MILITARY JUSTICE IN THE STATE OF PERNAMBUCO AFTER THE BRAZILIAN MILITARY REGIME:

An Authoritarian Legacy*

Jorge Zaverucha
Universidade Federal de Pernambuco

Abstract: This article is based on research conducted in the archives of the Auditoria Militar do Estado de Pernambuco. It substantiates the violation of the basic principle of equality before the law resulting from the existence in Brazil of two different court systems—one civil and the other military—with varying legal proceedings and sentences for similar crimes committed by civilian police and military police. The article reviews how the authoritarian regime enlarged the scope of military jurisdiction, a situation little changed more than a decade after the authoritarian regime ended. The article also shows that the Justiça Militar do Estado de Pernambuco functions in a hybrid manner. It is an agency of the civil judicial branch, but most of the judges are military, while the lawyers are civilians and the trials are conducted by the Ministério Público. Thus the military police can influence the outcome of judgments without having to assume the burden of rendering decisions because the final responsibility rests with the civil judicial branch. Finally, the article highlights the incompatibility between the continuation of this kind of military justice and a democracy seeking consolidation.

Man's capacity for justice
makes democracy possible;
man's capacity for injustice
makes democracy necessary.

Reinhold Niebuhr

Countries can be divided into four categories according to their varying degrees of military jurisdiction over civil society. In the first category are countries in which the military courts have jurisdiction during wartime only (Austria, Denmark, Finland, Germany, Norway, and Switzerland). The second group is made up of countries in which military courts have jurisdiction in wartime and peacetime, although military trial

* The article was translated from Portuguese by Sharon Kellum. I would like to acknowledge the helpful comments made by two anonymous *LARR* referees.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

of civilians is forbidden (England and the United States).[1] The third category is made up of countries that permit civilians to be tried by military courts but only if civilians have committed crimes against the external security of the country or the armed forces (France, Italy, Argentina, and Uruguay), or during a state of siege (Colombia), or in cases of terrorism (Peru). In the fourth category are countries that adopt a broader military jurisdiction over civilians in peacetime (Spain under Francisco Franco, Chile under Augusto Pinochet, the Philippines under Ferdinand Marcos's military law from 1974 to 1981, and Brazil under the Constitution of 1988).

Now that Franco and Marcos are dead and Pinochet is no longer governing Chile, Brazil is perhaps the lone example among democracies of a country in which the military penal codes determine that civilians should be tried by military courts, the same if they have committed an ordinary crime or if the accused are soldiers who used a military weapon to rob a supermarket. According to a Chilean commission created in 1990 by former President Patricio Aylwin, one factor that facilitated disregard for human rights during the Pinochet regime was a military penal code that violated basic human rights in several of its articles.[2] In contrast to the Pinochet regime begun in 1973, a state of war was never formally declared in Brazil. While Chileans were tried by councils of war, Brazilians were tried by military courts according to military codes in peacetime.[3]

Democratic countries tend to abolish military courts in peacetime or to restrict the scope of military jurisdiction as much as possible. Alfred Stepan has suggested that in countries that managed to reduce military jurisdiction before the emergence of authoritarian governments and where civilians are not subject to judgments in military courts, democratic consolidation advanced.[4]

The idea has been put forth that military jurisdiction is a social construct, and therefore it is necessary to make sure that military jurisdiction

1. In the United States, military law functions as a system of jurisprudence independent of the civil judiciary. See Edward S. Sherman, "The Civilianization of Military Law," *Maine Law Review* 22 (1970):3.

2. *Informe de la Comisión Nacional de Verdad y Reconciliación* (Santiago: n.p., 1991), 837.

3. International Commission of Jurists, *Chile, a Time of Reckoning: Human Rights and the Judiciary* (Geneva: Center for the Independence of Judges and Lawyers, 1992), 55.

4. Alfred Stepan, *Rethinking Military Politics: Brazil and the Southern Cone* (Princeton, N.J.: Princeton University Press, 1988), 97. While the concept of transition to democracy is reasonably easy to define and operationalize, the same is not true of democratic consolidation. Ben Ross Schneider has suggested disaggregating the concept of democratic government, thus leaving aside discussion of whether the political system as a whole is consolidated. The emphasis is placed instead on how different components of a democracy function, and in the case of civil-military relations, on how military justice affects the exercise of citizenship. See Schneider, "Democratic Consolidations: Some Broad Comparisons and Sweeping Arguments," *LARR* 30, no. 2 (1995):220–21.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

is socially applied and controlled. The military judiciary will be able to override democratic legitimacy only if conflicts of interest are declared null and void by means of rules, proceedings, and jurisdictions that are accepted by the society. Unfortunately, this is not the case with Brazilian military justice. Even the Código Penal Militar (CPM) and the Código de Processamento Penal Militar (CPPM), basic laws used in constructing military penal arguments set forth at the height of the military regime, continue intact.

PENAL LEGISLATION AND THE MILITARY PENAL PROCESS IN BRAZIL

The first military code was set forth in 1891 and went into effect in 1899, via Lei Número 617 of 29 September 1899. It was called the Código Penal da Armada. The Constitution of 1934 institutionalized via Article 63 the judges and military courts and agencies of the judicial branch, cancelling their administrative character up to that time. On 24 January 1944, under the dictatorship of Getúlio Vargas, the new Código Penal Militar (CPM) was promulgated.

Armed forces, military police, and military justice are all institutions associated with public safety. They help reveal the sociopolitical nature of a country. As is common practice in authoritarian regimes, with the advent of the Brazilian military regime in 1964, the specter of military legislation grew significantly. Its purposes were threefold: to protect the members of the repressive forces by making it difficult to try military personnel on active duty or even obstructing civil courts from doing so; to make it possible for civilians to be tried by military courts for committing civil or political crimes, thus increasing via intimidation the opposition's costs of engaging in a collective act of defiance;[5] and to legitimate state-sponsored violence in the eyes of citizens, thus inducing them to accept the norms of the established order.[6]

On 27 October 1965, Ato Institucional Número 2 (AI-2) redefined the scope of military justice established in the Constitution of 1946. Article 8 of the AI-2 strengthened Paragraph 1 of Article 108 of the Constitution of 1946 by means of the following revision:

> Paragraph 1: This special forum can be extended to civilians in the case law for the repression of crimes anticipated in Law 1,802 of 5 January 1953.

5. See Charles Tilly, *From Mobilization to Revolution* (Reading, Mass: Addison-Wesley, 1978), 100.

6. See Anthony Pereira, "Persecution and Farce: The Origins of Brazil's Political Trials, 1964–1979," *LARR* 33, no. 1:215–34.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

Paragraph 2: The jurisdiction of military justice in the crimes referred to in the preceding paragraph, with the penalties attributed to the same, will prevail over any other penalty specified in civil laws, even though such crimes have the same definition in these laws.

Paragraph 3: It is incumbent upon the Superior Tribunal Militar to try and to judge governors of states and their ministers in crimes referred to in the first paragraph and incumbent upon the Conselhos de Justiça in all other cases.

Thus civilians came to be tried more readily by military courts. The jurisdiction of military justice and its sentences prevailed in new crimes over civil justice and ordinary laws, and the courts designated to try governors and their ministers ended up being the military courts. The Constitution of 1967 and Emenda Constitucional Número 1 of 17 October 1969 (the Constitution of 1969) incorporated into the legal document the principles adopted by the Atos Institucionais. What had been an act of exception was thus transformed into a constitutional clause. The Constitution of 1967 defined the jurisdiction of military justice in this way:

Article 122: Military justice must try and judge, in the military crimes defined by law, military personnel and similar persons.

Paragraph 1: This special forum can be extended to civilians in the explicit cases of law for the repression of crimes against national security or military institutions, with ordinary appeal to the Supremo Tribunal Federal.

Paragraph 2: It is incumbent upon the Superior Tribunal Militar to try and to judge state governors and their ministers in crimes referred to in Paragraph 1.

Paragraph 3: The law will regulate the application of the penalties of military legislation in wartime.

Article 129 of the Constitution of 1969 repeated Article 122 of the Constitution of 1967 but with two important exceptions. First, in Paragraph 1, the possibility of appealing to the Supremo Tribunal Federal disappeared. Second, the expression "in wartime" disappeared from Paragraph 3, meaning that the law will regulate the application of the penalties of military legislation in wartime or in peacetime. The Constitution of 1969 consequently reflected the climate of growing authoritarianism in Brazil in that civilians' appeal to civil jurisdiction was foreclosed, and the law would regulate the penalties of military legislation not only in war but also in peacetime.

It should be remembered that the military regime was increasingly committed to fortifying the role of the military police as part of the repressive apparatus. In Minas Gerais, for example, the military regime created the Escola de Contraguerrilha de Imbiraçu (ECGI). Its purpose was to

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

teach military police techniques of interrogation, assessment, and interpretation of subversive propaganda as well as how to fight and survive in the jungle.[7] In legal terms, Decreto Lei Número 667 of 2 July 1969 stipulated in Article 3 that it was the duty of the military police "to execute exclusively, except for missions peculiar to the Armed Forces, the day-to-day policing, as planned and outfitted by the qualified authorities, for assuring fulfillment of the law, maintenance of public order, and exercise of the constituted powers." This same decree created the Inspetoria Geral das Polícias Militares, an agency linked to the Ministério do Exército and responsible for control of the military police up to this day.

To complement the Constitution of 1969, the Junta Militar (which governed Brazil due to the disability of General-President Artur da Costa e Silva) issued three decrees. Decretos-Leis Números 1,001, 1,002, and 1,003, all dated 21 October 1969, regulated respectively the Código Penal Militar (CPM), the Código de Processo Penal Militar (CPPM), and the Lei de Organização Judiciária Militar. These legal documents, written at the height of the political repression, remain valid today. Yet laws that serve the interests of not only an authoritarian regime but a supposedly democratic order are laws incapable of normalizing or regularizing major political transformations.

The authoritarian regime had a clear interest in militarizing the laws of the country. After all, the law makes up part of the ideological structure of any government, whether democratic or authoritarian. Therefore the law will always accompany the exercise of violence and physical repression. That is to say, there is an ideology that legitimates such violence. In the case of democracy, it would be dominance with the consent of the subordinated. In authoritarianism, the domination takes place without such consent, resulting from the systematic use of political repression.

The Minister of Justice, Luiz Antônio da Gama e Filho, in expounding the reasons for the new Código de Processo Penal Militar, disclosed that he was attempting to make military personnel more immune from civil regulation.

> The Projeto sought to create a codification that would embrace all matters relative to military penal procedure, without those implementing it having, except in very special and unforeseeable cases, to fall back on civil penal legislation, as often happens because of omissions in the Código da Justiça Militar currently in effect.
>
> It also had the purpose of translating into positive precepts the military tradition and its practices and customs, protecting the principles of rank and dis-

7. According to Antonio Cassemiro da Silva, an alumnus of the ECGI and Chief of the Polícia Militar de Minas Gerais, several former colleagues participated in the fight against the guerrilla forces of Araguaia, alongside the army forces. See Joaquim de Carvalho, "O diário de um contra," *Veja*, 16 Dec. 1992.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

cipline that rule the Armed Forces. Thus from the military police investigation and criminal training to the verdict, those principles are meticulously prescribed.[8]

The Constitution of 1988, which was undebatably democratic in origin, thus ended up changing things for the worse with Article 124: "Military justice is to try and to judge the military crimes defined by law. Sole paragraph. The law will provide for the organization, the functioning, and the jurisdiction of military justice."

Instead of military justice taking on the role of trying mainly military personnel who have committed strictly military crimes and limiting to the maximum the trying of civilians, Article 124 stipulated that military justice was to try military crimes defined in civil law. But because the law was not turned into regulations, despite the constitutional revision of 1993,[9] the legal document that defines what is a military crime continues to be the Código Penal Militar of 1969.

This innovation would have been useful only if it had been accompanied by a civil law that restricted to the maximum the definition of military crimes and had accepted only under very special circumstances the trying of civilians by military courts. Or the change could even have precluded this practice and stipulated that active-duty personnel could be tried by civil courts. As it was, the Federal Constitution of 1988, hailed as the legal landmark of a new political era, did not democratize the principles that had oriented military justice during the authoritarian regime.

But what turns out to be a military crime? Democratic countries tend to consider as military crime during peacetime only crimes that military personnel can commit because of their military enlistment. Examples would be nonfulfillment of military duty (as in falling asleep on watch), desertion, abandoning one's post, cowardice, mutiny, insubordination toward military authority, and espionage—in addition to crimes already defined in wartime. In the United States, ordinary crimes like robbery, rape, and murder committed on a military base are tried by military courts. But if a soldier commits the same type of crime outside a military area, the soldier is subject to being tried by a civil court for such crimes and by a military court for misconduct. That is to say, there is a concern in the United States about circumscribing the jurisdiction of military justice.

In Brazil the definition of military crime is still disproportionately broad, given the fact that the original article was passed to protect the members of the military who participated in the political repression and to intimidate civilians. This point is evident in the revision of Article 9 of the Código Penal Militar.

8. Luiz Cláudio Alves, *Manual de Legislação Penal Militar* (Rio de Janeiro: Destaque, 1994), 147–48.

9. The Constitution of 1988 was conceived of more as a normative law than as a long-term

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

The following are considered military crimes in peacetime:

I. Crimes that are covered in this code when they are defined in a different way in civil penal law, or those anticipated in it, regardless of who commits them, except for special disposition;

II. Crimes outlined in this code, even though they may have the same definition in civil penal law, when they are committed

a) by military personnel on active duty or similar status against military personnel in the same or a similar situation;

b) by military personnel on active duty or similar status in a place subject to military administration, against reserve military personnel, retired military or someone similar, or against a civilian;

c) by military personnel on duty, on a commission of a military nature, or in formation, even outside the place subject to military administration, or against reserve military personnel, retired or similar status, or against a civilian;

d) by military personnel during maneuvers or exercises against reserve military personnel, retired or similar status, or against a civilian;

e) by military personnel on active duty or similar duty against assets under military administration or military administrative order;

f) by military personnel on active duty or similar duty who, although not being in the service, uses arms belonging to the military or any war materiel under military guard, supervision, or administration to commit an illegal act;

III. Crimes committed by reserve military personnel, by retired military personnel, or by civilians against military institutions, considered as such not only those included in category I but those in category II as well as in the following cases:

a) crimes against assets under military administration or contrary to military administrative order;

b) in a place subject to military administration, against military personnel on duty or assembled, or against an official of a military ministry or military justice, in the exercise of a function inherent to the accused's office;

c) against military personnel in formation or during a period of readiness, alert, observation, exploration, exercise, encampment, billet, or maneuvers;

d) even if outside of the place subject to military administration, against military personnel engaging in a function that is military in nature, whether in discharging sentry duty or guaranteeing and preserving public order or administrative or judicial order, when legally requisitioned for that purpose or in obedience to higher legal command.

In other words, practically any type of crime committed by military personnel is considered military. Thus *military crime* and *crime committed by military personnel* became identical. It matters not whether the perpetrator is on active duty or out of the service. Committing an illegal act while using a military weapon is enough to fit the definition of military crime. This approach helped make the jurisdictional competence of Justiça Militar Brasileira broad indeed.

political project. This conception is evidenced in Article 3 of the Disposições Constitucionais Transitórias, which calls for revision of this constitution five years after its promulgation.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

PENAL LEGISLATION AND THE MILITARY PENAL PROCESS IN THE STATE OF PERNAMBUCO

The Brazilian police system presents a hierarchy quite different from those found in other countries. The Brazilian state has four police forces with civil authority. Two are uniformed: the Rodoviária (highway police) and the Ferroviária (railway police). The other two are plainclothes forces: the federal police and the civil police. A civil police force operates in each state, and its function is investigative, meaning that it acts after the crime has been committed. There is also a police force at the state level that is military in nature: the state military police.[10]

In contrast to the French gendarmes or the Italian carabinieri, the Brazilian military police do not perform the role of policing federal military personnel. This function belongs to the police forces of each federal military branch: the army police, the navy police, and the air force police—the combined equivalent of the military police in the United States. These police forces, including the state military police, are ruled by the same military penal codes and by similar disciplinary codes. The duty of these police forces, including the state military police, is to conduct day-to-day policing and to preserve public order. Before the military coup of 1964, the military police forces were quartered in the large urban centers and did not patrol the streets. With the advent of the military regime, however, they came out of their quarters and began to conduct activities previously limited to the civilian police, such as traffic control.

The Constitution of 1988, rather than trying to help the civilian police recover their status prior to the coup, conceded to the civilian police merely the functions of judicial policing and responsibility for investigating penal infractions, except for military infractions. The power acquired by the military police forces due to the authoritarian regime—daily policing and maintaining public order—represented a considerable broadening of their functions. While under the military regime, the military police had the role of carrying out day-to-day policing, but starting in 1988, the military police came to be the actual police, one of whose activities is everyday policing.[11]

In Brazil there are federal military personnel (the members of the armed forces) and state military personnel (the members of the military police and Corpos de Bombeiros, or military firemen). Generally speaking, when a coup d'état occurs, it is common for the armed forces to take control of the police. For this very reason, when a transition is made from au-

10. Access to the state archives, which contain the records of past trials, is difficult. I managed to do this research by taking advantage of contacts developed with progressive policemen during political science courses that I taught in the Cursos Superior de Oficiais e de Aperfeiçoamento de Oficiais da Polícia Militar de Pernambuco. Because military jurisdiction is virtually identical in all Brazilian states, the data collected in Pernambuco largely reflect the situation of the other state military Auditorias.

11. See Jorge César de Assis, *Justiça Militar Estadual* (Curitiba: Juruá, 1992), 24.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

thoritarianism back to democracy, the forces of internal and external order are usually separated. In general, the armed forces are tied to the defense department while the police are placed under the interior or justice department.

The Constitution of 1988 took a different direction from other countries. For the first time in the history of the Brazilian Republic, state military personnel were officially considered to be *servidores militares* (military public servants), according to Article 42. This status guaranteed that the state military forces would continue to be subject to the same military penal codes and similar disciplinary codes that govern the federal military forces. The army continued to control the military police and the military firemen, guaranteeing army interference in domestic matters. In accordance with Article 22, Clause XXI, the Union (meaning the army) is responsible for general rules of organization, manpower, ordinance, legal guarantees, and mustering and mobilization of the military police. The only difference in regard to the military regime is that the army lost control over the education of military police forces.

The state governors were awarded the right to name the commanders general of the military police forces. Nevertheless, according to Decreto Número 88,777 of 30 September 1993, Article 7, the governors need the authorization of the Estado Maior do Exército to build new quarters. This provision remains in effect. As a result, the military police forces are tied to the plans of the army department of Defesa Interna e Territorial. Thus in cases of subversion or disruption of order, the military police forces come under the control of the Regiões Militares do Estado. The governor's opinion matters little, despite the fact that the state continues to pay the salary of the military police.

Paralleling the federal and state military personnel in Brazil are the institutions of federal military justice and state military justice. In states with military police forces exceeding twenty thousand, there are Auditorias and Tribunais de Justiça Militar (in the states of São Paulo, Minas Gerais, and Rio Grande do Sul). The Tribunais de Justiça Militar represent the higher court of military justice. Because the military police of Pernambuco total less than twenty thousand, only the Auditoria Militar operates in that state. Appeals to a higher court are handled by the Tribunais de Justiça Comum.

A significant detail should be mentioned: the state military Auditorias and the state military courts are agencies not of the military police but of the judicial branch. This situation gives the Brazilian judicial system an unusual hybrid character, also creating a rather comfortable situation for the military. The majority of judges are military, whether in the Auditorias Militares Estaduais (four military judges to one civilian judge) or in the Tribunais Militares Estaduais (four military judges to three civilian judges). But civilians serve in several capacities: as the robed Juízes Auditores; as

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

the public prosecutors who have the power in the Auditoria to try cases and appeal them; as the lawyers, who are members of the Ordem de Advogados do Brasil (the Brazilian bar association); and as the appeals court judges who make up the civil Tribunais de Justiça. Thus, for example, if a charge against a torturer is rejected by the state Juiz Auditor Militar, the burden of responsibility falls on the court and not on the military police, despite the possibility of the military police influencing the judge. In sum, all decisions made by military justice are the responsibility of the civil judiciary.

Even though federal and state military personnel are considered military servants, the Constitution of 1988 granted separate jurisdictions for federal and state courts in trying civilians. While civilians continue to be tried by federal military courts for civil or political crimes, the same does not occur in the state courts (Article 125, Paragraph 4). Thus in Pernambuco until 24 April 1993,[12] civilians were being tried by the Auditoria Militar Estadual in Recife, in clear violation of the basic legal document.

Let us consider some examples taken from the records of the Auditoria Militar in Pernambuco:

On 29 June 1989, Carlos Braga de Souza was admonished in a bar in the municipality of Palmeirinha by military policemen José Henrique da Silva and Antonio Tenório Cavalcanti to stop tossing drinks on those present. The accused defied the soldiers and was arrested according to Article 299 of the Código Penal Militar.

On 7 October 1989, in the intersection of Avenida Conselheiro Aguiar with Ribeiro de Brito, Brivaldo Markman was not behaving as he should have in traffic, honking the horn of his car repeatedly. Military policewoman Grécia Maria Tobiares asked for restraint because the signal was broken. She was threatened and verbally insulted. The accused was therefore arrested according to the articles in the Código Penal Militar, 223 (threatening) and 299 (minor offense).

On 10 February 1990, Antonio Carlos Pimentel da Paz Portela and Neidson Lima Ramalho got into a fight. Military policeman Ricardo José de Freitas and Military Police Third Sargent Paulo Roberto Pires da Silva tried to restrain them. The civilians reacted by throwing a paving block at the Agrale vehicle of the military police. The defendants were arrested according to the following articles of the Código Penal Militar: 209 (minor offense), 301 (disobedience), and 259 (minor damage).

On 14 March 1990, a vehicle of the Corpo de Bombeiros was traveling with its sirens and headlights on to put out a fire. All the vehicles in front of it stopped in the manner required by the Código Nacional de Trânsito. On reaching Bongi Street, the vehicle was hit violently by a light truck with the license plate BW-2615, belonging to the Companhia de Eletricidade de Pernambuco (Celpe) and driven by Sebastião Viriato de Lima. The collision resulted in the death of two persons riding in the Celpe truck and severe damage to the CB vehicle. The Celpe driver

12. Data from the *Diário do Poder Judiciário de Pernambuco*, pp. 8–11. For the first time since 1988, the Juiz Auditor da Justiça Militar do Estado de Pernambuco decided that the Auditória lacked jurisdiction and sent to civil courts trials in which civilians are accused of having committed crimes against military police.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

was accused of having committed a military crime because of having damaged a military vehicle.

On 15 December 1992, Severino Bezerra da Silva failed to obey an order to halt by a military authority. He was arrested according to Artigo 301 of the Código Penal Militar (disobedience).

Legally protected military property and the interests of the military institution, federal as well as state, are not differentiated in the military penal codes. Therefore because the legal proceedings are the same in the Código de Processo Penal Militar, it becomes difficult to understand legally why only the state military court is prohibited from trying civilians. The explanation is political: the armed forces agreed to the prohibition against civilians being tried in state military courts because federal military justice retains the right to try civilians.

Thus a democratic advance was made in the sense of preventing civilians from being tried by state military courts. But because the lawmakers writing the new constitution approved of civilians continuing to be tried by federal military courts, situations began to arise that are judicially incompatible with the legitimacy of a democratic government. For example, in a strike where a demonstrator was beaten by civil or federal police, it would be the jurisdiction of civil justice to deal with the unlawful act. If those doing the beating were military or army police, it would fall to state and federal military justice to try these policemen. In the case of a civilian demonstrator who had simultaneously thrown rocks at four policemen, it would fall to civil justice to try the attacker of civil, federal, and military police but to federal military justice to try the attacker of the army policeman. We would have different penalties imposed by different courts for the same illegal act, damaging one of the foundations of the lawful state that requires equal treatment of individuals under the rule of law.

Given the broad definition of what becomes a military crime in peacetime, the jurisdiction of Brazilian military justice expands to such proportions that even though by law military justice is specialized justice, in certain circumstances it functions like a court of exception. Hence its legitimacy is being questioned constantly for having made the terms *privileged forum* and *specialized justice* synonymous.

All the following cases would fall under the jurisdiction of military justice:[13] if a military policeman commits an assault using a military

13. In reality, duplication of inquiries can occur, as happened in the case involving military policemen João Pereira Florêncio da Silva and Raimundo João de Andrade Neto. On 23 March 1991, the accused pair beat Waldemar Gregório de Souza in the city of Granito. The police inquiry was launched on 26 March 1991 and the IPM on 25 July 1991. The two trials proceeded in parallel fashion under civil and military justice. Only when both the accused began to be tried by the Auditoria Militar did their lawyer find out about the duplication in judgment. Because the trial in the civil court came to a close first, the Auditoria Militar decided to suspend its trial. This information was provided by Nilton Cunha Júnior.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

weapon;[14] if an off-duty policeman kills his wife using a military weapon or ammunition;[15] if a military policeman rapes an adult or a minor;[16] if a military fireman damages a military vehicle;[17] if a military policeman hits and kills a passerby while driving a military vehicle;[18] if a military policeman gets drunk and kills someone with a military weapon;[19] if a policeman injures anyone[20] or torture anyone.[21]

14. On 5 May 1990, discharged military policeman Edgeldo Soares de Albuquerque was caught red-handed and charged with using a military weapon to commit an assault. The crime was considered military because of the use of a military weapon.

15. On 25 August 1990, military policeman Severino Manoel de Lira shot and killed his wife. Even though he was out of the service, the crime was considered military because it was committed with a service revolver.

16. On 18 July 1990, military policeman Enaldo Gomes da Mota raped a fourteen-year-old minor, Andreia Pereira de Andrade. Although he was out of the service, the rape was considered a military crime. If a military policeman uses his service revolver or even the belt from his uniform to compel a woman have sex with him, that is enough to cause the rape to be considered a military crime.

17. On 9 April 1989, military fireman Ednelso Rogério Mendonça was driving a fire boat while drunk. He crashed it into the dock and killed fireman Aristóbulo de Souza Palmeira, who was in the prow. In this unique case, a fireman was considered a military public servant and the crime was considered military because the boat was considered to be a "military vehicle."

18. On 22 December 1987, military policeman Carlos Ubiraci Barbosa de Gusmão was on duty when he drove into the intersection of Entroncamento and Avenida Rosa e Silva at high speed. He lost control of the military vehicle and collided with a car, crushing a passenger riding in it. This death due to a traffic accident was considered a military crime, in this case, manslaughter.

19. On 17 February 1987, military policeman João Batista Barbosa de Farias arrived drunk at a bar and began to provoke others. Invited by Raimundo Lacerda da Silva to have a drink at his table, he replied, "I don't drink with fags." But he sat down at Silva's table and had a drink. Afterward, he decided to arrest Silva and take him to the military police platoon of Araripina. On asking Raimundo to take his bicycle, the accused warned him by pointing his revolver: "Take it, but don't run, or else I'll shoot you in the back." Near the platoon, he unexpectedly fired a shot into the victim's neck and killed him. Even though the military policeman was off duty, the crime was considered military because the weapon was a service revolver. In a similar case, on 7 May 1984, military police sergeant Severino Nascimento Cruz was drinking in a bar in Olinda when he twice called the waitress a prostitute. He was admonished by military policeman Nelson Manoel Siqueira, who urged him to apologize for his gross behavior. Just then, the owner of the lunch counter arrived and wanted to know what was happening. He was made acquainted with the facts by the soldier, which displeased the sergeant and led to an argument. The sergeant punched the soldier, who reacted by firing two shots. Although both soldiers were off duty, the crime was considered military because it involved a service revolver.

20. On 17 September 1981, military police Lt. Col. Gerson de Azevedo Viana entered an annex of the Clínica Traumatológica do Centro Hospitalar of the military police, where a staff meeting of doctors was taking place. After making offensive remarks to those present, the officer ended up physically attacking clinic doctor Romeu Krause Gonçalves, alleging delay in attending Viana's daughter. Although he was off duty, the crime was considered military.

21. Early on 5 March 1995, Cícero Roberto Henrique de Vasconcelos and Juarez Freire de Andrade were arrested on the charge of having killed a military policeman. They were taken

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

Similarly, if a military policeman is serving along with a civil policeman and both of them rape a young woman, the two will be punished differently. The civilian policeman is subject to Legislação Penal de Crimes Hediondos (Lei Número 8,930 of 6 September 1994). According to this law, he could be condemned to nine to fifteen years in prison. Meanwhile, the military policeman will receive a penalty of three to eight years of imprisonment according to the Código Penal Militar.

If a civilian policeman and a military policeman commit manslaughter together and hide the body of the victim, the military policeman will be forced to answer for the crime in two courts, civil and military. Because the Código Penal Militar does not cover the crime of hiding a body, the military policeman will be indicted according to Article 211 of civil penal law, but he will answer for the crime of murder before a military legal authority. The civil policeman will answer for two crimes in the same court. It cannot be justified within the parameters of democratic legality that two different punishments should exist for the same illegal act (murder). If the homicide is manslaughter, Article 206 of the Código Penal Militar stipulates imprisonment for one to four years. But Article 121, paragraph 3 of the Civil Penal Code sets the sentence at one to three years. If the homicide is unpremeditated murder, both the civil and military policemen will receive the same punishment: imprisonment for six to twenty years (Article 121 of the Civil Penal Code and Article 205 of the Military Penal Code). It is also unjustifiable to consider a homicide committed by the military policeman to be a military crime but hiding the body, whether committed by a military policeman or someone else, to be a civil crime.

Another major injustice in military penal legislation is that the Assistente of the Ministério Público cannot practice certain acts that are guaranteed by civil legislation, specifically it is impossible to appeal in whatever circumstances without the concurrence of the Ministério Público.[22] According to the Código de Processo Penal Militar (CPPM), Article 65, Paragraph 1, the Assistente cannot enlist witnesses, except to call for depositions from them, nor order the issuing of writs of mandamus or petitions or any judicial proceeding that delays the course of the trial, except with the concurrence of the judge and after a hearing by the Ministério

---

to a dense woods near Santa Maria da Boa Vista and tortured by military police First Lieutenant Gílson Barbosa Cantidiano de Andrade, soldier Deoclécio Cariri Lopes, and another soldier known as Bartolomeu. According to the documents of the prosecutor in that city, Geraldo Diniz de Melo, the torture was lengthy and savage. In his report, the prosecutor claimed that investigation of the crime was under the jurisdiction of the military courts, and he asked the judge of Santa Maria da Boa Vista to send the trial to the Auditoria Militar. See "Promotor desiste de denunciar policiais," *Jornal do Comércio*, 28 July 1995.

22. In a military criminal trial, just as in a civilian criminal trial, the Ministério Público privately prosecutes the public criminal act according to Article 129, I, of the Constitution of 1988.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

Público, when dealing with the verification of fact on which clarification of the crime depends. Nor can the Assistente petition for appeal, except under an executive rule to disallow the request for assistance. Therefore if a military policeman accused of having killed a civilian is acquitted, the Assistente cannot appeal the verdict, however absurd it might seem to him. But if the crime was committed by a civilian policeman, the Assistente could appeal the absolving verdict.[23] Moreover, Artigo 25 of the CPPM forbids the investigation of the files of any military police inquiry, which means that if new evidence arises, a new military police inquiry must be started. The time factor works in favor of the accused because time obscures evidence and supports the legal prescription.

Article 65 of the CPPM favors the military regime in two ways. The first arose because the Ministério Público had virtually no autonomy and bent much more to the coercion of the military regime rather than defy it. This being the case, if a military court at the lower level found a soldier innocent for political reasons, it was sufficient that the Ministério Público did not appeal the verdict for the accused to go free because the hands of the Assistente of the Ministério Público were tied. Second, in a case where a civilian accused of a crime was found innocent but the Ministério Público wanted to punish the accused for political reasons, the ministry could appeal to the Superior Tribunal Militar and thereby keep the accused in prison for several more years until a new trial took place.

Another example of bias arises in Article 16 of the Código de Processo Penal Militar. This article requires that the military inquiry be kept secret, although allowing the attorney for the accused to look into the inquiry. In civil inquiries, the imposition of secrecy is somewhat less restrictive: "the authority will assure in the inquiry the secrecy necessary to elucidating the facts or demanded by the interests of society" (Article 20 of the Código de Processo Penal). Thus it is perfectly possible to break into the secrecy of a civil police inquiry but never with a military criminal inquiry.

An example of what this article can lead to occurred following the massacre that left 111 detainees dead and another 110 wounded in the Carandiru Penitentiary in São Paulo. Among the military police, there were 18 wounded and none dead, indicating the low level of resistence by one group in facing the other.[24] While the civil inquiry was covered by the press, the military inquiry was off-limits to public knowledge. Brazilian society had no means of finding out immediately the details of the event and consequently no capacity to assess the direction of course of the military inquiry into this major event. Because of this institutional set-up, social pressure to find out the facts was stifled. Secrecy went so far that one of the

23. I am indebted to Gilberto Marques for this observation.

24. Marcello Lavenère Machado e João Benedito de Azevedo Marques, *História de um massacre: Casa de Detenção de São Paulo* (São Paulo: Cortez, 1993), 54–57.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

policemen involved in the massacre was named police commander of the Regimento de Cavalaria 9 de Julho of the military police of São Paulo. This strange turn of events aroused no major protest.[25]

The disparity in punishment for the crime of theft is well known. If civilian and military police are caught in the act of stealing, the penal code allows the civil policeman to arrange for bail. But the military policeman will be sent immediately to military prison because according to Article 240 of the military penal code, theft is a crime without bail. The military judge can consider the infraction as disciplinary if the perpetrator is a first-time offender and the value of the stolen goods does not exceed one-tenth of the monthly earnings at the national minimum wage (Article 240, Paragraph 1 of the Código Penal Militar). This is only another instance of the same illegal conduct being charged as two different crimes with different penalties. In this case, the military punishment is more severe than the civil. But the larger point is the lack of equality before the law in the handling of the same crime.

Moreover, a person condemned to imprisonment or military detention for a period of not more than two years can have actual imprisonment suspended for two to six years (per Article 606 of the CPPM). That is to say, the requirement for conditional suspension of punishment in the military is more rigorous than in the civilian world because Article 77 of the civil penal code stipulates a lesser term: from two to four years. A similar situation arises in the requirements for obtaining conditional release from the penalty. While Article 618 of the CPPM stipulates that a first-time offender must fulfill half of the sentence and a repeat offender two-thirds of it, Article 83 of the civil penal code requires the fulfillment of only a third of the sentence by a first offender and more than half for a repeat offender.

There is also the instance in which the unlawful act is defined differently in the civil penal code than in the military penal code: the charge of failure to offer assistance. Imagine that in a joint action by civil and military police in one of the favelas in Recife, individuals are seriously wounded. But they receive no assistance from the public authorities. A civilian policeman would be punished for failure to offer assistance according to Article 135 of the civil penal code.[26] But what about the military policeman? Because the military penal code was established for federal military personnel trained for warfare, the definition of this crime found in Article 210 of the Código Penal Militar does not apply to the situation of

25. Antonio Jurandir Pinotti, "Criminosos comuns versus policiais criminosos," *Folha de São Paulo*, 1 July 1995.

26. "To fail to lend assistance, when possible to do so without personal risk, to a lost or abandoned child, or to a disabled or injured person, or to one who is helpless or in grave and imminent danger; or in these situations, to fail to ask for the help of public authorities. The penalty is imprisonment from one to six months or a fine."

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

public safety just described.[27] Consequently, the military policeman would have to be charged under some other article than failure to offer assistance.

In citing these disparities in punishments for similar illegal acts by civil and military police, my concern is neither to support nor to refute those who accuse military justice of being "justice with privileges" or "corporativist."[28] As has been shown, military penal laws can be more strict in one instance than civil penal laws and milder in another. And their application often depends on the political atmosphere prevailing in each state. For example, the military police in Rio de Janeiro, under the administration of Governor Leonel Brizola, financed the purchase of personal revolvers for its members. The goal was to play down the existence of military crime outside the service. Thus in the case in which a military policeman returning home found himself facing a criminal on a bus and wounded or killed him with his personal revolver, the policeman would be tried by a civil court. But if he had fired with a police revolver, he would be tried by a military court and the punishment would be greater than that meted out by civil justice.[29]

Another significant point here is that a state of law never can be consolidated if individuals who commit the same illegal acts continue to receive different punishments for the same behavior, as under the military regime. It matters little whether the weight of the punishment falls more heavily on the civilian policeman or the military policeman. Democracy will be harmed either way.

The Auditoria Militar Estadual in Pernambuco

Military justice is a regular agency of civil judicial power, not of the military police, per Article 125, Paragraph 4 of the Federal Constitution. According to the Código de Organização Judiciária do Estado de Pernambuco, state military justice is one more of the specialized jurisdictions of the capital. It is exercised in the lower court by a robed judge designated as Auditor (military magistrate), a prosecutor, a notary, a clerk, two judicial offi-

27. "For the commander to fail to assist, without just cause, a merchant or warship, national or foreign, or aircraft in danger, or wrecked ships that have asked for help, the penalty is suspension from his command for one to three years or retirement."

28. Hélio Bicudo, "Crimes militares e crimes de militares," *Folha de São Paulo*, 8 Apr. 1993; Hélio Bicudo, "A violência policial e a Justiça," *Folha de São Paulo*, 18 May 1993; Hélio Bicudo, "Fim à impunidade," *Folha de São Paulo*, 4 Sept. 1993; Hélio Bicudo, "Justiça Militar e impunidade," *Folha de São Paulo*, 3 Mar. 1995; Getúlio Corrêa, "A Justiça Militar no banco dos réus," *Folha de São Paulo*, 2 Apr. 1995; Antonio Augusto Neves, "Por favor mudem o disco," *Folha de S. Paulo*, 1 May 1995; and Hélio Bicudo, "Justiça Militar e corporativismo," *Folha de São Paulo*, 23 May 1995.

29. I owe this information to a former student, Ten-Cel PMRJ Geraldo José de França. This measure of the Policía Militar do Rio de Janeiro was not applied in Pernambuco. The danger is that some military police might use a second weapon to commit crimes due to the lack of proper institutional control over such arms.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

cials, a messenger, and the Conselhos de Justiça. Decreto-Lei Número 1,003 of 21 October 1969 provides for an alternate Auditor and an assistant prosecutor to serve as replacements if necessary. The Constitution of 1988 authorized the creation of the Tribunal de Justiça Militar in the states where the active manpower of the military police force totals more than twenty thousand. Because the Polícia Militar de Pernambuco (PMPE) contains seventeen thousand military police,[30] its members continue to be tried at the higher level by the Tribunal de Justiça do Estado.

To carry out the activities appropriate to this judicial organization, the Auditoria Militar consists of a notary, a judicial clerk, and a justice official. Their duties are civil functions, and yet these posts are filled by military police. The impression one gets on going into the offices of the Auditoria Militar is that of entering a barracks rather than a branch of the civil justice system. The justice officials are mostly sergeants. Imagine the tight situation of a sergeant charged with serving a colonel with a summons. Being well aware of the importance of rank in the military, the sergeant would have good reason for not wanting to locate the colonel, thus reinforcing the idea of military corporativism. Moreover, this second-level military echelon brings to the civil judiciary the military vision of the world.[31]

As in the civil courts, trials mount up in the Auditoria Militar, and many hearings never take place. Beyond the traditional slowness of the Brazilian courts, a structural defect aggravates the problem. Because there is only one Auditoria Militar for the entire state of Pernambuco, military judges cannot hear testimony on writs in their own state. The writ of one court must be heard by another court, but because there is only one state military court in Pernambuco, the Auditoria Militar can never invoke another judge in the state because the latter would be incompetent. Consequently, many witnesses in complaints who live in the interior and lack the means to travel to Recife do not make the trip. It is the duty of the Auditoria to cover such expenses, but as funds are not always available, many hearings are suspended.[32]

Before the trial arrives at the Auditoria Militar, the commander of the unit in which the crime was committed launches an inquiry to find out the truth of the matter at hand. Once it has been ascertained that enough indications point to the existence of a military crime, the commander begins the Inquérito Policial Militar (IPM). According to Article 9 of the CPPM, the IPM "has the character of provisional instruction, whose es-

30. Major PMPE Antônio Neto, "A missão da PMPE," *Jornal do Comércio*, 30 June 1995. The major is the official spokesperson for his institution.

31. I encountered obstacles to collecting data in the Auditoria Militar because the lieutenant who kept the records of the completed trials was afraid to let me study them. He feared that my study would denigrate the image of the military police and thus prejudice his military career.

32. Elias Higino, "Justiça Militar precisa de juízes," *Diário de Pernambuco*, 13 Sept. 1992.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

sential purpose is to supply the elements necessary to the proposing of a judicial action on the criminal act." It therefore becomes a part of the judicial phase of the penal proceeding. To this end, the IPM gathers pieces of evidence surrounding a criminal act, evidence with which it attempts to investigate the truth regarding the authorship and the costs that the damage might entail. Such pieces of information furnish the Ministério Público with elements for proposing the penal course of action. Thus it seems that the accused can be sentenced only after the penal course of action has been proposed.

Yet events do not always transpire in this sequence. For example, during the IPM to determine the damage or the loss of military materiel, the authority that launches the inquiry[33] sets itself up as a judge in permitting the investigative function of the inquiry of crime to turn into the determination of guilt—that is to say, when an institution of the military executive acts as if it were a judicial court. The preoccupation of the military police command with disciplining the troops overrides the requirements of a system of impartial judgment. The head of the IPM determines the indemnification of damage or loss in cases where there are indications of culpability on the part of the military police, without allowing a technical defense of the individual indicted.

In truth, one cannot speak of a technical defense in the inquiry proceeding because no guilt has been determined, nor any trial or trial relationship established. Therefore, "defense" is understood to mean the ability of the accused to face the IPM without providing information that could end up compromising the accused later on, when the IPM is sent to the Auditoria Militar. During the IPM, a military policeman has no right to a defense attorney. The principle of conflicting rights, meaning the ability of two parties to have equal opportunities to exercise powers, faculties, or subjective rights, is observed only after the IPM arrives at the Auditoria.

The situation worsens in cases involving the disappearance of military weapons because the administrative punishment is generally greater than the penal punishment. This being the case, the accused in such cases often end up being absolved in the Auditoria Militar. Such absolutions are wrongly viewed as a sign of corporativism being practiced by the Auditoria when they should be considered the fruit of the arbitrariness of the official directing the IPM. In a case where the lost weapon belonged to the civil police, a disciplinary administrative trial would be opened when the principle of conflicting rights is contemplated, meaning that the policeman would have the right to defend himself.

The IPM is a tool of inquiry just like the civil police inquiry. But the

33. According to Article 15 of the CPPM: "Whenever possible, the official charged with the investigation will be of a rank not lower than captain or lieutenant captain; and when dealing with a crime against national security, this official will be, whenever possible, a higher-ranking officer than the officer indicted."

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

inquisitorial nature of the IPM is substantially reinforced by the higher rank in the military hierarchy of the one responsible for conducting the IPM in relation to the person indicted.[34] Moreover, it is a common situation that the witnesses are uniformed colleagues of the accused. The constraint tightens if the witnesses are lower in rank than the indictee. Thus one can grasp how difficult it is to reconcile the ideal of democratic justice based on equality with the military hierarchy, which by definition differentiates markedly between the one who commands and the one who must obey.[35]

In addition, the well-known economic inequality existing in Brazilian society flourishes during the compiling of an IPM. Article 306 of the CPPM stipulates the eight questions that must be asked of the person indicted, whose responses can be used for or against the accused. An enlisted person is unlikely to have as much legal knowledge as those in the officers corps. Consequently, an enlisted man is more defenseless than an officer in responding to an IPM. This inequality is accentuated when the trial arrives at the Auditoria for judgment. Officers generally have the wherewithal to hire a good private attorney. Enlisted persons, given their precarious economic condition, have to avail themselves of the legal assistance offered by the military police.[36]

In theory, there is the public defender, who is appointed by the state attorney general. But these defenders are so scarce that the military police prefer to contract with private attorneys. Yet the number of attorneys at the disposition of the military is minuscule, especially for enlisted persons, the majority of the active-duty military police. This shortage explains how many of the enlisted accused arrive at their trials without the required legal orientation. Moreover, in the military forum, the fact is that economic power influences the obtaining of a full pardon, as often occurs in the civil courts. But this situation is more serious for a military institution that routinely exalts comradeship and military solidarity but in the hour of judgment treats its members differently.

According to Article 18 of the CPPM, the president of the IPM can order temporary imprisonment for military as well as civilians for thirty days,[37] renewable for another twenty days, except in the case of those

34. José do Espírito Santo, *O direito penal militar aplicável aos policiais e bombeiros militares* (Minas Gerais: Polícia Militar de Minas Gerais, 1989), 22; and Arquidiocese de São Paulo, *Brasil: Nunca mais* (Rio de Janeiro: Vozes, 1985), 193.

35. Dyrceu Aguiar Dias Cintra Júnior, "Judiciário e reforma," *O Estado de São Paulo*, 12 Nov. 1994.

36. The PMPE has many soldiers living in favelas, more than five hundred reportedly subsisting in wooden barracks covered with sheets of plastic. See "Polícia Militar tem três mil soldados morando em barracos," *Diário de Pernambuco*, 27 July 1995.

37. Such a precept is so odd that even Law No. 7,170 of 14 December 1993, which revised the investigation of illegal acts involving national security, shortened the length of provisional imprisonment to fifteen days. See José do Espírito Santo, *O direito penal aplicável aos policiais e bombeiros militares*, 242.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

caught in the act or those having a written order based on qualified legal authority. Such discretion was kept in the Constitution of 1988, which states in Article 5, Clause 51: "No one will be imprisoned unless caught in the act or by written order except in cases of military transgression or military crime per se, as defined by law." The president of the IPM need only communicate the detention to the appropriate judicial authority. Preventative imprisonment, however, still requires the authorization of a judge.[38]

Curiously, a civilian cannot be detained temporarily by the highest authority of the civil police judiciary without the consent of the judge. During the drafting of the Constitution of 1988, the civil police lobbied to obtain the legal right to impose temporary detention for five days, rather than thirty, and submission of the act to justice, instead of mere notice. The members of the constitutional assembly vetoed this request of the civil police but kept intact the undemocratic prerogative of the head of the IPM.[39]

Other authoritarian prerogatives of the head of the IPM remain in force. This official can keep incommunicado, with no judicial authorization required, any accused person who was legally arrested for a maximum of three days (Article 17 of the CPPM). In a civil police inquiry, the accused also can be kept incommunicado for up to three days. In the meantime, the incommunicado status will be imposed by an order approved by the judge, at the request of the police authority or the agency of the Ministério Público.

Once the IPM is finished, it is sent to the Auditoria Militar, which orders that it be opened to the Ministério Público, which examines the IPM and brings an indictment or does not. If an indictment is made, the trial is directed to the hearing judge, who accepts or rejects it. If the judge accepts the indictment, one of two types of Conselhos Militares is set up: a Conselho Especial de Justiça if the accused is an officer, or a Conselho Permanente de Justiça if the accused is an enlisted man. Both Conselhos are made up of four military magistrates and the Juiz Auditor, who is a civilian. Such a composition encourages the military magistrates to judge the accused much more the way military police would rather than as jurists would.

On the Conselhos, the highest-ranking officer serves as the president of the Conselho. Inexplicably, the Juiz Auditor does not judge—not even the crimes brought before the Auditoria. This task falls to the Conselhos Militares. The Juiz Auditor conducts the proceedings, has the right to

38. Article 254 of the CPPM makes clear the distinction between provisional and preventative imprisonment. While provisional imprisonment can be decreed only by the person charged with the IPM, "preventative imprisonment can be decreed by the military magistrate or the Conselho de Justiça on duty, at the request of the Ministério Público or by means of representation of the authority charged with the military police inquiry, in any phase of the investigation or the trial, according to the following two requirements: proof of the criminal deed; and sufficient indications of authorship."

39. Author's interview with Delegado José Edson Barbosa, 20 June 1995, Recife.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

vote, helps settle technical issues, and is also charged with formulating the questions to be asked of the accused and the witnesses, the judge's own queries and those submitted by the other military judges. The Juiz Auditor is charged with executing military sentencing, but the judgment is actually made by the collegial military agencies. It can therefore be said that the president of the Conselho Militar de Justiça has more power than the Juiz Auditor in that the latter always sentences but never judges the crimes charged by the Auditoria Militar or those involving manslaughter.

The Conselho Permanente de Justiça is active continuously, but there is little that is permanent in its composition. In fact, the term of its members lasts only three months. Such a short term hurts the performance of the Conselho, which is made up exclusively of officers. A single trial passes from one conselho to the next, no matter what phase it is in. Consequently, Conselho members lack the necessary background to analyze the trials placed before them, especially given that most trials last for more than a year. In such cases, the same trial will pass through the hands of four groups of officers. It therefore must be expected that information will be lost, which could lead to the impunity of a guilty person or the condemnation of one who is innocent.

The Conselho Especial de Justiça, which is also made up exclusively of officers with more seniority than the officer being tried, is not temporary in duration. It is made up specifically for each trial, allowing its members to accompany the trial from the beginning to the final sentencing.[40] Thus its officers are led institutionally to maintain a relationship with the accused officer that differs from the one maintained with an accused enlisted person. Moreover, each officer knows that one day he could end up being judged by a fellow officer for something that he is passing judgment on today. Furthermore, a colonel (the highest rank in the military police) who is being tried could in the future become the commander of the military police. Consequently, it is easier for intra-institutional corporativism to operate in favor of the officers corps. The Conselho Especial is dissolved after its work is finished.

Conselhos Militares have the full power to absolve, to condemn, or to deliberate over preventative detention or pardon for the criminal caught red-handed. Yet such absolute powers are handed to members of the corps by an unreliable means: the Conselhos are formed following a public lottery among active-duty officers. In some cases, officers previously tried and convicted in the Auditoria Militar are invited to participate in judging crimes identical to those that they committed in the past.[41] The use of a

40. It is noteworthy that officers judge enlisted persons in the Conselhos Permanentes, while officers judge officers in the Conselhos Especiais. If they have the same rank, seniority prevails.

41. In jury trials, however, participation is forbidden by persons with criminal records, members of the police, friends or enemies of the accused, or anyone else involved in the case.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

drawing[42] can thus select officers who are not morally fit to participate in a conselho passing military judgment.[43] Moreover, most of those selected in the drawings are not trained in the law and are therefore lacking in the technical knowledge necessary to apply it.[44] Such a random selection process invites legal controversies.

After a Conselho de Justiça is installed, the military policeman is indicted by the Ministério Público, and the trial proceedings are conducted by the Juiz Auditor. The appointment as a juiz auditor is for life, for an entire career because these judges are ineligible for promotion to the appeals court bench. Following a round of competitive examinations and qualifications, the Juiz Auditor is named by the president of the Tribunal de Justiça. The competition commission consists of members of the civil bench and the Ordem de Advogados do Brasil.

Decisions made by the Auditoria Militar Estadual can be appealed. The Promotor de Justiça (the prosecutor), who is chosen by the Procurador-Geral de Justiça, can set an appeal in motion at the next higher level, the Tribunal de Justiça. The third level would be the Superior Tribunal de Justiça, and the final court of appeal is the Supremo Tribunal Federal, which is the Corte Constitucional do Brasil.

TIMID CHANGES: OLD WINE IN A NEW CASK

During the military regime, the military police did not have the constitutional status of military public servants. This designation was first made in the Constitution of 1988. The military police were not even officially military personnel, but because they participated actively in the political repression, they considered themselves de facto soldiers and therefore wanted to be tried by military courts.

To nullify various exceptions to jurisdictions imposed, the Supremo Tribunal Federal revised Sumário Número 297 on 6 July 1969. A summary serves solely to interpret, in a particular instance, the body of law prevailing in the court. Nothing prevents it from being modified if the political circumstances change. Such a summary established that officers and enlisted soldiers in the military police must be tried and judged by civil justice if

42. In jury trials, a drawing takes place, and among the twenty-one names drawn, the judge chooses seven. Afterward, both the prosecution and the defense have the right to recuse up to three jurors each.

43. An officer who ranks lower than the accused or even the same rank with less seniority cannot take part in the Conselhos. Only higher-ranking officers can participate, or those of equal rank with greater seniority. If no active-duty officer can meet these requirements, officers in the salaried reserves can be called for duty.

44. Roberto Romano, "Juízes, democracia, imprensa," *Folha de São Paulo*, 18 May 1995. It is evident that this problem is not limited to the state-level military justice. For the judges at the Justiça do Trabalho, who are chosen by their unions, not even a high-school diploma is required. The same is true for jurors in jury trials.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

they commit crimes while acting as police. For the Supremo Tribunal Federal, policing is a civil function, and consequently civil justice should have jurisdiction in judging the crimes committed by military police or against them. On 13 April 1977, President-General Ernesto Geisel issued revised Emenda Constitutional Número 7 and went over the heads of the Supremo Tribunal Federal. From that time forward, crimes committed by military police and firemen, whether on duty or not, were to be tried by military courts.

The fact that an authoritarian president would disregard the decision of the highest court in the country is not surprising. It is understandable that the authoritarian regime sought to try the members of the forces of repression (which includes the military police) in military courts. It was a clever institutional maneuver intended to regulate and legitimize political repression. What is surprising is that more than ten years after the military regime ended, Brazilians today still tolerate a state military justice system operating in almost the same molds as those set by General Geisel.

In November 1992, Federal Deputy Hélio Bicudo (of the Partido dos Trabalhadores) presented Projeto de Lei Número 3,321. Article 2 of this draft bill stipulated, "officers and enlisted men in the state military police forces who are exercising policing functions are not considered military personnel for penal purposes, the civil justice system having jurisdiction to try and judge any crimes committed by or against military policeman." The draft bill was approved in the Câmara de Deputados, with an amendment added by Deputy Ibsen Pinheiro (of the Partido do Movimento Democrático Brasileiro, or PMDB). He modified the bill so that crimes committed by military police against civilians would not be tried by military courts, except in the case of intentional crimes. This bill went on to the Senado, where it stalled.

Deputy Pinheiro then decided in August 1995 to present Projeto de Lei Número 899, a very similar bill. But this one specified that penal infractions committed by military police or firemen are not military crimes when committed "in activities that have no relation to military police service or the fulfillment of a military mission." It also stipulated, "the inquiries launched to investigate the crimes mentioned in this law can be appealed according to the judgment of the Procurador-Geral de Justiça, who will designate a member of the Ministério Público to pursue these investigations."

Facing a threat by the Organization of American States (OAS) to bring to its court charges of negligence by the Justiças Militares Estaduais in investigating and punishing crimes committed by military police, the president's office worked hard to get Projeto de Lei Número 899 approved. In fact, by order of President Fernando Henrique Cardoso, Minister of Justice Nélson Jobim attended one plenary session to try to convince the deputies to approve this bill.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

On 14 January 1996, the Câmara de Deputados passed Projeto de Lei Número 13/96, barring military courts from trying crimes committed by military police against civilians during the exercise of police functions. Nonetheless, the Câmara decided that such crimes would continue to be investigated by the military. According to Article 144, IV, Paragraph 4 of the Constitution of 1988, it is the duty of the civil police to investigate infractions except for military crimes. Once the Câmara de Deputados had legislated that crimes committed by military police in exercising policing functions are not considered military for penal purposes, it was to be hoped that the investigation of such crimes would become part of civil jurisdiction. Meanwhile, the Câmara decided to innovate: the crime would be civil but the investigation military.[45]

On 9 May 1996, the Senado gutted the draft bill proposed by Deputado Hélio Bicudo, right after the uproar caused by the military police killing the landless in Eldorado dos Carajás.[46] The executive office stayed out of the matter this time. Minister Nélson Jobim, who was attending a meeting in Maputo, was not called to line up votes to approve this bill, as he had in the Câmara. The result of this presidential omission showed in the massive voting by the same congressional bloc against the proposal that crimes committed by military police while policing be tried by civilian courts. The government leader in the Senado, Elcio Alvares (of the Partido da Frente Liberal, or PFL), worked hard against the bill that had been approved in the Câmara. Alvares explained that he had received no directions from Cardoso to approve the Bicudo bill.[47] In the same vein, Sérgio Machado, the leader in the Senado of the Partido de Social Democracia Brasileira (PSDB, the president's party), declared, "The president did not ask me to vote for this bill."[48]

In the end, the senators voted against the Bicudo bill and revived Projeto de Lei Número 102 of 1993 by former Deputy Genebaldo Corrêa (of the PMDB). He had created a bill to fight Projeto de Lei Número 3,321 presented by Bicudo in 1992. The senators, several of them former state governors,[49] did so because the Corrêa bill was much more acceptable to the mil-

45. Recently, legislation in Colombia was changed that had allowed crimes committed by military personnel while policing to be investigated by military and tried in civilian courts. From now on, such crimes will be investigated as well as tried by civilian authorities. The Brazilian Câmara de Deputados is therefore proposing a bill that would end up being nullified in Colombia.

46. On 17 Apr. 1996, 19 homeless persons were killed during an action by 155 military police in Pará to suppress a demonstration on Highway PA-150. See "Colheita macabra," *Isto É*, 24 Apr. 1996.

47. Raquel Ulhôa, "Aperfeiçoamos o projeto, diz Elcio," *Folha de São Paulo*, 16 May 1996.

48. "Poder da Justiça Militar ameaça plano," *Folha de São Paulo*, 12 May 1996; and "Senadores derrubam projeto Hélio Bicudo," *Jornal do Brasil*, 10 May 1996.

49. State governors appoint the commanders of the state military police forces and are also responsible for promotions to colonel, the highest rank in the military police.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

itary police. These same senators were counting on the support of the bloc of landowners in Congress.

In fact, via an amendment by Senator Geraldo Melo (PMDB), the bill approved by the Senado directed to civil courts only premeditated crimes committed against the life of a civilian,[50] that is to say, when there is intent to commit the crime.[51] Because the investigation of the crime remains in military hands, the Inquérito Policial Militar will be sent to Justiça Militar, which will thus make the final decision about the existence or nonexistence of malice.[52] If malice is determined, the IPM documents will be sent to the civil court.[53] In cases of torture leading to death, military justice can if it wishes protect a military policeman by deciding that there was bodily harm followed by death—that is, by making the crime manslaughter rather than a crime intended to take a life. The Senado bill excluded from the reach of civil justice the crimes most commonly committed by military police: crimes against the patrimony, abuse of authority, beating, illegal imprisonment, extortion, seizure, and wrecking a military vehicle.

The senators meanwhile retained two innovations introduced by the Corrêa bill. First, they abolished Section F of Article 9 of the Código Penal Militar, thus restricting the definition of military crime. In this way, crimes committed with a military weapon by military personnel not on duty are no longer considered military crimes. Accordingly, if after a domestic argument, a soldier kills his wife with his service revolver, the crime will be considered civil. At the same time, the Senado bill broadened the definition of military crime to modify what is spelled out in Section C of Article 9. As a result, a crime committed by a solder is now considered a military crime when he is "acting by reason of a military duty."

The decision to restrict the definition of military crime in one place and broaden it elsewhere will certainly provoke jurisdictional conflicts. Imagine the situation in which a military policeman takes a bus after work, and an assault is attempted. The military policeman responds and kills the assailant with a military weapon. Will he have committed a military crime in acting "by reason of a military duty," or will it be a civil crime because he was off duty?

In addition, the Senado bill stipulates that the changes made apply

50. This category includes homicide, infanticide, abortion, and inducement to commit suicide. The last three are not addressed by the Código Penal Militar and are subsumed under the Código Penal. If a soldier commits an intentional crime by taking the life of another soldier, the crime will continue to be tried by military courts.

51. If a soldier falsifies a signature on a check, the crime, although serious, will be tried by military courts because it is not life-threatening.

52. The official responsible for the IPM can, for example, conclude that manslaughter occurred, but the prosecutor in military courts can decide whether the crime was intentional or vice-versa.

53. According to the draft bill sponsored by Genebaldo Corrêa, the findings of the military police inquiry would be sent directly to civilian courts.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

not only to the military police but also to the federal military forces—even in cases of intentional crimes against the lives of civilians. This broad application means that members of the army, navy, and air force would receive the same legal treatment conferred on the military police and would be tried by civil courts. For the first time since a civilian president took office in 1985, the Congress showed itself inclined to limit, at least minimally, the jurisdiction of federal military justice.[54] Such an effort quickly succumbed, however.

On 16 July 1996, the plenary session of the Câmara de Deputados rejected the amendment approved by the Senado to Projeto de Lei Número 13/96 of the Câmara. The Senado version was forwarded to the president the following day. The military ministers resolved to take action. They pressured President Cardoso to remove federal military personnel from the draft bill, leaving only state military forces. The military ministers claimed that if the president approved the bill, it would inhibit the participation of federal troops in operations to combat violence, such as Operação Rio (1994–1995) in the hills of Rio de Janeiro, the suppression of strikers as occurred in the seizure of oil refineries in May 1995, or future actions taken against the landless. Commanders of the military police also alleged that trying military police in civil courts would inhibit their activity in combating violence. But the arguments of the federal and state military are not convincing because no democracy allows civil crimes, intentional or not, committed by soldiers off base to be tried solely by military courts. The larger concern here is to avoid having military personnel form a society apart from civilian life.

Immediately afterward, Deputy Hélio Bicudo on 17 July re-presented his bill requiring that all crimes (not only intentional ones) committed solely by military police while policing be tried in civil courts. Bicudo alleged that the Senado had not considered his bill but that of former deputy Genebaldo Corrêa. The Bicudo bill involved only the military police, which pleased the federal executive branch. Deputy Bicudo proclaimed that all citizens are equal before the law and for this very reason should be tried by the same justice system. Meanwhile, his bill sought to separate crimes committed by military police from those committed by federal military personnel.[55] It nonetheless accepted the existence of two categories of soldiers.

54. Political crime would continue to be tried by military courts, but the Congress is taking no measures whatsoever. In Paraná, in possession of a search warrant issued by the Juiz Auditor of the Quinta Circunscrição Militar, federal police detained Franklin Augusto Sterheim, Oscar Pacheco dos Santos, Jorge Luiz Cirino, and Osvaldo Pereira Filho, and accused them of belonging to a separatist group called "O Sul é o Meu País." The accused were indicted under national-security law and will be tried by the federal military court. This course of action was decided by Ministro da Justiça Mauricio Corrêa. See "Polícia Federal detém 4 separatistas," *Jornal do Brasil*, 7 May 1993; and "Separatistas são indiciados na LSN no Paraná," *Folha de São Paulo*, 7 May 1993.

55. Hélio Bicudo, "Problema ainda não resolvido," *Folha de São Paulo*, 13 Aug. 1996.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

Suppose that two soldiers, one belonging to the military police and the other to the army, commit an intentional crime against the life of a civilian. Although both are military personnel, the military policeman will be tried in civil courts while the soldier will still be tried by federal military justice. The differentiation made between being federal military rather than state military will become even more evident in states where military police forces are commanded by army officers. Commanders and those they command, while both are constitutionally defined as military public servants, become ruled by different laws, tried in separate courts, and subject to different penalties.

Facing a veto by the military ministers of the possibility of federal soldiers being tried by civil courts, the spokesperson for the president, Sérgio Amaral, declared that the "extension of the possibility of soldiers being judged by civilians is inopportune for the Armed Forces."[56] He then passed the matter on to the Ministério da Justiça without ever explaining when it would be opportune to make this change in federal military justice. Eleven years had already passed since the end of the military regime. Minister of Justice Nélson Jobim was left with the task of developing a new bill that would remove intentional crimes committed by federal military personnel from the jurisdiction of civil justice. Forced to explain the reason for this behavior but unable to reveal that the real reason for concocting a new bill was the veto of the military ministers, Jobim offered a technical explanation: "Military crimes must be tried by military justice. Police crimes must be tried by civil justice."[57]

Reinforcing his boss's thought, José Gregori, the head of the Gabinete do Ministério da Justiça, commented, "It is the military police who are responsible for policing, not the Armed Forces.... We seek not to persecute the military police but to diminish the violence committed against civilians."[58] Hence it would make no sense to try federal soldiers in civil courts. Four months earlier, President Cardoso had announced his intention to use the armed forces increasingly as police to help combat drug trafficking, smuggling, and other activities of organized crime.[59]

After three weeks of deliberations, the president opted on 7 August 1996 to approve the entire draft bill upon revision of Lei Número 9,299.[60] On 20 August, he directed Projeto de Lei Número 2,314 to the Câmara de Deputados. In accordance with what had been promised to the military ministers, the new draft excluded federal military personnel from Lei Número 9,299, meaning that they would not be tried by civil courts even if

56. "Presidente deve sancionar projeto," *Folha de São Paulo*, 1 Aug. 1996.

57. "Governo estuda projeto para crimes militares," *Folha de São Paulo (últimas notícias)*, 1 Aug. 1996.

58. "Justiça comum vai julgar militares," *Diário de Pernambuco*, 7 Aug. 1996.

59. "FHC quer militares no combate ao crime," *Folha de São Paulo*, 16 Apr. 1996.

60. In Brazilian law, there is no partial presidential veto.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

they committed intentional crimes against civilians.[61] The new presidential draft was generous toward federal military personnel but was more rigorous with military police than the previous draft. It stipulated that homicide, whether first-degree or manslaughter, and bodily harm would no longer be military crimes when committed by military police, who would now be tried in a civil court.

But the president needed to give some satisfaction to the national and international communities regarding the massacres of peasants in Eldorado dos Carajás (Pará) and Corumbiara (Rondônia). Given the difficulty of proving that the police had left their quarters intending to kill the peasants, Lei Número 9,299 was modified. But what if another massacre takes place and the commander of the military police is an army officer (as is the case in the military police in Sergipe and Acre)? The commander of the military police would be tried in a military court but the men he commanded in a civil court.

By using the argument of force rather than the force of argument, the military ministers succeeded in getting President Cardoso to back down. It remains to be seen whether the members of Congress will also bend to military pressure. All the signs suggest that they will, considering that Projeto de Lei Número 2,314 was previously negotiated with the Congress, and until now, not a single congressional representative has protested its demise.

In practice, Lei Número 9,299 does not apply to federal military personnel. On 12 November 1996, the Superior Tribunal Militar judged the law to be unconstitutional, and on 26 January 1997, three soldiers of the fourteenth Batalhão Logístico do Exército in Recife were sentenced by the Ministério Público Militar. The accused were tried in the Auditoria Militar Federal for committing an intentional crime against the life of student Fábio de Melo Castelo Branco, on 15 November 1995, and they were acquitted. In this instance, the Superior Tribunal de Justiça considered Lei Número 9,299 constitutional. The military police involved in the slaughter at Eldorado dos Carajás will be tried in a civil court. Thus, two types of soldiers have already been defined judicially: the first category consisting of federal military personnel and the second of state military personnel. Although both are military public servants, even if they commit identical crimes, they will be tried nevertheless in different courts and according to different penal codes.

61. In June 1996, Guatemalan President Alvaro Arzú Irigoyen approved legislation sending military personnel who commit civilian crimes to be tried in civilian courts. As a result, 350 cases involving military personnel accused of unlawful conduct were transferred to civilian courts. See Larry Roether, "Guatemala's Uneasy Time: No War but No Peace Pact," *The New York Times*, 18 Aug. 1996.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

CONCLUSION

During a transition from an authoritarian regime to a democracy, it is not enough to replace arbitrary governing officials. It becomes necessary to create new institutions that will give civil society the opportunity to recapture political spaces that were annexed by the apparatus of the authoritarian state. New legal institutions—understood here as social mechanisms that can be used to mediate conflicts—will have to change the model of relations between civilians and the military, democratizing them. This kind of change occurred in Spain, Greece, and Portugal and is now taking place in Chile. In Brazil, however, the political leadership of the transition government paid little attention to altering institutionally the legal nature of civil-military relations. The residual institutional picture—such as state and federal military justice, the military penal codes, and military trial procedures—ended up protecting the interests of political actors before the transition as well as those after. Consequently, such institutions do not serve the goals of larger democratic transformations.

In fact, the Federal Constitution of 1988 continues almost unchanged in regard to the Military Constitution of 1967–1969 and the principles that orient military justice. As a result, the current legal-military picture resembles the one existing in the late 1960s, at the peak of the repressive period. The Código Penal Militar and the Código de Processo Penal Militar as well as state and federal military justice under the military regime continue to define what is a military crime, its forms and procedures of judgment, as well as military organization. In other words, military justice, with the due permission of the Brazilian Congress, has become an authoritarian enclave within the state apparatus, whether because members of the military believe that they are better protected in military courts or because they have no confidence in civil justice. It is difficult to believe that during most of the military regime (1964–1977), military police were tried in civil courts for crimes committed while policing and yet this is not happening in Brazil today. Without reforming the military penal codes and the military justice systems, which functioned so efficiently during the military regime, it is simply impossible to consolidate Brazilian democracy. In addition to perpetuating a form of authoritarian social control, the maintenance of this legal order retards the inclination of military personnel to submit to democratic civil control.

The criminal trial records housed in the Auditoria Militar and cited in this article demonstrate the incompatibility between civil crimes being considered military crimes and the existence of a strong state of democratic law. Such crimes are specific examples proving that the Auditoria Militar of the state of Pernambuco continues to invoke the military status of the offender in order to determine criminal jurisdiction.[62] The state military

62. As Colonel PMSP Ubirajara Gaspar, president of the Tribunal de Justiça Militar de São

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

court regularly judges not only military crimes but also civil crimes committed by military personnel. In this way, military personnel become both judges of and parties to the same legal case.

The relevant political actors evidently feel that their interests are not threatened by the continuance of this authoritarian enclave within the state apparatus and that Brazil is maintaining the institutions necessary to be considered a polyarchy.[63] It is therefore not surprising that the pervasive influence of military values in the civilian world is questioned so little by the Brazilian political elite and the mass media. The military ministers' veto of the Senado draft bill occasioned neither editorials nor protests by organized sectors of Brazilian society. They merely denounced the fact that the draft bill had assigned to civil justice only intentional crimes committed by military police against the lives of civilians.

At a time when social tension in the Brazilian countryside is mounting due to land invasions, the military forces, especially the military police, will be assigned the task of removing the invaders. The message of the military police lobby in the Congress was that their men would not be able to exercise their mission effectively if they knew that illegal acts that happened to be committed by the military police during policing activity could cause them to be tried in civil courts. In the same manner, the military ministers reminded the president of internal interventions made in the name of law and order carried out by the armed forces and the likely necessity of this kind of intervention in the future.

This group succeeded in persuading President Cardoso to send a new bill to the Congress, which was then done. The senators accepted the idea of the new presidential law exempting federal military personnel who commit an intentional crime against the life of civilians from being tried in civil courts, without uttering any protest whatsoever. Although the new draft bill has not yet been voted into law, the first case of soldiers accused of committing an intentional crime against the life of a civilian ended up being tried by the Auditoria Militar Federal, not by civil courts. What seems to be consolidating in Brazil is the nondemocratization of the military judiciary.

Paulo, stressed: "Military justice exists not because it judges police but because it judges soldiers." In *Folha de São Paulo,* 4 June 1993.

63. Robert A. Dahl, *Democracy and Its Critics* (New Haven, Conn.: Yale University Press, 1989), 233. In discussing the institutions necessary for a polyarchy, Dahl did not mention some form of civilian democratic control over the military. Perhaps he believed this point to be obvious in the North American context.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press

REFERENCES

ALVES, LUIZ CLAUDIO
1994 *Manual de Legislação Penal Militar.* Rio de Janeiro: Destaque.

ARQUIDIOCESE DE SÃO PAULO
1985 *Brasil: Nunca mais.* Rio de Janeiro: Vozes.

ASSIS, JORGE CESAR DE
1992 *Justiça Militar Estadual.* Curitiba, Paraná: Juruá.

CHILE, COMISION NACIONAL DE VERDAD Y RECONCILIACION
1991 *Informe de la Comisión Nacional de Verdad y Reconciliación.* Santiago.

DAHL, ROBERT A.
1989 *Democracy and Its Critics.* New Haven, Conn.: Yale University Press.

ESPIRITO SANTO, JOSE DO
1989 *O direito penal militar aplicável aos policiais e bombeiros militares.* Minas Gerais: Polícia Militar de Minas Gerais.

INTERNATIONAL COMMISSION OF JURISTS
1992 *Chile, a Time of Reckoning: Human Rights and the Judiciary.* Geneva: Center for the Independence of Judges and Lawyers.

MACHADO, MARCELLO LAVENERE, AND JOÃO BENEDITO DE AZEVEDO MARQUES
1993 *História de um massacre: Casa de Detenção de São Paulo.* São Paulo: Cortez.

NETO, ANTONIO
1995 "A missão da PMPE." *Jornal do Comércio,* 30 June.

PEREIRA, ANTHONY
1998 "Persecution and Farce: The Origins and Transformation of Brazil's Political Trials, 1964–1979." *LARR* 33, no. 1:43–66.

SCHNEIDER, BEN ROSS
1995 "Democratic Consolidations: Some Broad Comparisons and Sweeping Arguments." *LARR* 30, no. 2:215–34.

SHERMAN, EDWARD S.
1970 "The Civilianization of Military Law." *Maine Law Review* 22.

STEPAN, ALFRED
1988 *Rethinking Military Politics: Brazil and the Southern Cone.* Princeton, N.J.: Princeton University Press.

TILLY, CHARLES
1978 *From Mobilization to Revolution.* Reading, Mass: Addison-Wesley.

https://doi.org/10.1017/S0023879100038577 Published online by Cambridge University Press