

The New Politics of Inequality in Latin America

Rethinking Participation and Representation

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Capítulo 11 - Popular Responses to State-Sponsored Violence in Brazil

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In 1989, the first president to be democratically elected in Brazil after twenty years of authoritarian rule was accused of corruption. A parliamentary investigation into the affairs of the President and a subsequent criminal investigation led to popular protests throughout the country in 1992, in which protesters filled the streets, urging their congressmen to vote for the President's impeachment and to vote against pardon. This process finally concluded in September 1992 with the impeachment of President Fernando Collor on charges of corruption.

In early 1994, a special commission of the federal Congress presented the final report of its three-month-long investigation – sessions were transmitted by radio and television – on what became known as ‘the Federal Budget mafia’ scandal, centering on a group of congressmen who had pocketed more than 100 million dollars from the federal budget in 190 checking accounts dispersed in twenty-seven banks. The federal Congress promoted its own ‘clean hands’ investigation, proposing the expulsion of eighteen of its members and indicting two dozen.¹

All participants in these investigations – the government, political society, the judiciary, and civil society – strictly adhered to the rules of the game. Linz and Stepan have recognized that ‘what was impressive about the impeachment proceedings is that in the midst of the multiple crises of democracy, every major component of Brazilian politics carried out their fundamental democratic tasks’ (Linz and Stepan forthcoming: 263, 264).

Almost simultaneously, while the impeachment and the parliamentary corruption investigations were being carried out, government agents directly participated in gross human rights violations – such as the October 1992 Carandiru massacre of 111 prisoners by the São Paulo military police; the July 1993 killings of street children near the Candelária church by the Rio military police; and extrajudicial killings by *justiceiros* and police forces. These contrasting events show that the government has not succeeded in changing many of the arbitrary practices of its institutions or in imposing the restrictions expected of the state's monopoly on legal violence. Brazil thus illustrates the problems that new democracies face in bridging the growing gap between the state's political gains and its persistent violations of economic, social, and civil rights. These conflicting practices show the challenges that developing countries face in establishing connections among, the heterogeneous spheres of power – democratic values continue to coexist with authoritarian ones.

The fundamental contradiction that this chapter addresses is whether basic political and civil rights can be protected adequately in countries where ‘structural violations’ of economic, social, and cultural rights seem to be a permanent feature of society (Stavenhagen 1990; Pinheiro *et al.* 1993: 25). It seeks to explain why democratic consolidation, despite constitutional freedoms which have been granted and competitive elections which have been held during the last ten

years, still faces so many obstacles. The chapter argues that one of the main difficulties is the continuation of authoritarian practices in a society now under a democratic political framework.

After examining the main aspects of this continuity and the characteristics of socially rooted authoritarianism, the chapter discusses two closely interconnected and mutually reinforcing phenomena that pose, in our view, the most serious threats to the consolidation of democracy in Brazil. The first is the failure of democracy to integrate large segments of the population as full-fledged citizens into the development process and consequently into the decision-making process. The second is the failure to achieve pacification of society through the universal application of the rule of law and the legal control of violence. The chapter focuses on these phenomena by examining the question of corruption and the persistence of illegal violence against the most disadvantaged groups. It also evaluates the role that impunity, accountability, and transparency play at the present juncture in Brazil. Despite this grim picture, the chapter also examines how a free and active civil society developed in specific sectors, exemplified by the activities of NGOs in Brazil – especially those involved in human rights. The chapter discusses the strategies of human rights NGOs concerning the effective enforcement of the rule of law and the struggle against violence. Finally, we discuss the democratic framework that can gradually create conditions for civilian governments to make transparency a requirement for addressing gross human rights violations.

1. Democratic Consolidation and Authoritarian Continuity

The end of authoritarian regimes and the return to constitutionalism through political transitions proved insufficient to guarantee access to democracy for large segments of the population in developing countries. This is because democracy is more than writing a constitution and introducing an electoral system.

If political democracy could be defined, as Kenneth Bollen proposes, ‘as the extent to which political power of the elites is minimized and that of the non-elites is maximized’, then the present situation of democratic regimes in developing countries is extremely precarious. For, as Bollen indicates, ‘it is the relative balance of power between elites and non-elites that determines the degree of political democracy. Where the non-elites have little control over the elites, political democracy is low. When the elites are accountable to the non-elites, political democracy is higher’ (Bollen 1991: 5).

The main prerequisites which enable non-elites to control elites – popular sovereignty through free and competitive elections, alternation in government, separation of powers, independence of the judiciary, control of the military – may become real in any stage of economic development. Even if these characteristics often are found more easily in richer countries, some changes in the political process can reform political institutions in any polity. But contemporary history has demonstrated that the pacification of violence, with few exceptions, has become a reality only in more economically and socially developed societies (Pinheiro *et al.* 1993: 201 – 2).

Needless to say, the control of violence has represented a challenge to Western countries where democracy has flourished and become deeply rooted. With the establishment of the modern state and its rational politico-administrative apparatus, these countries largely have achieved ‘the monopoly of violence’, and ensured the pacification of social conflicts through the universal applications of laws (Weber 1963, Bobbio 1984). This process was not achieved without intense social struggle and confrontation. The break with the past occurred when the state succeeded in ensuring the basic principles of human rights, political pluralism, the social contract, and political representation.

Many Latin American countries were not entirely successful in ensuring one of the basic cornerstones of democracy: the legal control of violence. The return to civilian rule carried the hope that the human rights victories achieved by political opponents under military rule would now be extended automatically to all citizens, especially the most destitute and vulnerable groups. While the most egregious forms of human rights violations by the military regime were eliminated under civilian rule, the long-awaited democracies did not succeed in playing their role as guardian of public order and protector of the fundamental rights of all citizens. The pacification of society through the rule of law is still precarious in many countries.

In many of these new democracies, as Guillermo O'Donnell has pointed out, the installation of a democratically elected government does not necessarily open the avenues for institutionalized forms of democracy. In many emerging democracies without a democratic tradition, that 'second transition' – after the 'first transition' from authoritarian rule – is immobilized by the many negative legacies of the authoritarian past (O'Donnell 1994: 56).

If we can consider the linking of authoritarian practices with a democratic regime as constituting a new system of government – unable to realize all the prerequisites of the formality of democracy – then perhaps we can understand the dynamics of the present system. Tentatively, if we refer to the presence of corruption or gross human rights violations, we can conclude that the authoritarian regime (1964 – 85) and the civilian democratic government (1985 to the present) are expressions of the same system of government as a whole. One of the explanations for this continuity is that social forms of authoritarianism have survived well beyond political democratization (O'Donnell and Schmitter 1986, Pinheiro forthcoming). This authoritarianism is not only socially rooted in macropolitical institutions, but also in the micro-physics of power (as defined by Michel Foucault).

Within that system there persists a clientelistic political style that is 'normal in an oligarchic republic, founded in a predominantly rural society, with a very limited expansion of capitalist relations and with a very limited mobilization and organization of the popular classes'. But that political style is profoundly inadequate for an eminently urban society, where capitalist relations are fully hegemonic and where a civil society is present. The perpetuation of the ruling class after the authoritarian regime, as O'Donnell has observed, indicates a very high level of continuity of authoritarian practices in Brazil, even when compared to other successful democratizations since World War II. In Brazilian society, as in many new democracies, there are profound authoritarian strands that pervade not only politics but society. Implanting democratic institutions following political transitions was much more difficult than had been expected previously: 'The combination of extreme inequality and very authoritarian patterns of social relations poses great difficulties in creating a more solid and open democracy... In Brazil, just to name one country, the lower classes are treated as inferiors, as subcitizens. With those kinds of inequalities and social authoritarianism a democracy is difficult' (O'Donnell 1993e).

The institutional changes made to the Brazilian government structure after the return to democracy were never accompanied by economic and social changes for the majority of the population. There is a dramatic inequality between rich and poor people, a profound and historical gap that continues to widen and still divides Brazilian society. The lack of democratic controls on the ruling classes has been combined traditionally with denial of human rights for the poor. This combination reinforces a strong social hierarchy, where rights and the rule of law are an illusory reference for sheer domination. As a consequence, only a few sectors of society which have access to economic and social conditions of survival do, in fact, benefit from effective control over the means of violence in the social interactions of daily life.

2. Citizen Representation and Lack of Accountability

Brazil experiences the incredible paradox of strictly defined constitutional guarantees combined with very weak citizenship. To understand this contrast, it is worth considering that political institutions for citizen representation are very problematic and that most of their limitations, defined under the authoritarian regime, were maintained by the 1988 Constitution.

Most striking among those institutions is the over-representation of the less populated states in comparison with the most populated one: the state of São Paulo today has only sixty congressmen (11.9 per cent among the total members of Congress representing 20,774,991 people, approximately 21.9 per cent of the 94 million voters).² In comparison, the state of Roraima elects eight congressmen (1.6 per cent of the total in Congress) when its voters total 119,399 voters, or 0.1 per cent of all voters in the country. The states of the Brazilian federation that are over-represented are the northern and north-eastern states, those with the worst social indicators and where elements of social authoritarianism are most visible, especially through the continuous presence of oligarchic politicians who have remained in power since 1964. These states also have the largest concentrations of illiteracy – 46 per cent in the north-eastern states and 35 per cent in the northern states.³ In the states of these two regions, rates of illiteracy are much

greater than in other states: Sergipe, 23.30 per cent; Alagoas, 23.22 per cent; Maranhão, 21.68 per cent; Paraíba, 21.64 per cent; compared to São Paulo, 3.07 per cent, or Rio de Janeiro, 3.09 per cent.

It is precisely in the northern and north-eastern states where free access to information is most limited and where local politicians control the media – television and radio – by concessions from the state and the press. Eight private groups control the country's television in a situation of virtual oligopoly. Many concessions are divided among members of the same family to escape the provision in the law that forbids individual ownership of more than ten television concessions. Most of the power of politicians from the oligarchy in those states of the north and north-east is based on control of the media in their states. The families of former presidents Sarney and Collor each have one television concession, and five and three radio stations, respectively, in their states, Maranhão and Alagoas; former Bahian governor Antonio Carlos Magalhães, Congressman Inocêncio de Oliveira of Pernambuco, former President of the Chamber of Representatives, as well as several former governors, ministers, and senators from those regions also own television concessions, radio stations, and very often local newspapers.⁴

These limitations in the system of representation have direct consequences for citizen participation because this clientelism systematically builds strong obstacles to human development in the region and to the possibilities for organizing the participation of civil society. Underdevelopment in those two regions is not a result of fatality or of pathology. It is the concrete consequence of the maintenance of social authoritarianism through the complex interplay of control over political (representation, media access, judicial institutions, police) and economic resources (privatization of state budgets through corruption) in the hands of those oligarchies – as the investigation concerning the 'congressional Mafia' has demonstrated. Poverty, illiteracy, and epidemics are by-products of the continued presence of traditional and authoritarian elites in the consolidation of democracy. Such elites, so far unchallenged by civil society, have enjoyed recourse to illegal controls and many times to terror; the absence of transparency, the absence of accountability, and impunity are the pillars of traditional economic and political domination in the north and north-east region.

One of the most characteristic flaws of democratic states like Brazil which have difficulties in implementing the rule of law is the absence of 'accountability', the principle which requires that political representatives and public officers be made to answer for their actions. In modern political practice, as Juan Linz and Alfred Stepan have observed, accountability requires that 'all financial records... be routinely subject to inspection, and that it is the obligation of the officials who use public funds to follow transparent procedures... Bureaucrats and officials who treat state resources as their "patrimony" are held accountable and can be put in jail' (Linz and Stepan 1994: 262).

Political oligarchies, through their control of the electronic media, make transparency impossible and create obstacles to strengthening institutions crucial to the enforcement of constitutional guarantees and to making the ruling class and public officers accountable to the citizens. The judiciary is not subjected to any kind of external control by administrative proceedings or expenses. State public prosecutors have had their competence broadened by the new constitution and in practice try to make their prerogatives real, but in many states they are submitted to serious limitations. Civilian police posts, as we will see, do not exist in the poorest states, and police commissioners, who preside over every criminal investigation, are completely dominated by the Executive. This incapacity of the state to make public officers accountable and to strengthen the political institutions most exposed to corruption is a phenomenon which affects both new and consolidated democracies. The extremely fragile consolidation of democratic institutions, lacking in effective accountability, assures virtual impunity, especially for crimes committed by the ruling classes and by organized crime.

The absence of serious mobilization dramatically restricts the weight that popular mobilization could have on changing the foundations of political power. Certain elites, especially in the most underdeveloped states, clearly perceive that if citizenship and democratic participation become a reality, this will inevitably lead to demands for economic change, which is long overdue (Cammack 1993: 189).

To be fair, it is necessary to recognize that in the south-eastern states, like Rio de Janeiro or São Paulo, even though the rate of illiteracy is smaller and there is greater transparency and a

higher degree of independence enjoyed by the judiciary, violent crime – as the homicide rate indicates – as well as illegal violence and impunity nonetheless are high. Despite the relative weakness of clientelism, corruption helps to establish a very active collusion between crime and state agents.

Thus, despite democratic governance and the clear definition of constitutional guarantees, we must recognize that in Brazil there is democracy without citizenship. Here, as in several other Latin American societies, ‘the blocking of participation outside elections by local elites and state security forces forces the prevalence of clientelism, and elite resistance to the building of strong and autonomous association by the poor themselves’ (Cammack 1993: 189).

Besides these political aspects, it must also be remembered that most Latin American countries have reached democracy with stark inequities in development and relatively poor social indicators. Notwithstanding democratization, both trends worsened during the so-called ‘lost decade’ of the 1980s. According to the UNDP Human Development Report, Brazil, which has the worst income disparity (among the countries of more than 10 million inhabitants) in the world, experienced an increase in the ratio of the income of the richest 20 per cent to that of the poorest 20 per cent from 26 to 1 in 1991 to 32 to 1 in 1993.⁵

Latin American specialists consider structural violations of economic and social rights a permanent feature of these societies and question the feasibility of protecting the fundamental political and civil rights of the population without undertaking profound changes in these structures. The exclusion of important segments of the population from economic progress and political participation, leaving them with little hope to better their lives, means that countries in transition will only be able to achieve ‘imperfect’ or ‘restricted’ forms of democracy (Stavenhagen 1990: 48 – 50).

Structural violations of human rights that are rooted in the economic and social structure of a country are as destructive to democratic principles as the better-known civil and political violations; yet they are much more difficult to combat than the latter, in the sense that the state alone cannot be responsible for solving them. Society as a whole has to be mobilized to put an end to these secular distortions (Stavenhagen 1990: 48 – 50).

3. Lack of Accountability in a Culture of Corruption

On many fronts, including gross human rights violations, violence, and corruption, the Brazilian experience offers an example of continuity in – rather than rupture with – past authoritarian practices.

If we can consider the linking of authoritarian practices with a democratic regime as constituting a new system of government then perhaps we can understand the dynamics of the present system. Perhaps in the realm of corruption if we could consider the authoritarian regime (1964 – 85) and the civilian and democratic governments (1985 to the present) as a single system then we would be able to understand the endemic corruption that characterizes many new polities, such as the present one in Brazil. The Brazilian corruption scandals may be of particular interest for the analysis of transition processes where in fact there is evidence of continuity rather than of rupture.

Democratization, meaning free and competitive elections and constitutional guarantees, is not sufficient to overcome what Gunnar Myrdal called twenty-five years ago in *Asian Drama* ‘the soft state’: the state that failed to supersede personal, family, ethnic, and tribal loyalties (Woollacott 1993: 6). Many elected presidents or democratically appointed officers do not perceive the boundaries between state finances and private expenses. Even in democratic regimes many officers continue receiving bribes or regular commissions, or take money directly from public funds.

Corruption may also be interpreted as an absence of efficient political institutions. Public officials, as Samuel Huntington noted some time ago, have no autonomy and tend to subordinate their institutional roles to external demands. In many societies, the use of public positions for personal enrichment is accepted as normal. In many countries, like Italy and Brazil, several public institutions, especially those which are supposed to be above influence like the parliament, are extremely susceptible to untoward practices.

In the face of a weak state, political institutions, especially the parliament, are those most exposed to corruption. It is a phenomenon that is cross-cultural and which affects new and consolidated democracies alike. Many congressmen world-wide continue to be available to be bought. Alan Doig, in his work on corruption in contemporary British politics, considered government Ministers (and Cabinet Ministers also) 'the most marketable and vulnerable commodity'. Quite recently, in an opinion editorial which appeared in the *international Herald Tribune*, historian Arthur Schlesinger Jr. quoted Mark Twain as having considered congressmen 'the only distinctly natural criminal class'. Brazilian and Italian congressmen are competing to affirm the truth of these assessments which link political representatives and corruption.

For twenty years, the Brazilian parliament did not have a say in the preparation of the federal budget. When, after the return to democracy, the Congress regained control of the budget, decisions became subject to control through collusion between members of the congressional budget commission and half a dozen executive officers. The Congress, as a whole, has also developed a very particularistic approach to the preparation of the budget, a large percentage of the budget being allocated directly to private organizations nominated by each congressman. In fact, one aspect of the scandal was the discovery that an apparently favorite way of stealing from the federal budget was to channel grants to those charitable foundations controlled by members of Congress. In response to these disclosures, the government ruled in December 1993 that 3,200 'non-profit' groups were no longer eligible for subsidies (Brooke 1994).

Beyond state and political institutions, however, to understand corruption we must take into account that this is also a dimension of a political culture characterized by an insufficient acknowledgment of the difference between the public spirit, *l'esprit public*, and private interests. In many societies there is a generalized compulsion to take private advantage from a given situation, especially from public resources. This is particularly so in those countries where public resources are so scarce. On the other hand, the belief that all those who are in government or in the parliament are corrupt functions as an excuse for the majority of the population to disrespect the law, to evade taxes, and to carry out administrative irregularities.⁶ In many societies the very notion of 'conflict of interest' does not exist.

The enormous difficulties encountered in trying to clean up a country after an investigation by the Congress (as in Brazil) or by the Judiciary (as in Italy) indicate that the phenomenon of corruption is quite pervasive and profound in society. This skepticism was recently echoed by Umberto Eco: 'Nowadays 95 per cent of the people are enraged and shout "Thief!" at the MPs walking down the street. But what were they doing before'. Running some kind of Committee of Public Health? Let's not go along with this idea of a country with a clean bill of health in revolt against a High Dome of corruption. Confronted by an examination of conscience, we find a country which is, for the most part, corrupt.' There is no real guarantee that allows us to conclude that the 'clean hands movement' in Brazil, Italy, or other parts of the world has become consolidated in the sense of achieving effective cultural reform. It would be extremely misleading to suppose that the present campaigns against corruption announce the end of generalized practices of corruption accepted and even practiced by all the population.

In any case, these new and unexpected developments in the fight against the impunity of corruption practices have produced a new civic awareness and may contribute to strengthening democratic values. In December 1993, in a national survey taken by the daily *Folha de S. Paulo*, 54 per cent of Brazilians agreed that 'democracy is always better than any other form of government' – the highest percentage registered in the ten times the question has been asked since September 1989. This was the year after the numerous public demonstrations for impeachment, the reawakening of investigative journalism, and the parliament's investigation of corruption. Transparency makes a difference.

4. Endemic Violence and Gross Human Rights Violations

After nearly ten years of restored democracy, Brazil has yet to find a solution to endemic violence and gross human rights violations. Violence in Brazil emerges in a setting of extreme economic and social inequalities, of huge income gaps inside as well as outside Brazil's borders.

Crime as a whole became more violent in the 1980s; the murder rate in recent years has risen dramatically in Rio de Janeiro and São Paulo. Prominent among the assaults on life in Brazilian

cities are traffic accidents and deaths, causing us to recognize a category of violence meted out by 'educated' people. The state, in most cases, is not directly responsible for committing these abuses; its responsibility lies in the failure to control the arbitrary practices of its own repressive apparatus.

The failure to control violence is illustrated by: (1) the continued use of torture against suspects in most police precincts throughout the country; (2) the ill-treatment of inmates in prisons and in closed institutions⁷, (3) extra-judicial killings by police-linked death squads; (4) the murder of street children and adolescents by *justiceiros* and other non-identified groups; (5) widespread rural violence. The majority of these cases have a common denominator of impunity. The failure to enforce the law not only affects the equality of citizens before the law, but also makes it more difficult for governments to strengthen their legitimacy and perpetuates the illegal circle of violence (Pineiro *et al.* 1993: 10).

The victims are no longer a small minority of educated, mostly white, middleclass political opponents. Under democratic rule, the principal targets of arbitrary rule and of human rights abuses are the most defenseless groups – the poor, prison and closed-institution inmates, rural workers and trade-union activists, racially discriminated minorities, destitute children and adolescents.

Violence is widespread in rural areas of Brazil, where, José de Souza Martins indicates, at least 90,000 people were at some time enslaved during the last twenty-five years (Foreword to Sutton 1994: 8). Generally, people are 'hired' to work and are brought to the work site, after which they are informed that they are indebted for their transportation and food during transport. The workers are not paid wages and are threatened with death if they attempt to escape.

Many visible manifestations of this endemic violence also are present in urban areas. Between 1980 and 1990, the rural population decreased from 23 million to 15 million, with an average 1 million people leaving the countryside every year (Sutton 1994: 24). The urban population in Brazil grew from 67.5 per cent of the total population in 1980 to 75 per cent in 1990. This was the consequence of massive migrations during the last three decades from the rural to the urban sector. Large parts of populations in Brazilian cities live in miserable conditions of urban marginality, similar to those of the least developed countries in Asia and Africa (Jaguaribe *et al.* 1989: 17 and 31).

There is a strong correlation between the places where the poor live and violence. Shootings, stabbings, and traffic accidents kill more in the poor periphery of São Paulo than all the types of cancer. The further we go from the central regions of the city to the periphery, where there are large concentrations of poor (mostly living in shantytowns – *favelas*),⁸ the more we see a clear reduction in mortality rates due to cardiovascular disease and cancer and an increase in 'external' causes of death (violence, homicide). There is a clear link between living conditions and violence and mortality rates which indicates an epidemic of violence – violence being a significant part of social deprivation (Sen 1993: 46).

This violence is not a new phenomenon in Brazil; rather, it is the continuation of a long tradition of authoritarianism that was hidden behind the political violence of the military regime and the restrictions imposed through censorship. The formal configuration of democracy opened space for repressed contradictions and unresolved social, cultural, and other conflicts to come to the surface.

5. The Failure of the State to Control Illegal Violence

This aggravation of gross human rights violations occurs despite the existence of what we could call a 'bill of rights' – one of the most far-reaching in Brazilian history – written into the 1988 Constitution (especially the 77 provisions in article 5, chapter 1 on individual and collective rights). The new Constitution brought enormous progress in the area of protection of fundamental individual rights. Violations which traditionally have plagued Brazilian society, such as torture and racial discrimination, are treated as crimes; the rights to life, liberty, and security of the person have been reinforced. The formal recognition of these rights, however, has not been sufficient to put an end to a wide range of violations.

Let us look in more detail at the situation of legal institutions. The reform of the judicial system, the most crucial institution for enforcing the rule of law, has not accompanied political

and legal changes introduced in the text of laws by the new democracies. The judicial system has both a precarious structure and an insufficient staff. The lack of judges in rural areas, the slow pace of legal processes, and the differential access of the rich and the poor to justice are but a few examples of the poor performance of this institution.

Brazil, as Alfred Stepan has recently observed, is a country with great problems concerning the normative and institutional presence of the state. Many studies have revealed that the overriding number of Brazil's citizens do not believe that the state has attempted or will ever attempt to enforce laws on all its citizens equally and impartially. In particular, most citizens think that the justice system fundamentally exists to protect the powerful (Stepan 1993: *passim*).

Reform of the judicial system has been slow in coming to Brazil's new democratic administrations. Today there are fewer than 6,000 judges in the country, as evidenced by the data published by the National Judiciary Data Bank of the Supreme Court (1991). In the northern and north-eastern states – which are politically over-represented in the Congress, where the accountability of public officials is practically non-existent, and where social and economic conditions are worse and impunity is more evident – the ratio of judges to people is smaller than in the southern states.⁹

This pattern is duplicated in other public posts crucial to the rule of law, such as the public prosecutors' offices in each state. Many cities in areas of intense rural conflicts have no judge or public prosecutor. In most states in the north and north-east there is no police career track – police commissioners, who preside over every criminal investigation, are political appointees of state governors and the requirement that they must have a law degree is not always respected. In the state of Bahia, for instance, 60 per cent of police commissioners have been appointed by the governor. The result is that police investigations, decisive in the struggle against crime and impunity, are extremely fragile.

Evidently this failure of the democratic regime is not limited to the more underdeveloped states; the federal police, an essential instrument for investigation of crimes involving corruption, contraband, and human rights violations, number less than 5,000 agents, the great majority of whom are concentrated in Brasilia and in the biggest state capitals.¹⁰

The police and the legal system are virtually absent concerning the detection and prosecution of rural violence against the poor. According to the Comissão Pastoral da Terra, from 1964 to 1992 there were 1,730 killings of peasants, rural workers, trade union leaders, and lawyers as well as of religious people serving in advisory capacities in rural and labor conflicts; just thirty of these cases had been brought to trial by 1992 and only eighteen of these resulted in convictions (Sutton 1994: 24).

In the state of Para, where more rural workers and their leaders have been killed than in any other state, only one gunman was convicted of murder in 1993 and no landowner has ever been convicted for paying for the killings, as oftentimes has been the case. In a rare case where a landowner was convicted and jailed for murder, Darli Alves and his son Darci (the killers of rubber-tapper leader Chico Mendes) escaped from the Acre state prison on 15 February 1993; many human rights groups have charged that the escape was aided by authorities. A federal manhunt failed to find them and they remain at large (US State Department 1994: *passim*).

As a result, many violent and organized crimes and most gross human rights violations – such as those allegedly committed by state agents – are never prosecuted. Moreover, rigorous and respected legal precepts regulating arrest, right to counsel, interrogation, and imprisonment are unknown to the poor segments of the population on the periphery of metropolitan areas.

In the majority of the states police investigations are extremely precarious. Disrespect for civil rights is the rule in relations between police and the poor. Public opinion holds that the police cannot be trusted. A study of the state civil-ian police (Paixão 1982), which is responsible for investigations in the large cities of Brazil, showed that members of the civilian police see themselves as 'purifiers of the society', justifying their routine use of illegal methods of investigation: torture and ill-treatment of suspects, especially those who are not able to defend their civil rights. The study also underlined the precarious character of the formal mechanism of investigation, the rule of law, 'which is often considered by police agents as an obstacle rather than an effective guarantee of social control' (Pinheiro 1992 and 1993).

The state military police, under the control of the governors of each of the twenty-six states of the Brazilian federation and in charge of patrolling and crime prevention, have been reported to

commit some of the most blatant human rights violations in the form of summary execution of suspects (Americas Watch 1993a, Chavigny 1990). The military police view these deaths as a way of protecting society against 'marginal' elements, and they are rarely punished.

The 1988 Constitution has preserved a separate system of criminal justice set up under the dictatorship – the *justiça militar* – for the discipline of the military police. Crimes committed on duty by the military police come under the jurisdiction of special military police courts set up by the military police in each state (not by the armed forces). But, in fact, military justice is not designed to work well for acts of violence committed by the police; it works much more efficiently for cases that present a threat to the organization, such as corruption and breaches of discipline, than for violence against citizens (Americas Watch 1993b: *passim*; US Department of State 1994: *passim*).

6. The Role of Civil Society and NGOs' Strategies

If we turn to the organized sectors of civil society, namely the human rights movements and non-governmental organizations (NGOs), we find that during military rule they were quite successful in denouncing political rights violations but did not engage in defending those who were demanding their social and economic rights. Even in the case of persecuted trade union leaders, human rights activists primarily focused on the political aspects of the persecution. Social and economic rights usually were disassociated from political and civil rights and treated as part of the country's economic policy.

The new juridical framework opened up space for new movements and organizations among women, blacks, indigenous people, rural workers, and others. These emerging movements have introduced a dynamism and a capacity for innovation in the system that have challenged the limitations of weak political parties and trade unions, as well as the more narrow concerns of national interest groups (Stavenhagen 1990). Yet, despite their vitality, the activities of these groups are still fragmented and localized. They can complement but not substitute for political society.

It is interesting to note that the same groups that fought arbitrary rule in Brazil and in other Latin American countries have, over the past two years, begun to act in defense of the poor and other disadvantaged groups. The most famous initiative is, undoubtedly, the 'Campanha da Cidadania contra a Fome e pela Vida' (Citizens' Campaign against Hunger and for Life), launched by the well-known Brazilian sociologist and activist Herbert de Souza ('Betinho'). This nationwide campaign is mobilizing the enthusiasm of significant segments of the population and receiving support from several authorities. The concrete results are still modest compared to the gigantic needs; however, this is a reflection of the country's 'malaise' in relation to the rising social crisis.

Although all protagonists – state, civil society, political parties – agree that something should be done, no government in the region has committed itself seriously to changing the balance of power in favor of the most vulnerable minority in all societies, the poor. Although they represent the majority, the poor are 'institutionally excluded and systematically discriminated against' in societies governed by laws that are not enforced and markets that exclude them (UN 1991). Most Latin American countries are far from possessing the ideal distribution of power resources between competing groups to foster the democratization process. Yet, as Vanhanen explains, economic and intellectual resources are important means of power, 'as long as the struggle for power remains more or less peaceful'. When competing groups resort to violence, it becomes the most important power resource (Vanhanen 1990: 51). In the next section, we shall analyze how this violence takes an endemic form that is perpetuated by public institutions and society.

7. Civil Society vs. the State: Fighting Illegal Violence

The persistence of illegal violence among the poor after the return to democracy is a crucial obstacle to the emergence of civil society – considered as the institutional framework of a modern world 'stabilized by fundamental rights' (Cohen and Arato 1992: 442). The situation is most devastating for those rights that secure socialization, which are crucial to the building of solidarity (Pinheiro 1992: 5).

Despite these obstacles and the failure of state institutions to enforce the rule of law, it is important to note that civilian rule and the 'formality' of democracy (using Agnes Heller's term), even with all its limitations, have opened the possibility of accountability. Many important changes have occurred in civil society and in the democratic structure of the state.

The struggle against the military dictatorship has contributed to the awareness of civic and social rights. In marked contrast to the situation evident in the 1970s or 1980s, there is a widespread network of non-governmental human rights organizations, both urban and rural, as well as neighborhood and professional associations and environmental and indigenous groups.

NGOs have proliferated at a tremendous rate since the political opening. Research carried out in 1988 showed that there were 1,208 NGOs (spread over 378 cities), 85 per cent of them created in the last fifteen years, and about 100 focused exclusively on human rights. According to recent estimates, that number has more than doubled in the last few years.

The south-eastern region contains 53 per cent of these organizations, the majority of which have programs with a national focus, are research institutions, or defend indigenous peoples' rights. The second-largest concentration of NGOs is in the north-east at 27 per cent. These NGOs have developed a number of activities, such as organizing assistance to grassroots movements and popular groups, primarily linked with rural and urban labor unions; education and communications; and assistance to vulnerable and destitute groups (Garrison 1993: 5).

Considering their size and resources, the contribution of NGOs is notable, as recognized by Miguel Darcy de Oliveira, who writes: 'The NGOs' contribution was great, because they were able to speak legitimately today in Brazil of a civil society. In their function as micromultimediators, they explored the unsuspected space of social articulation – places of privilege, themes, actors and powers that circulate at the base of society' (Oliveira 1992: 173).

During the military regime, human rights activists had succeeded, in spite of their small number and the repressive measures taken against them, in building a powerful regional and international network. Moreover, they deserved credit for the elimination of the most brutal forms of political persecution. Their struggle was courageous, well targeted, and succeeded in winning the support of national and international public opinion.

Today under civilian rule, although working conditions are more secure, activists are faced with the more difficult task of defending the rights of the poor and the vulnerable groups. In comparison to the small groups of political opponents, the new victims are more difficult to identify, as they do not constitute a homogeneous group and their number is much higher. Moreover, public opinion in general has not been mobilized in the same way in defense of their cause, and the middle class that gave its support to democratization does not take action to end these new manifestations of human rights abuses.

An additional element that we need in order to understand the Brazilian case is the difficulty poor people encounter in recognizing their own rights within human rights. This is combined with a high level of acceptance of the illegal practices of state agents on the part of the population at large, even among the poor, who despite being the preferential victims of this violence see this acquiescence as a way of distancing themselves from 'marginal elements' and criminals (Pinheiro *et al.* 1993; Caldeira 1992). On the other hand, the overriding majority of Brazilians do not believe in the impartiality of the justice and police system. For this reason, they often take justice into their own hands, in the form of vigilante actions or lynchings, thereby reinforcing illegality and violence.

To sum up, the poor continue to be the preferential target of human rights violations, in Brazil as well as in other new democracies. The failure of governments to respect their own laws not only perpetuates human rights abuses, but also jeopardizes their legitimacy, and makes it more difficult for them to obtain the necessary support from the population to undertake structural reforms for more equitable development.

On the other hand, in the present juncture of recession, unemployment, and social injustice rebellions against inequity often take the form of endemic violence, rather than organized movements to demand civil rights. Increased marginalization and the lack of future prospects for the most deprived segments of the population, especially the chronically unemployed and the young, make them turn to violence and illegal activities.

All of these phenomena show the survival in modern Brazil – and in other developing countries – of asymmetric power relations, which combined with a low trust in institutions of law enforcement put their democratic achievements at risk. With the increasing use of violence as a means of resolving power conflicts, democracy is not ‘the only game in town’.

During the past decade, denunciations of gross human rights violations committed against unprotected populations have multiplied. Demands for formal legal protection have been formulated by movements for the defense of human rights, many of them published through national dailies and the electronic media. The 1988 Constitution abolished all forms of censorship. The press and broadcast media routinely discuss controversial social and political issues and engage in investigative reporting. The Brazilian government imposes no formal obstacles to human rights monitoring, and many local organizations have promoted actively the rights of the rural and urban poor, street children, women, indigenous communities, prison inmates, and other victims of human rights abuses.

Most radio and television stations are privately owned; however, the government, through Congress and with the limitations we have already pointed out, controls licensing authority. Newspapers, which are also privately owned, vigorously report and comment on government performance and human rights violations (US Dept. of State 1994). The NGOs have access to the press and the electronic media to present their work and express their criticisms throughout the day on radio and during prime-time television. Thanks to these denunciations, the failure to put an end to violence during the new democratic phase is now visible (USP 1993: 82).

The cases we have already mentioned here – police killings, the killing of street children, the massacre of the Casa de Detenção at Carandiru, the 1993 massacres of Candelária and Vigário Geral in Rio de Janeiro, to cite only a few – were the targets of NGO investigations and reports. These cases also served to renew networking with international organizations that had been so intense during the period of military dictatorship. In 1987, Americas Watch published the first report related to human rights in Brazil, *Police Abuse in Brazil* (1987), soon followed by another report published by Amnesty International. Since then, Americas Watch (now Human Rights Watch/Americas) alone has published twelve reports and newsletters regarding various types of gross human rights violations in Brazil. This international dimension of the activities of Brazilian NGOs constitutes an important instrument of pressure and influence on government policies.

Brazilian NGOs actively investigate allegations of human rights violations and often initiate legal proceedings. In 1992, the Center for the Study of Violence along with Americas Watch and seven other Latin American NGOs established a corporate law office in Washington, the Center for the Study of Justice and International Law, CEJIL, to present cases to the Interamerican Commission. By the time of this writing CEJIL had presented several formal complaints concerning human rights violation in Brazil:

- Mass killings, São Lucas Police Precinct (#0301) – filed directly by Americas Watch; arising from prison events of February 1988 in the São Lucas police precinct in São Paulo, where eighteen inmates died when they and many others were forced into a small cell. The government claims that domestic remedies have not been exhausted. On 29 September 1993, one of the police officers involved in the killings is convicted and sentenced to 516 years in prison. This sentence is one of the largest handed down in Brazil. More convictions are expected to follow.
- Slave labor, the Fazenda São Luiz. A petition is filed by CEJIL and Americas Watch with the Interamerican Commission on 13 September 1992, seeking condemnation of the Brazilian government for failing to protect its citizens from conditions amounting to slave labor. The petition is temporarily rejected by the Secretariat of the Commission for failure to exhaust internal remedies. CEJIL will file a brief, arguing that no internal remedies remain to be exhausted.
- Slave labor/freedom of association, João Canuto. On 23 September 1992, CEJIL, Father Ricardo Rezende from the Comissão Pastoral da Terra, and America Watch file a petition with the Interamerican Commission arising from the murder of Joao Canuto for his active involvement in seeking to put an end to slave labor through a rural workers’ union. Although Mr Canuto received death threats, the government did nothing to protect him. The Secretariat of the Commission temporarily rejects the petition for failure to exhaust remedies. CEJIL will file a brief contending that domestic remedies are exhausted.

- Prison massacre, Comissão Teotônio Vilela. On 21 October 1992, CEJIL and the Comissão Teotônio Vilela file a petition with the Interamerican Commission seeking the condemnation of Brazil for killing 111 prisoners while responding to a disturbance at the Carandiru Prison. The petition is rejected temporarily by the Secretariat due to the non-exhaustion of domestic remedies. CEJIL will file a brief addressing the exhaustion issue.

As regards human rights, the role of the state is to respect, protect, and promote their effective realization. This foundation of the state is Janus-faced: on the one hand, as bearer of the monopoly of legal violence, the state has to observe the limitations placed on its powers and actions; on the other hand, as guardian of the public order, it must be the protector and provider of all liberties (UNDP, Pinheiro 1993: 31).

This influence of NGOs in demanding that the state be a guarantor of rights was especially felt after Brazil adhered to the principal instruments of human rights protection adopted by the international community. Until 1985, Brazil was an outlaw country in the system of international human rights protection. Only after the end of the military dictatorship did the new civilian government, after 1985, decide to sign and actively promote the ratification of the most important human rights instruments, such as the American Convention; the International Covenant on Economic, Social, and Cultural Rights; the International Covenant on Civil and Political Rights; and the Convention against Torture, among several others.

There was a substantial shift in government policy toward human rights: the Brazilian government today acknowledges human rights charges and tries to practice a policy of transparency toward the international community. The federal government has taken on some public responsibility in the fight against impunity. In 1994, the Brazilian government submitted its first report to the International Covenant on Civil and Political Rights.¹¹ The new administration of President Fernando Henrique Cardoso also has launched several initiatives in the area of human rights. A law proposing the recognition of the death of disappeared citizens during the military dictatorship and the granting of indemnities to their families was prepared by Jose Gregori, former president of the Justice and Peace Commission (and now the cabinet chief of the Ministry of Justice), submitted by the government, and approved by the National Congress. A commission for the ascertainment of these facts was initiated in December 1995. In September 1995, President Cardoso created a National Prize for Human Rights, and the highest award went to one of the most outspoken critics of the military regime, Cardinal Arnolds of Sao Paulo. Never before in recent history has the Justice Ministry pushed so actively to promote human rights. The preparation of a National Plan of Action for Human Rights, following a recommendation of the Vienna Declaration of Human Rights in 1993, was launched in October 1995 by Justice Minister Nelson Jobim, with the participation of NGOs and under the supervision of the Center for the Study of Violence at the University of São Paulo.

The Federal Ministry of Justice, the Federal Attorney General's Office (Procuradoria Geral da República), and senior Rio de Janeiro state government officials attempted to deal with two recent massacres 'with speed and vigor', recognized Americas Watch (1993b), and took initial steps during 1993 to put an end to impunity. The federal government has promoted investigations through the Federal Council for Human Rights and the Federal Police, publishing reports about the incidents and acting at the state level as well. In the Candelaria killing, four men, including three military policemen, were arrested and indicted for homicide in early August. A subsequent investigation into the killing revealed a network of organized crime within the police force and resulted in the arrest and indictment of thirty-three men – twenty-eight of them military policemen – accused of being part of a death squad. Several top figures in the civilian police were indicted on charges of corruption and organized crime.

Concluding Remarks

After over a decade of democratic transition, Brazil is probably one of the most eloquent examples in the region of the persistence of illegal endemic violence and high levels of human rights violations, with extremely limited accountability for past or present abuses. This contrasts paradoxically with the rising commitment to democratization on the part of the state and society,

a good record with respect to the functioning of the formal aspects of democracy, and a highly sophisticated media.

Despite all these continuities and obstacles, we may conclude that we are not facing in Brazil an entirely crystallized situation. A high level of political liberties coexists with problems in the area of civil liberties; *Freedom House*, on a scale of 1 to 7, gave Brazil grades of 3 and 4, respectively, in 1993. As we have seen, thanks to the interplay between civil society and government, some progress has been made in terms of accountability and the fight against impunity, even while gross human rights violations persist.

To consolidate democracy, economic growth – although imperative – will not be sufficient to change power relations in countries where structural imbalances are deeply rooted in social relations. Priority attention will have to be given to the distribution of economic growth and of resources (in the widest sense as defined by Vanhanen). This means that countries which have adopted a democratic political system of free elections and political freedoms will have to undertake measures of economic equality and human rights (both civil and political and social and economic rights) in order effectively to consolidate democracy.

Such a structural change in power relations, as we have seen, will not be achieved without pain and resistance; yet, without such an effort, democracy will continue to be restricted to a ruling minority. No easy solution can be devised. Changes

will have to be introduced through social pacts among all protagonists – the state, the political system, and several sectors of civil society. Violence and human rights violations, which are not restricted to Brazil or to developing countries, must also be considered in the international context.

The struggle is not limited only to human rights entities. All organized groups have social and economic equality as an objective in their programs. New actors are claiming their social, economic, and cultural rights: women, racial minorities, rural workers, indigenous peoples, and others. Their claims are formulated mostly in terms of collective rights, as the defense of individual rights is no longer sufficient. Moreover, in the case of the human rights violations we have discussed here, the role of civil society is vital, as the state cannot bring about solutions on its own (Stavenhagen 1990, Poppovic and Adorno n.d.). Today more than ever, an alliance is needed between state and society, between human rights and other groups. The main priority must be the eradication of the most unsustainable forms of social injustice and exclusion, on the one hand, as well as, on the other, the restoration of human rights, by breaking, the vicious circle of 'institutional vacuum', social violence, and the persistence of impunity. Without a mobilization of all forces and massive popular participation, democracy will remain in jeopardy

1 See James Brooke, 'Scandals Shaking Faith of Brazil in Democracy', *New York Times*, 4 Jan. 1994.

2 'Camara nunca seguiu proporcionalidade', *Folha de S. Paulo*, 31 Aug. 1994: Especial-2.

3 'Taxa de analfabetismo diminui para 20%', *Folha de S. Paulo*, 4 Aug. 1994, p. 3-2.

4 See 'Coronelismo agora e eletrônico', *Jornal do Brasil*, 7 Sept. 1994.

5 According to the World Bank, 51.3 per cent of national income is concentrated in the hands of 10 percent of the population; the 20 percent poorest get 2.1 percent. Daniela Falcão, 'Brasil é o primeiro em desigualdade social', *Folha de S. Paulo*, 28 July 1995, p. 1-5.

6 Quoted by Ed Vulliamy, 'A Culture of Corruption', *Guardian Weekly*, 25 Apr. 1995.

7 At present, some 126,000 prisoners are held in jails built to hold 51,000. The rate of incarceration is moderate by international standards, but Brazil has one of the highest levels of lethal violence by the police in the world.

8 Indeed, a large percentage of housing in the principal cities is in the form of favelas: 42.3 percent in Recife; 12.4 per cent in Rio de Janeiro; 10 per cent in Belo Horizonte; 6.5 per cent in Porto Alegre; and 5 per cent in São Paulo. In the latter city (8 million pop.), 61.7 per cent live in shantytowns, slums, and squats, cit. P. S. Pinheiro, 'Survivre dans les favelas de São Paulo', *Esprit*, June 1994, p. 30.

9 In the state of São Paulo, there is one judge for 20,228 people; in Pernambuco state in the north-east, one judge for 40,228 people. See Pinheiro (1993: 10), By comparison, Germany has one judge for 3,448 people and Italy one judge for 7,962. Sadek and Bastos (1994: 39).

10 In the port of Santos, the biggest in the country, with 15 km, there are only two agents. Brazilian borders are almost completely unprotected – in most outposts there are on average two agents.

11 See Brasil Ministério das Relações Exteriores, *Relatório inicial relativo ao Pacto Internacional dos Direitos Cívicos e Políticos de 1986/Ministério das Relações Exteriores, Fundação Alexandre de Gusmão e Núcleo de Estudos da Violência da Universidade de São Paulo* (Brasília: Funag, 1994), 176 pp. There is an official English translation in mimeo.