

REPORT ON CRIME AND IMPUNITY

Democracies Without Citizenship

Official violence continues unabated in many of Latin America's new democracies. While under military rule, the targets were political dissidents, today's victims are the continent's "undesirables" – the poor, the homeless, minority groups, homosexuals, landless peasants.

BY Paulo Sérgio Pinheiro

In the middle of Rio Branco Avenue in downtown Rio de Janeiro, three men robbed a bank. As they were making their getaway, private security guards assaulted them, seizing their spoils and killing one of the thieves in the ensuing struggle. The bank robbers, whose weapons were rented, decided to file a complaint at the police station to try to recoup their stolen weapons at least – which they did after the police apprehended the private guards. Six other bank robberies occurred on that same day in Rio de Janeiro, but in only one case did the banks file charges with the police. The inversion of justice has reached the point that criminals seem to trust police more than established businesses do.

In Brazil, as in many Latin American countries, there is a dramatic gap between the letter of the law and the brutal reality of law enforcement. Brazil's new Constitution, promulgated in 1988, incorporated broad provisions for the protection of individual rights, which were systematically violated during two decades of military rule. The document explicitly recognizes the rights to life, liberty and personal integrity, and torture and racial discrimination are now considered crimes. But despite these constitutional protections, official violence continues unabated.

This gap between the law and reality is rooted in the failure of Latin American democracies to consolidate one of the most basic cornerstones of democratic governance: the state's monopoly over the means of coercion. This failure has resulted in the persistence of endemic violence throughout the region. On the one hand, violence is exercised by elites to maintain "social order." In countries like Brazil, deadly force, torture and arbitrary detention continue to characterize police behavior because this official violence enjoys widespread impunity. On the other hand, violence crime and delinquency have also increased in Latin American societies, particularly in the 1980s and 1990s. Crimes against life and physical integrity – homicide, assault, rape – have risen sharply, and murders account for a growing percentage of unnatural deaths. In São Paulo, for example, the homicide rate jumped from 41.6 per 100,000 inhabitants in 1988 to 50.2 in 1993. Crimes against property – theft, robbery, fraud – are also on the rise. So is organized crime, especially drug trafficking and money laundering.

This endemic violence – embedded in a context of broad economic inequalities and a system of profoundly asymmetric social relations – is hardly a new phenomenon in the region. It has worsened over the past two decades, at least in part because neoliberal economic policies have widened the gap between rich and poor and doomed millions of Latin Americans to lives of poverty and social exclusion. But violence also stems from the continuation of a long tradition of authoritarian practices by elites against "non-elites" – practices that are often reproduced in social relations among poor people themselves. The return to democratic constitutionalism did little to eradicate the authoritarian practices embedded in the state and in society.

While the most egregious forms of human rights violations committed by the region's military regimes have been eliminated under civilian rule, the long-awaited

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democracies have not fulfilled their role as guardians of public order and protectors of the fundamental rights of all citizens. Consequently, the rule of law, remains precarious in many Latin American countries. In Brazil as elsewhere, the difference is that the victims are no longer political activists, many of them educated members of the middle class, whose opposition to the military regimes got them killed or brutally tortured. Today, the principal targets of arbitrary police behavior are the most defenseless and vulnerable groups in Brazilian society: rural workers, trade-union activists, minority groups and destitute children and adolescents, many of whom live in the streets. Arbitrary detention and torturing suspects are still common police practices. Extrajudicial killings are also shockingly common, including the assassination of street kids by off-duty police and the repression of rural workers struggling for land and labor rights in the Northeast. Much of this violence is fueled by ingrained discrimination against poor people and racial minorities, who constitute a high percentage of all homicide victims. The common denominator in all these cases is impunity. The failure to enforce the law not only makes a mockery of the principle of the equality of citizens before the law, but also makes it more difficult for governments to strengthen their legitimacy. It feeds the circle of officially sanctioned violence.

Brazil, like other Latin American countries, is a society based on exclusion – a democracy without citizenship. The impact of globalization, coupled with the crises resulting from economic adjustment programs, separates the rich and poor as never before – “as if,” says Hector Castillo Berthier, “they were oil and water.” Countries with greater inequality – high rates of income concentration in upper-income groups – tend to have higher crime rates as well as higher levels of human rights violations. Brazil is a shocking example in this regard. A country with one of the most appallingly uneven distributions of income on the planet – in 1992, the richest 20% earned 32 times more than the poorest 20% – Brazil also has correspondingly high rates of crime and official violence. For example, worldwide, residents of Rio de Janeiro – along with Buenos Aires, Kampala and Pretoria – run the highest risk of having their homes broken into. And Brazil’s militarized police forces, which come under the authority of state governments, are among the most deadly in the world. In 1992, for example military police killed a record 1,470 civilians in São Paulo alone (compared to 27 police killings in New York City that year).

Those who are most affected by unemployment and most marginalized from the education system are also the most likely victims of both arbitrary police repression and common crime. In Brazil, for example, those most frequently victimized by violent crime live below the poverty line. The perpetrators of violent crimes, such as homicide, are usually from the same social strata as the victims. These crimes usually occur in poor neighborhoods and shantytowns. In fact, in most of Latin America's huge metropolises, there is a correlation between poor neighborhoods and death from violent causes, and a clear link exists between living conditions, violence and mortality rates.

This is the case in the shantytowns that dominate the landscape of almost all Latin American cities – *favelas* in Rio de Janeiro and São Paulo, *ranchos* in Caracas, *barriadas* in Lima, *campamentos* in Santiago, *ciudades perdidas* in Mexico City, *villas miserias* in Buenos Aires. In these “geographic and social pre-cities,” says Ignacy Sachs, “the majority do not possess the minimum conditions of what could be called urban life.” They lack adequate housing, have little access to work and income, and have difficulty obtaining basic services. Moreover, the state, particularly those institutions charged with maintaining peace and order, is rarely present in these “pre-cities,” leaving the socially excluded to fend for themselves. In such a milieu, violence often becomes the mediator of daily social relations. Whenever the state's monopoly on legitimate violence is relaxed, survival may depend on an individual's ability to maintain his or her reputation by displaying a “credible threat of violence.” “A seemingly minor affront is not merely a ‘stimulus’ to action, isolated in time and space,” according to one study of violent behavior among poor classes in the United States “It must be understood within a larger social context of reputations, face, relative social status and enduring relationships.” The offended party may feel the need to use violence to defend his or her status. In this sense, violence is, to a large extent performance.

This kind of inner-city violence may be the result of a “loss of structure in society.” In other words, where social restraints have been loosened, violence is considered a legitimate means of resolving conflict and may actually be encouraged. But violence may also simply be a

reaction by normal people to oppressive circumstances – be it poverty, the humiliation of unemployment, the pressure of organized crimes or the arbitrary power of the police.

Young people are increasingly the victims of violent crimes in large, cities across Latin America. In São Paulo, an average of 102 youths between 15 and 24 years of age are murdered for every 100,000 inhabitants in that age range. In some poor neighborhoods, the figures for this age group reach epidemic proportions of up to 222 homicides per 100,000 – more than ten times the national average. The degree to which young people are either victims or perpetrators of crime reveals the clear link between poverty and violence. This is not to say that there is a direct or mechanistic relationship between poverty and violent crime, but it is imperative to consider how inequality factors into the problem of growing crime in Latin America. As a result of economic-adjustment policies, many young people are unable to find jobs or pay university tuition fees. To compensate for their sense of marginality, many youths join street gangs, while others become involved in drugs trafficking. Crime becomes a quick, easy means to climb the social ladder in a society in which legal and "respectable" channels for such mobility are largely cut off.

Most analyses of crime, however, rarely make these distinctions. Even though most victims of crime are poor, the middle and upper classes perceive crimes as a problem that only affects them. They see crime, moreover, as a constant threat from the lower classes – the "dangerous classes" – that must be held in check, whatever the cost. The police tend to act as border guards protecting the rich from the poor, and police violence remains cloaked in impunity because it is largely directed against these "dangerous classes" and rarely affects the lives of the well-to-do. Crime prevention policies – especially those proposed during delinquency – diminish the fear and the insecurity of the ruling classes. Elite perceptions of the poor as part of the "dangerous classes" are fueled by a judicial system that prosecutes and convicts crimes committed by poor people, while the crimes of the elites go unchallenged. Middle-class crime – including corruption, financial scams, tax evasion and the exploitation of child or slave labor – are not perceived as threats to the status quo. The same is largely true for organized crime, including drug trafficking, money laundering and contraband, and even the very profitable arms trade, none of which are targets of consistent enforcement policies.

Even if the state no longer engages in systematic coercion against political dissidents, as it did during the dictatorships, it remains accountable for the repressive illegal practices of the police and the military which have survived the transitions to democracy. The state needs to work towards eradicating the impunity for official crimes to the same extent it tries to punish violent crimes committed by common criminals.

In much of Latin America, the state has shown itself incapable – or, more likely, unwilling – to punish the criminal practices of state agents.

The problem, of course, is that the election of civilian governments does not necessarily mean that state institutions will operate democratically. Guillermo O'Donnell referred to this as passing from the "first transition" – away from authoritarian rule toward elected civilian government – to the "second transition" – institutionalizing democratic practices at all levels of the state. In many postdictatorship countries that lack a strong democratic tradition, the "second transition" has been immobilized by innumerable negative legacies of the authoritarian past.

This continuity suggests that, notwithstanding the political transition to elected rule, the authoritarian regimes of the past and the new civilian democratic governments are barely differentiated expressions of the same system of domination by the same elites. Political democratization does not attack "socially rooted authoritarianism." This authoritarianism also persists in what could be called the "microdespotisms" of daily life, manifested as racism, sexism and elitism. The combination of a lack of democratic controls over the ruling classes and the denial of rights to the poor reinforces historical social hierarchies. Civil rights and the rule of law are little more than smokescreens for domination. As a consequence, only the middle and upper classes actually benefit from the effective control that democracy exercises over the means of violence in the social interactions of daily life. For the poor and destitute majority of the population, unchecked power continues to be the most visible face of the state.

State institutions charged with providing law and order are widely perceived as dysfunctional. A large percentage of Latin American citizens do not believe that their civilian governments have implemented – or have attempted to implement – the rule of law with equality and impartiality for all citizens. Formal guarantees enshrined in the Constitution and the legal code are systematically violated, largely because of the glaring gap between what the law says and the way the institutions charged with protecting and implementing the law – i.e., the police and the judiciary – function in practice.

In almost all Latin American countries, the poor see the law as an instrument of oppression at the service of the wealthy and powerful.” The judicial system has been widely discredited for its venality, inefficiency and lack of autonomy. It is deficient in every respect: material resources are scarce; judicial procedures are excessively formalistic; judges are insufficiently trained; and too few judges oversee too many cases. Many judges, moreover, have been impotent to prosecute cases of organized crime, and some have even been linked to drug trafficking. In most countries of the region, the investigative capacity of the police is very limited, and a low percentage of investigated cases make it to the courts. Almost half of the nearly 5,000 homicides that occurred in São Paulo in 1995, for example, remain unsolved.

In most countries, the way the courts function is intimately linked to the hierarchical and discriminatory practices that mark social relationships. In Brazil, for example, the criminal-justice system has failed to investigate and prosecute numerous cases of rural violence against the poor. According to Brazil’s Pastoral Land Commission, of the 1,730 killings of peasants, rural workers, trade union leaders, religious workers and lawyers committed between 1964 and 1992, only 30 had been brought to trial by 1992. Of those, only 18 resulted in convictions. In Chile, not a single assassin of the 1,542 trade unionists killed since 1986 has been successfully convicted. Through-out the continent, impunity is virtually assured for those who commit offenses against victims considered “undesirable” or “subhuman.” As a result, those responsible for serious human rights violations go unpunished. And undeterred, they continue to commit other violations.

As a result of the failure of Latin America’s democracies to rein in the police by imposing greater civilian controls, abusive practices against suspects and prisoners have become entrenched. The police in many countries have been criticized for the unjustified use of deadly force. In Chile, for example, the UN criticized the police for their policy of “shoot first, ask questions later.” In Brazil and elsewhere, torture is still practiced in the majority of police inquiries. Accusations of torture are rarely investigated; when they are, those responsible are even more rarely punished.

Military police throughout Brazil continue to practice summary executions of suspects and criminals. In São Paulo, there are 18 killings by police a month, and in Rio de Janeiro, the monthly average is 24. Most of these deaths take place in the poor neighborhoods, and the victims are usually from the most vulnerable groups – the poor, the homeless and African Brazilians. The military police see the rule of law as an obstacle rather than an effective guarantee of social control; they believe their role is to protect society from “marginal elements” by any means available. Such killings enjoy broad support from elites as well as the poor – who are, after all, the largest category of victims of violent crime. In each of Brazil’s 26 states, crimes committed by the police and military are tried in military-police courts. Made up of military officials and based on shoddy criminal investigations, these courts often sanction the impunity of acts like police killings and other violent crimes.

Police massacres – like the summary executions of 19 landless peasants in the northern state of Pará in April – are all too frequent. In areas where rural conflict, largely over control of the land, is widespread, the police often act in collusion with large landowners and local politicians. On August 9, 1995 in Corumbiara, in the state of Rondônia, for example, ten squatters were killed when 200 military-police officers stormed a camp of 1,200 rural workers and their families who hoped to farm the land. Deadly force has also been frequently used to suppress prison riots. After a riot of more than 7,000 inmates at the House of Detention in São Paulo in February, 1992, the military police killed 11 detainees.

This series of killings and massacres in the countryside and in the city are the legacy of a militarized approach to public security. This approach was carried to its logical extreme in December, 1994 when the army occupied the city’s slums in the hills of Rio de Janeiro. The

government said the army occupation was necessary in order to regain control of these areas from the drug mafias. While some have referred to these areas as a "parallel state" because the police often refuse to enter them, these are not "occupied territories" that need to be "liberated" by the armed forces. In fact, the current situation of disrespect for the law continues in

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these areas largely because of the extensive association between organized crime, public officials, business people and state agents. Organized crime flourishes in these neighborhoods because public officials tolerate – and sometimes finance – these illicit activities, and because consumers among the elites assure a regular market, which is protected by the police. On the other hand, the populations of Rio's slums have been abandoned by public officials. Their main experience of state authority is extortion and illegal police repression. It is not surprising, then, that traffickers in the slums – usually adolescents acting as intermediaries for the real traffickers that live in the city – are venerated as benefactors when they distribute some crumbs from the enormous profits of their patrons in the form of jobs and protection. The army occupation of the *favelas* failed to put even a small dent in drug trafficking or in the criminal gangs that continue to terrorize the residents of these poor neighborhoods. Military strategies to fight crime – an approach that is increasingly common in many new democracies – are doomed to failure. Crime prevention requires more complex and subtle forms of intervention.

The massive delegitimization of the police and the criminal-justice system has led to a wave of vigilantism in poor neighborhoods throughout Latin America. Local groups carry out "justice" on their own and criminals caught *en flagrante delicto* are spontaneously lynched. Lynchings have become commonplace in Brazil, Peru and Venezuela. In a recent study, sociologist José de Souza Matins counted 515 lynchings in Brazil between 1970 to 1994, which resulted in a total of 366 deaths. In Brazil's largest cities, *justicieros*, or gunmen, are charged with maintaining order in poor neighborhoods. Merchants, and at times local neighborhood associations, often support these private "enforcers" of public order. The abundance of lynchings and *justicieros* indicates the ineffectiveness of state institutions charged with controlling violence and crime, and the degree to which the state has abdicated its role as provider of order and security to all citizens.

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These private acts of "justice" thus consolidate the cycle of illegality and violence.

Across the continent, an important network of human rights organizations has developed since the dictatorships. These organizations, in coordination with professional associations, environmentalists and indigenous-rights groups, have been organizing campaigns to deal with the problems of crime, impunity and human rights abuses. The organization *Viva Rio*, created in 1993 in the state of Rio de Janeiro, is an example of how groups in civil society have tried to build networks to confront the problem. *Viva Rio* includes religious, activists, popular movements, business people, private foundations, churches and the media. In 1995, protesting crime and ongoing official impunity in Rio, the group organized a huge "walk for peace" along the central avenues of the city – the first large public demonstration in Brazil since the campaign for direct elections decades before. Bringing together grassroots groups, businesses and government, the organization is trying to tackle the problem of urban violence and how to integrate the city's slums into the larger metropolis.

While groups like *Viva Rio* face serious disadvantage in terms of resources and influence – and in some countries they are still subject to death threats and other forms of intimidation – their efforts represent remarkable attempts to defend vulnerable groups in society. At the same time, however, their work has been more difficult to define in the postdictatorship period. Under the dictatorships, human rights victims were predominantly small groups of political dissidents. It is harder to define the new victims, because they do not constitute a homogeneous and immediately identifiable group, and their numbers are infinitely

greater. An additional obstacle is that poor people are often not aware of their rights. In addition, the illegal practices of state agents are widely viewed as acceptable by the population at large.

Despite the general failure of Latin American democracies to address the problem of official violence and impunity, there have been a handful of government attempts to tackle some of these problems. At the UN World Conference on Human Rights, which took place in Vienna in 1993, several countries championed the idea of trying to ensure human rights protection through special laws and government-assistance programs. The Australian and the Philippine government were the first to unveil their national plans, followed by Brazil's promise to implement a national human rights charter. The human rights charter includes 168 proposals, ranging from guidelines for police training to directives for a witness-protection program and assistance to the victims of violent crime. The reforms proposed by the current government of Fernando Henrique Cardoso, such as federally mandated investigations into human rights crimes, would radically change the status quo of arbitrary police violence and impunity. The Congress has already approved one of those reforms – transferring cases of intentional homicide committed by the military police from military to civilian courts.

Yet despite these positive developments, Brazil and other new democracies in Latin America are still far from being capable of assuring liberty and justice for all. In this context, governments that attempt to promote reforms to address the multifaceted problems of crime and impunity often find themselves in a no-win situation. The failure of the new democracies to respect their own laws, as well as their international obligations, has seriously compromised their legitimacy. As a result, these governments are likely to have difficulty garnering popular support for their reform efforts.

The current international conjuncture is not the most propitious for implementing redistributive policies that would reduce social polarization and for instituting principles of social justice. Globalization pushes Latin American countries toward greater integration into the world economy, but the only countries that are likely to accrue any benefits from this integration are those that have laid the requisite foundations for industrialization and development – by investing in human resources and physical infrastructure, raising productivity in the agricultural sector and promoting technological and managerial capacities at the microlevel. Since most Latin American countries have not laid these foundations, globalization will likely have disastrous consequences. “The countries which have not created these preconditions could end up globalizing prices without globalizing incomes,” says economist Deepak Nayar. “In the process, a narrow segment of their population may be integrated with the world economy, in terms of consumption patterns or living styles, but a large proportion may be marginalized even further.”

This is exactly what has happened in Latin America during the “lost decade” of the 1980s and beyond. In addition to traditional unemployment, in which many are simply “left behind” even as the economy grows, Latin American democracies must grapple with the problem of the “new poor” generated by technological competition and increasing globalization. Such economic and social imbalances – which lie at the root of inequality and victimization – cannot be corrected by the market alone. The state – as defender and promoter of human rights – has a critical role to play if these societies are to tackle the growing problem of poverty and the associated problems of crime and impunity. Only the state can provide consistent national programs to promote health and education – the preconditions for a social order, based not on the silence of official abuse and impunity, but on democracy and development.

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