



Democratic Governance, Violence, and the (Un)Rule of Law

Author(s): Paulo Sérgio Pinheiro

Source: *Daedalus*, Vol. 129, No. 2, Brazil: The Burden of the past; The Promise of the Future (Spring, 2000), pp. 119-143

Published by: [The MIT Press](#) on behalf of [American Academy of Arts & Sciences](#)

Stable URL: <http://www.jstor.org/stable/20027631>

Accessed: 14-05-2015 19:26 UTC

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



The MIT Press and American Academy of Arts & Sciences are collaborating with JSTOR to digitize, preserve and extend access to *Daedalus*.

<http://www.jstor.org>

Democratic Governance, Violence, and the (Un)Rule of Law

DEMOCRATIC LEADERS during political transitions in Brazil have held an overly optimistic view that civilian government and the strengthening of civil society would be sufficient to consolidate the rule of law. New civilian governments have underestimated the vigor of the authoritarian legacy and have proved unable to reform institutions inherited from the military regimes. In spite of democratic governance, the rule of law is far from being effectively established, and citizenship is not yet guaranteed for large sectors of the population, which live in dire conditions of poverty and social inequality. In Brazil, violence is deeply rooted in the wide gap between the elites and the general population, the longevity of slavery, racial discrimination, and profound social inequalities. But contemporary violence cannot be explained by referring exclusively to these elements; the incapacity of democratic governance to reform state institutions certainly bears a greater impact at the present juncture. More than in other South American societies—exceptions being Colombia and Peru, ravaged by insurgencies—the (un)rule of law continues to prevail for the underprivileged.

Efforts to implement specific public policies to tackle this endemic violence (expressed by extremely high rates of homicide, gross human-rights violations, torture, and summary executions) have proven futile, and impunity prevails. What are

Paulo Sérgio Pinheiro is professor of political science and director of the Center for the Study of Violence at the University of São Paulo.

the main features of this complex sociopolitical reality? What is it about Brazil and its society that makes it so difficult to impose accountability?

THE LEGACY OF AUTHORITARIANISM

For more than two decades, from 1964 to 1985, Brazil was ruled by a military dictatorship. There has always existed a generalized acquiescence vis-à-vis arbitrary power, which may explain the relatively low degree of intensive repression during the military governance. When compared with contemporary dictatorships, military repression in Brazil boasts the lowest rates of disappearance, arrest, and murder. In Argentina, more than 20,000 people have been killed or have disappeared; in Chile, 3,000 have disappeared and thousands have been arrested and executed; and in Uruguay, one finds the highest incidence of imprisonment per capita in the Southern Cone. In Brazil, by contrast, there were thousands of cases of torture, and approximately 7,367 people were arrested,¹ but there were fewer than 360 political disappearances.²

At the beginning of the military dictatorship in 1964, very few voices dared to condemn the arbitrary detentions and torture inflicted upon political militants, supporters of the previous constitutional regime, and members of labor unions and student organizations. However, as the intensification of political repression began to affect members of the elite, complaints and protests ignited, invoking human-rights issues in cases of military abuse. In the 1970s, the emphasis was on civil-rights violations committed by the police and the parallel repressive apparatuses established by the armed forces.

In the 1980s, a dynamic network of social movements began to be organized throughout the country in urban as well as rural areas. It was then that new concepts of human rights emerged, with the creation of new political subjects. Unforeseen movements surged, such as the struggle for indigenous rights, which, in some sense, substituted for or prolonged the agrarian-reform issue. Progressively, several movements shifted to the promotion of social and economic rights among the poor sectors of the population. Several groups also began to promote

rights to housing, health, education, and a clean environment, as well as the rights of minorities, women, and children.

Thus, paradoxically, it was under the military regime that new forms of mobilization developed. It was not simply ideas that were being imported from abroad, but rather new social practices, a new discourse, voicing the demand for the consolidation of the rule of law for all the population.

However, the emergence of civil-society movements cannot be exclusively interpreted as a contribution to stability and social cohesion. An inexorable shadow of uncivil society follows the strengthening of civil society. The solidarity and “public-spirit” values of civil society revealed during the struggles for democratization are a relevant dimension of the social system, but contiguous spheres continuously challenge these positive proprieties where diverse functional interests and contradictory objectives are expressed. This situation gives rise to social relations of a completely different nature.³ This may explain the common trend of an increase of violence after democratic transitions in such different settings as Eastern Europe, Russia, South Africa, Brazil, and other countries in South America.

Even if democratic transition and consolidation provided the basic conditions for new forms of conviviality and pacification, the return to democracy coincided with the increase in violent criminality and the spread of gangs, Mafiosi, and other criminal organizations. All classes of vigilantes in several Brazilian cities exist, in a certain way, as a continuation of the death squads and other repressive clandestine organizations and practices that prevailed during the dictatorship.

Brazil’s “slow, gradual, and secure” shift to democracy took the longest of all the political transitions of the 1980s, and because of this, military leaders were able to negotiate their departure from government and a full “general, ample, and nonrestricted” amnesty for their political crimes, guaranteeing impunity. In 1985, the country returned to civil rule, and three years later a democratic constitution with a comprehensive “bill of rights” was adopted.

Despite democratic constitutionalism, however, there exists an evident legacy in state apparatuses, left by the authoritarian

regime. The authoritarian regime promoted the militarization of public security and the unification of police forces.⁴ A virtual impunity for military police was also established through military courts in each state for common crimes, which continues, with a few limitations, even today. Indeed, almost fifteen years after the transition, the police continue to have the same structural organization defined during the dictatorship and preserved in the 1988 Constitution.

LAWLESS VIOLENCE AND CRIME

There is a general perception that common crimes have increased since the return to democracy. Brazil is not an isolated case in the world if we consider violence and the fear of crime. After the 1960s, statistics on crime compiled around the world all pointed to a pattern of growing criminality, especially violent crime. This tendency was witnessed both in Europe and in the United States.⁵ The situation in Brazil is aggravated by extremely high rates of homicide combined with a widespread impunity unacceptable under democratic governance.⁶

This may explain why Brazilians give so much value to the maintenance of order. Indeed, in a recent survey, compiled by the Center for the Study of Violence at the University of São Paulo, ten state capitals in Brazil confirmed that perception. When asked “which is the most important—to maintain order, to increase participation, to control inflation, or to protect freedom of speech,” 31 percent declared that “the maintenance of order” was the most important. It was the second choice after the necessity “to increase participation” (34 percent); 24 percent considered the “control of inflation” to be most important, while only 9 percent chose “the protection of freedom of speech” as the most important.⁷

Brazil has the eighth largest economy in the world. But when we compare the national annual homicide rate per one hundred thousand—which has grown from 13 in 1980 to around 25 in 1996⁸—with the rates of the seven economies preceding it, Brazil belongs to a totally different category. Indeed, the national annual homicide rate in 1996 in the United States was 8.22, and in 1997 for Germany it was 4.86; France, 4.11; the

United Kingdom, 2.43; Italy, 4.90; Canada, 1.99; and Spain, 2.43.⁹ Among the countries of South America, Brazil ranks second (just after Colombia) in deaths resulting from homicides: homicides have grown from 11,190 in 1979 to 40,470 in 1997.¹⁰

We must bear in mind that Brazil is a largely urban country: in 1997, 79.6 percent of the population lived in cities.¹¹ A large proportion of the urban population in most of the large cities live in poor neighborhoods and shantytowns, *favelas*, in those areas that Ignacy Sachs has called “geographic and social precities.” This population does not live under the minimum conditions of what could be called an “urban life.” They lack adequate housing, have little access to secure jobs, and have difficulty obtaining the most basic public services. In 1997, half of the homicides (51 percent) were concentrated in 1.8 percent of the cities with a population of more than twenty thousand, and seventy-four of those cities are located in just three states: twenty-eight in Pernambuco in the Northeast region, twenty-six in São Paulo, and twenty in Rio de Janeiro.¹² If we consider the mortality rate by homicide of fifteen- to twenty-nine-year-olds, in 1995 it almost doubled the national rate (44.8 per one hundred thousand), reaching 83.1 for men and 7.1 for women.¹³ In Rio de Janeiro, during 1996, firearms caused 87 percent of the homicides.

When crime statistics are broken down according to area, a correlation appears between deprived neighborhoods and the risk of victimization. In the cities of São Paulo, Salvador, and Curitiba, the violent areas, where in certain communities homicide rates have reached an epidemic level, are also the ones with the lowest socioeconomic “grades.”¹⁴ Correspondingly, the areas with the highest socioeconomic grades also enjoy the lowest rates of homicide. Therefore, members of communities with low socioeconomic indicators have a much higher risk of being murdered than those living in less deprived neighborhoods. In Rio de Janeiro, the mapping seems at first to be more complex, as *favelas*, located mostly in the hills, and wealthy neighborhoods can coexist in the same geographic area. But a closer observation confirms the correlation already observed in the case of São Paulo: there is a large disparity between the two

areas in terms of their homicide rates and socioeconomic grades. The southern zone, which is the most affluent, has the lowest rates of violence, whereas the northern zone, which is the poorest in the city, has the highest rate of murder:¹⁵ the correlation between the rate of homicides and the quality of life is clear. These figures confirm Amartya Sen's observation of violence as an element of social deprivation.¹⁶

These high-risk areas are marked by several unmet needs: an absence or an insufficiency of public services (schools, cultural and sports organizations, transportation, clean water, and street illumination), a lack of commercial infrastructure, and isolation or very limited access to other neighborhoods, transforming them into enclaves.¹⁷ In these spaces, physical violence is a concrete reality that disturbs every aspect of daily life. The frequency of homicides, thefts, robberies, and aggression in general is such that they have provoked the virtual disappearance of public spaces.¹⁸ In those areas where most of the homicides occur and where the police presence is extremely sparse, not to say absent, the state monopoly of physical violence has been relaxed. An individual's survival may actually depend on his or her ability to display a "credible threat of violence."¹⁹ This may also be explained by the fact that, in an environment where violence is deemed legitimate, a "loss of structure in society" often occurs. In urban Brazil, social restraints have in fact been loosened, and violence is increasingly perceived as a legitimate means of solving conflicts.²⁰

But it would be misleading to consider these populations to be excluded (as in the French expression *exclusion sociale*), or even marginalized, because their immense majority is composed of lawful citizens, workers who share the same values and experience the same urban culture. They watch the same soap operas on television and have similar ambitions (often unattainable). It must be emphasized that in Brazil over 97 percent of houses in these poor urban areas have electricity, 90 percent have radios, 85 percent have television sets (which is more than the 80 percent who own refrigerators), 78 percent have access to a main water supply, and 70 percent have sewerage facilities (main connections or septic tank), even if just 25 percent have telephones.²¹

Those populations are confronted day after day by the control and terror of organized crime and the arbitrary power of the police (the only face of the state that the immense majority of the poor know). We may say that the rule of law is nonexistent in these areas. But these populations themselves are not lawless, and they attempt to remedy the terror imposed upon them by criminals who live in their communities.

A wide variety of criminals is active in the urban areas where the poor live. These criminals may act individually or in groups; they may be either regular citizens or state agents. It should be noted that the difference between the two categories—*justiceiro* (vigilante) and *matador* (gunman)—is not always evident. It is common knowledge that civil or military police, both on and off duty, participate in private death squads. During the military dictatorship, death squads were formed with the support of authorities to kidnap or kill political dissidents in São Paulo and Rio de Janeiro. After the dictatorship, most of these groups were dismantled, but their practices survived in different forms. Death squads involving the police continued to be active in several states, for example, in Acre, Espírito Santo, and along the border with Paraguay in the state of Mato Grosso do Sul. In this last case, it is the special border division of the state police that is suspected of taking part in criminal actions.²²

In the 1990s, cocaine use has dramatically increased in the main metropolis in the east of the country, as well as in the principal cities located in the transit routes of drug trafficking between Bolivia, São Paulo, and Rio de Janeiro. Contemporary Brazil offers an important market for the cocaine produced in Bolivia, in addition to the large markets in the United States and Europe.²³ Brazil is already the second largest consumer of cocaine in the world.²⁴ If one considers the logistics of drug running, it becomes apparent that the conditions found in the great hydrographic basins in South America offer an ideal natural system for the circulation of cocaine. Drug traffickers can rely upon vast river, road, and air networks, which act as a reliable liaison between the Pacific Coast and the Atlantic Ocean.²⁵ The growing strength and infiltration of these criminal organizations into state institutions such as the police, the

judiciary, and the federal, state, and municipal legislatures reveal the weaknesses of the democratic state.

Gross human-rights violations under democratic rule are much more visible when they occur in urban areas thanks in part to media exposure. But police brutality and massacres are also frequently committed in rural areas. Several rural conflict areas have become territories for the confrontation between rural workers, activists, state military police, and landowners' private militias. During the 1990s, the landless poor, led by the *Movimento dos Trabalhadores Rurais Sem Terra* (Movement of Landless Workers), intensified land occupations aimed to pressure the government to accelerate land reform, which resulted in increasing violence directed at the leaders and participants in this movement.

The incapacity of democratic governance to create and reform institutions to build a state able to protect the rights of the citizens certainly has an impact on the violence and criminality described above and must be taken into consideration to understand contemporary Brazil.

A USABLE STATE?

The role performed by state institutions in the existing context of violence continues to be extremely precarious, to say the least. "Unfortunately, it is a chronically violent country. The police are not efficient, it does not fight crime, and it is violent. The justice system is very slow," was the candid statement recently given by José Gregori, secretary of state for human rights.²⁶ Police and other institutions of the criminal justice system tend to act as border guards protecting the elites from the poor. Police violence, such as torture, remains unpunished, as it is largely directed toward these "dangerous classes" and rarely affects the lives of the well-to-do. Throughout the country, impunity is virtually assured for those who commit offenses against victims considered "undesirable" or "subhuman."

Thus, despite the vigor of the resistance to the dictatorship and the inventive capacity of civil-society organizations (CSOs) formed in the 1970s, a coercive state apparatus to protect the rights of all is not yet available to the general population. The

state—the main defender of rights, the *defensor pacis*, the main guarantor of pacification—is simply not perceived as accessible to all citizens.²⁷ In terms of the protection of rights and public security, there is not a usable state available—the basic requirement of a consolidated democracy. Fifteen years after the dictatorship, many surveys indicate that people still think it dangerous to go a police precinct, even to make a simple complaint. A recent study in Rio de Janeiro indicated that just 20 percent of people robbed went to the police. Of these, just 13 percent effectively registered complaints, and in as few as 5 percent of those cases, the police have had some success in their investigations.²⁸

The police tend to see the rule of law as an obstacle rather than as an effective guarantee of public security. They believe that their role is to protect society from “marginal elements” by any means available, even if those means are illegal.²⁹ Illegal detention by the civilian (judiciary) police continues to be a common practice. The return to a democratic constitutional system in 1985 was an outstanding advancement that enabled civil society and the offices of federal and state public prosecutors to fight the arbitrary practices of state institutions. However, arbitrary practices have not yet been fully eradicated.

One of the main obstacles to changing the police system is that state governments, despite the regionally determined differences in security issues they face, are not allowed by the federal Constitution to define a police structure more adequate for their respective needs. The states cannot unify the military police (in charge of patrol) and the civilian police (in charge of the investigation), or extinguish them, or modify the role of either. This aspect makes it difficult (if not impossible) to curb the authority of the police and gives them a large degree of autonomy.³⁰ During the last fifteen years, several government proposals were presented to the National Congress to change the police structure inherited from the military regime. Among them were the separation of the military police from the armed forces, the extinction of the military police, the transfer of the activities of patrol from the military police to the civilian police, and the autonomy granted to the states to organize their police forces and to eliminate the military status of the military police.

Not a single one of these changes to the Constitution was voted. On the contrary, in 1998, under pressure from the armed forces and the “lobby” of the military police, the Congress approved Constitutional Amendment 18, which defined the military police as the “armed forces [*militares*] of the states,” reinforcing their military status and making reform of the public-security system seem even more distant.³¹

Police do not receive sufficient training, they are underpaid, and most do not respect the rule of law. Torture is used in the majority of police inquiries throughout Brazil. Torture became a crime in 1997, but these horrendous practices are protected by the absence of effective systems of accountability. Accusations of torture are rarely investigated, and when they are, those responsible often go unpunished. In 1998, there were several high-profile cases in which the police extracted confessions from defendants who were later shown to be innocent.³²

Besides torture, summary execution of suspected and accused criminals has become a common practice in several states. It is justified as a way to control ordinary crime in poor neighborhoods, and the victims come from the most vulnerable groups in society—the poor, the homeless, and those of African descent. This picture becomes even more complex in light of the acquiescence by the majority of the population to these practices. Such killings receive broad support from elites as well as the poor—who are the first targets of these abuses and crimes.

Since the 1970s, the regular killing of young, poor, and non-white suspects by the military police has been common in Brazil’s main state capitals like Rio Janeiro and São Paulo. In São Paulo, for example, from 1990 through 1998, 6,218 civilians were killed by the military and civilian police—an average of 691 a year and 58 a month. The number of civilians killed by the police reached its peak in 1992, when 1,458 civilians were killed by the military and civilian police. In 1997, the civil and military police killed 1,008 civilians, and in 1998, the number dropped to 546. In Rio de Janeiro, 595 civilians were killed by the police from January through October of 1998, an average of 59 killings a month.³³

Some cities have showed some recent improvement: Rio de Janeiro police killed fewer civilians in 1999 under a new state

administration. In São Paulo, figures released by the state secretariat of public security showed that the police killed 317 civilians in the first seven months of 1999, suggesting that by year's end, the number would rise for the third consecutive year. Despite measures taken by civilian authorities in São Paulo in recent years to control police abuse, police killings, after experiencing a sensible reduction, are again on the rise.³⁴

The 1988 democratic Constitution did not reform the system established under the military dictatorship in which crimes committed by the military police were tried in military police courts. These courts are composed of military officials and base their sentences on shoddy criminal investigations. They often give impunity for acts like police killings and other violent crimes. In 1996, the competence to examine and try homicides perpetrated by the military police was transferred to civilian courts and popular juries. This transfer occurred following the legislative initiative that President Fernando Henrique Cardoso proposed in the context of the Human Rights National Program. This judicial reform, law 9299/96, being of a procedural nature, was retroactive for all cases not yet closed. Civilian courts are now examining cases involving the military police. Among such cases are the Eldorado dos Carajás massacre, which left nineteen landless peasants dead in the state of Pará in April of 1996. That incident, described in reports provided by an independent coroner, mandated by Nelson Jobim, then minister of justice, demonstrated that the police had hacked several of the landless to death with their own farm tools and shot others at point-blank range.³⁵

Despite that important change, judicial authorities continue to fail to successfully prosecute recent violations despite overwhelming evidence. Seven years after the Carandiru massacre, the defendants have not yet been brought to trial. Despite the transfer of the Eldorado dos Carajás case to the state capital to assure independent jurors, a Belém jury of seven acquitted three of the defendants of all charges on August 19.³⁶ Efforts to prosecute the military police officers responsible for extreme police brutality in the Favela Naval neighborhood in Diadema, São Paulo, in early March of 1997 also suffered setbacks. A film made by an amateur cameraman and broadcast through-

out Brazil and the world showed police officers extorting, beating, torturing, and shooting persons randomly stopped at a roadblock. In one instance, after beating and humiliating the occupants of one car, Otávio Lourenço Gamba shot at the departing vehicle, killing Mário José Josino. The Justice Tribunal of São Paulo, the state's highest appellate court, overturned Gamba's murder conviction in June.

Access to justice in Brazil, especially for the poor, has always been extremely precarious. Historically, the judiciary has not been perceived as a body that protects the rights of the underprivileged classes, but rather as an institution responsible for the criminalization and repression of these classes. There is an extremely unfavorable perception of the legal system, which is reflected in the low frequency with which the population resorts to the judiciary.³⁷ The operation of the judiciary is marked by legacies from the authoritarian past: these are perhaps more present in the judiciary than in any other state institution. The criminal justice system is also characterized by strong racial discrimination. Nonwhites confront greater obstacles in accessing justice and have more difficulties in having their rights protected. As a result, they are more likely to be punished and they tend to receive more rigorous penal treatment.³⁸

In 1990, there were only 5,164 judges in Brazil. The ratio between the number of judges and the size of the population is the lowest in those states where impunity is most flagrant: in the state of Alagoas, there is one judge for 44,000 people; in Pernambuco, one judge for 40,228 people; in Maranhão, one judge for 39,383 people; in Bahia, one judge for 38,774 people.³⁹ The Brazilian national average is one judge for every 29,452 inhabitants; the deficiency becomes more apparent when this ratio is compared to those in developed countries. In Germany, there is one judge for every 3,448 inhabitants; in France, one for every 7,142 inhabitants; and in Italy, one for every 7,692 inhabitants. In this respect, Brazil follows the typical pattern of developing countries, which allocate a greater proportion of human resources to the police, ultimately to the detriment of the judiciary: in 1986, 2 percent of its criminal justice personnel were judges, while 80 percent were police. In developed countries, in the same year, 8 percent were judges and 76 percent

were police.⁴⁰ A clear indicator of the lack of judges in Brazil is the fact that in every state there is a large percentage of judgeships that are not being filled: the national average of empty positions is 26 percent, and it is as high as 50 percent in some states.⁴¹

Another aspect of the crisis of the judiciary is the large discrepancy between the volume of cases that are brought to trial and the number that are resolved in court. In 1990, 4,209,623 prosecutions were brought before magistrate judges throughout Brazil; only 2,434,542 were resolved in the same period. This extremely low level reflects the output of the judiciary in recent years. Furthermore, since the number of prosecutions tends to increase and the speed for resolving cases remains constant, this discrepancy continues to grow.⁴² Due to the accumulation of prosecutions, many judgments are not carried out within the procedural time limit and the charges are therefore dropped. Consequently, impunity is widespread. Some judges who are corrupt and controlled by local interests intentionally allow some charges to lapse.⁴³ In many states in the North and the Northeast, there is often a judge but no prosecutor, or vice-versa.

Many judges and prosecutors in rural conflict areas have received death threats and live under the protection of the federal police. The criminal justice system has failed to investigate and prosecute the numerous cases of rural violence against peasants. This is partly explained by the repetition of rural massacres—to the point that they are now perceived as a common phenomenon—and the lack of effective measures for investigation of most of these crimes. According to the Pastoral Land Commission (Comissão Pastoral da Terra, CPT), 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, and of those only 18 resulted in convictions. The lack of effectiveness witnessed in the police and the judiciary exists in penal institutions as well. Detention conditions continued to violate international norms as severe overcrowding, abysmal sanitary facilities, and lack of legal and medical assistance provoked riots in police lockups, jails, and penitentiaries throughout 1999. Food, health

conditions, and medical assistance are poor for the 170,208 prison inmates held in Brazilian prisons, which have a capacity of only 74,000. Commonly, the management of these establishments is arbitrary and oppressive, and the internal administration is often left to the inmates themselves. It is difficult to imagine the impact of these circumstances on the hundreds of thousands of inmates concentrated in very limited spaces.⁴⁴ In the pens—police lockups initially used for short-term detention but transformed into long-term facilities in the city of São Paulo—there are more than 9,000 prisoners living in sub-humane conditions. Prisoners' riots, hostage-taking, and hunger strikes are a routine occurrence in every state as prisoners demand that minimally humane conditions of incarceration be provided or that they be transferred from police lockups to penitentiaries.

Every year there are dozens of deaths in prisons resulting from prison official and police violence. The inmates live under the constant threat of being beaten or tortured by prison guards and police, common methods used to control the prison population. Criminal suspects and prisoners are the forgotten victims of gross human-rights violations in Brazil.⁴⁵ Torture is also common in police precincts. The inmates are subjected to oppression from the guards and sexual violence from other inmates. In consequence, riots and mutinies are frequent. The reaction of the police to these outbreaks has, in general, been the use of "massacres to restore order."

Conditions of detention for juveniles also remained well below international standards as well as below the minimum guarantees established in Brazil's progressive Children's and Adolescents' Statute (*Estatuto da Criança e do Adolescente*, ECA). A series of riots in detention facilities for adolescents in São Paulo demonstrated the state government's inability to maintain security in the facilities or guarantee minimum standards of decent accommodations for the youths held there. In September of 1999, some 500 detainees escaped from the Imigrantes center during two days of rioting. At the time of the riots, the center held more than 1,300 juveniles in a space designed for fewer than 400. In the midst of the September rioting, footage from television camera crews showed guards

at these detention centers using batons to beat juveniles who had already been subdued and stripped to their underwear.⁴⁶

CIVILIAN GOVERNANCE AND CIVIL SOCIETY

Despite the inability of the Brazilian state to implement guarantees of the rule of law for the majority of citizens, the return to democratic governance brought important changes, making the national landscape today very different from what it was fifteen years ago. The present democratic regime functions in a country where three-fifths of the population is enfranchised, 80 percent are urbanized, and more than half of the workers are in the service sector. There was an impressive 12 percent growth of the electorate between 1994 and 1998, mostly in the areas of the North and Central-West. In 1998, there were more than 106 million voters, corresponding to 65 percent of the total population, making Brazil one of the world's largest electorates. But the states of the federation in which more voters are concentrated continue to be those located on the seacoast of the Southeast region: six of these states—São Paulo, Minas Gerais, Rio de Janeiro, Bahia, Rio Grande do Sul, and Paraná—have more than 60 percent of the voters.

Several changes were made concerning relevant civil and political rights. The democratization process contributed to guarantee most political rights such as fair and clean elections, freedom of parties and candidates to campaign (although there have been a few cases of political assassination), and alternation in power. Another important element was the growing attention that several federal administrations—those of José Sarney, Fernando Collor, and Itamar Franco—gave to the ratification of human-rights treaties and conventions during the 1980s and the 1990s. The federal Congress voted recognition of the jurisdiction of the Inter-American Human Rights Court, and President Cardoso, on December 9, 1998, in commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights, announced this important decision. The Brazilian state has now ratified all the core instruments of international human-rights law. The official recognition of those international norms has contributed to strengthen and empower

groups “struggling domestically—both legally and politically, and in creating both material incentives and normative pressures for the internationalization of such norms into domestic legal and political systems.”⁴⁷

This official recognition of the human-rights international machinery will be an important element in prosecuting the perpetrators of gross human-rights violations, increasing the “power to embarrass” governments by CSOs, which is extremely effective in making governments comply with human-rights requirements. CSOs have learned that when they are unable to get the attention of their government, they can bypass the state apparatus and call on international allies to apply pressure on the government from the exterior. After most of the core human-rights treaties were ratified by the Brazilian government in the 1990s, these organizations began to turn to international institutions—like the Inter-American Commission on Human Rights—responsible for aiding in the implementation of such treaties. These institutions express concern to the national government and apply pressure by shaming it on the international stage.⁴⁸ The federal government in the 1990s has begun to play a decisive role in promoting and protecting human rights with the objective of putting an end to persistent illegal and violent practices.⁴⁹

During the political transition in the 1980s, social movements—like labor unions and associations of the liberal professions, for instance, the Society for the Advancement of Science (SBPC), the Brazilian Bar Association (OAB), the Brazilian Press Association (ABI), and the new human-rights association—were able to reshape the face of politics by helping to dismantle authoritarian regimes. In the new democratic setting, CSOs have rapidly developed as they moved beyond their role in the resistance against dictatorship, being able to establish new connections between the autonomous spheres of society and political institutions.⁵⁰ The new constitutional system opened up space for new movements and organizations defending the rights of women, blacks, Indians, rural workers, and groups with differing sexual orientation. The contemporary Brazilian population and civil society is much more active, better informed, and more participatory than ever. A major develop-

ment of this has been that CSOs were able to accumulate a large number of experiences, build greater knowledge, and create better networks. One outstanding example is the Rede de Informação do Terceiro Setor (RITS, Third Sector Information Network).

CSOs have also begun to function as “early warning systems,” acting as censors that hear public opinion and concerns and attempt to introduce different viewpoints into the political process. They are able to provoke political exposure and transparency, contributing to the control of political power and of powerful social groups, forcing them to act in accordance with the law. In all these ways, CSOs are capable of contributing to the amplification and democratization of the political process.⁵¹

The National Movements on Human Rights, the National Movement of Street-Kids, and the national conferences on human rights promoted by the Human Rights Commission of the House of Representatives (Câmara de Deputados) were able in the 1990s to establish themselves as monitors of state compliance with international standards ratified by Brazil, proposing changes in state institutions and challenging the genuine interest of those institutions in defending human rights. Human Rights Watch/Americas, with a dozen Latin-American CSOs and the Center for the Study of Violence at the University of São Paulo, supported the creation of CEJIL, the Center for Justice and International Law, a corporate law office in Washington, which prepares the complaints on human-rights violations for the Inter-American Human Rights Commission and the Inter-American Human Rights Court.

HOW TO EXIT FROM ENDEMIC VIOLENCE?

How do we exit this world of violence, gross human-rights violations, and impunity? What are the possible perspectives? We have learned that in a federal system the “political will” of the executive is not sufficient to bring about change. The federal government is convinced of the need to improve human-rights records, not only to improve the Brazilian image—as some wish to suggest—but as a requirement to establish good governance and efficiency within the state apparatus. Nonethe-

less, a certain tolerance for violence continues in government organizations and in society in general—a tendency that contributes to the resistance to human-rights policies.

It has been acknowledged that the Cardoso government has broken new ground by adopting a National Human Rights Program in 1996, prepared with the participation of CSOs.⁵² Since then, annual National Human Rights Awards were established, the National Secretariat for Human Rights was established in 1997, and in 1998 it became a state secretariat. Important pieces of legislation have been introduced and approved, racial inequality was officially addressed, and the struggle against forced labor and child labor was intensified. There have been undeniable changes and advances in government policies to protect and promote human rights in the framework of a National Human Rights Program. Numerous partnerships were built with the National Movement on Human Rights, CSOs, human rights NGOs, research centers, and universities through the National Secretariat for Human Rights. These are all major advances in the history of the protection of human rights in Brazil.

An increasingly mobilized civil society contributed to the realization of these recent positive changes. Even if the numbers of Brazilians who participate in these civil CSOs are very limited relative to the population, it is important to note that violence and crime are being denounced by new associations and organizations that are enthusiastic about small progresses and not discouraged by numerous setbacks. Examples of this trend are the many human-rights groups, the campaign against hunger, the partnerships between government and civil society launched by the *Comunidade Solidária*, the *Viva Rio* mobilization against violence in Rio de Janeiro, and the *Movimento dos Trabalhadores Rurais Sem Terra*.

We must not underestimate the changes in the 1988 Constitution that increased the powers of federal prosecutors, who became the defenders of indigenous peoples' rights. On occasion, they were even able to act against the Federal Union on their behalf. There exists today, in each state of the Federation, a citizenship federal prosecutor for the promotion and protection of human rights. In June of 1999, a project to reform the

judiciary was elaborated in the House of Representatives, and at the same time a Commission of Investigation was established to look into cases of corruption, nepotism, and misallocation of funds in both houses.

State governments have also contributed important innovations to this movement. In the state capitals of São Paulo, Fortaleza, Belo Horizonte, and Rio, the police are now subject to the control of an ombudsman (*Ouvidoria*). The ombudsman has a precise mandate. Independent and respected officials who receive and process complaints of police violence fill the office. In 1998, the ombudsman of São Paulo was able to show that police violence had been underreported by roughly 30 percent throughout the decade.⁵³ As a result of this observation, the governor of São Paulo declared that police killings are to be regularly published in the official government newspaper (*Diário Oficial*).

There are structural obstacles that the Brazilian government will have to overcome. The first step is clearly the implementation of institutional reforms. The judicial court system, perhaps the most evident in its inadequacy, must be rethought and its ideology revised. The promotion of human rights, especially among the poor, has never received the necessary attention and consideration of Brazilian judges. It is rare that these judges have even basic knowledge of international human-rights obligations, despite the fact that the 1988 Constitution recognizes these obligations as domestic legislation. Ideally, associations of conscientious judges will become a state norm, modeled after the Judges for Democracy, which was formed to promote within their profession the values of democratic constitutionalism, human rights, and social responsibility.

As in any process of reform, the establishment of the rule of law and civil society in Brazil is multidimensional and requires more than institutional restructuring alone. Changes must simultaneously be made to the penal code and the penal process. It is crucial, for example, to remove from the code the provisions that delay legal procedures and that are occasionally used to escape punishment by those who have the means to hire a lawyer. Brazil must not be characterized by the simple enforcement of criminal law, precisely because one of the cardinal

features of any criminal law is its discriminatory nature. Indeed, the vast majority of those who are punished or imprisoned in Latin American society are the powerless and the underprivileged, exactly those who should be protected by the rule of law in a democracy.⁵⁴

Does the possibility of remedying this urgent situation of endemic violence, high rates of criminality, and homicide exist for Brazil in the near future? It is difficult to imagine that in a country of such continental proportions, the multiplicity of problems being confronted can be solved in all of the diverse geographic regions. There are many positive practices being implemented by a number of different state governments in areas such as public security and citizenship. However, for these attempts to be fully effective and achieve true reform, the federal government must play an active role, as many of the necessary changes to institutions such as the police and the judiciary depend upon constitutional amendments. To build a sound support for these changes, some political reforms are fundamental—like controls on economic power during elections, the limitation of parliamentary privileges (which now give immunity from criminal prosecution), the reduction of overrepresentation of the less populated states, and the confrontation of corruption and infiltration of organized crime in the state apparatus.

Democratic states have failed to promote accountability, that magic word that does not exist in Spanish or Portuguese. In consequence, CSOs need to increase pressure on states so that they can build accountability through serious investigations, prosecution, and punishment of criminal offenders, be they civilians, civil servants, or government agents, without interference of party politics.

In accordance with what I have said thus far, one of the basic strategies for CSOs should be to strengthen local social controls on the public policies of the state. Besides monitoring gross human-rights violations, it is crucial to monitor the performance of state institutions. One of the main problems in Brazil, as a result of corruption, inefficiency, and lack of accountability, is that social investment often does not reach the most underprivileged. The decentralization* of state power has opened

new possibilities to better define the appropriate mechanism for local social control.

In any case, the first and most basic issue in the next decade for government and civil society is to cope with lawless violence. Rights are systematically violated under democratic rule, as they have been consistently throughout the Republican period since 1889. It is a trademark of Brazilian political history: abusive practices against citizens (nowadays against the youth in particular), entrenched in the political system. Torture under police investigation and abominable prison conditions persist without dramatic changes.

Thus, reinforcing the rule of law continues to be extremely relevant for effective democratic governance. For everyone to understand that human rights are the rights of all, and not only of the elite, it is essential that CSOs be able to mobilize, organize, and fight for the realization of social, economic, and cultural rights without the threat of being tortured or murdered. Constitutional guarantees and basic democratic principles, such as freedom of expression, assembly, and association, are the foundation of an active civil society. CSOs challenge the power of the state, but it is only within a democratic state that a democratic civil society can thrive, as it is only a democratic civil society that can effectively preserve a democratic state.⁵⁵

Thus, Brazilian society arrives at the turn of the century obliged to cope with rampant crime and violent death. The obstacles are immense; the impediments sometimes seem insurmountable. What is needed is not just the implementation of rights but the institutionalization of public policies capable of preventing the practice of gross human-rights violations. Even if in Brazil the past never seems to die, democratic constitutionalism may open new perspectives in the next century to guarantee finally the control of the elites by the nonelites, a primordial and essential requirement for an effective democracy.

ENDNOTES

¹See Arquidiocese de São Paulo, *Brasil Nunca Mais* (Petropolis: Vozes, 1985), 85–88.

- ²Nilmário Miranda and Carlos Tibúrcio, *dos filhos deste solo (Mortos e desaparecidos políticos durante a ditadura militar: a responsabilidade do Estado)* (São Paulo: Editora Fundação Perseu Abramo/Boitempo Editorial, 1999), 15–16. The government’s special commission on political disappearances, at the Ministry of Justice, established by the law 9140/95, recognized that the Brazilian state was responsible for the disappearance of 148 people until May of 1998 (besides the 136 already recognized in the annex of that law). The commission continued its work in 1999.
- ³Jeffrey Alexander, “Aspectos não—civis da sociedade. Espaço, tempo e função,” *Revista Brasileira de Ciências Sociais* 33 (12) (February 1997): 175–176.
- ⁴Sérgio Adorno, “Insegurança versus direitos humanos: o governo FHC (1995–1998) entre a lei e a ordem,” *Tempo Social* 11 (2) (October 1999).
- ⁵Sérgio Adorno, “O Gerenciamento Público da Violência Urbana: a justiça em Ação,” in Paulo Sérgio Pinheiro et al., *São Paulo sem medo* (São Paulo: Garamond, 1998), 227–246.
- ⁶See, for instance, Robert Sampson: “Once crime reaches a certain level, a lot of gang violence we see is reciprocal. . . . Acts of violence lead to further acts of violence. You get defensive gun ownership. You get retaliation. There is a non-linear phenomenon. With a gang shooting, you have a particular act, then a counter response.” In Malcolm Gladwell, “The Tipping Point,” *The New Yorker*, 3 June 1996, 32–38.
- ⁷Of course, this perception may be influenced by an increasing exposure to violence, notably through the media. But despite that, it is extremely revealing of insecurity and disorder as unsolved problems. See Nancy Cardia, coordenação, *Atitudes, Normas Culturais e Valores em relação à violência em 10 capitais em capitais brasileiras* (Brasília: Ministério da Justiça, Secretaria de Estado dos Direitos Humanos, 1999), passim.
- ⁸Even if the crimes of homicide may be affected by the underregistration that characterizes all the information on crime, the data on mortality, reasonably systematized under the same criteria throughout the country, offer a situation extremely close to reality. See Ministério da Saúde, Fundação Nacional de Saúde, Departamento de Informática do Sistema Único de Saúde, Coordenação de Informações de Saúde; Sistema de Informações de Saúde, SIM, IBGE in IBGE, Departamento de População e Indicadores Sociais, *Síntese de Indicadores Sociais 1998* (Rio de Janeiro: IBGE, 1999), 49.
- ⁹For data about France and other European countries, see France, Ministère de l’Intérieur, *État de la Criminalité et la Délinquance en France et dans l’Union Européenne* (Paris, 1997); for the United States, see U.S. Department of Justice, *Uniform Crime Reports* (Washington, D.C.: Government Printing Office, 1996).
- ¹⁰“Arquitetura da Violência,” *Folha de S. Paulo*, 17 October 1999, sec. 3, 3.
- ¹¹IBGE, *Síntese de Indicadores Sociais 1998*, 19.
- ¹²In the state of São Paulo (54.7 homicides per one hundred thousand) and in Rio de Janeiro (53.7 homicides per one hundred thousand) there are approxi-

mately seven hundred homicides a month, or twenty-three a day, or one an hour. Sistema Único de Saúde, "Arquitetura da Violência," sec. 3, 3.

¹³In 1995, the most populated and/or affluent regions had the highest mortality rates by homicide per 100,000: North, 28.5; Northeast, 28.8; Southeast, 63.70; South, 23; Center-West, 38.2. But if we consider each state individually, this tendency is no longer true. Some of the Brazilian states with the highest rates are those that are more populated, such as Rio de Janeiro, 114.7; and São Paulo, 68.8. The smallest rates belong to Minas Gerais, 11.9; Santa Catarina, 12.3; and Rio Grande do Norte, 14.7. But Pernambuco, 65.9, is not the most populated nor the most affluent and yet it has the third highest rate after Rio and São Paulo. IBGE, *Síntese de Indicadores Sociais 1998*, 47–48.

¹⁴See MJ (Ministério da Justiça), CEDEC (Centro de Estudos da Cultura, Contemporânea), *Mapa de Risco da Violência Cidade de São Paulo* (São Paulo: CEDEC, 1997), 4.

¹⁵*Ibid.*, 7–11.

¹⁶Amartya Sen, "The Economics of Life and Death," *Scientific American* (May 1993): 46.

¹⁷See Albert Levy, "L'espace public peut être incivil," *Le Monde* (16 janvier 1998): 15.

¹⁸See Loic J. D. Wacquant, "Banlieues françaises et ghetto noir américain: de l'amalgame à la comparaison," *French Politics and Society* 10 (4) (1992): 81–97.

¹⁹For a discussion on the state monopoly of physical violence see Norbert Elias, "Violence and Civilization: The State Monopoly of Physical Violence and its Infringement," in John Keane, *Civil Society and the State* (London: Verso, 1988), 177–198. The expression "credible threat of violence" is from Martin Daly and Margo Wilson, *Homicide* (New York: Aldine de Gruyter Press, 1988), *passim*.

²⁰Robert Wright, "The Biology of Violence," *The New Yorker*, 15 March 1995, 73.

²¹"Survey Brazil," *The Economist* (27 March 1999): 14.

²²Human Rights Watch, "Brazil," *World Report 1999* (New York: Human Rights Watch, 1998), 103–109.

²³I owe this information to Christian Geffray.

²⁴*Veja* 32 (9) (8 dezembro 1999).

²⁵Lia Osorio Machado, "Movimento de Dinheiro e Tráfico de Drogas na Amazonia," in Maurides de Melo Ribeiro and Sergio Dario Seibel, *Drogas, Hegemonia do Cinismo* (São Paulo: Fundação Memorial da América Latina, 1997).

²⁶"Survey Brazil," 14.

²⁷The 1996 Latin American *Barometer* survey showed that, when asked how much confidence they have in the police, 21 percent of Brazilians answered "some," 35 percent answered "a little," and 39 percent declared to have "no confidence at all." With respect to confidence in the judiciary, the results are

astonishingly similar: 28 percent answered “some,” 35 percent “little,” and 39 percent “none.” *Latin Barometer*, June 1996, 35.

- ²⁸Leandro Carneiro, “Para medir a violência,” in Dulce Pandolfi et al., *Cidadania, Justiça e Violência* (Rio de Janeiro: Editora Fundação Getúlio Vargas, 1999), 175.
- ²⁹Paul Chevigny, *The Edge of the Knife* (New York: The New Press, 1995), passim.
- ³⁰I am relying on Paulo Mesquita Neto, “Pesquisa e prática policial no Brasil,” versão revisada do texto preparado para apresentação no seminário “Agenda de Colaboração Sociedade/Polícia,” mimeo, 11 June 1999, 18.
- ³¹*Ibid.*, 19–20.
- ³²Human Rights Watch, “Brazil,” *World Report 1999*.
- ³³Mesquita Neto, “Pesquisa e Prática Policial no Brasil,” 8.
- ³⁴Summary of the cases from Human Rights Watch, “Brazil,” *World Report 1999*.
- ³⁵See Claudio Júlio Tognolli, “O Dedo de Badan Palhares,” *Caros Amigos* (5) (September 1999): 17–19.
- ³⁶The trial for the remaining 152 defendants is pending a decision of the Ceara’s State Justice Court on an appeal by the Public Ministry asking for the verdict to be annulled.
- ³⁷See Maria Teresa Sadek and Rogério Bastos Arantes, “A crise do judiciário e a visão dos juízes,” *Revista da USP* 21 (Março-Abril-Maio 1994): 39.
- ³⁸Sergio Adorno, “Racial Discrimination and Criminal Justice in São Paulo,” in Rebecca Reichmann, *Race in Contemporary Brazil* (University Park, Pa.: Pennsylvania State University Press, 1999), 123–138.
- ³⁹Paulo Sérgio Pinheiro, “Democracia, derechos humanos y desarrollo economico y social obstáculos y resistencias. El caso de Brasil,” paper, Santiago de Chile, Centro de Derechos Humanos de las Nacionales Unidas, Seminario Latino Americano de Expertos, 1991.
- ⁴⁰“The Cost of Criminal Justice,” *Trends: UNCJIN (United Nations Criminal Justice Information Network) Crime and Justice Letter*, special issue, November 1991.
- ⁴¹Sadek and Arantes, “A crise do judiciário e a visão dos juízes.”
- ⁴²*Ibid.*
- ⁴³U.S. Government, *Country Reports on Human Rights Practices for 1994*, report submitted to the Committee on Foreign Relations, U.S. Senate and the Committee on Foreign Relations, House of Representatives by the Department of State (Washington, D.C.: Government Printing Office, 1995).
- ⁴⁴The ratio of prison inmates per one hundred thousand inhabitants increased in 1995 from 95.47 to 108.36 in 1997. The Penitentiary Census, Ministry of Justice, March 1998, indicated that there is one prisoner for 923 Brazilians. In the state of São Paulo, that rate is double the national rate: 198.66, or one

prisoner for 503 people. In the period from 1950 to 1997 the population of the state of São Paulo increased 39 percent and the number of prisoners rose by 239 percent.

- ⁴⁵International, *Aqui ninguém dorme sossegado* (São Paulo, Porto Alegre: Seção Brasileira da Anistia Internacional, 1999), 1–2.
- ⁴⁶“Relatório da Visita da Comissão Teotônio Vilela a Febem Imigrantes,” mimeo, São Paulo, October 1999; and summary of cases from “Brazil,” *Human Rights Watch 2000* (New York: Human Rights Watch, 1999).
- ⁴⁷Andrew Hurrell, “Power, Principles and Prudence: Protecting Human Rights in a Deeply Divided World,” in Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), 283.
- ⁴⁸This is called the “boomerang pattern” by Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders* (Ithaca: Cornell University Press, 1998), 13.
- ⁴⁹Paulo Sérgio Pinheiro and Paulo Mesquita Neto, *Texts from Brazil*, special ed. (Fifty Years of the Universal Declaration of Human Rights) (Brasília: Ministry of External Relations, May/August 1998), year II-n.6, passim.
- ⁵⁰Juan Carlos Portantiero, “La Sociedad Civil en América Latina: Entre Autonomía y Centralización,” in Peter Hengstenberg, Karl Kohut, and Gunther Maihold, *Sociedad Civil en América Latina: representación de intereses y gobernabilidad* (Caracas: Nueva Sociedad, 1999), 37–38.
- ⁵¹The expression “early warning system” is from Dick Messner, “Organizaciones No-Gubernamentales; nuevas esperanzas o actores sobreestimados? Procesos de Búsqueda en América Latina y experiencias de los países industrializados,” in Hengstenberg, Kohut, and Maihold, *Sociedad Civil en América Latina*, 442–444.
- ⁵²“Survey Brazil,” 14.
- ⁵³Human Rights Watch, “Brazil,” *World Report 1999*; “Brazil,” *Human Rights Watch 2000*.
- ⁵⁴See Jean Paul Brodeur, “Comments on Chevigny” and Paulo Sérgio Pinheiro, “The Rule of Law and the Underprivileged in Latin America,” in Juan Méndez, Guillermo O’Donnell, and Paulo Sérgio Pinheiro, *The (Un)Rule of Law and the Underprivileged in Latin America* (Notre Dame, Ind.: University of Notre Dame Press, 1999), 1–18, 71–86.
- ⁵⁵Messner, “Organizaciones No-Gubernamentales,” 448–449.