

## **POLICE OVERSIGHT IN BRAZIL**

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#### **Introduction**

All public agencies need social control to guarantee that their functions are carried out in a satisfactory fashion. In the case of the police, the depository of the state monopoly of legitimate violence, this need is all the more peremptory, since any deviation of conduct can bear dramatic consequences. Nevertheless, it is natural that the institutions resist this control to a certain extent, at least initially, feeling that it is interfering with their autonomy. In Brazil, the authoritarian history associated with the creation of police forces and relatively hermetic institutional cultures contribute towards this resistance.

Police control can be understood in two inter-dependent and complementary ways: control of the police as an institution and control of the conduct of individual agents.

A police force that is not submitted to society's control can pursue its own objectives, which do not always coincide with those of the citizens. In this sense there is a strategic polarity between autonomy and political control, which makes it necessary to find a point of equilibrium. On the one hand, all police institutions legitimately aspire to be free of political interference so that they can serve the interests of society rather than those of the government. Nonetheless, a scenario of an overly autonomous police force in which the government does not manage to control the police opens the doors for corporative interests over the common good. So the police should be unequivocally submitted to the control of the Executive but at the same time possess the capacity to resist pressures to act on behalf of the interests of the governing body. This paradox can only be solved through active participation of society whereby both government and police can be controlled at the same time. In Brazil, the traditional direct link between several Military Police forces and the governor, outside the structure of the Secretariat of Public Security, seems to be more aligned to the notion of 'government police' than to that of 'society's police'. This link has slowly grown weaker over time, but there are still Military Police forces in the country today that are not part of the structure of the Secretariat of Public Security.

In turn, control over the activity of police agents is indispensable in order to guarantee efficient policing and to prevent deviant behaviour. Given the discretionary nature of police functions, control of the daily work of policemen is a challenge for police

institutions all over the world, especially as a result of the growing tendency towards decentralization.

In Brazil the notion of controlling police activity is usually understood as the capacity to curb abuses committed by the police, either by preventing or repressing such deviations. However, the idea of control should not be limited to punishing irregularities but rather should include, among other elements, public awareness of the functioning of the police forces and the capacity to propose measures and influence decisions taken by the police corporations.

Control depends to a great extent on institutional transparency, because society cannot possibly control an organization that it does not know. Transparency is therefore a necessary condition for control. One may also consider it to be an almost sufficient condition, for it is difficult to imagine a corporation that is fully transparent and at the same time resistant to control. In Brazil, the tradition of secrecy, as well as negligence regarding information of criminal justice does not favour transparency. It is worth stressing the need to both give wide publicity to existing information and also produce more reliable data that allow for planning interventions and evaluating the impact of public-security policies.

Control is usually divided between internal, which is developed by the police corporation proper, and external, when it is exercised by any other agent. Parallel to this, control may be either formal or informal.

### **Internal Control**

Formal internal control is exercised in the first place by the line of command itself, with the limitations that arise from the discretionary characteristics mentioned above and the spatial dispersion with which the police carry out their work. The truth is that it is not easy for the command to have an exact notion of what goes on in police work on the streets, despite routine accountability mechanisms (reports, direct supervision by superiors, and so on).

Secondly, police institutions of a certain size have specific bodies to inspect police activity and handle misconduct. In Brazil, these internal-affairs bodies are called *Corregedorias*. They possess at the same time the mandate of correcting and improving police practices so as to render them more efficient, and on the other hand the mandate of

investigating and punishing irregular conduct. Investigation covers both the administrative and judicial spheres, whereas punishment is naturally restricted to the administrative area, the legal area being exclusive to the judiciary. Consequently, the *Corregedoria* has the double mandate of inspecting the quality of the work and at the same time playing the role that we could call “police of the police”.

In practice, the Brazilian *Corregedorias* can hardly cope with such a wide-sweeping mission. Their action tends to be reactive rather than proactive and is usually more centred on investigating and punishing abuses than on implementing quality control.

The human and material resources are not up to the size and difficulty of their obligations. Most policemen usually perceive the *Corregedorias* with fear, consider them to be ‘persecutory’ and complain that they do not offer wide opportunities for defence against the allegations. The policemen who work in them normally receive no special payment and also fear to return to normal routine work, where they might suffer reprisals on the part of colleagues or superiors who had been investigated by them. Accordingly, a complement to their wages and the guarantee of stability would be essential elements to overcome the current recruitment problems and to make sure that the best policemen opt to work in the *Corregedorias*.

The *Corregedorias* are often accused by society of being corporatist, given their incapacity to effectively deter police abuses. In fact, corporatism is not an element that is peculiar to the *Corregedorias* but rather to the whole police institution. It does have a positive side, as a way of strengthening professional identity, but its perverse effects appear when interpreted in the sense of loyalty in transgression, that is, as a tendency not to denounce colleagues who break the law. So there are policemen in good faith who still believe that the image of the corporation is tarnished not so much by those who do something irregular but rather by those who expose the irregularities to the public. The natural consequence of this attitude is to deepen society’s distrust of the police.

Indeed, informal internal control exercised by one’s own colleagues is essential to inhibit misconduct. A professional culture that is strict with respect to abuses is probably the most effective control on police activities that could exist. Nevertheless, this type of sub-culture coexists in Brazilian police forces with other professional sub-cultures that tolerate or even encourage irregular behaviours.

In general, the treatment granted by the systems of internal control in Brazil focuses almost exclusively on punishment for the policemen who commit crimes, rather than on prevention. As a matter of fact, there are social sectors that demand a wide-ranging and preventive approach to criminality in general, but they return to the merely punitive paradigm when it is a matter of police abuse. The truth is that in order to reduce the crimes committed by the police, as in any other type of crime, it is cheaper and more efficient to think in terms of prevention. Given the frequency with which cases of police misconduct appear in the country, one needs a systemic approach that re-considers the criteria for training, selecting and inspecting, as well as the professional culture. It is not enough to punish or expel those individuals proven to be deviants, considering them as 'rotten apples' that could 'contaminate' the whole.

### **External Control**

The Constitution accords the responsibility of formal external control of police activities to the Public Prosecutor's Office (MP). Prosecutors, however, do not really exercise this control on a daily basis, with rare exceptions, for a number of reasons. Among these is the fact that visiting police stations is not a habit, reluctance to becoming involved in police activities, and the lack of sufficient human resources. The control of the Public Prosecutor's Office is in general limited to the enquiries sent by the Civil Police. With regard to the Military Police, this control is virtually non-existent. There exists a certain paradox in relation to the MP's control of the work of the Civil Police, because, on the other hand, prosecutors are also required to collaborate effectively with police chiefs during criminal investigations in order to reduce the slow and unending flux of enquiries between both institutions before charges are finally pressed or the case abandoned. Of course, it is difficult to expect an ideal and impartial external control on the part of someone who works closely on a daily basis with the body that is being controlled. The consequences of this paradox have not revealed themselves in practice, because until today the MP does not usually fulfil either of these two functions: it neither exercises external control nor works side by side with the police, due to the traditional mistrust that exists between prosecutors and police chiefs.

On the other hand, just like any other public institution, police are submitted to the formal external control of the Legislative and the Judiciary. The control of the Legislative over the police is very feeble, except for some Parliamentary Enquiry Commission or public hearing in cases of public scandals. Budget control of police costs, for example, is quite uncommon. The Judiciary obviously represents an indispensable control in the extreme case of criminal offences. Nonetheless, several pieces of research show that police misconduct, such as abuses in the use of force, usually remain unpunished in the courts. It would be desirable to clarify to what extent this is the result of the poor clearance rates prevalent in the country or is rather the result of corporativism or lack of transparency in police institutions.

One particular type of formal external control is that exercised by a police corporation over the others, sometimes - oddly enough - due to the antagonism between them. There have been cases where the intervention of one police force managed to limit the abuses practiced by another. Civil Police, as a judiciary police, should investigate allegations against all citizens, including the members of police forces. However, the military jurisdiction for crimes committed by military policemen — with the exception of crimes against life — limits this possibility.

The traditional deficiencies of internal controls have led some states to create Police Ombudsman's Offices, bodies of external control that receive complaints, forward them to the *Corregedorias* for investigation, and follow them up. The Ombudsman's Office publishes reports periodically and has served as an element to mobilize the debate and arouse public awareness on the matter. Many of them are still in the preliminary stages of institutionalization and depend to a great degree on the person of the ombudsman. Furthermore, the Ombudsman's Offices are institutions relatively unknown to the general public, particularly in states where they have been recently created. Since they lack power of investigation, the final result of the complaints presented to them lies in the hands of the *Corregedorias*. Because of this, research carried out so far with the complainants at the Ombudsman's Offices shows that they are dissatisfied with the final outcome. The lack of both feedback to complainants and effective punishment for the alleged abuses are the two key elements behind this negative assessment. In fact, complainants assess the system as a whole and do not differentiate between the mandates of one or the other body.

The Public Security Community Councils are organizations situated between formal and informal control. Their function is precisely to represent the community in their dialogue with the state and the institutions of public security, so as to allow the latter to attend to society's priorities and concerns. In this sense they enable society to exercise a more propositional and participative control which is not limited to inhibiting abuses. Several Brazilian States have already created such councils, sometimes together with a new model of community policing. The results have varied a great deal. Excellent in some cases, problematic in others. Among the problems reported are a) the interference of party interests; b) the monopoly of certain social sectors, with more material or symbolic resources, in the work of the councils; c) the lack of participation of the very groups that have more conflictive relations with the police — such as low-income young people; d) the use of the Councils by some members as a political springboard in search of a candidacy; e) the predominance of council members who are always favourable to the positions of the police; f) attempts by some individuals to use their position as council members to obtain undue advantages; and g) use of the council by the police as a way of obtaining material resources from the community. In spite of the risks and occasional distortions, this is an extremely important mechanism of social participation.

Informal external control is more diffuse, albeit no less efficient. Among the different actors who perform this function, the press plays a key role. Up to the 60s, coverage of public security by the Brazilian press was limited to reporting the crimes committed, always according to the version of the police. There were even cases of journalists who were at the same time policemen. This specific, de-contextualized and biased approach to reporting began to change along with the re-democratization process of the 80's. Nonetheless, recent research shows that even today most of the press articles relate to concrete facts of violence, whereas pieces that are reflective, propositional or simply dedicated to the question in a more comprehensive manner, are still the minority. Excessive party politicization of the public security issues in Brazil has not contributed to a more impartial press coverage. Most of the Brazilian press organizations highlight the criminality in Rio de Janeiro and there is a tendency at times to treat *carioca* violence like a spectacle. On the other hand, recent attacks against journalists in slums have heightened the fear of entering these areas and in this way increased reliance on police sources.

Despite all these problems, the press plays an essential role in denouncing police misconduct. In cases where there is press attention, the chances of impunity are far smaller. Likewise, the demands of the press for more transparent information of criminal justice have unquestionably borne a positive effect.

Last but not least, there is a spontaneous control exercised by citizens individually in their contact with the police. However, in a society as unequal as Brazil, the capacity for effective control depends on the position of the individual in the social structure. The low-income population, in particular those who live in poor areas, is treated by the police in a way that is clearly different from the middle class, but they lack the mechanisms to redress this situation.

#### **An example of positive external control: the ‘Citizen Police’ prize in São Paulo.**

The Citizen Police prize was created by the “‘I Am for Peace’ Institute” in São Paulo, a non-governmental organization dedicated to themes of public security, disarmament and human rights. It is awarded each year to city policemen, individually or in groups of up to 5 agents, who have solved public-security problems in an efficient, creative and law-abiding manner. The prizes consist of US\$ 2,500 or a university scholarship. The committee of judges is made up of researchers, community leaders and policemen from other States. Some of the principles considered by the judges are involvement of the community in the solutions, preservation of the life of all those involved, and team work.

In this way, the Institute aims to identify and recognize good practices, as well as to promote their diffusion among police forces by showing the compatibility in practice between police efficiency and respect for human rights. Some of the interventions that have recently been awarded the prize bear the following titles: “Massacres in SP: investigation and zeal in combating impunity”, “Commitment to the community in rebuilding the self-esteem of the police”, “Planning and mobilization in the struggle against criminality”, and “Mediating and articulating in the peaceful settlement of conflicts”.

Publishing the results in the press represents an important symbolic recognition for the police agents. The prize therefore contributes to alter the perception of many policemen who believe that society only remembers the institution when it makes mistakes. In

particular, police agents realize that a human-rights institution, normally associated with criticism of the police, explicitly recognizes the value of their work.

At first, there was a certain resistance on the part of the command of the Military Police, who wanted to control nominations for the prize among their ranks. Later on, the institution embraced the initiative full-heartedly and began to invest the prize with an almost official status.

The prize represents an interesting initiative of police control for several reasons. First, it is a positive example of control, in other words, it encourages successful cases rather than punish deviations, as is usually the case. Second, it enables sectors of society to encourage the type of policing they desire: efficient, modern and respectful of the law and the community. As a result, the adoption of the prize by police authorities contributes to making a change in the police culture in this same direction. Third, the articulation between civil-society organizations and the command of police forces has shown that combining external and internal controls may be a promising path.