Chapter III
Problems and promises: the informal economy, crime and corruption, norms and rights

Bernardo Sorj
Danilo Martuccelli
Social cohesion is unthinkable without respect for rules and norms. All societies establish norms and, transgressions notwithstanding, tend to adhere to them. But national societies exhibit considerable differences in this exercise. In some cases, individuals acquiesce to transcendental traditional or religious norms, especially if social controls and community sanction of disobedience are strong. In contrast, in cases where secularization and de-traditionalization have been more intense, respect for the rules derives in large measure from personal ethical beliefs, rational calculations about the need to respect (more or less freely) accepted contractual agreements, and the degree of willingness to risk punishment.

Latin America is no exception to this. As we shall see, however, its historical self-perception and the magnitude of the challenges facing its societies are influential, and indeed, inter-related factors in this area. The prevailing image of the traditional relationship to the norms in Latin American societies intensifies feelings of being overwhelmed by the expansion of criminal phenomena. The individual experience of this is perhaps less a feeling of living in a truly anomic society (one that is devoid of rules, as Durkheim asserted in the late 19th century) than of being condemned to navigate in societies where the law has two faces: it is applied differently.
depending on the person involved. There is an old Brazilian saying: “for my friends, justice, for my enemies, the law.”

A unique culture of transgression exists in Latin America (Nino, 1992; Girola, 2005; Araujo, 2006). It is a culture of generalized attitudes of transgression — to a greater or lesser degree — that reflect countless perversions of social life: a legalistic tradition; an establishment that holds its citizens in contempt (in direct proportion to their lack of economic or political power); and a tolerance — and even a collective sense of satisfaction — towards violations of the rules. Some forms of transgression, especially those committed through the harsh imposition of raw economic, political or bureaucratic power, are met with revulsion, while other everyday transgressions are experienced as positive signs of understanding, sensitivity, and a willingness to help out. If we ignore the latter aspect — which regards the “blind” application of universal norms without taking into account personal circumstances as inhuman and rigid — we will be hard-pressed to understand how the culture of transgression has so thoroughly penetrated our way of being.

This culture is an amalgam of arbitrary behaviors and “turning a blind eye.” One of harsh punishment for some and the “law of the funnel” for others (the wide part for me, the narrow part for everybody else). Tolerance of the powerful can be present to an extreme, since many still equate power with the right to abuse, as if it is simply a matter of fate and there is nothing to be done about it. In many countries, “cleverness” is not only tolerated, it is an acknowledged feature of the national “temperament,” although this attitude is slowly changing, as we will see later on. While there is less tolerance towards “every day” citizens, abuses are accepted because the thinking basically goes that “it isn’t fair that they punish some and not others” and that “it isn’t fair” to send an “educated middle class” person to a prison where the conditions are usually infrabhuman. In any case, the law is not applied in the same way to everyone. Moreover, for the power elites in particular impunity is virtually guaranteed since they have every opportunity to use economic power to ensure that the law will act in their favor or if not, to simply corrupt some public official in charge of the proceeding.

This state of affairs frequently has its roots in the colonial legacy: in the gap — if not the abyss — between the de jure country and the de facto country, or between what the law prescribes and the social reality actually allows (the famous “it is respected but not obeyed” from the colonial era). The traditional disconnect between “law” and “habit” is such that it sometimes seems as if the laws have no other vocation than to facilitate “featherbedding”
and corruption. This is particularly true of the most rigorous laws, which are, for that very reason, unenforceable (except to punish or blackmail a particular individual). The end result is the proliferation of attitudes which, from this perspective, citizens regard as “hypocrisies.” It is difficult, nonetheless, for anyone to completely escape playing the game, especially since there is no expectation that the authorities (police, judicial officials) will adequately enforce the law (“he who doesn’t pay, pays”).

But that is just one side of the coin. Morality, of course, exists in Latin American societies, but it is elastic and ambivalent. Although everyone is convinced that the rules are necessary, anyone who obeys the law has got to be a “fool,” “slow,” or an “idiot.” A transgression may be held up for public admiration (“clever,” the “scam,” but sooner or later is inevitably debunked as “cocky” or even a “screw up”). Indeed, some would consider transgression itself to be legitimate since “no one has any respect for anything” in society. As shown by an empirical study on Peruvian youth, this relationship with transgression is most aptly described as ambivalence: it is at once rejected and admired (Portocarrero, 2004, Ch. 3). If we fail to take into account this final point, we risk interpreting the culture of transgression as some sort of cultural or psychoanthropological constant inherent to Latin Americans, while forgetting the extent to which these traits were informed — and to a degree are still informed — by a model of social domination.

This bears repeating: we are not dealing with inherently virtuous or vicious agents. Private interests colonize the state in search of spectacular, risk-free gains. Individuals from across social sectors develop survival strategies within the realm of possibilities determined by pre-established practices vis-à-vis state institutions in a generally perverse dynamic. While police corruption is considered repulsive, few would hesitate to take advantage of it to benefit or protect a loved one who has ended up on the wrong side of the law. And even though slum dwellings erected by means of land invasions lack adequate infrastructure and services, residents often oppose legalizing the holdings if it means paying municipal taxes. Similarly, while the so-called informal sector of the economy exhibits enormous creativity, it is frequently built on semi-criminal regulatory systems and operates through a system of payments to tax and fiscal authorities.

We cannot, however, fall into the anachronism of projecting onto the past the categories of the present. While transgression is a constant in Latin American history, it has undergone a constant recomposition in form and substance. Only today — when individualized forms of sociability have proliferated and the political horizon increasingly comprises a democratic
state at the service of the public good — is it possible to appreciate the range of past and present forms of transgression.

The past — based on hierarchical, authoritarian class relations and the patrimonialist use of the state — is essential to understanding how we arrived at the present. At the same time, it is insufficient to explain the complex network of relations that modern Latin American societies, particularly urban ones, have woven around transgressions of the law. This network comprises a system in which the poor and the rich participate unequally but often in combination. The police officer whose low salary is the excuse used to justify the payment of a bribe (often extorted) from a middle class driver, or the residents of the poorest neighborhoods who “divert” water or electricity, or the wide range of illegal practices found in the informal sector, cannot be reduced, by our “guilty consciences,” to byproducts of history or to the bad example set by the elites. Beneath the apparent generosity of those who redefine the acts committed by the poorest groups as symptoms of their victimhood lies an elitist paternalism that has failed to grasp the enormous transformation of our societies and the range of behaviors and values that permeate different social groups. To paraphrase an old Latin American leftist slogan: either “everyone is held responsible or no one will be responsible.”

As with all historical phenomena, the characteristics and currency of such practices are beginning to change. Alongside the transformation of the social bond discussed earlier and the consolidation of a more open and frankly egalitarian ideal, there is increasingly less tolerance for transgression, especially in the public sphere. At the same time, growing relational equality — as social and hierarchical distances between actors have been reduced in the context of profoundly urban societies cut off from their former community controls — has led to the emergence of an uneven assortment of transgressive or criminal practices.

Let us take corruption, for example. Previously one of the perks or “rules of the game” enjoyed by power elites sheltered by their social distance, the public increasingly regards corruption as a criminal act (even though it is not always treated as such in practice). In any event, in recent years it has provoked social outcry and produced a tacit demoralization of democracy. This is not an innocuous matter. The gradual but persistent expansion of the state’s fiscal capacity in most countries, in which the direct tax base is made up of a narrow swath of formal sector employees and business people, can engender new forms of polarization between those who feel that they benefit from state action — generally the poorest sectors that use public health and education services — and those who feel as if they
receive “nothing in exchange” (even the responsibility for security is, in practice, transferred to middle class citizens whose cost of living rises as they pay for private transportation for their children or for building or home security services). This frustrating situation is intensified by political corruption scandals, which members of the middle class view as personal “robbery” since they are the ones paying higher taxes, and which deepens their dissatisfaction with democracy.42

The spread of such phenomena strongly conspires against social cohesion in democracy. We examine several of them in the pages that follow: the unprecedented explosion of armed urban violence in the region; the consolidation of organized crime — often associated with drug trafficking — which quite literally compromises the neutrality of the state apparatus; acts of corruption met increasingly with public protest, which is ultimately a rejection of impunity and judicial inefficiency; and, at the same time, a growing number of citizens seeking legal recourse through the justice system. While these issues are clearly linked to extreme social inequality, today they have taken on a life, and a relevance, of their own that deserves specific scrutiny.

In the sections that follow we will discuss the problem of transgression with a focus on several issues in particular. In Latin America we are a long way from having a developed sociology of transgression, one that would enable us to understand its different manifestations and the complex avenues through which ordinary transgression gives way to legal transgression given the enormous deformations of the “law and order” system. This is necessarily an interdisciplinary effort, and in particular requires introducing a discussion of legal studies into the social and political reflection.

2. Armed urban violence in Latin America43

International lexicon defines “conflict” in very narrow terms. “Conflicts” relate to politics and to the paths intended to overcome them. When associated with the category of “war” they can be termed “just” or “unjust.” Negotiation...
processes serve as the counterpoint to the violence of conflicts: even in the most terrible cases, a legitimate space for interlocution can be found.

The issue we are looking at is altogether different: it is a violence for which we do not even have an adequate name. It is referred to as “crime,” a term that is wholly inadequate to express the complexity of the phenomenon. It poses a challenge not only at the level of semantics, but also in terms of ideas and available policy choices. This “other conflict” translates into extremely high rates of violent homicides, a staggering number of which are committed with firearms (WHO, 2002: p.30). According to some studies, Latin America accounts for 42% of homicides caused by firearms worldwide (Small Arms Survey, 2004: p. 176).

**Burgeoning violence**

By way of illustration, let us look at four countries: El Salvador, Guatemala, Venezuela and Brazil. Despite their differences, they lend themselves to comparison, as they have several common features related to our examination.

The Central American armed conflicts of the Cold War era ended during the 1990s and yet intentional injury death rates remain high in several countries. At present, the homicide rate in El Salvador, for example, is 40 deaths per 100,000 inhabitants and in Guatemala, it is 46 deaths per 100,000 inhabitants (from León and Sagone, 2006: p.188; Acero Velásquez, 2006: p.7).

Venezuela and Brazil began the 1980s with promising prospects for development and democratization. Homicide rates, however, spiraled in Venezuela in 1989 (the year of the “Caracazo”) and this trend has continued unabated. Venezuela’s homicide rate climbed from 9 to 51 deaths per 100,000 inhabitants in 2003 (Briceño León, 2006: pp. 317-321; Acero Velásquez, 2007: p.6). In Brazil, the rate of homicides by firearm tripled in two decades, rising from 7 such deaths per 100,000 inhabitants in 1982 to 21 in 2002 (Phebo, 2005). Clearly then, the problem began to expand in the region in the 1980s or 1990s, depending on the country, and by 2000, it had reached critical levels.

---

44 The Venezuelan office responsible for reporting crime statistics (Cuerpo de Investigaciones Científicas Penales y Criminalísticas — CICP) has not made homicide statistics public since 2004. Therefore the figures after that date are based on estimates.

45 The growth trend in the curve was barely interrupted in Brazil en 2004, which was attributed, at least in part, to the impact of new public security policies including stepped up firearms control. See Ministry of Health 2005 and Fernandes (coord), 2005.
This process has also undergone a significant displacement, shifting from the endemic violence considered typical of rural areas to a mainly, although not exclusively urban violence. The homicide rate per 100,000 inhabitants in cities such as Recife (65 in 2004), San Salvador (78 in 1998), Caracas (107 in 2006), Cúcuta (60 in 2006), San Pablo (38 in 2004) and Rio de Janeiro (51 in 2004) far surpasses national averages (Acero Velásquez, 2006: p.17).

Fernandes and de Souza Nascimento (2007) have extensively documented these ratios. The following graph is taken from a 2002 study carried out in 5,507 Brazilian municipalities:

Homicide Rate in Brazilian Municipalities, according to the Rural/Urban Gradient
(Number of cases per 100,000 inhabitants)

Briceño León (2002: pp. 39-40) offers a fair interpretation of this transition: “The homogenization and inflation of expectations among the second or third urban generation occurs simultaneously with a downturn in economic growth and in the possibilities for social betterment, creating a chasm between aspirations of a certain quality of life and the real possibilities of achieving them. This clash, this dissonance between the individual’s expectations and his or her inability to meet them through the means prescribed by society and the law, breeds violence by creating an incentive to turn to crime as a means of obtaining by force what cannot be achieved through formal channels.”
We will return to this point, but let us stop for a moment to examine the social logic at the heart of this process. This form of violence is not essentially produced by immigrants who lost their traditional controls by moving from the countryside to the city. To the contrary, as Briceño León rightly points out, it is the fruit of second or third generation youths, city born and bred and living lives of acute frustration. A phenomenon in which it is essential to underscore two contradictory elements: (a) first — as Merton’s classic analysis pointed out decades ago — this criminal violence is the fruit of a clash between growing expectations and the dearth of formal channels through which to meet them (to paraphrase the preceding chapter: such phenomena exemplify the dissociation between higher expectations and actual individual capacity); (b) this phenomenon, despite its inherent violence and illegality, also expresses, as we have seen in previous chapters, a process of homogenizing expectations and communion around a common imaginary; (c) lastly, and this is very important, increased expectations, heretofore channeled towards the political system (giving rise to the populist phenomena of the 1950s and 1960s), today are more likely to take the shape of individual aspirations and attempts to satisfy them in ways that are peripheral to the political arena and/or illegal.

The dissonance between expectations and capacity is reflected, as we have seen, in an urban map marked by radical inequalities. Risk factors accumulate in certain areas and in inverse proportions to protection factors. “Poverty,” from this standpoint, has become synonymous with chronic vulnerability to the proliferation of risks to individuals in the urban setting.

In Río de Janeiro, for example, social and institutional protection mechanisms against the risk of violence are concentrated in the southern zone of the city. That is where the middle classes live, sandwiched between the mountains and the ocean. The northern and western zones, in contrast, are situated beyond the mountains in the poorest region, rarely visited by foreign tourists. The table below compares homicide rates in neighborhoods of the southern, northern, and western zones of the city. The homicide rate in Ipanema, a famous neighborhood in the southern zone, is 43 times lower than the Bonsucesso neighborhood in the northern zone. Using the tunnels that now crisscross the city, one can travel from Ipanema to Bonsucesso in 30 minutes. The distance between the two, however, is considerably greater in the Human Development Index (HDI) ranking. If Ipanema were to freeze at its current HDI level, while that of the Complexo do Alemão, the largest favela (precariously erected slum neighborhood) in Bonsucesso,
continued to grow at the same pace of the past 30 years, it would take the latter 100 years to catch up with Ipanema. The map of Rio de Janeiro below, color-coded by HDI rankings, illustrates this point (Fernandes and de Souza Nascimento, 2007).

### Rio de Janeiro - Homicide in the Geographical Context

<table>
<thead>
<tr>
<th>Neighborhood</th>
<th>Homicides</th>
<th>Population</th>
<th>Homicide rate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>South region</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ipanema</td>
<td>8</td>
<td>5</td>
<td>47.106</td>
</tr>
<tr>
<td><strong>North region</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bonsucesso</td>
<td>79</td>
<td>93</td>
<td>19.421</td>
</tr>
<tr>
<td><strong>West region</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pedra de Guaratiba</td>
<td>26</td>
<td>24</td>
<td>9.755</td>
</tr>
</tbody>
</table>

Source: Fernandes and de Souza Nascimento, 2007

### Human Development Index, by Neighborhood in Rio de Janeiro, 2000

Source: Fernandes and de Souza Nascimento, 2007
Victimization and at-risk groups

But even in poor neighborhoods, victimization does not affect everyone equally. According to 1999 World Health Organization (WHO) estimates, violence was the primary cause of death among youths (over 15 years of age) in the region (Briceño León, 2002: p34). Young people are affected so disproportionately by this type of crime that Lisboa and Viegas (2000) propose age as the structural variable for a sociological interpretation of the problem. The common denominator of “100,000 inhabitants” masks the true impact of the various factors on youth as a specific demographic group and therefore, the usual “rates” estimates based on the general population fails to include relevant information on the variants of violence and its associations.

Data on education are consistent among the four cases under examination. The at-risk group is composed of urban youths familiar with the city and its wiles, who attended and subsequently dropped out of school. Although not illiterate, neither are they equipped to surmount the obstacles to integration in formal society. They are halfway between the illiteracy more typical of their parents’ generation, and the level of education required by the market. Here we encounter a criterion with which to determine the dimensions of the at-risk group in Latin American urban centers. In Venezuela, 27% of young men aged 15 -18 are neither working nor in school (Briceño León, 2002: p.38). In Brazil, 13.8% of youths ages 15 — 24 are not working or studying and the percentage rises to 19.6% among those who did not finish their eight years of basic education (PBAD, 2005). These are alarming figures for a generation seemingly condemned to the risks of the informal economy, a fertile breeding ground for criminal activity.

Along with violence, sexuality is practiced freely and at a precocious age among this generation, regardless of any adults who may be in the picture. In Central America, 25% of heads of household are young women on their own; this circumstance is more prevalent in urban areas. In Brazil, where equally significant figures are cited (27%), there is a positive correlation between the percentage of families headed by young women and the rates of lethal violence by firearm (Fernandes and Sousa do Nascimento, 2007). According to a study by the Institute for Education on Sustainable Development —IEPADES—, 38% of young women involved in gangs are already mothers (de León and Sagone, 2006: p.182).

Although this is an urban phenomenon, hierarchies and loyalties have a powerful influence on individual behavior. Gangs or “factions” establish
hierarchies tailored to hostile conditions and tuned to uncertainty. They affirm identities, mark out territories, and mobilize wills around radical options. In reality the powerful organic and internal cohesion of these criminal bands, and the strict respect accorded their norms and codes of honor, contrast sharply with the relative weakness of their ties to other sectors of society or to its criminal dimension.

Although very local, their origins rooted in the internal variables of each society, these new criminal groups are connected to international networks and symbologies. Guatemalan and Salvadoran gangs have evolved in the context of transnational relations. In Brazil and Venezuela, illicit business dealings involve internal and external connections segmented into multiple networks. It makes sense, then, to consider strategies to fight crime and violence that target the links between the local and the global (Fundación Arias, 2006: p.4; Carranza, 2005: p.210).

The illicit drug business, the niche of criminal _entrepreneurism_, along with easy access to firearms — the source of parallel powers — are the main vectors of the problem assailing the region (Dreyfus, 2002). The United States' liberality when it comes to the small arms business impacts the entire region, which then provides justifications and support to anti-gun control pressure groups and, paradoxically, strengthens drug trafficking. Compounding this, Latin America is also home to major arms and ammunition producers such as those in Brazil, Argentina and Mexico.

The death of each and every one of these youths has an indirect economic impact on societies in which the man continues to play a central role in supporting the family. They are the husbands, boyfriends, sons, and brothers who help feed their families. Violence among armed men has an indirect impact, then, on the main social nucleus. Added and multiplied, it acquires even greater proportions. In 2003, the cost of armed violence in El Salvador was estimated at U.S. $1.717 billion. This figure is equivalent to total tax revenues for that same year, double the education and health budgets combined, and equivalent to 11.5% of the Salvadoran GDP (Luz, 2007: p.4). Similarly, the direct and indirect costs of violence are estimated at 11.8% of Venezuela’s GDP, while the same percentage in Brazil is 10.5% (Briceño León, 2002: p. 42 and 44). The annual cost of hospital admittances due to firearms alone is estimated at U.S. $36 - $39 million (Phebo, 2005: p.35).

In synthesis, the violence we are referring to is characterized by the intensive use of firearms by criminal groups comprising young men (15 - 29 years old), from low-income sectors. They are born in unstable families further weakened by the frequent absence of a father figure. While they are
not illiterate, they lack the academic qualifications they need to thrive in the institutions of greater contemporary society. Their access to the formal market blocked, they avail themselves of the opportunities available in the illicit market where illegal drug trafficking is rampant. Easy access to the illicit arms market strengthens their control over certain territorial or economic segments. While these groups operate throughout society, they consolidate their dominion in the poor areas of large cities, where they are able to thrive by feeding on the endemic fragility of institutions and public services. This situation occurs in the cities of countries not presently at war (such as Caracas, San Salvador, Rio de Janeiro, Guatemala City and Tegucigalpa), as well as in countries engaged in political armed conflicts, although generally in urban areas far from rural combat zones between government and insurgent forces (Cali and Medellin in Colombia, for example).

Exploding rates of urban, armed violence conveys the sense that the state is incapable of ensuring the physical integrity of its citizens. The impact this has on social cohesion is immediate and profound. Insecurity and fear desensitize the middle classes. The latter distance themselves from the circumstances of the poorest sectors, which they come to regard with distrust, particularly if they are young men and even more so if their physical appearance classifies them as mestizos, Indians, or blacks. This further reinforces a strategy, particularly among youths from poor sectors, to use violence or incivility as a means of combating their invisibility. This perverse dynamic is at the root of that unnamed “other conflict.” And beyond the telling statistics (to which other crime indicators could be added), the important thing is the general wound it inflicts on society. Security is one of the fundamental freedoms that states must guarantee their citizens — all of their citizens — and its inability to do so conspires against solidarity among individuals, and against its own legitimacy.

3. Drugs, organized crime and the state

While urban armed violence is an important indicator of state impotence and the expansion of a culture of transgression and crime, it is not the only factor that conspires against social cohesion. Though the two are often

46 This section is based on Luiz Eduardo Soares and Nizar Messari, “Crime organizado, drogas corrupção pública - observações comparativas sobre Argentina, Brazil, Chile, Colômbia, Guatemala, México e Venezuela.”
related, the drug trafficking phenomenon is critical enough to warrant a separate analysis. Even more so when its expansion gives rise to new patrimonialist pressures and enormous corruption risks, thereby increasing public disaffection towards institutions and the state.

**Drug trafficking and delegitimization**

The redimensioning of Latin American — U.S. relations around the drug trafficking phenomenon did not yield very positive results. Despite heavy financial investments to fight drug production and drug trafficking, over the past fifteen years, total narcotics production in the countries of the region has not declined significantly, nor has consumption in the North American market. The fight against drug trafficking also led to the criminalization of a particular product — *coca*— which had an enormous impact on a broad swath of the region's low income population.

In many countries, the regional increase in drug trafficking strengthened armed groups, which took control of urban and rural spaces creating a destabilizing panorama that calls into question the state’s capacity to perform its basic duty to monopolize the use of instruments of violence.

### Comparative Table

<table>
<thead>
<tr>
<th></th>
<th>Colombia</th>
<th>Guatemala</th>
<th>Venezuela</th>
<th>Argentina</th>
<th>Chile</th>
<th>Mexico</th>
<th>Brazil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organized Crime with Drugs</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Public Corruption</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>State monopoly over coercive methods</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Societal privatization of coercive methods</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>(this is the case of militias formed by the police forces)</td>
</tr>
</tbody>
</table>

The Latin American Challenge - SOCIAL COHESION AND DEMOCRACY

Bernardo Sorj & Danilo Martuccelli
<table>
<thead>
<tr>
<th></th>
<th>Colombia</th>
<th>Guatemala</th>
<th>Venezuela</th>
<th>Argentina</th>
<th>Chile</th>
<th>Mexico</th>
<th>Brazil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Politicized or partisan</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
<td>NO and</td>
</tr>
<tr>
<td>appointments to government</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>YES</td>
</tr>
<tr>
<td>posts, or their political-</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>corporative-ideological</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>cooptation (confusing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>government with state)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State induced privatization</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>of coercive methods</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public security is a major</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>issue in public perception</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public security is a major</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>issue according to crime</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>statistics</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are there pockets of sovereign-</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>ty or loss of territorial</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>control on the part of the</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>state?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are these pockets</td>
<td>YES</td>
<td>YES/NO</td>
<td>NO</td>
<td>----</td>
<td>----</td>
<td>YES/NO</td>
<td>YES</td>
</tr>
<tr>
<td>associated with the dynamics</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>of drugs?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Do current national trends      | expanded | stabiliza- | deterio- | expanded | expanded | stabiliz- | deterio-
| reflect an expansion of         | democratic | tion of   | ration of | democratic | democratic | tion of   | ration |
| democratic control,            | control   | the current| the current| control   | control  | the current|        |
| stabilization, or              | expanded  | panorama  | panorama  | expanded  | expanded |        |        |
| deterioration                   | democratic| control   | control   | democratic| control  |                  |        |

The Latin American Challenge - SOCIAL COHESION AND DEMOCRACY
Bernardo Sorj & Danilo Martuccelli
As shown, we cannot really refer to regional or general trends when it comes to violence and drugs. While some issues such as corruption, police violence and a sense of insecurity are common to all of the countries, there is considerable variability in other areas, such as the credibility of police institutions and the homicide rate. Finally, drug trafficking and consumption have had a wide range of impacts on the societies and the political climate of the countries examined. Indeed we can distinguish two groups: Brazil, Colombia and Mexico, where drug trafficking has had an enormous impact — felt mainly in the social sphere in the case of the former, and in the political sphere in the latter two instances. This issue does not have the same impact or repercussions in the other four countries studied (Guatemala, Venezuela, Argentina, Chile). But even so, there are discrepancies between the countries in this regard. Colombia seems to be resolving its security problem and shifting drug trafficking away from center stage. In Mexico, in contrast, the influence of drug traffickers and the challenges they pose for society and for the political system have increased palpably.

While not a drug producing country, over the past fifteen years, Mexico has become a springboard for drug exports to the United States. Powerful groups of drug traffickers have established themselves in the country, causing tremendous insecurity and uncertainty. These groups use sophisticated weapons that surpass those of the Mexican and North American police in terms of technology and firepower, and they operate with enormous audacity, causing grave concern and insecurity in Mexico and the United States alike. The particular brand of cruelty practiced by drug traffickers is exemplified in sensationalist and grisly murders, in some cases involving the torture and decapitation of the victims. Yet even as rampant corruption in the Mexican police force and its antidrug apparatus pointed clearly to the ineffectiveness of its antidrug policy, the U.S. executive branch persisted in certifying Mexico, asserting that its southern neighbor was, in fact, collaborating in the war on drugs.

Organized crime and the perversion of social cohesion

Organized crime has reached such proportions in the region that it is important to recognize the enormous paradox, and challenge, it poses for Latin American societies. Whatever its negative import, violence is not necessarily the inverse of cohesion or an impediment to it. It may be the condition for its potential or its peculiar — and paradoxical — form of existence. For example, aside from serving as an economic wellspring for
local tyrants, drugs and arms trafficking in Brazilian _favelas_ establishes cooperative networks in an illegal market and articulates social pacts that become a source of identity and belonging for socially invisible youths whose self esteem has been trampled by perverse and multilayered instances of rejection and exclusion. Of course this sort of social cohesion is essentially problematic or perverted in its social meanings. Having said that, however, it is perhaps not unreasonable to take a more process-centered approach to cohesion, one that is relativized and contextualized. It may be useful to conceive of it as a continuum along which fixed points and clear frontiers are not always easily identified.

An empirical example might serve to illustrate this: a community assailed by youth criminal gang violence might arm itself or else lend its support to a group willing to “take justice into its own hands.” This has occurred repeatedly in Brazil and Guatemala and is also evident in various forms in Colombia, Mexico and Venezuela. Violence is the motive behind the organization of local society and it provides the language and substance of social mobilization. In this scenario, cohesion derives from violence and is structured as violence. The state is removed, democracy out of focus, legitimacy in tatters. In this case, there is no “cohesion in democracy”: it is organized instead _against_ society and democracy.

It is interesting to note, however, that despite these pockets of cohesion-without-adhesion-to-democratic-institutionality, institutional democracy exists in these societies. And these pockets are not islands set adrift; they have ties to the state and to legality. Organized murderers or hit men, extermination groups and vengeance seekers, militias and informal private security agents pay taxes, vote, run for office, attend church, are consumers, and abide by the rules in many aspects of their lives. It is not unheard of for such individuals to be known and admired by their communities, segments within communities, or sectors of public opinion. What is more, the notion of pockets or isolated gaps in sovereignty pales and is relativized when we shift our gaze in the opposite direction — towards institutions and their agents.

Let us turn our attention to the natural adversaries of the lethal crimes perpetrated by social actors who kill, collectively or individually: the police, prosecutors, defenders, and judges. We will examine the case of Brazil, focusing particularly on the state of Río de Janeiro, where military and civilian police killed 4,329 people from 2003 to 2006 (inclusive). An estimated over 65% of those murders did not occur during confrontations, in other words, as a legal response to armed resistance by suspects, but...
presentation clear evidence of having been executions. We are referring, then, to over 2,800 deaths caused by illegal police actions (it is common knowledge that military police combat units in the state of Río de Janeiro stopped accepting surrender in the mid 1990s: one can therefore grasp the magnitude of these figures).

The police, then, rival the murderers, intermingling with them, occupying their space, and taking on exactly the same identity. It is no accident that police officers swell the ranks of extermination groups and are members of organized militias. When are they acting as civil servants at the behest of the state? When are they acting as private individuals? How to establish clear boundaries? The entire field is swathed in shadows. And the police operate in these shadows by suppressing the sovereignty of the state in territories where they are and lay down the law and separating them from the rule of law and the Constitution. When they intervene as state agents, the weapons used, the timing of the intervention, the popular wisdom that it is the police who behave like that, and the impunity that shelters them — due to the complicity of many other state agents including prosecutors and judges (who go with the flow against the democratic rule of law) — all of these things undermine the credibility of public institutions.

The presence and the absence of the state must therefore be relativized in their meaning and implications both as enclaves of sovereignty and in the juxtaposition of state and violence, institutions and crime.

**Organized crime and the patrimonialization of the state**

Organized crime and drug trafficking pose the very real risk of contributing to a perverse “repatrimonialization” of the state in Latin America. Even more so since the illegal nature of such activities only exacerbates the evident danger posed by the entry of the “economy” into “politics.” The repatrimonialization process is rooted in an overwhelmingly negative legacy in which a (sometimes) precarious democratic conviction goes hand in hand with institutions operating out of a retrograde and oppressive patrimonialism that propagates and intensifies patterns of inequality, while obstructing development and the deepening of civic values (of equity and liberty).

This disturbing mix alters both sides of the equation: democratic institutions as well as patrimonialism. The former face the dilemma posed by the gap, or even the contradiction, between form and substance, depriving subordinated classes of access to justice and restricting their control over
representation. The latter is redefined as a crude predatory assault on the state, the citadel *par excellence* of the public realm. In such a scenario, public corruption causes patrimonialist pacts to become entangled in the clandestine networks widely known as organized crime. In this way, drug trafficking revives, on new foundations and in a new international context, some of the endemic ills plaguing the states in the region.

Note that we are not suggesting that Latin American states have been taken over by organized crime or that patrimonialism is synonymous with organized crime. What we are trying to say is that, as many societies in the region became more complex and democratic institutions more consolidated — insofar as this process has found reasonable conditions to prosper amid pitfalls, setbacks and restrictions — the latter proved incapable of guaranteeing external controls, broadbased participation, transparency and less impunity for “white collar” criminals. This caused a metamorphosis of the traditional patrimonialism that had negatively politicized the economy and obstructed the market: it essentially turned to modern criminal dynamics and found its expression in the form of organized crime, within which public corruption is but one possible example.47

When patrimonialism disintegrates into organized crime, the eroding legitimacy of political institutions may give rise to skepticism, apathy, the growing autonomy of the body politic, and the breaking away of bureaucratic-administrative segments. This set of circumstances leaves the state and political representation increasingly removed from what could be termed the effective foundations of the republican popular will. As this was taking place, political representation and state decision-making processes became hostage to private interests, which derailed the reforms historically necessary from the standpoint of the public interest, rational governance, and democratic progress.

To conclude, it could be argued that: (1) patrimonialism and modern capitalism coexist and mutually redefine themselves in Latin America; (2) the loss of strategic space — due to factors that render societies, economies, and political life increasingly complex and impact institutions — causes patrimonialism to disintegrate into organized crime; (3) the political economy of drugs furthers this process wherever it exerts power and influence; (4) this panorama creates an opportunity, despite the enormous

47 The negative politicization of the economy involved privatizing the public through the installation or maintenance of an institutional structure that legitimized privileges and standardized procedures that preserved and deepened inequalities.
civilizational risks: in the context we have described, it can stimulate a revitalization of democracy insofar as the struggle to reestablish it requires the construction of order (security and legitimacy) and reducing inequality in access to justice.

4. The threats of corruption

There is a widespread perception of rampant corruption in Latin America that impinges on political and economic life, public and private institutions, and social cohesion in general in the countries of the region. Indeed one of the pillars of a cohesive social system is the legitimacy of its political institutions, premised on respect for those to whom society has delegated authority. This legitimacy is what enables the authorities to fulfill their mandates efficiently and with a minimum of coercion. When legitimacy is absent, authority can only be exercised through authoritarianism and violence, whether that means corrupt practices, the cooptation of allies and constituents, or frequently a combination of the two.

Authoritarian regimes are conducive to corruption because of the restrictions imposed on the expression of public opinion, the loss of judicial autonomy and the discretionary exercise of power. Corrupt political systems, for their part, always lean in the direction of authoritarianism as a strategy to cover up their proclivity towards the private appropriation of public resources. The authoritarian regimes that predominated in Latin America up until the 1980s were frequently associated with extremely high levels of corruption. In many cases, in the wake of the democratization processes of the 1990s, endemic corruption evolved into “kleptocratic” political regimes that demoralized democratic institutions and created fertile ground for the emergence of new forms of authoritarianism.

One might of course argue that corruption is a universal phenomenon, and this is true. The difference is found less in the degree of corruption in each country — although this is also relevant — than in the degree of impunity. Herein lies the distinction between corruption in Europe and the United States, and corruption in Latin America, which occurs with virtual impunity: those caught in flagrante delicto not only go unpunished.

48 This section is based on Simon Schwartzman, “Corrupção e coesão social na America Latina.”
but frequently insist on remaining in public office. More than corruption per se, it is the state of general impunity that causes the public backlash and indignation and has led to the eruption of protests.

_Economic corruption and development_

Although corruption affects social cohesion in various ways, its principal effect lies in the way it undermines democratic institutions and public identification with the political system. Technically, economic corruption undercuts healthy price competition and the quality of products and services, thereby hampering economic growth and the distribution of its benefits for society. This has not prevented extremely corrupt societies from achieving high growth rates, China being an excellent example of this. In democratic societies, however, public sector corruption at different levels hampers the development and strengthening of a professional, competent administration, encourages the negative selection of political leaders, and creates a sense of frustration and a rejection of taxes, which are perceived as being tarnished.

Taking the most straightforward approach to the economic issue, the question is whether the existence of corrupt practices in a particular country helps or hinders economic activity and by association, the generation of wealth and economic development. Writing in the 1960s, Nathanael Leff argued that in the absence of a well established legal framework in less developed countries, the payment of a bribe to certain public officials to obtain contracts and authorizations was a rational behavior choice on the part of companies, one that facilitated the flow of economic activity. The bribe was regarded as “grease” for economic transactions; a fee like any other that had to be anticipated in a company's normal transaction costs. In contrast, Rose-Ackerman, among others, has argued that corruption is not grease, but rather “sand”: while it may facilitate specific business dealings, corruption reduces the transparency of markets, hampers competition based on efficiency and results, and ultimately breeds inefficiency in the economy and society as a whole. Whichever the case may be, there is strong consensus among economists today that corruption has a significant negative impact on the economies of the affected countries (Mauro, 1997).

There are many explanations for this. When governors make decisions based on private pay-offs, the companies they invite to invest in the country are not always the most efficient or competent, and an extraordinary premium is exacted from them in terms of the uncertainty they will face...
in the form of tax exemptions, monopolies, price controls, and the like. Many firms prefer not to invest under such circumstances, while others are inclined towards short-term speculative investments to the detriment of more mature, long-term projects. If bribing the authorities is a normal practice, taxes are not collected and public services only benefit those who are able to pay for private services to cover their needs. This, in turn, is detrimental to public investment in areas of general public interest such as in education, health, and infrastructure.

Corruption has never been exclusive to poor countries and the literature on the subject is replete with examples of this problem in developed countries (Rose-Ackerman, 1999). This is a very important point. The corruption issue is always associated with moral values and judgments and with the perception that the poorest countries, or their elites, are more corrupt than their counterparts in the developed world. This perception has repercussions for private investments as well as for the cooperation and aid policies of national and international institutions. And it has sparked the endless and largely inconclusive debate over whether the poorest countries are the victims of, or actually responsible for, their own poverty and underdevelopment.

The observation that corruption is not unique to the poorest countries helps chip away at the moral arrogance of many parties to this debate and situates the matter of corruption in the more neutral territory of sociological, political and economic analysis. Most importantly, insofar as it is inherently difficult to know for sure exactly how widespread corruption is, this proviso has the role of projecting this critical issue into the broader sphere of interpretation concerning its real effects. This is particularly significant given that corruption feeds on the large public bureaucracies organized in the dominant patrimonial tradition in Latin America, in which a whole range of private actions are contingent upon administrative or bureaucratic concessions or licenses.

**Political corruption and democracy**

Corruption of a specifically political nature occurs when the “rules of the game” are violated in electoral processes or in the functioning of government institutions. It may take the form of illegal campaign financing or direct electoral fraud, anomalies in legislative or judicial proceedings or in executive actions (vote buying schemes, machinations between the executive and the judiciary, the influence of particular lobbies and interest
groups over legislative processes and executive actions, etc.). This type of corruption is contingent upon many factors: in part, the ethical culture of each society, but also the make-up of political institutions, the transparency of political processes and government actions, and the force of public opinion and the independent press.

As long as the electoral process depends heavily on private campaign funding, deals between candidates and financial or business groups are virtually inevitable and offer very tangible benefits to financiers, as is the case in Brazil (Claessens, Feijen y Laeven, 2006). So long as executive action relies on constant negotiations with the Congress to enact legislation, deal-making with respect to positions, votes, and the release of funds is also virtually inevitable. In these areas, there is a fine line between legitimate and corrupt behaviors.

While political corruption occasionally facilitates the participation and access of disenfranchised groups (as was the case of “machine politics” in New York and Chicago), it also helps undermine institutions and contributes to the widening gap between the “mythical codes” of laws, and the operational practices of daily life.

In effect, one way to look at democracy is as a system that formalizes, regulates, and legitimizes the exercise of power, protects minorities, and ensures the right of all sectors of society to participate in electoral races. This conception does not imply that political leaders are literally representatives of the popular will and it acknowledges that many such leaders come from social sectors that are out of reach of the vast majority of the population. But when party and electoral systems work properly, they uphold the principle of representativity, thereby legitimizing this form of governance. At the same time, they are a mechanism for the administration and negotiation of conflicts and disputes, which do not take on the destructive nature observed in countries where the democratic system does not work and is not legitimate. If democracy is to play this role, clear, formal operating rules must be in place and must be observed and respected by the vast majority of the population. Just as important as the formal legality of political and electoral processes is the legitimacy and recognition that society vests in the political system.

Lack of public confidence in the political system creates crisis modes of varying sorts. In many Latin American countries, the deterioration of the traditional democratic order has become the justification for the establishment of populist, plebiscitary regimes, which initially may come across as efficient at distributing resources and social benefits, but ultimately differ very little
from more typically kleptocratic regimes. Examples of this are the Collor administration in Brazil and the Fujimori government in Peru.

This deterioration also justifies the growing trend among social movements of various sorts to turn to “direct action.” Acting in the name of human rights, these groups set out to build or rebuild strong racial, cultural and regional identities among the population. At the same time, they neither recognize the legitimacy of existing democratic institutions nor believe in the need to improve them. Another tack in this regard is the frequent use of the plebiscite to skip over regular legislative procedures or support for other manifestations of “direct democracy.” Irrespective of the good or bad intentions of the individuals involved, such movements only accentuate the contemporary political crisis (Schwartzman, 2004: pp.161-180).

Social inequality and disillusionment with career politicians in Latin America has fueled support for politicians who (claim they) are not really politicians, but rather saviors of the fatherland who intend to govern for the good of the people. Even when such leaders are democratically elected, power defined as a space to be conquered by individuals and political groups seeking to take control of the spoils of public resources is still a feature of many democracies on the continent (one which reinforces the inclination towards continuism in power, even at the expense of democratic institutions).

Corruption clearly is not the main cause of all the problems of underdevelopment, inequality, and institutional fragility, although it is associated with, and can contribute to, all of these things. Weakened institutions lend impetus to the search for community identities that are easy to perceive and follow and are not contingent on drawn-out processes of formation and socialization. Religion, race, the tribe, the gang, separately or in combination, allow such identities — often crystallized by charismatic leaders or clinical rationales — to accentuate the dysfunction of the public order.

**Corruption, norms and social cohesion**

Economic and political analyses frequently approach corruption as a rational behavior like any other, devoid of moral content. In part, this is a methodological ploy: to leave aside for a moment the values of the analyst in order to better understand the rationales or interests that drive individuals and organizations to engage in corrupt behaviors. We know, however, that in some societies people's behavior is guided by ethical principles which preclude, or at least limit, behaviors that may be considered corrupt, and that this is not the case, or is much less so, in other societies. Using Argentina
as an example, Luis Moreno Ocampo (2000) refers to the existence of “mythical rules” of ethical behavior. While these rules must not be violated, they manage to coexist fairly smoothly with corrupt “operational codes,” which are the ones that actually work. The coexistence of this duality of norms and practices is hardly trivial. Because of the mythical rules, operational behaviors must be discreet, and this gives rise to all sorts of cynical behaviors such as student plagiarism, tax evasion, or “informal” labor contracts. Such behaviors often lead to the tightening of formal rules, which in turn engenders increasingly sophisticated informal practices. This normative duality can be explained, according to the same author, by discrepancies in the different normative systems governing people's lives that allow the operational codes to predominate.

In a more general sense, why do societies establish ethical norms that people tend to obey? Under what conditions do these norms prevail? Under what conditions do they lose meaning and relevance? There are two metaphors to answer these questions, one through the lens of existing institutions and the other through that of the interactions between individuals. The two are often linked. From the standpoint of the overall functioning of society as well as of personal bonds, societies organized around the common good and long-term benefits are contingent upon ethical behaviors that allow people to trust each other. Conversely, societies inclined towards immediate, short-term results tend to exhibit predatory behaviors. At the same time, it is difficult, if not virtually impossible, to sustain ethical behaviors when the institutions responsible for maintaining social order (the police), upholding the law (the judiciary), or regulating business (fiscal officials) can impose systems of payments or bribes that draw the citizen into the corrupt system. This is facilitated in turn by a system of laws so (formally) severe that a public agent only has to hint at a willingness to apply the law for a citizen to understand that it makes more sense to reach an agreement. This constant uncertainty vis-à-vis the law and its enforcers gives rise to an “individualism Latin America style” that we might describe as hyper-reflexive or as an exacerbated individualism: the individual lacks defined parameters for how to behave in his or her dealings with representatives of the law and its regulations. (Should one violate the rules? Corrupt the law enforcement agent? Trust that one possesses the necessary material resources or contacts to “get off”? Obey the law knowing that impunity is the rule?) Individualism in Latin America, then, is more a product of the distortion or transgression of the legal system than an expression of its application (Sorj, 2005a).
And perhaps herein lies the crux of the matter: how to change the rules of the game when citizens and public officials weave networks of common interests premised on a hypertrophied legal system associated with high levels of inequality? How to break down the complicity of interests, particularly between the middle and upper classes that allows for constant pacts of microcorruption?

5. The judicial question

Until recently, Latin American judiciaries were not necessarily considered germane to understanding the political workings in the region. In the wake of democratic transitions — whether due to the exigencies of the transition process itself or those inherent to economic reforms — the region's economic elites, international financial institutions, and significant sectors of the public began to regard judicial institutions as politically and institutionally relevant. This unusual convergence of actors had two consequences. First, it placed the issues of judicial functioning and performance on the political agenda, paving the way for reforms oriented towards the quality and type of services provided. It also led to a judicialization of conflicts as courts and judges were increasingly drawn into public policy and to a growing tendency to use ordinary legal proceedings to lodge complaints and settle social and political demands.

In recent years, these two realities — the first related to the aggiornamento of the judiciary's institutional capacity to perform its functions and the other to the discovery of the justice system by social actors — have informed the evolution of the judiciary and the direction of the academic debate over this issue.

**Judicial reforms**

Those concerned with the bureaucratic aspects of the problem focused on the study and implementation of measures that would enhance judicial capacity to respond efficiently and impartially to complaints. The priority

49 See Pablo Sorj (2005) for an exercise in applying economic analysis to the legal system in contexts of widespread corruption and severe social inequality.

50 This section is based on Catalina Smulovitz and Daniela Urribarri, “Poderes judiciales en América Latina. Entre la administración de aspiraciones y la administración del derecho.”
was on procedural aspects to expedite and ensure the independence of decisions and to lower the thresholds for access to the system. Over the past twenty years, judicial reforms have been undertaken in almost every Latin American country to modify judicial selection procedures, expand the administrative powers of judicial authorities, promote transitions to oral proceedings and public legal representation, and increase the number of actors authorized to bring cases.

As the chart shows, the administration of justice was established as a separate branch of government from the moment each country was constitutionally founded. In the context of judicial reform processes in the 1990s, however, some of the functions originally assigned to the judiciary became autonomous or administratively separate. Efforts to implement the aforementioned reforms in the countries of the region encountered difficulties related to the insufficiency and quality of the data used to assess the problem and the failure to take into account political resistance.

### Judicial institutions and date of establishment

<table>
<thead>
<tr>
<th></th>
<th>Argentina*</th>
<th>Bolivia</th>
<th>Brazil*</th>
<th>Chile</th>
<th>Guatemala</th>
<th>Mexico*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial branch</td>
<td>1853</td>
<td>1826</td>
<td>1824</td>
<td>1823</td>
<td>1825</td>
<td>1824</td>
</tr>
<tr>
<td>Defender of the People (Ombudsman)</td>
<td>1994</td>
<td>1997</td>
<td>1985(^{51})</td>
<td>1999(^{52})</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Council of the Judiciary</td>
<td>1994</td>
<td>1994</td>
<td>n/d</td>
<td>n/d</td>
<td>n/d</td>
<td>1994</td>
</tr>
<tr>
<td>Ministry of Justice</td>
<td>n/d</td>
<td>n/d</td>
<td>n/d</td>
<td>n/d</td>
<td>n/d</td>
<td>1992</td>
</tr>
</tbody>
</table>

\(^{*}\) the data correspond to the Federal System; n/d: no data


51 The equivalent in Guatemala is the Human Rights Ombudsman.

52 The equivalent in Mexico is the National Human Rights Commission.

53 The equivalent in Bolivia is the Vice Ministry of Justice and Human Rights.
to reforms on the part of local judicial and political authorities. These difficulties notwithstanding, the reforms wrought significant changes in the organization, resources, and performance of the region's judiciaries. Institutions such as the Public Ministry, public defender systems, councils of the judiciary and judicial schools were established and the internal organization of the judiciary and procedures for judicial selection and removal were reformed, while the number and types of populations with access to the judicial system was increased.

But the breadth of these reforms must be viewed in relation to the actors of the judicial system, primarily attorneys. The chart below shows the number of attorneys in each of the countries studied. This is relevant inasmuch as litigiousness and ease of access to the system are related to the supply of attorneys. The chart reflects tremendous variation in the ratio of attorneys to the general population. Brazil and Argentina rank first, with approximately 300 attorneys per 100,000 inhabitants, while Bolivia and Guatemala each have fewer than 100 attorneys per 100,000 inhabitants. The presumed relationship between the number of attorneys and litigation levels seems to hold true in these countries.

Advocates of this perspective view the problems besetting the judicial system as essentially linked to a public bureaucracy that has difficulty converting “inputs” into “outputs.” It follows, then, that studies on judicial performance and government corrective actions are focused on administrative reforms to enhance performance — particularly measures to reduce the judicial backlog and delays in resolving cases, such as replacing

### Number of judges, prosecutors, defenders and attorneys per 100,000 inhabitants

<table>
<thead>
<tr>
<th></th>
<th>Argentina</th>
<th>Bolivia</th>
<th>Brazil</th>
<th>Chile</th>
<th>Guatemala</th>
<th>Mexico</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges</td>
<td>11.2</td>
<td>9.5</td>
<td>7.6</td>
<td>5</td>
<td>6</td>
<td>n/d</td>
</tr>
<tr>
<td>Prosecutors</td>
<td>0.8</td>
<td>4.5</td>
<td>n/d</td>
<td>4.2</td>
<td>6.9</td>
<td>n/d</td>
</tr>
<tr>
<td>Defenders</td>
<td>0.6</td>
<td>0.8</td>
<td>1.9</td>
<td>1.5</td>
<td>1.1</td>
<td>0.6</td>
</tr>
<tr>
<td>Attorneys</td>
<td>312</td>
<td>77</td>
<td>279</td>
<td>124</td>
<td>68</td>
<td>196</td>
</tr>
</tbody>
</table>

Source: The data are for the last year available in each case (2003-2005). The information on the number of judges comes from Unidos por la Justicia for Argentina and from the Supremo Tribunal Federal of Brazil, and CEJA’s Report of Justice in the Americas for the remaining countries. The data on prosecutors and defenders for all of the countries comes from CEJA’s report. The information on the number of attorneys is taken from Revista Sistemas Judiciales N° 9, 2005, in Smulowitz, op. cit.
the inquisitorial system with an accusatory or semi-accusatory one — or to facilitate public legal representation.

It is worth noting, however, that even where progress has been registered, evaluations and opinions of judicial performance are still disappointing. In most countries of the continent, the justice system continues to be plagued by enormous case backlogs, obstacles to access by poor sectors, and impunity associated with powerful political and economic influences over judicial decisions.54

### Average length of proceedings

<table>
<thead>
<tr>
<th></th>
<th>Argentina</th>
<th>Bolivia</th>
<th>Brazil</th>
<th>Chile</th>
<th>Guatemala</th>
<th>Mexico</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal</td>
<td>1.5 to 2 years</td>
<td>9 to 12 months</td>
<td>n/d</td>
<td>3 to 7 months</td>
<td>1.5 years</td>
<td>n/d</td>
</tr>
<tr>
<td>Civil</td>
<td>2 to 3 years</td>
<td>n/d</td>
<td>n/d</td>
<td>509 days</td>
<td>n/d</td>
<td>n/d</td>
</tr>
</tbody>
</table>


Again, the outcomes of these reforms do not seem to have lived up to expectations. Opinion polls continue to show high levels of public dissatisfaction with judicial performance. Public opinion views the system as unfair, characterized by costly delays and politically-motivated rulings, and far removed from the interests of everyday citizens. The administration of justice is considered untrustworthy, corrupt, slow, costly, and biased in its treatment of the rich and the poor. Even when, as Pásara (2004a) points out, such perceptions may be biased, information as to how the public views the justice system cannot be taken lightly; at the very least, it is worth wondering where such perceptions come from. According to the 2006 Latinobarómetro study, the public assessment of the judiciary in the region is very poor, with an average 38% approval rate of its performance in Latin America. Among the countries surveyed, only in Brazil does over half of the population approve of judicial performance (53%) while Argentina is at the other extreme with a public approval rate of only 29%. The study also showed that 66% of the region’s inhabitants believe that the judiciary discriminates against them because they are poor.

54 Averages by type of crime are as follows: theft: 127 days; rape: 171 days; settlements: 193 days; slander: 108 days.
In synthesis, studies of reform processes point to various sources of problems in their implementation (Pásara, 2004b): (a) Due to the insufficiency and quality of the data used to assess the problem, reforms were concentrated in problem areas that may not have been as serious as they seemed based on a partial reading and on an agenda proposed by international aid entities; (b) insofar as these assessments tended to attribute problems to the existing legal framework, reforms and reformers failed to take into account the political obstacles and resistance to the process on the part of local political and judicial actors. This impeded the development of strategies and networks to support reform implementation.

The judiciary as a space for politics

Those who view the judicial branch as an alternative venue for political conflicts and its institutions as a strategic resource for political action have a very different interpretation of the matter. While not discounting the relevance of the bureaucratic, functional aspects, these observers stress that the judiciary has in recent years become a space to fulfill the retributory and social aspirations of various social actors. From this standpoint, political and social actors and individuals are finding new ways to make instrumental and experimental use of this venue, transferring to the judicial sphere substantive demands and aspirations that have not been satisfied in the political playing field. In this space, demands become assertions of rights, judges become parties to political disputes, and the law is transformed into the discourse and language of conflicts. This is reflected in a significant increase in judicial litigiousness in the region.

From this perspective, the origin of, and the problems posed by, the judicialization of aspirations cannot be resolved by the more efficient administration of judicial institutions. And this growing judicialization of conflicts poses new and different questions: if expert evaluations and public opinion polls on judicial performance are consistently negative, why does

<table>
<thead>
<tr>
<th>Year</th>
<th>Argentina</th>
<th>Bolivia</th>
<th>Brazil</th>
<th>Chile</th>
<th>Guatemala</th>
<th>Mexico</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>10,225</td>
<td>2,740</td>
<td>8,568</td>
<td>12,305</td>
<td>2,151</td>
<td>n/d</td>
</tr>
</tbody>
</table>

the judicial caseload continue to grow? Does this mean that performance is less deficient than the evaluations would suggest? Does it mean that a significant segment of the public now regards filing judicial complaints as another tool of political struggle?

Efficiency evaluations concentrated on indicators such as delays and congestion can obscure other uses to which citizens might be putting judicial institutions. For example, if filing a judicial complaint has really become part of a broader negotiation of a conflict, then what appears as delays and congestion in less disaggregated statistics, could be an indication that the resolution of political disputes is being transferred to the judicial sphere.

Recent data on cases presented in civil courts that examine the moment at which backlogged cases became inactive point to this new interpretation (Hammergren, 2002: p.26). The fact that a significant proportion of complaints become inactive early on in the process would seem to indicate that a good number of them are being resolved extrajudicially. This situations invites the notion that political and social actors view legal complaints as just one of several instruments — and the judicial system as just one of the available avenues — for the resolution of disputes. If this is the case, and if actors use the presentation of legal complaints as a strategic tool, then the growing delays and backlog may be indicative of a different use of the judicial institution rather than its inefficiency, thereby reaffirming the existence of a process of judicialization of conflicts.

Recent studies that have scrutinized the history of cases presented in the five countries reveal an aspect of this phenomenon that had been overlooked: the high percentage of cases abandoned soon after they were opened. A study on the Juicio Ejecutivo Mercantil in two courts in the Federal District of Mexico (World Bank, 2002) showed that 80% of the cases were abandoned by the parties and never resolved, while 60% of cases became inactive after they had been declared admissible. A study conducted in Brazil indicated that 48% of executory actions and 51% of monitory actions were stopped after having been declared admissible by the judiciary, and 20% of the former were subsequently abandoned.55 Only in the Argentine case did the data reflect lower levels of case abandonment prior to resolution.

But this strategy is more ambivalent than would appear at first glance. In effect, if actors presume that the judicial response is going to take time then there is less incentive to use the system as a mechanism to regulate

and arbitrate conflicts and less chance that actors will resolve their conflicts on the basis of law. This increases the barriers to access and impinges on the social equity of the outcomes. Delays increase obstacles to access by discouraging the use of justice services by those who are not in a position to wait for long periods to get results. It exacerbates social inequity because those who cannot await the results of their legal process are forced to resolve their conflicts in the context of binary relations in which the imbalance of power between the two parties is what ultimately decides the outcome. Therefore, in addition to the problem of judicial efficiency per se, it is also important to recognize its correlation to the greater or lesser degree of equity in the outcomes yielded by the system and of the propensity to actually use it.

What are the repercussions of the advent of these new types of interventions? For one thing, the law has become another strategic instrument for doing politics. According to some authors, this judicialization is allowing citizens to employ the coercive powers of the state to pursue their own interests and therefore should be viewed as a form of citizen engagement in democracy. On the other hand, however, judicialization enables minority actors to intervene and exert influence over public issues without having to reach significant majorities. In this sense, while such interventions make it possible to incorporate issues and actors otherwise excluded from the public debate, the caveat is that it can also have antidemocratic outcomes.

Justice and social cohesion

How do these two views of the judicial issue relate to social cohesion? From the administrative standpoint, improved judicial performance will reduce obstacles to access and other related factors that conspire against social cohesion will tend to dissipate. On the other hand, and regardless of whether the performance of judicial institutions can actually be improved, social cohesion is contingent on the innovative ways in which actors use the judicial space to claim and demand their integration into the broader political community. As a result, aside from matters specific to administrative aggiornamento, the latter perspective is contingent upon the establishment of conditions (lower thresholds of access, support and legal aid structures) that facilitate the use of this sphere to change the distribution and protection of rights in the political arena.

It is also important to examine the extent to which the judicialization of social life is part of an ambivalent attempt by individuals to establish new
bonds of trust with institutions. With regard to the judicial issue, how can we ignore the profound distrust expressed in public opinion polls and all of the promises surrounding this renovated resource on the part of court actors? Inequality vis-à-vis the justice system is among the most dramatic and dangerous symptoms when it comes to social cohesion. Not only does it corrode the legitimacy of public institutions, it has an even more profound effect on the very meaning of collective living. The perception of an unfair (not just ineffective) judicial system engenders contradictory feelings that flow easily into political nihilism. Experiences of this type take on even more dramatic overtones in a region wracked by serious problems of violence, organized crime, and corruption. The outcome, as we all know, is a mixture of indignation, cynicism and apathy.

But we reiterate the novel aspects of the process currently underway. While the law is hardly — and poorly — enforced, recourse to the legal system is on the rise. And although dominant groups continue to enjoy unabashed impunity, some of their acts, such as certain forms of corruption and human rights violations, are beginning to be punished. Some would say, and rightly so, that the process is still hesitant and painfully slow. Yet the promise is real. At the same time, one cannot expect that the judiciary alone will be able to regenerate state institutions. This is especially true since an overload of expectations concentrated in this branch will ultimately politicize it, and lead to executive and legislative attempts to rein it in.

But taking a closer look, and despite Latin America’s secular self-image as a continent with a particularly entrenched culture of transgression, we cannot fail to notice that in recent decades (unprosecuted) public corruption cases are increasingly widespread in other latitudes, while public rejection of such behavior is on the rise in Latin America, owing in large part to the influence of the media. Turning to human rights violations, while the panorama remains poor in many countries, it is also true that public efforts and awareness have a higher profile than in other parts of the world. Our intention, of course, is not to negate the serious pitfalls or the gravity of the problems, but to make sure we do not overlook the virtue of the promise.

6. Conclusions

This chapter is clearly a study in contrasts. First, as we have shown, 21st century Latin America has become the theater for real growth in delinquency and criminal acts, as reflected in armed urban violence or the emergence
of organized crime which, under cover of international networks, severely compromises the legal institutionality of the countries of the region. In some countries, violence and crime are a relentless nightmare that — due to the deficiencies of the state — individuals must face based on their different possibilities to do so. Ultimately too, when individuals take charge of their own security, they end up covering over the institutional gaps (which often are part of the problem, given the porous boundaries between legality and illegality among the very actors charged with law enforcement).

Second, corruption among politicians, high level officials, and the police, coupled with the inefficiency of the judicial system, is high on the public opinion agenda. Whether because it is actually on the rise, or because investigative journalism and the news media are more efficient, and/or because people are more sensitive to such phenomena, corruption plays a key role in political dynamics.

Case by case, corruption corrodes people's trust in institutions, producing cynicism and frustration. It also hampers processes of egalitarian individuation since everyone is potentially dependent on a favor; sooner or later, a well-situated friend or acquaintance will help find a "way out". But something new is insinuating itself into this scenario. Public awareness concerning impunity is on the rise, especially among the middle classes. True, at the moment this heightened sensitivity is often expressed in ambivalent ways: alongside a fatalistic or bitter attitude towards the entrenched secular failure to respect the rules, there are movements in the region, often in the form of collective or individual outbursts that seek to progressively limit impunity for such acts.

These two contradictory realities — the rise in increasingly violent crime and the still incipient attention to certain forms of abuse and corruption — are the fruit of the democratic revolution sweeping the continent. When the symbolic equality among citizens is divested of hope or resources, what emerges are predatory and criminal behaviors along with socially destructive or personally self-destructive attitudes. But that same symbolic equality among citizens is what sometimes triggers demands for respect for the law, and if need be, efforts to defend themselves through the law. The former conspires against social cohesion (especially by giving shape to perverted expressions of micro-cohesion in criminal groups). The latter buttresses social cohesion (since it conveys a modicum of trust in institutions). Which of these synergies will win out is contingent on the nature of the democratic game that takes shape in the region in the coming years.