districts that have frontiers with municipalities where they were more active. This pattern suggests that they were sort of spill over of their main “jurisdictions”. Most of the cases took place in the Southwest area of the Greater São Paulo area, with another large concentration of cases in the east part. Violent crime grew in all those areas throughout the 80’s. Often this growth was much greater than the average for the Metropolitan area. The same geographical pattern was found for cases where the victims were children which suggests that the context was more important than the nature of the victims.

The composition of the death squads and the nature of the “justiceiros” change through the decade: at the beginning of the 80’s when information existed, the press described the groups as being formed by Military Policemen; by the end of the decade there was more information on the groups but there is also much mystery as to the true nature of the groups- they are often described as Justiceiros or as a mixture of justiceiros and ex-policemen but there are a number of cases where it is impossible to tell who was acting. The news clippings suggest that policemen do not disappear from such groups but act in a more disguised way.

Victims are described in the news clippings as delinquents, bandits (29%) or as having a criminal record (7,1%), for 26% of the cases the press informs that they were “workers” or that they had no criminal record, 6% are described as “justiceiros” or as members of death squad, that is they victimize and become victims as well. The press provides no information concerning the profile of victims for 32% of the cases. When the victims are underage there is a similar pattern, no information about the victim in 37% of the cases, “suspect” or “infrator” in 26% of the cases. Children described as “wrong victim”, i.e. someone that never caused trouble total 9%.

Groups openly formed by policemen were more common at the beginning of the decade before the government started to punish them. They acted mostly in the South part of the periphery of the city of São Paulo through contract with local businessmen. Contractors financed the operations but did not get involved in the killings. Police officials acted in groups and with the support of their superior. They acted less intensively in the greater São Paulo area also in the Southwest area and in the East region. Their victims were mostly described as delinquents and bandits, or as having a criminal record.

Justiceiros were more active in the municipalities of the greater São Paulo area than in the city of São Paulo in the same areas where the military police acted- southwest and east part. They differ from the Military Police in the nature of the victims: while most of the

¹¹Montoro's special investigative commission removed officers from the Military Police that commandeered battalions in areas where death squads were quite active. It also expelled from the military police 20 sergeants, corporals and constables; it started 66 police investigations and military police inquiries; it identified and sent to prison a number of killers from the police forces solved 36 murders committed by 69 Military Policemen from one battalion alone; 15 murders committed by 25 Military Policemen from another battalion and finally 29 murders committed by 60 Military Policemen from a third battalion.

so called bandits killed by the police when police investigations started were found to be citizens without criminal record and a law abiding workers, the majority of those justiceiros victims' described as criminals continue to be described as such during criminal proceedings against the justiceiros. One hypothesis is that since the justiceiros living in the areas they act that they have greater knowledge about the area and the inhabitants than the hired policemen who are less familiar with the area and more arbitrary in their actions. This is coherent with what are the reasons for their downfall. Their actions seem to be tolerated by the police for they had long standing careers. Tolerance is reduced or disappears when they kill "the wrong person" or a policemen or when their charges become extorsive. Quite often they end up being killed by criminals from the area or after they are jailed. Of the ones who were caught and sentenced many fled prison, suggesting that they found "sympathizers" within the system. They go back to their "bairro" and back in business.

Groups with a dubious profile represent 14% of the cases and appear in the press by the end of the decade. They are similar to hired gun men: they work under contract for pay, and it is difficult to isolate their actions from gang battles. They are generally formed by ex-policemen both from the civil and the military Police.

News clippings were also analyzed in terms of the whether human rights organizations or active groups in society played any role in denouncing those cases. For 81% of the cases there was no information. In the few cases (19%) that it existed 8,1% were actions supporting the killings. Organized actions by human rights groups to demand some response from authorities are very few (4,1). Thus there is more news of action to support than to condemn the killings. It is possible that some of the deaths were approved by the people living in the areas. This would be the result of having to live with the growth in violence and with the lack of public security described above. The negligence of the state in providing for safety in those already very deprived neighborhoods would foster their support for gross human rights violations.

Organized sectors of the civil society, including human rights groups tend to manifest and to demand action from the government when the death squads were composed of Military Policemen whereas by the end of the decade when justiceiros are the majority there are demonstrations by local communities to manifest their support for the actions. The killings by justiceiros did not provoke action from human rights groups, maybe because by the end of the decade the defense of human rights had become associated with the defense of "rights for criminals" and this stigma was keeping human rights activities shy from confrontations with communities that backed the justiceiros. This possibility will be examined along the research.

The judicial system and the death squad/vigilante groups.

The press tends to cover homicide only at the disclosure of the case. Homicides that overlap as gross human rights violations receive a little more attention. Even then there is very little news about what the police does and/or about the outcome of the case in court. Death squad groups and vigilantes are one exception. We find more news about police intervention and about the outcome in court for this type of violation than for any other

group in the database for 86% of the cases there is some information about police or judicial action. Most of information concerns police investigations, but there is a surprising number of reports on the imprisonment, trial and sentencing of people accused of death squad activities.

Similarly to what was found about other aspects of the justiceiros and death squad groups news about how the criminal judicial system treats these case vary through the decade. While at the beginning of the decade there was more information concerning police investigating the death squads composed of Military Policemen, at the end of the decade most of the news report the imprisonment, trial and sentencing of justiceiros. Readers are left to guess the fate of the policemen but there is little doubt that justiceiros had some punishment.

The clippings from press leave the impression that killings committed by the death squad groups and justiceiros did not go completely unpunished. This impression is being confirmed by the analysis of the cases that were selected for reconstruction. Eight cases involving death squad and justiceiros were recovered from court archives and their analysis reveals some interesting aspects: these are the cases where there has been more action from the judicial system when compared to the other violations being studied as will be discussed. In three of the cases the accused were found to be guilty and were sentenced, in two cases they were found not guilty and in three cases the case was dropped because the accused was murdered.

The cases being reconstructed corroborate some of the data from the press: members of death squad and justiceiros tend to end up victims of the same violence they perpetrate, there is relatively more punishment despite the length of time that the investigations and trials take: the criminal cases have lasted on 4 years between the event and a decision by court. (table 4)

Table 4 - Cases, sentences and turn over of personnel

VIOLATION	TOTAL TIME	AREA	STATE OF THE PENAL PROCESS	NUMBER OF STATE AGENTS THAT ACTED ON THE PENAL PROCESS		
				POLICE CHIEF	PUBLIC PROSECUTORS	JUDGES
DEATH SQUAD VIGILANTE						
DS	3 YEARS, 3 MONTHS	Jd.Jacira-I.S.	Sentença final: absolvição	5	4	3
DS	2 YEARS, 2 MONTHS	Guarulhos	Sentença Intermediária: pronúncia (1*)	5	10	7
"	2 YEARS, 3 MONTHS	"	Sentença Intermediária: pronúncia (1*)			
"	1 YEAR, 5 MONTHS	"	Sentença Final: condenação			
DS	6 YEARS, 1 MONTH	It.Serra	Sentença final: condenação	3	3	2
DS	4 YEARS, 4 MONTHS	Z.Oeste	Processo Arquivado: extinção de punibilidade (morte)	2	5	4
DS	1 YEAR, 13 DAYS	Z.Sul	Sentença final: condenado	1	2	2
"	1 YEAR, 8 MONTHS	"	Processo Arquivado: extinção de punibilidade (morte)			
DS	3 YEARS, 4 MONTHS	Osasco	Inquérito Arquivado: extinção de punibilidade (morte)	2	2	2
DS	7 YEARS, 6 MONTHS	Guarulhos	Sentença Final: absolvido (por Acórdão)	1	6	3
DS (c)	6 YEARS, 13 DAYS	SBC	Sentença Final Condenação (por acórdão, réus 1,3 e 4)	6	9	17

The turn over of the personnel from the criminal judicial system in charge of the cases is very high: the number of police officers that were in charge of investigations at one time or another vary from 1 to 6; the number of public prosecutors that acted in one case vary from 2 to 10 and the number of judges from 2 to 17 (seventeen). Such turn over means that there was a high probability of loss of information due to frequent changes in the team, that there was little personal involvement with the task and little commitment with solving the case. All these make the outcome more surprising, in other cases there is a strong pattern of impunity as we will see with the lynchings.. The cases being reconstructed have one bias there are no cases of death squad composed of Military Policemen, typical of the beginning of the decade. Three cases undergoing analysis are of mixed groups, formed by ex-policemen and criminals and of justiceiros. One of the reasons for the bias was the lack of access to the archives of the Military courts. military policemen were (until recently) tried only by Military Courts irrespective of the nature of their offense. Such courts have been notoriously lenient with policemen accused of very severe crimes. Had we had access to the court proceedings of such cases maybe the pattern of impunity would have been stronger.

Lynchings

The database lists 370 cases of lynching where the victims were adults and 26 cases were the victims were underage throughout Brazil for the period 1980-1989. These lynchings victimized 519 adults. The state of São Paulo is where the majority of the cases occurred (50%). This is due in part to the fact that the national press used as source focuses more on São Paulo and Rio but the interesting fact is that Bahia is the second state in frequency of cases (21,1%) followed by Rio de Janeiro with 14%.

We will present in greater detail the profile of lynching in São Paulo. Most cases resulted in the death of the victim. Most of the cases also had one victim only but in 30% there were two or more victims including in some instances children. Victims tend to be male (99%), under 40 years of age (64%). There is little information concerning the occupation of the victims of lynching (79%, no information) what there is tells us that they are unskilled or semi-skilled workers (17%), 32% had a criminal record and there is no data for 68%. There is also little information (7,2%) concerning race or color of the victims: in 1,6% the victims were black, 1,6% white and in 3,6% were mulattos. The profile of the children and adolescent that were lynched in this period is slightly different from that of the adult in one respect 100% of them were described as “suspect” or “infrator” (deviant?), the majority (74%) were between 15 and 17 years old and 5% were between 10 and 14 years of age. The scenario, reasons, and the profile of the lynching group is the same for adult or adolescent victims.

Most lynchings were motivated by the attribution of some criminal offense to the lynched person. Most of the news clippings (97,3 %) provide information about the alleged offense, homicide is a leading cause of lynching (29%), followed by robbery (26%), assault (19%) and rape (18%).

Lynchings happen in public places: 54% in the street, 13% in state institutions such as the local police station, 12% in parks and squares. The lynching group is made up of “people passing by” (42%) neighbors of the victim (36%) and others 22%. Within this group taxi drivers represent ¼ of the others. This is the largest professional group. Their action is generally motivated by damaged inflicted on another driver.

It is very rare that human rights groups or organized groups of the civil society openly protest against after an episode involving lynching, even when the victims are children or adolescents. In fact the news clippings whenever they refer to a public manifestation it will be of approval. This is a common denominator between the victims of death squads, justiceiros and lynchings. Their deaths very rarely provoke public outrage. In the case of lynchings the family of the victims are also silent as if condoning the act. Most often after the lynching there is silence in the community: no one saw or heard anything, thus there is nothing to tell the police or the press.

The judicial system and lynchings

Police action in cases of lynching is dual. They may be called to stop the lynching and they will have to open an inquiry and investigate the case. In 42% of the lynchings in São Paulo the police was absent from the area. These are the cases that tend to result in the death of the lynched. The police was present and acted to avoid the death of the person in 48% of the cases and in 2% it helped the lynchers. It is possible that there are more cases in which the police is successful in containing people's anger that are not reported by the press.

The second moment is when the civil police- the judiciary police in Brazil, starts the investigations to identify those responsible for the homicide or for the grave bodily injuries. In terms of information about police action and about the courts. Comparing lynchings to other types of violations the clippings in the database have little information about what the police does and what happens at the courts, 65% of the case have no information about the police investigations or trials. When the information is available it is mostly about the police opening the investigations or recording the case-31%; inquiries were started in 28% of the cases and 3% resulted in indictment. Only 2,1% of the cases refer to prison of the aggressors. Finally, in 1,65 of the cases the police is described as having rescued the victim to hospital. From the clippings that compose our database it would seem that courts are absent from lynchings. This may be the result of the press selectivity or may express a reality.

The analysis of the cases selected for reconstruction points to an absence or a distance from the courts to the lynchings. We succeeded in retrieving from the courts archives 10 cases involving lynchings with a total of 57 accused and 17 fatal victims. The court documents have been exhaustively analyzed. What the police did (or did not do) what the public prosecutor did (or failed to do) and the outcome of the cases are analyzed elsewhere¹²

Table 5 provides an overall view of the cases, the duration of the process, the outcome and the turn over of personnel. The cases concluded took on average, 4 years and seven months to be processed, mostly without ever reaching trial. Only in one case were the accused tried and in this instance they were found guilty of grave bodily injury followed by death, not homicide and sentenced to 4 years of prison in an "open institution". Three cases were dismissed and the investigations "archived", two cases are not concluded one case is pending after 13 years, the other one after 12 years the accused are free waiting trial .

¹²Third report on the ongoing project: "Authoritarian Continuity and the Construction of Democracy".

Table 5- Cases, sentences and turn over of personnel

VIOLATION	TOTAL TIME	AREA	STATE OF THE PENAL PROCESS	NUMBER OF STATE AGENTS THAT ACTED ON THE PENAL PROCESS		
				POLICE CHIEF	PUBLIC PROSECUTORS	JUDGES
LYNCHING						
L (c)	7 YEARS, 5 MONTHS	Carapicuíba	Arquivado DISMISSED	4	13	5
L		Mauá	PENDING	1	7	6
L	7 YEARS, 2 MONTHS	It.Serra	Culpado lesão corporal seguida de morte	2	3	1
L	7 YEARS, 2 MONTHS	Lapa	Sentença Intermediária impronúncia	7	9	9
L	1 YEAR, 6 MONTHS	Jd.Miriam	Sentença intermediária Impronúncia	3	2	3
L	4 YEARS, 2 MONTHS	Pça.da Sé	Sentença Intermediária: impronúncia	5	9	10
L	1 YEAR, 7 MONTHS	Parelheiros	Inquérito Arquivado	2	15	11
L	9 YEARS, 7 MONTHS	Campinas	Sentença intermediária: pronúncia (4*)	7	10	10
L	11 MONTHS	Osasco	Inquérito Arquivado	6	5	2
L(c)	7 YEARS, 5 MONTHS	R.Pires	Sentença intermediária: impronúncia	3	7	14

Not only do the cases take many years but similarly to the death squads and justiceiros the turn over of personnel in charge of investigating or processing the cases is not negligible: police officers (delegados) in charge of investigations varied from 1 to 7, public prosecutors from 2 to 15, judges from 1 to 14. All this personnel passed through the cases, so to speak, without really processing them. It is important to stress that interviews carried out with police officers, public prosecutors within this research project revealed that they are fully aware that cases that take a long time to be processed will result in impunity and that a high turn over of personnel is damaging to the police inquiry, to the accusation and for the trial. Nevertheless there is no action from any of the professional groups involved to prevent delays, to develop better investigative procedures, or to protect the cases from the damming effects of personnel turn over. The result is that lynching along with rural violence the type of human rights violation least likely to be punished.

Table 6 sums up the outcome of the 35 cases of gross human rights violations being reconstructed in our ongoing research project.

Table 6 - Outcome of the criminal processes

Sentence	Guilty	Not-Guilty	Case dismissed	Waiting trial	Undecided /not indicted yet	Police investigation found to contain little evidence	Charges due to death of the accused	Statute of limitation charges dropped	Homicide charges reverse to grave bodily injury	Total
Type Violation										
OSA(1)		1								01
PV (9)	4	4	1			1		7		17
DS (8)	4	2		2			3			11
LYN (10)			3	1	1	4			1	10
R V(7)	1	3		1	2					07
Total (35)	9	10	4	4	3	5	3	7	1	46

Obs. The numbers in brackets refer to cases. The total number of sentences is greater than the numbers of cases because sometimes there is more than one accused per case.

This table shows that there is more punishment for the actions of death squads and justiceiros followed by violence committed by the police. But “more punishment” is relative to the impunity associated to other forms of violations. The police and in especial the civil police receive little punishment, as revealed by the number of cases against the police dropped because homicide charges were changed into grave bodily injury and since the statute of limitations allows less time to punish such offense policemen that killed while torturing a prisoner are not tried.

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