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Crime, Society and the Challenge to Human Rights Protection

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With a regional homicide rate over three times the global average since 2000, accounting for over forty percent of the world’s murders each year,ⁱ crime has been one of the top concerns of Latin Americans since the mid-1990s.ⁱⁱ In response, governments have been enacting an extensive range of reforms. While varying among countries, the main areas of such reform are a re-structuring of police forces, more professional support for officers, stronger accountability, judicial reforms, and community policing. Though usually well-designed, these reforms have had limited impact against record crime rates, in part because of how they incorporate human rights. In countries around the region, there has been insufficient engagement by criminal justice with human rights as they are viewed, prioritized and practiced in society on a daily basis. The resulting gap between state and society has led to emerging challenges in the protection and support of basic rights around the region.

This paper will examine three areas in which this gap is widest: criminal policy and the judiciary; societal fragmentation; and state accountability. In each area, threats to basic rights have emerged that are markedly different from those against which human rights groups struggled in the authoritarian and early transition periods. These inter-connected

issue areas expose a strong, mutually-reinforcing and symbiotic vulnerability of society and the state on the link between crime and rights: society's demands for crackdowns, combined with its lack of confidence in officials, heighten the state's inability to support rights while maintaining public safety. Such tension is often expressed in a supposed trade-off between security and civil rights that facilitates tough policing that removes criminals from the street but in the process erodes the rule of law. Drawing on several countries in the region – with Honduras, Bolivia, and Argentina in particular – this paper will examine how these three areas reveal crime as a major challenge to human rights in democratic Latin America.

Criminal Policy and the Judiciary

While the five areas of reform mentioned above are moving Latin America toward more preventative, flexible, and participatory form of policing. But since they involve slow institutional change, they tend to get overwhelmed by the combination of short-term demands, and strong patterns in policing grounded in historical and often authoritarian practices that have been given a legitimizing boost by zero tolerance, the other global trend in law enforcement policy. More and more officials are elected on anti-crime platforms, but, unable to alter intransigent practices during a limited time in office, turn to easy zero tolerance policies. Such approach has become politicized through widespread and facile rhetoric that creates an incompatible division between “public order,” associated with a decisive state, and “human rights,” associated with delinquents. In Argentina's Mendoza province, for example, complaints by rights activists are often met with responses about the human rights of society to security. In the government's 2008 “Social Accord for Security,” Governor Celso Jaque warned criminals that “You are our enemies and we will look for you day and night ... I believe firmly in human rights, but the first human right is life.”ⁱⁱⁱ The

police facilitate and promote such divisions. One of the five principal problems that Ecuador's police defined for itself, for example, is that "Human Rights Organisms have carried out campaigns to discredit the Police Institution, which has affected the morale of its members" (Policía Nacional de Ecuador 2006).

Zero tolerance, the policy that gives substance to such an approach, stems, at least rhetorically, from the "broken windows" theory (Kelling and Coles 1996) that anti-social behavior such as intimidation and harassment, along with physical deterioration, scare off law-abiding citizens and allow crime to take root. A broken window is a signal that no one cares about a property, encouraging delinquents to gather there and form a base for intimidating or illegal activity. As residents start avoiding the street, a sense of public order then slips out of their control. The only effective way to prevent such a pattern, zero tolerance theory posits, is to give police more authority to detain or question people about misdemeanors and anti-social behavior. Such clampdowns not only prevent potential criminals from being emboldened into more serious crime, reason zero tolerance proponents, but divulge illegal arms, evidence on outstanding crimes, and other illegal possessions or activities that would otherwise go unchecked.

To be both effective and remain within the bounds of civil rights, though, such an approach requires major changes in police training and activity. By bringing the police in closer contact with causes of crime such as drug addiction, in particular, it necessitates good legal training for all officers, coordination with social services, functioning courts to process detainees, and oversight by government agencies, courts, NGOs, and the media. To work, that is, policies based on broken windows must combine the "co-production" part of its approach, which scholars such as Evans and Ostrom (1997) define as different agencies

working together, with the “incivilities” component, in which anti-social behavior is curtailed. Detentions for chronic drunkenness, for example, only work if courts and social services are able to forestall recurrence. In reality, though, co-production is usually outpaced by a focus on incivilities. In many areas of Latin America and other regions, “zero tolerance” is often applied with few outside supports or controls at all, turning it into a *mano dura* (iron fist) that is little more than a continuation of police practices from the pre-democratic period that provide legal cover for police control of society “dangerous” elements. Zero tolerance can thus give the illusion of action without necessarily involving structural changes that lead to solid improvements.

While such policies are relatively recent, they have a strong legal basis. Helping institutionalize and legitimize them are the edicts and other internal regulations that most Latin American police have been acquiring since the colonial era, empowering them to carry out detentions for subjectively defined activities ranging from “vagrancy” to “suspicion of criminal intent.” The provision in Chile’s 1901 penal code allowing police to make arrests based on physical appearances, for example, wasn’t eliminated until 1998. And while technically legal, most edicts often include exemptions from regular judicial procedures, such as notification of a judge within a short time period. Because of these advantages for the police, edicts and other internal rules take up a large percentage of officers’ time. In Guatemala, for example, an estimated 80 percent of detentions and arrests are for alleged misdemeanors.^{iv} As police operations become centered on edict detention, statistics are also affected, with the number of such detentions becoming the police’s self-referential measure of success. Once in place, a *mano dura* starts to legitimize itself as arrests begin replacing conviction and recidivism rates as the barometers of policy success.

In nearly every country where such regulations have been struck down for being unconstitutional or abusive, furthermore, governments try to re-instate them in new forms or through increasing use of other regulations, such as checking identification or police record. Venezuela's 1939 Law of Vagabonds and Crooks, for example, allowed detention of anyone deemed "suspicious" and was one of the main bases for police detention until it was declared unconstitutional in 1997. But it was quickly replaced by stepped-up arrests based on checking for identity or past criminal record. Along with edicts, boosting zero tolerance are newer "social control" laws enacted since the democratic transition. Often introduced as parts of anti-guerilla or special police operations, or as replacements of eliminated edicts, these laws also increase the police's unregulated control over citizens even as the conditions that justified them end. Such application of zero tolerance, of course, distract from focus on the causes of crime, distend judicial backlogs, raise tensions with citizens, and complicate the five areas of needed reform. Without follow-up or coordination with social services, such actions do not serve the "broken windows" purpose of stopping more violent crime. In Costa Rica, for example, up to 50,000 misdemeanor violations are reported each year, which criminal justice officials admit are not assessed for their effectiveness.^v

Such excesses, of course, can and should be corrected in the courts. By determine the meaning, strength, and application of rights guarantees, the judiciary is democracy's principle protector of both general and individual human rights. But as documented in the scholarship (see Hamnergren 1998, Hilbink 2007), a range of political pressures, institutional limitations, and legal complexities all thwart this role. On the court's defense of both general and individual rights in the area of criminal justice, such obstacles are clear. Restraining courts' broad interpretive role, for example, has been overlap and confusion on

questions where judicial interpretation has particular weight.^{vi} The use of force, the collection of evidence, the treatment of at-risk youth, and other key security issues can and often are supported by different laws. But as new national, provincial, and local laws continue to be enacted far more quickly than they are interpreted, there is extreme external and internal pressure on judges to support them through “broad” interpretations of police power maximizing the agency’s authority. Honduras, for example, has enacted some of Latin America’s toughest and constitutionally-dubious criminal laws, including those allowing raids without a warrant and imprisonment of gang leaders based on the suspect’s role rather than any specific criminal act. But the Supreme Court’s magistrates, who reach the bench through party politics, have not questioned such laws. One Magistrate even stated that “any measure” adopted to crack down on crime “will be approved, because criminality is a problem we all have and we are all obligated to fight it.”^{vii}

On the individual level, one of the biggest and most promising criminal justice reforms in the democratic era also demonstrate the judiciary’s limitations. With criminal investigations in Latin America notoriously slow and biased, fourteen countries since the early 1990s have adopted new penal process codes. While varying, these codes all aim to speed up trials, clarify each criminal justice agency’s role, and strengthen due process by replacing glacial written procedures with oral trials, transferring investigative authorities from the police to prosecutors (*fiscales*) in the Attorney General Office (MP: *Ministerio Público*), and creating courts at the investigative and sentencing phases. Many others have also expanded alternative sentencing and community justice, such as through formation of popular “judges of the peace.” These codes led to impressive impact in their first few years, such as more resolved charges and alternative sentencing. But since then, they have been

slowed by inadequate funds, poor training, bureaucratic inertia, and resistance by police agencies resentful of losing investigative power. Instead of meeting the new codes' higher standards on evidence, for example, police officials often refuse to cooperate with prosecutors and blame the codes for allowing the release of criminals – fueling the politicized divide between public safety and human rights.

Societal Fragmentation

Citizens most affected by tough zero tolerance policing, of course, are those least aware of how their rights are affected by them. While such effects have been discussed in the literature (see Brinks 2008), this article tries to identify and bring out an underlying fragmentation that gives rise to the kinds of division and inequality that lead to serious rights abuses in the democratic era. While such fragmentation exists in many realms, this article will discuss four with particular import for human rights and criminal justice: decentralization, privatization, fear, and youth.

While spending cuts and other economic policies have strained public services throughout Latin America, the region's unprecedented rate of decentralization has created a widening disparity in the kind of security provided to different regions within nearly every country. This shift of authority to the regional and municipal levels throughout Latin America has led to a record number of local police forces, which theoretically are more efficient, responsive, and accountable. But decentralization can turn out to be not just less efficient than centralization, but less protective of human rights as well, since sub-national governments do not necessarily allow more participation, accountability, or rights. Decentralization can thus resuscitate local prejudices and political clientalism that were held in check by national standards. Resistance to change by recalcitrant provinces of federal

states like Argentina and Mexico, or threats to state integrity itself in countries like Bolivia, are evidence of the differences among regions and the stakes involved in security decentralization.

Amid income inequalities, policing in particular shows how decentralization can mean wide differences in the quality and extent of state services among regions.^{viii} With urban crime usually far higher than the national average, provinces without large metropolises tend to support decentralization based on the perception that they have been subsidizing expensive urban policing. Ecuador's urban homicide rate is about 3 ½ times the rural rate (INEC), for example (Carrión 2005), while four out of five murders in Bolivia occur in its three urban departments. While smaller and more self-sufficient provinces benefit, though, poorer ones suffer a fall in policing quality after decentralization. Since due process and other rights associated with criminal justice depend on agencies beyond the police, furthermore, differences in their presence will determine basic rights protection. While the police are scarce in many of Latin America's rural areas, for example, a greater scarcity of public defenders can severely undercut civil rights.

But decentralization can have an even bigger impact within urban areas, where violent crime is concentrated in the poor neighborhoods least able to afford quality policing. Links between demographics and crime must be carefully demonstrated, since some scholars (see Carrión et al 1994) show no correlation between violence and city size. But in Latin America, the instability and fragmentation of urban life is often regarded as an aggravating factor. As in other regions, urbanization in Latin America usually accompanies economic growth, since expanding cities have the jobs and infrastructure that attract and absorb new residents. But if this economic potential does not materialize or goes into reverse, cities will

struggle to support swelling populations. Latin America shows the impacts of this more clearly than other regions, with an urbanization rate of 75.3 percent comparable to that of far wealthier North America (77.2 percent) and Europe (74.8 percent) and nearly twice the rates of Africa (37.9 percent) and Asia (36.7 percent) (Cerrutti and Bertonecello, p. 5). This economic volatility is compounded by high ownership instability, with an estimated 65 percent of Latin America's urban properties lacking property rights to give their long-time occupants the ability to use them as collateral for loans.^{ix}

In contrast to the poor areas with high crime, middle- and upper-class areas become more secure through cooperation with the police and reforms tailored toward their own concerns. The more durable community policing programs in Latin America, for example, have developed in middle-class neighborhoods. More and more, though, private security lets these sectors opt out of public security altogether. With growing crime and socio-economic change in the modern era, Latin America's long history of geographic exclusion – from “company towns” in the 1800s to closed residential areas in the 1900s (see Borsdorf 2003) – has facilitated adoption of private security. Since the 1980s, in fact, private security has grown in every region of the world (Frigo 2), to the point where private security officers now outnumber their public counterparts in cities throughout Latin America, Africa, and Asia. Every Latin American country has experienced such growth in both residential and business sectors, expanding from higher-income to less affluent as well as different types of areas.^x While turnover, off-the-books hiring, and high bankruptcy rates make statistics uncertain,^{xi} it is conservatively estimated that there are about 1.6 million registered private security employees in Latin America, with about two million more working informally.^{xii} Even governments are buying into privatization, such as contracts with private firms by Lima's

wealthier municipalities.^{xiii} Since many private agents are staffed by moonlighting state officers, there is much overlap between them even without official contracts. Laws regulate these enterprises, but, according to police administrators, well under half abide by them and so operate essentially unfettered. One particular danger of such lax regulation stems from the fact that many of their employees were kicked off the force or unable to get in, with obvious implications for the quality and safety of their services.

As privately-protected sectors then make fewer claims on public security, the reduced pressure on the state slows momentum for reform. It also helps justify casting wide net of zero tolerance over on “high crime” areas, with police actions increasingly tailored to different areas. On a social level, the exclusion which underscores the increasing ubiquity of private police takes on a legal sheen and societal justification. “Apart from examining legal systems and the practices of social control agencies, explanations of exclusion require an account of barriers, prohibitions and constraints on activities from the point of view of the excluded,” as Sibley (1995, page x) points out, leading to fundamental questions, such as “[W]ho are places for, whom do they exclude, and how are these prohibitions maintained in practice?” In Latin America, where the excluded are a majority confined to a minority of space, such questions display the underside of citizen security and rights protection. The exclusivity of consumerist spaces, combined with local police focused on incivilities, shows how decentralization and privatization can together undermine rights.

Such fragmentation can also breathe new life into long-standing patterns of discrimination. Groups associated with immorality and disorder – such as youth, immigrants, indigenous persons, people with dark skin, and sexual minorities – now face an increased suspicion over criminal intent. Most definitions and studies of civil society rightly

emphasize its role as the catalyst of democracy in Latin America and other regions.

Regarded as “arena” where citizens organize to “express themselves and advance their interests” (Stepan 1988, 3-4) or to “question” and “resist” the state (Keane 1988, pp. 27-28), civil society can in fact be a “school of virtue” that promotes cooperation, aggregates interests, and equalizes representation of otherwise unequal social sectors (Almond and Verba 1963, Putnam 1993). In Latin America, it has used that power to bring down repressive regimes, forge policy change, and check government excess. From neighborhood justice centers to community policing, citizen security has been among civil society’s beneficiaries. But while civil society is an engine of democracy, it can also undermine democracy’s standards as fear, individualization, and weak states drive citizens to cast off or re-order rights. As scholars such as Habermas (1989) and Turner (1983) point out, certain conditions or catalyzing events can galvanize civil society. But unlike socio-economic or other issues in which citizens often find common ground, the combination of individual fear and state power can prevent such activism from crystallizing on citizen security. Amid decentralization and other changes, the immediate needs for personal safety and the ready availability of zero tolerance can lead to a reflexive resort to physical state power. As a fragmented “sphere of publics” rather than “the realm of a single public” (Calhoun and McGowan 1997, 250), civil society thus fails to help the state protect rights amid rising criminal violence.

Even alone, fear fragments society. As crime becomes predictable in expectation of its likelihood but unpredictable in its time and form, it closes in the scope of civil association. As people adjust their schedules, expectations, and interactions in response to violence, it re-configures their relationships with each other, with space, and with the state. What Rotker

(2002) calls a “citizenship of fear” has led to a war without the usual markers of ideology, mobilization, and battle lines. As that war’s unwitting combatants, residents avoid a growing range of their cities and distrust “anyone who looks at you for more than a few seconds.” As *barrios* blend into each other, residents retreat into homes barricaded with guns, dogs, window bars, and other individualized solutions. Many residents in poor areas say they need to have someone home at all times to prevent robbery, which further depresses community response. As attendees of community meetings dwindle, though, in many areas more people take it upon themselves to bring order through gangs, vigilantism, and other forms of organized social violence. As fear mutates into hostility, as scholars like Armony (2004) and Snodgrass Godoy (2006) describe, the positive association between civic engagement and democracy deteriorates. As such inequalities and tensions multiply, civil society becomes “not an inherently consensual arena” but “a terrain of struggle” over distribution of and access to not just resources, but of rights. As both fear of crime and violent responses to it spread, as Keane (2001, 235) observes, it “robs subjects of their capacity to act with or against others. ... Fear eats the soul of democracy.”

New types of organizing to confront these conditions often come up against their complexities. Although human rights were catalysts of the anti-authoritarian movements, in particular, they have been slowed and sometimes halted in the democracies those movements brought forth by the growing opposition to rights for presumed criminals. Human rights language and strategies have even been co-opted, when the “right” to security is used to trump others through the media and mass rallies in countries such as Argentina, Mexico, and Guatemala. For most Latin Americans, “impunity” is no longer about unpunished rights abuse from the authoritarian era, but about unresolved crimes in the democratic one. In

much of Latin America, that is, rights have become increasingly contextual – proper in some cases but not others and for some people but not others. So when human rights organizations begin broadening their focus to include current police practice, they find themselves cast as defenders of criminals rather than of rights. In Venezuela, for example, the Chávez government has faced few repercussions for rebuffing rights organizations pressing it for information on police practices or against its decision – unprecedented in a democracy – to stop publishing crime statistics.

Nothing exemplifies the impact of civil society's changes than how it and the state respond to its youth. Though youth are both the biggest perpetrators and victims of crime in Latin America, criminal policy is ineffective at addressing either problem, with an institutional weakness that extends from early prevention to post-crime punishment. Rates of violence by and against youth far surpass those of any other sector in Latin America. About 29 percent of all homicides are among people 10 to 19 years of age, making youth homicide rate up to three times higher than national rates. Violence – homicide, suicide, and accidents – killed 80,000 Latin America youth in 2006, more than any other group and at a rate higher than in any other region. At 36.4 killings per 100,000 people between 10 and 29 years of age, its rate far surpasses other regions, which range from 0.9 per 100,000 in high-income areas to 17.6 per 100,000 in Africa (World Health Organization, 2007). The three countries with the world's highest youth homicide rates are Latin American: Colombia, Venezuela, and Brazil.^{xiv} Other countries have similar patterns.^{xv} With youth unemployment up to three times the general rate, just about half of young people finishing school (Kliksberg 2001, p.109), every country faces similar conditions. But society's response – as seen in legal debates, public space, and gang policy – demonstrate its own fragmentation.

After the term “youth delinquency” was coined in 1815, its legal definition gradually expanded from serious crimes to encompassing different forms of anti-social or marginal behavior. And the “1990s accelerated two trends relation to youth and the law, clearly in tension if not outright contradiction,” point out Alladi Venkatesh and Kassimir (2007, pp. 7-8). One trend is “a punitive turn in juvenile justice and the treatment of young people in public space,” and another is “an explosion of new legal instruments, discourses, and organization around the rights of children and young people.” Restorative justice and rehabilitation are gaining ground in Latin America as applications of the latter approach. But clash between these two trends still dominates policy in the region, focusing on questions such as minors’ legal responsibility. The Minimum Rules of the United Nations for the Administration of Justice for Minors, commonly known as the Beijing Rules, state that legal responsibility “should not be fixed at an age that is too early, taking into consideration the circumstances that accompany emotional and intellectual maturity.” The consensus is that the earliest such age should be 15, which most countries’ laws reflect. In most of Latin America, juvenile law covers youth between 16 and 18 years of age, held responsible for their acts but in a separate legal category as “minor offenders.” But as police in nearly every country report an increase in the number of arrests of individuals between 14 and 18,^{xvi} there has been increasing pressure to stiffen penalties against this group and to lower the age to fourteen.

Such debate feeds into broader policy conflicts between crackdowns and prevention. El Salvador, for example, cannot get past its contradictory *super mano dura* crackdowns and its *mano amigo* social programs and court reforms.^{xvii} In Nicaragua, where many social programs from the 1980s continue, the 1999 Integrated Development Plan for the Prevention

of Juvenile Violence was intended “to clamp down on visible youth crime and thereby restore a sense of security among the urban populace,” while police systematically arrested suspected gang members without judicial warrants (MacClure and Sotelo 2003, 681). Regular police actions toward youth in most countries, in addition, are far more selective and discretionary than they are for other social sectors. Laws that are less clear and more flexible – such as dispersing crowds after a concert – tend to affect youth disproportionately. The most serious confrontations in Argentina since democratization have been between police and youth between 15 and 18 years of age, for example. Though youth are already the primary targets of policing, societal demands for security around youth are among the most tense and immediate. Families want to protect their own kids while also demanding actions against others and with efforts to address social problems clashing with clamors for crackdowns. Partly as a result, even mediated encounters between youth and police are characterized by conflict and distrust, making young people reluctant to go to the police even when they victims. Even when such meetings allow youth to complaint about abuses or poor services, a lack of follow-up only compounds their frustration.^{xviii}

Such control is most apparent around the use of public space. Most Latin American youth depend heavily on public space, since they are often crowded out of their homes and because, as anywhere, their identity and status depend on how they act in front of others. But their problems and conflicts tend to be amplified in Latin America because of high rates of socio-economic instability, employment vulnerability, hostility to authority, and, in many cases, resentment at having adult responsibilities. Combined with the consumption of drugs, music, and clothes, the rest of society regards such socialization as unfit for public space. In polls, residents typically identify groups of youth in the street as the neighborhood’s biggest

“problem,” whether or not they do anything illegal. Such responses help legitimize even extreme responses, such as killings of youth in Honduras. In that country, the current government of Melvin Zelaya has backed off from the harsh policing of its predecessor. But since his inauguration, an average of 41 youth have been killed per month, adding to the 3,200 children and youth killed between 1998 and June 2006 – documented by the NGO Casa Alianza but undisputed off the record by state officials^{xix} – a rate faster than political killings during the pre-democratic era. So for police responsible for an area, control of youth is almost always a priority to for a community’s sense of order. But the skills they need to restore that order – such as understand those involved, identify causes, and develop solutions – are those most lacking in their education. Instead, youth policy is painted in broad strokes. Lack of adaptation, deviant behavior, and other conduct identified by untrained police become characteristics used to mark youth delinquents. With these attitudes from police and society, youth thus become objects of collective fear, seen not as individuals but as generators of delinquency, intimidation, and jarring cultural changes.

Abusive and ineffective criminal policy on youth is perhaps most evident with gangs. Although youth gangs are now considered to be the one of the biggest threats to citizen security in Latin America, there is discordance among theory, research, and policy on them. Reflecting the demand for short-term results, this clash begins with the policy priority of controlling rather than understanding gangs. Gangs can be identified and understood through many characteristics, including their level of establishment (from initial perceptions as a distinct group to physical control of a neighborhood), their links (to institutions such as schools); their cultural touchstones (from music groups to fascist ideology); and their goals (from local dominance to international drug trafficking). Failure to document these traits,

along with differences in definitions among officials, can result in either exaggeration or underestimation, usually leading to greater police discretion without greater effectiveness. Also lacking are studies across time, geographic areas, and government jurisdictions. Resulting paralysis then allows policy to be hijacked by immediate political needs: a tourism campaign, for example, can turn a group of kids into a gang. More seriously, of course, such failure allows gangs to grow to the point where most policies are ineffective, as seen most clearly with MS-13, 18th Street, and other gangs in Central America.

Accountability

After an era of authoritarianism, one of the principal objectives of Latin American democracy is ensuring that state institutions and officials are accountable to democratic laws and norms. If a democratic regime is consolidated when all major actors “become habituated to the resolution of conflict within the specific laws, procedures and institutions sanctioned by the new democratic process” (Linz and Stepan 1996, p.8), then mechanisms for such habituation are indeed central to democracy. With the weaknesses of the region’s democratic governments, though, accountability is under threat by the belief that it hinders the state’s efficiency and the decisive decision-making seen as necessary to overcome persistent economic and political problems. With violent crime now one of the biggest of those problems, popular support for crackdowns on criminals – amply demonstrated by polls and protests – is clashing with laws and agencies that many countries formed during democratization to hold the police accountable to the law. The doubt that crime has cast over accountability’s wisdom and practicality is even leading to additional laws that erode or reverse it. The perception of accountability as a hindrance to efficiency has allowed

accountability mechanisms to be starved of needed political and institutional support before they even take action.

Because accountability is under most strain on the issue of policing, the agencies specifically created to hold the police accountable is one of the best windows into the dangers to accountability in contemporary Latin America. Scholars point out that many state bodies are less accountable on rights because they are not elected and often avoid intra-state monitoring as well (see Przeworski et al, 1999, p. 20). This is especially true for the police, since most of its activities – from detentions to manipulation of evidence – occur out of the public eye, are physically separate from other agencies, and usually occur against people with little power. But as the primary instrument of the state’s monopoly of violence, the police determine the daily protection of constitutional guarantees like habeas corpus. The high volume of complaints over the police to umbrella accountability agencies is testament to the ongoing abuse of such rights. Well over half of reports to El Salvador’s Human Rights Commissioner were about the National Civilian Police (Chinchilla 2003, 215), for example, while in Perú the police logs the third highest number of citizen grievances.^{xx} In 2004 alone, Nicaragua’s Office of Internal Affairs received 1,113 reports that led to investigation of 639 police officials.^{xxi} Such numbers underscore the importance made by Peruzzotti and Smulovitz (2006) of activating accountability agencies to get concrete results.

In most countries, charges against police officers are handled in three main ways: through internal police procedures, usually by the accused officer’s superiors; through an ombudsman (*Defensoría del Pueblo*) or human rights commission, empowered to receive and investigate citizen complaints on any state agency; or through the Prosecutor’s Office (*Fiscalía*). Serious cases sent through all three channels may end up in a court of law. Each

of these processes is limited, though, since most agencies end up being weaker than the institutions they try to hold accountable. Favoritism and the police's tendency to close ranks curbs internal administrative actions; ombudsmen are usually too overwhelmed with other issues to devote sufficient attention to policing; and the courts' slowness limits use of judicial processes.

Because of such limitations, many countries have formed units exclusively to monitor the police (thus limiting being overwhelmed, like ombudsman), with external and civilian actors (thus avoiding the bias of internal processes), and minimizing potential conflicts of interest (as with prosecutors). Although they vary in size and legal reach, almost all of these agencies have the authority to investigate police wrongdoing, publicize abuses, and prod judicial and executive agencies into action.^{xxii} Most importantly, they are usually given some say over management, enabling them to take steps beyond investigation. Given this head start, obstacles to such agencies once they are in place can reveal limits to accountability beyond institutional design, position, or power.

Two of those obstacles, experience has shown, come from two forms of support on which accountability relies. The first is political, made up primarily of backing by executives and the public in general. The second is institutional support, centered on cooperation with the accountability agency by other agencies. Both these conditions are broad, but each one pivots on a central element. Of all the myriad influences on political support, first of all, a critical and often overlooked one is a tolerance for abuse. In many countries, abuses such as corruption and unconstitutional decrees are often tolerated as a reasonable price to pay for effective governance. With public panic over crime, such acceptance is particularly true with the police. Illegal and violent practices such as mass raids, arbitrary curfews, and extra-

judicial killings are seen as necessary to fight crime. In a poll in Maracaibo, Venezuela's second largest city, 91% of respondents did not "feel secure" with the police. But 89% feared being victims of crime, 60% favored more violence to combat it, and a 47% favored police killing of delinquents (Gabaldón, and Bettiol 1998). Even distrust of a state agency, that is, does not always mean that citizens want to hold it accountable. Such views help executives to manipulate and withhold support for accountability agencies.

Institutionally, accountability agencies are circumvented, ignored, or second-guessed by other bodies before, during, and after investigations. The impact of even the clearest evidence of abuse depends on how it is collected and presented before an accountability agency steps in, for example, and even the strongest accountability agencies relies on the how the criminal justice system treats cases turned over to it. In many cases, such as in Argentina's Mendoza province, they are inundated with minor complaints that prevent investigation of serious ones. In other cases, institutional uncertainty harms these agencies. For instance, Perú adopted an extensive internal affairs structure: a police ombudsman to review complaints from all ranks and the Interior Ministry's civilian Office of Internal Affairs (*Oficina de Asuntos Internos*) for more serious abuses. But these units were weakened by resistance from the police, overlap with the Inspector General, and a revolving door of interior ministers since 2000.^{xxiii}

These influences help evaluate how much accountability mechanisms defend and promote human rights. In the literature's many definitions of accountability, two general dimensions are cited as essential to it. The first is explanation and answerability – the power to know what is happening and why. The second is judgment and sanction – the ability to punish violators (see Schedler 1999). Police accountability units have become increasingly

able to reach the first goal of uncovering and publicizing abuse and, to a limited extent, the second goal of punishing wrongdoers. But tolerance for abuse is a sign that accountability units also should begin to uproot its underlying causes. Along these lines, many argue that “accountability should encompass both *a priori* and *a posteriori* elements of policing; meaning it should include assessment of the guidance given to police before an operation as well as how police are monitored and assessed afterwards” (Osse, 2006, p. 31). Most accountability agencies have yet to carry out such a broad function, of course, as seen by the fact that even increases in indictments do not necessarily mean a corresponding reduction in abuses. The small number of court prosecutions for abuse, even with more indictments, further shows that accountability agencies clearly must do more than channel cases to the judiciary in order to attain a meaningful – or “full” – level of accountability. Most of Latin America’s police accountability units have policy as well as investigative authorities for precisely this reason, and challenging the political and institutional conditions that foster abuse is the source of their potential. While it is unreasonable to expect them single-handedly to turn around deeply-rooted practices of state bureaucracies, of course, it is reasonable to expect that these agencies will have some affect on the actions of state officials.^{xxiv} This wider view is needed to explain and demonstrate the limits on accountability agencies’ ability to expose and punish – as well as prevent – rights abuse.

Conclusion

As O’Donnell states (1993: 1361), “a situation in which one can vote freely and have one’s vote counted fairly, but cannot expect proper treatment from the police or the courts ... severely curtails the citizenship” at democracy’s core. As Latin America is overwhelmed by crime, how it responds through criminal policy, civil society action, and standards such as

accountability will determine how well it can fortify human rights in an era of new challenges to democracy.

ⁱ Latin America's average annual homicide rate has been 27.5 and the world rate 8.8. Sources: Interpol International Crime Statistics, <http://www.interpol.int>; Pan-American Health Organization 2002; United Nations Interregional Crime and Justice Research Institute 2006.

ⁱⁱ Crime is statistically tied with unemployment in the regional Latinobarometro survey, more than doubling between 2001 and 2007 as a response to the question, "What do you consider to be the most important problem in your country?" Latinobarometro 2007 polled 20,212 people in 18 countries in, with a three percent margin of error. Crime jumped from fifth place in 2003 to second place in 2005 as citizens' biggest worry in some polls; Inter-American Development Bank, "Expertos debaten prevención de violencia juvenil en América Central, Panamá y República Dominicana," October 6, 2006.

ⁱⁱⁱ Author Interviews, Mendoza, July 2008; Martes, 2 de Septiembre de 2008, El gobernador de Mendoza anunció su "Acuerdo" para combatir el delito y renunciaron los funcionarios de DD.HH."

^{iv} US Agency for International Development, Reflections on Community-Based Policing Programming in Guatemala, Washington, DC: USAID, April 2005, p. 2

^v Author Interviews, Commissioner Alberto Li Chan, June 17-20, 2006; Ana Durán Salvatierra, Vice-Minister of Governance and Police; AI, San José de Costa Rica, 19 June 2006; Mario Zamora Cordero, Advisor, La Defensoría de los Habitantes de Costa Rica, April 7, 2006.

^{vi} Many areas of law deal with the police. The legal base of Latin American policing is comprised of penal codes, penal process codes, police codes, ordenanzas (usually part of administrative penal law used primarily to regulate public order); contravenciones (both also called faltas; edicts are a category of faltas), regulations (reglamentos, which are part of disciplinary penal law and mostly for internal police matters like discipline); prohibitions; police orders; permisos (exemptions to regulations); special permits or authorizations; and customary laws made up of unlegislated but long-held practices. Disciplinary law delineates police responsibility; administrative law defines sanction authorities and processes; penal law regulates constitutional order and internal state security.

^{vii} *Honduras This Week*, Monday, June 24, 2002 Online Edition 23. Cited *El Herald*, June 5, 2002

^{viii} In Nicaragua, which has one of Latin America's more equitable distributions of income, the high-poverty rural areas representing 16 percent of the population had just 400 officers, which is one for 2,188 people, while the rest of the country has one for every 710 persons (Bautista 2006 p. 114).

^{ix} According to a study of 12 Latin American countries by the IADB and Peru's Institute of Liberty and Democracy, as quoted in Oppenheimer, Andrés, "Latin America's underground economy keeps booming," Hispanic American Center for Economic Research, <http://www.hacer.org/current/LATAM190.php>

^x In Mexico City, for example, about 750 gated communities with about 50,000 mostly middle-class housing units were formed between 1990 and 2001 (Parnreiter 2002).

^{xi} The reported number of officers in Mexico ranges from 140,000 to 450,000, with an estimated 600,000 unregistered ones. Sources: Lower estimate of 140,000 from *The Economist*, January 27, 2007, p. 33; higher estimates from Uildriks, Niels and Tello, Nelia, *Mexico's Unrule of Law: Human Rights and Police Reform under Fox*, forthcoming, page 196. According to Uildriks and Tello, about 70 percent are former state police officers. There are 322 private security firms on Mexico's federal registry, but about 6,000 operate just in the Mexico City area. The 2007 estimates for private security officers in Guatemala range from 80,000 to 200,000. Lower estimate: Otto Pérez Molina, a military general and 2007 Presidential candidate, Author Interview, June 19, 2007; Higher estimate: "Impunity Rules," *The Economist*, November 18, 2006, p.41. Both estimates are a leap from the estimated 15,000 of the 1990s, making private security more than ten times bigger than the 20,000-strong police.

^{xii} Though this growth began in the 1980s, most Latin America firms are less than ten years old. In the Dominican Republic, for example, 47 of the 98 firms registered in 2000 were formed since the mid-1990s.

Raimundo Díaz, “Compañías privadas de seguridad, el negocio del miedo,” en Revista Rumbo 388 año VII, 9/7/2001, Santo Domingo, p. 40.

^{xiii} Author Interviews, Lima municipal security chiefs, June 2001

^{xiv} In Brazil, youth homicides increased 77 per cent since the late 1990s to 51.7 homicides per 100,000 youth, a rate a hundred times greater than a majority of countries (UN-Habitat, 2004).

^{xv} In the Dominican Republic, 45.7 percent of all killings in 2001 were of people between ages 20 and 29, and in El Salvador, 15 to 17 year-olds make up 93 percent of the homicide victims. Survey the Universidad Centroamerica de El Salvador, 2005. Costa Ricans between the ages of 20 and 24 commit 12.7 homicides per 100,000 people – double the overall rate of 7.6 Fernández Umaña, María José, “Ticos más violentos,” Prensa Libre, San José, 25 February 2005.

^{xvi} The chief of the Chilean Carabineros, for example, reports that arrests in this age range in Chile rose five times between 1986 and 2003. Blanco and Bernales, forthcoming).

^{xvii} On judicial reform, see Call 2003. On exclusion of youth, see Savenije and Van der Borgh 2004.

^{xviii} Author Interviews, Youth Centers in Tegucigalpa, La Ceiba, and Chamelecón, Honduras; La Paz and El Alto, Bolivia; and Morón, Mendoza, and La Rioja, Argentina.

^{xix} Author Interviews, Gustavo Zelaya, Casa Alianza Legal director, 2003-2007

^{xx} Defensoría del Pueblo, Perú, www.ombudsman.gob.pe/modules

^{xxi} Programa Centroamericano de la Federación Luterana Mundial, Centroamérica 2004-2005: desde una perspectiva de derechos humanos (FLM Publishers, 2005).

^{xxii} Below are listed the primary accountability agencies in Latin American countries, apart from internal mechanisms and civilian (or military) courts. *Defensorías del Pueblo* are listed where they are the main oversight body for policing.

Country	Police Accountability Agencies and Procedures
Argentina*	<i>Inspección de Seguridad</i> (most provinces)
Bolivia	Office of Professional Responsibility (DNRP: <i>Dirección Nacional de Responsabilidad Profesional</i>); Superior Disciplinary Tribunal (TDS)
Brazil*	<i>Ouvidoria da Polícia</i> (14 states)
Chile	Administrative Procedures; Military Courts
Colombia	<i>Defensoría del Pueblo</i>
Costa Rica	Personnel Council; internal mechanisms
Dom. Republic	National Human Rights Commission; Institute of Human Dignity of the National Police
Ecuador	<i>Defensoría del Pueblo</i>
El Salvador	General Inspection Office – National Civil Police
Guatemala	National Human Rights Office; police Human Rights Office; Professional Responsibility Office (investigates charges); Disciplinary Regime Section
Honduras	<i>Unidad de Asuntos Internos; Consejo Nacional de Seguridad Interior</i>
Mexico*	Varies by state; federal-level National Public Safety Council
Nicaragua	<i>Dirección de Asuntos Internos (DAI)</i> (Office of Internal Affairs)
Panama	Internal Affairs Unit
Paraguay	Internal Affairs Unit
Peru	Police ombudsman; Office of Internal Affairs; human rights <i>Defensoría del Pueblo</i>
Uruguay	<i>Inspección Nacional de Policía</i>
Venezuela*	<i>Defensoría del Pueblo</i> (national); Police Inspector’s Offices (local and state)

*In federal countries, differences among provinces/states are wide.

^{xxiii} See “Informe de la Comisión Especial de Reestructuración de la Policía Nacional del Perú,” Gobierno del Perú, Lima: February 22, 2002.

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