



Police inspect cells at Cianorte jail, Paraná State, after prisoners escape

The justice

of

Inefficiency of the police
and the courts destroys faith
in democratic institutions

impunity

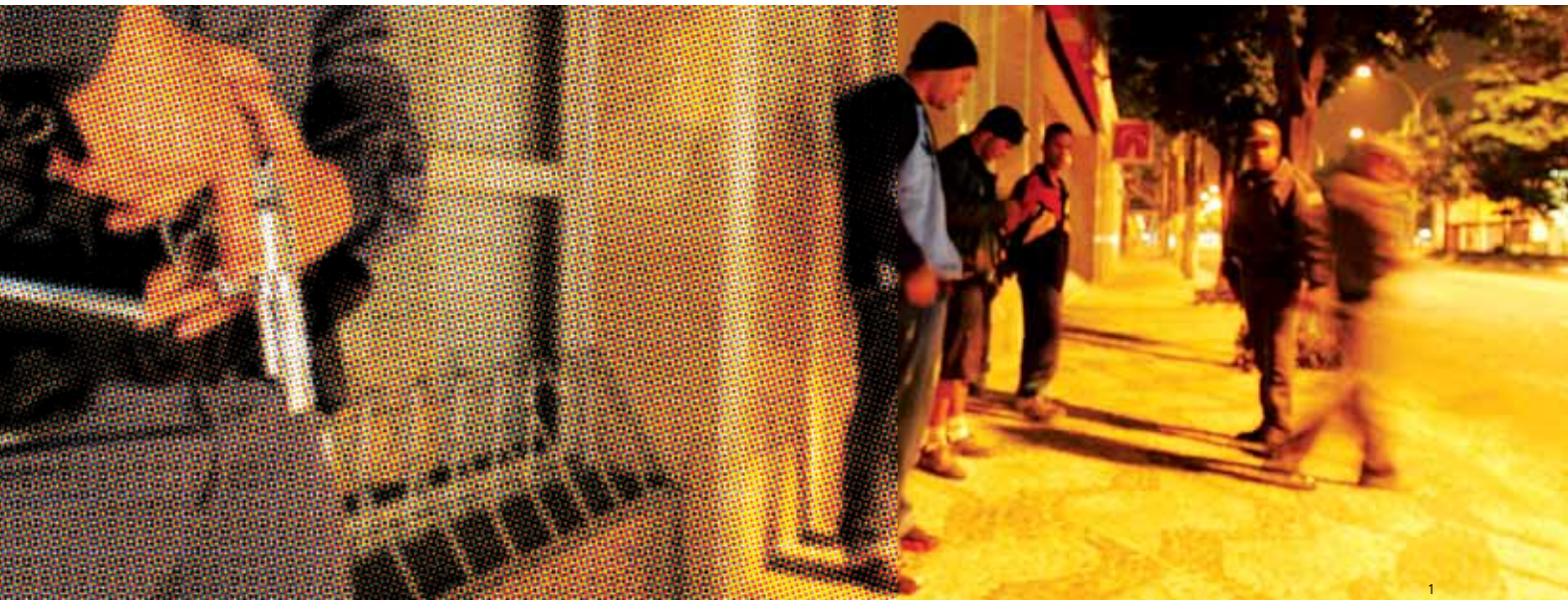
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A sentence from Cesare Beccaria's 1764 classic *On Crimes and Punishments* is remarkably fitting today: "The certainty of a chastisement, even if it be moderate, will always make a greater impression than the fear of a more terrible punishment that is united with the hope of impunity." Beccaria's foresight captures current trends. "There's a strong feeling in Brazil that irrespective of class, wealth, or power, crime has increased and grown more violent but that there is impunity. At times like this, people think the solution is to have stiffer laws and longer prison terms," says sociologist Sérgio Adorno, coordinator of the Center for the Study of Violence of the University of São Paulo (NEV-RIDC/USP), which is one of the 17 Research, Innovation, and Dissemination Centers funded by the São Paulo Research Foundation (FAPESP).

"The feeling that impunity exists feeds distrust in the democratic institutions that are entrusted with enforcing law and order and with protecting civil rights, as provided for under the constitution, especially the right to safety," says the researcher. What are the true dimensions of this impunity? With this question in mind, NEV-RIDC conducted the research study *Police investigations and the judicial process in São Paulo: the case of homicides*, which is an outgrowth of the project *Research on criminal impunity*. The aim of the study was to analyze the flow of homicide cases from police reports to sentencing. In addition to measuring criminal impunity, the study sought to identify the judicial and extrajudicial factors and the institutional mechanisms that favor the non-application of sentences for these crimes.

The basic numbers reveal the magnitude of this impunity: only 60.13% of reported homicides were investigated. Consequently, no police investigations were on file for approximately 40% of the reports. Although homicides rose 15.51%, the number of police investigations increased only 7.48%. "This means the gap between the potential for more violence and the ability of the police force to investigate these crimes has widened, and this may find expression in people's lack of confidence in the institutions entrusted with safeguarding the public order and enforcing law and order," the sociologist notes.



Military Police search and question young men at random on Rio Branco Avenue in central São Paulo in 2006

The most striking finding involves whether the suspect was known to the victim. Only 19.58% of reported homicides are committed by known suspects, whereas the vast majority – 76.65% – are committed by someone the victim does not know. Yet, 90.36% of the reported crimes that are actually investigated involve homicides committed by a known suspect. “In short, every report should generate an investigation, but there is a blatant selection bias centered on the 10% committed by a known suspect, that is, the crimes committed by a neighbor, a relative, a colleague from work, a drinking buddy, and so forth. If the perpetrator is caught in the act, this figure rises to 97.64%. Biased selection based on whether the suspect was known to the victim has grown entrenched as a criterion in police culture,” says Adorno. If, for example, there is the slightest suspicion that the crime is linked to drug trafficking, the chances that the crime will not be investigated increase even further. “The police claim that it’s very complicated to mess with this or that there’s a special group for such cases,” the researcher explains. Consequently, only a small percentage of homicides are investigated and, as we will see, almost none end in prison terms. It is only when the perpetrator has been caught in the act that the likelihood increases.

“The problem is that the arrest is made by the Military Police, but the Civil Police are responsible for the investigation. So we have some random arrest that will then be investigated by a different group. The system operates precariously and irrationally,” argues Adorno. The sociologist further observes that because police precincts have not adopted uniform investigation practices, this selection bias is even more arbitrary than might be suspected. “The study identified seven perfor-

mance groups, ranging from those displaying a low homicide rate and low production of investigations to those displaying high numbers of homicides and of investigations.” Police investigations are apparently not an institutional policy priority in the sphere of public safety.

“The police investigation model used in Brazil should not be confused with the model used elsewhere because here, we combine typical police force responsibilities with responsibilities handled by public prosecutors in other countries,” cautions sociologist Michel Misse, professor at the Department of Sociology of the Federal University of Rio de Janeiro (UFRJ) and author of *Inquérito policial no Brasil: uma pesquisa empírica* (Police investigation in Brazil: an empirical study) (2010). According to the sociologist, this makes the Brazilian investigation model an important instrument of power in the hands of the police and a document that tends to hold sway throughout the process of criminal charges. “Here we have the most reticent and problematic core of resistance to the modernization of the Brazilian justice system. This is why it has also become an irreplaceable part – the key that opens all the doors to the proceedings and decreases the workload for the other agents involved, that is, for the prosecutors and judges,” he says. In Misse’s opinion, the police investigation becomes a mechanism for selection bias by the police; the power to decide whether to open an investigation transforms this tool into a kind of “political merchandise.”

“If the police investigation model adopted in Brazil contributes to the system’s feeble ability to bring conflict and crime to a legal resolution, it is true that it also works to effectively preserve and reproduce an ‘archipelago system’ where proprietors of competing types of knowledge do not

see eye to eye,” in Misse’s evaluation. According to the researcher, the investigation wends its way about this archipelago, which ends up looking like a continent. However, there is no ultimate result, and the denouement is often that those who no longer believe in the justice of the state take it into their own hands.

In the opinion of sociologist Joana Domingues Vargas, professor at the University Research Institute of Rio de Janeiro (Iuperj) and author of the research study *Control and ceremony: the police investigation within a poorly regulated criminal justice system*, the current model only remains in place because the police cling to the old instruments of investigation and have a powerful lobby in Congress to ensure their continuation. “Proposals to simplify and modernize criminal investigations and similar matters have been making their way through the channels for more than 10 years, but to no avail. The rise in violent crime over the past 30 years has done further damage to the criminal justice system in terms of its efficacy,” Vargas observes. There are new brands of crime, a growing volume of police investigations, and ever greater delays in their processing, which only serves to discredit the system. “We can easily imagine how hard it is to transform or do away with the instruments that reproduce the social order in Brazil, one of whose central features is the disconnect between the state’s legal provisions and the actual practices as experienced by society. The result is general distrust of these practices.”

The anthropologist Luiz Eduardo Soares – former secretary of the Rio de Janeiro State Department of Safety (SESEG), professor of the Rio de Janeiro State University (UERJ), and author of *Violência política no Rio de Janeiro (Political violence in Rio de Janeiro)* (1996) – notes that Brazil ranks fifth in murder rates in Latin America, recording 50,000 per year. “However, of this total, only 8% are solved, even if they don’t reach the courtroom, while the other 92% go unpunished. Does this mean we’re a country of impunity? Yes and no. Because we have 540,000 people in jail, the third highest prison population in the world, and the fastest rate of incarceration on the planet,” Soares offers as an analysis. What accounts for this contradiction? “Over the past four years, more than 65% of those behind bars have been poor black youth who were unarmed, had no ties to criminal organizations, and were arrested in the act of buying or selling illegal substances,” explains the anthropologist, who is critical of this system that locks young people away without equipping them to return to life outside of prison.

According to Adorno, “in short, the biggest bottleneck to ensuring that someone accused of homicide will be prosecuted and judged pursuant to due process of law is found in the phase of

police work.” When we move to the second phase – the legal system – we encounter another bottleneck. “It’s virtually impossible to do research within the Brazilian justice system because we spend years searching for legal files without ever finding them, among other problems. However, in the files that we do locate, we find that only one-third of the perpetrators were sentenced for the crime of homicide, while the fate of the rest was either suspension of the case, acquittal, summary dismissal, or dismissal,” the sociologist reports. Contrary to what the specialized literature says, the process is equally prone to frank selection bias during the legal phase, although this phase is more restricted by the controls over criminal proceedings.

Once again, the fact that cases involving unknown suspects are most often not investigated is the prime factor behind impunity, and the lack of any progress in solving the cases that are investigated was the reason that 84.5% of these cases were shelved. Add to all this the sluggishness of the criminal system: it took an average of 25.8 months to definitively close the investigations that had been suspended. In cases in which charges were brought, the police work was completed in 4.3 months. The more time that is spent on the initial stage of police work, the less likely it is that there will be an investigation. “It’s notable that extrajudicial factors related to the biographical traits of the offenders or accused, like color, apparently don’t influence impunity rates. The profile of the defendant or the accused is quite similar among acquittals, summary dismissals, and suspended cases when we compare those who were only

The non-investigation of cases involving unknown suspects is the prime factor behind impunity

Detainee at the station house’s modular jail in the neighborhood of Novo Horizonte, municipality of Serra, Espírito Santo State, in 2006



charged with those who appeared before a jury. The reasons for this are not clear. Theoretically, this discovery implies that the prejudices and value judgments of actors in the legal system do not influence judicial rulings or sentences. However, our qualitative analysis often picked up prejudice and value judgments in the arguments used by both prosecution and defense,” notes Adorno.

“Technical evidence is always subject to error, and in most cases, everything is centered on evidence and oral testimony, although what predominates in documents is the law of silence. Furthermore, over the course of a case, which can go on for five years, many witnesses can no longer be located, which increases the production of inconsistent evidence,” the researcher states. We also do not find the predictability that is expected in properly functioning legal systems. “It’s very common to catch the defense and the prosecution using moral portraits of those involved – something of an extrajudicial nature – in an attempt to influence rulings and sentences. A reversal of the burden of truth is also common. Under Brazilian law, the state must prove the guilt of the accused by bringing together solid material evidence. However, the accused often bears the burden of proving his innocence, although he doesn’t have the same resources as the state.”

The sociologist believes it is difficult to know whether faith in public safety institutions has been shaken because, as he explains, faith in all institutions seems to have been lost. “This is why the central goal in public safety concerns should be to curtail impunity. This doesn’t imply punishing criminals more harshly, as people generally would like, but reinforcing the certainty that punishment will come. There’s no need for stiffer sentences or even a broader definition of heinous crimes. We have to increase the chances that someone who has committed a criminal act will be identified, arrested, prosecuted, and sentenced. Once he has been sentenced, he should really go to prison,” asserts sociologist Flavio Sapori of the Center for Studies and Research in Public Safety of the Pontifical Catholic University of Minas Gerais (Cepesp-PUC/MG) and author of *Segurança pública no Brasil: desafios e perspectivas* (Public safety in Brazil: challenges and outlook) (2007).

Sapori feels that impunity is the fundamental weak point in the Brazilian criminal justice system. “Targets of criminal action have broadened, as has the availability of firearms, but the system’s ability to prevent crime has not kept pace with these trends. If levels of impunity haven’t climbed, they’ve remained at the same high levels. I’m using impunity in the sense of a low degree of certainty that someone will be punished and not a belief that the punishment will be too lax,” Sapori observes. This is what spurs the continued calls

for stiffer sentences as well as the debate about lowering the age of criminal responsibility.

“Every society has to decide who its young people are – that is, whether someone who can legally drive should be sent to prison or not – but many misunderstandings have to be corrected before any decision is made,” says Adorno. One fallacy is that crime is on the rise among minors. “It’s actually falling. What has increased is the cruelty of the crimes committed by young people, which is something that needs to be investigated.” Another issue is the prison to which these teens would be sent. “Today, the criminal gang First Command of the Capital (PCC) is in control of Brazilian prisons as well as of the minutest aspects of prisoner behavior. Homosexual prisoners, for instance, are discriminated against. The more prisons the government builds, the more the PCC profits from the rooming houses, grocery stores, and commerce inside these institutions and nearby. You can’t simply throw someone in jail without wondering how he’ll leave the place a few years later – a ‘soldier’ trained by the PCC,” cautions the researcher.

Adorno feels that the nature of crime has changed but that the same solutions are persistently offered without taking into account that there is a new “crime economy” organized in the form of a network of collectives. The answer is not to be found simply in an obsessive thirst for punitive law and order and for more prisons. “Neither the legal system nor people are prepared for this type of crime. It’s no longer just a question of ar-

“The accused often bears the burden of proving his innocence, although he doesn’t have the same resources as the state,” says Adorno

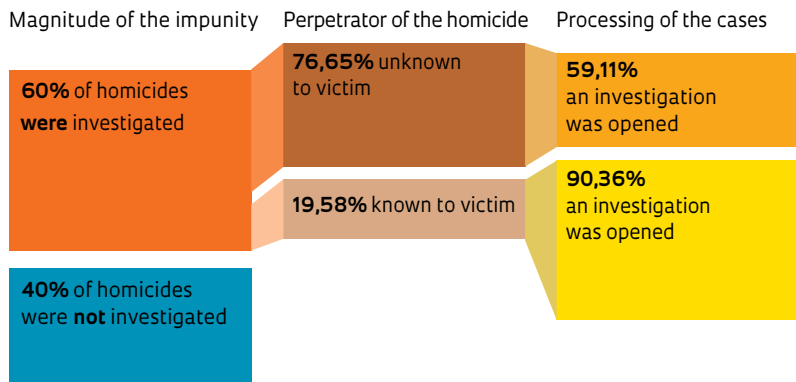
Staff member at work amidst piles of court documents in a records office at the São Paulo State Supreme Court



The numbers behind impunity

Survey pinpoints two bottlenecks responsible for the system's inefficacy: the police and the courts (1991-1997)

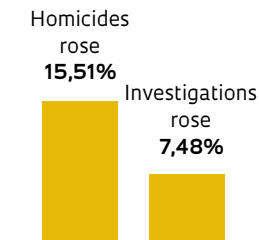
POLICE PHASE



JUSTICE PHASE

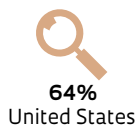
The lack of any progress in solving cases is responsible for the shelving of 84.5% of cases

CRIMES VS. INVESTIGATIONS



SOURCE NEV-CEPID/USP

RATES OF SOLVED CRIMES IN OTHER COUNTRIES (2002)



SOURCE NEV-CEPID/USP

bitrariness, which should of course be combated, but of what works in regard to keeping citizens safe and what doesn't," says the researcher.

The book *PCC: hegemonia nas prisões e monopólio da violência* (PCC: hegemony in prisons and monopoly over violence), released last month, was a byproduct of the doctorate of sociologist Camila Nunes Dias of the Federal University of ABC (UFABC). Dias, whose former advisor was Adorno, shows that this criminal gang controls 90% of the prisons in the state of São Paulo, which hold a total of 200,000 offenders. The PCC is now expanding nationwide, opening branches in the states of Mato Grosso, Mato Grosso do Sul, Paraná, Sergipe, and Pernambuco. An important point is that the PCC has grown in tandem with the increase in violence, prisons, and, above all, impunity. "There was a sharp drop in the state's homicide rate starting in the first decade of 2000; the trend began in 2001 and intensified in 2005, when the PCC expanded beyond prison walls to establish itself in the poor neighborhoods on the periphery and attain veritable hegemony outside the prison system," the researcher explains.

In Dias' opinion, an 80% plunge in the homicide rate cannot be accounted for solely by factors such as the expansion of the prison system or the increased presence of NGOs on the poor urban outskirts, factors that are often cited to explain the phenomenon. "When the PCC starts mediating and regulating disputes in the world of crime, especially on the drug market, the former anarchic process of revenge and violence comes under the control of the PCC," Dias notes. The PCC takes the role of the mediating agency that halts the cycles of revenge. The same thing allegedly happens inside prisons, where there are ever fewer riots – although this does not mean that living

conditions have improved but only that order is being maintained to avoid trouble with the state. This situation evinces the hegemony enjoyed by the PCC and is the reason one no longer hears about prison riots.

"The crime world proved capable of devising a mechanism that provides behavioral parameters and that defines agents and jurisdictions of oversight to judge and punish violations and violators – and these are seen as legitimate," Dias says. Of course, all of this comes in the name of power, business deals, and an ideology of opposition to the state. The PCC engaged in an effort to break the cycle of "kill-and-be-killed" logic that assailed poor outlying neighborhoods in the 1990s – that is, to end the chain of revenge battles behind most of the homicides. This is one of the most meaningful aspects of the sense of justice implicit in the debates promoted to solve interpersonal conflicts within the sphere of PCC power, and it has had a direct impact in reducing homicide rates in São Paulo.

It is obvious that the flip side of this social order, achieved through enforcement of the peace by the PCC, is the emergence of zones of exclusion, where one finds the "pariahs" that have been left with no place in the body forged through this entrenchment of power, as Dias notes. At the same time, no one knows how long or under what conditions this so-called peace will last because it lies wholly in the hands of criminals. "The perception that state agencies are ineffective in regard to promoting democracy because of criminal impunity has fostered the adoption of extremely violent individual solutions that help fuel a sensation of collective insecurity and allow for the emergence of a power that is able to control the conflicts, albeit in a spurious, authoritarian, and criminal fashion," says Adorno. ■