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978-0-521-87234-8 - The Judicial Response to Police Killings in Latin America: Inequality and the Rule of Law

Daniel M. Brinks

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The Judicial Response to Police Killings in Latin America

Inequality and the Rule of Law

This book documents the corrosive effect of social exclusion on democracy and the rule of law. It shows how marginalization prevents citizens from effectively engaging even the best legal systems, how politics creeps into prosecutorial and judicial decision making, and how institutional change is often nullified by enduring contextual factors. It also shows, however, how some institutional arrangements can overcome these impediments. The argument is based on extensive fieldwork and original data on the investigation and prosecution of more than five hundred police homicides in five legal systems in Argentina, Brazil, and Uruguay. It includes both qualitative analyses of individual violations and prosecutions and quantitative analyses of broad patterns within and across jurisdictions. The book offers a structured comparison of police, prosecutorial, and judicial institutions in each location and shows that analyses of any one of these organizations in isolation miss many of the essential dynamics that underlie an effective system of justice.

Daniel M. Brinks is assistant professor of government at the University of Texas at Austin, teaching comparative politics and public law, with an emphasis on politics and democracy in Latin America. He holds a Ph.D. in political science from the University of Notre Dame and a J.D., cum laude, from the University of Michigan Law School. Professor Brinks's research has appeared in journals such as *Comparative Politics*, *Studies in Comparative International Development*, *Comparative Political Studies*, and the *Texas International Law Journal*. Among his many awards and accolades, Brinks has received Honorable Mention in the Gabriel Almond Competition for Best Dissertation in Comparative Politics (2006), the Helen Kellogg Institute for International Studies Visiting Fellowship (2006–07), the Eli J. and Helen Shaheen Notre Dame Graduate School Award in the Social Sciences (2004), the American Bar Foundation Doctoral Fellowship (2002–04), the Social Science Research Council International Dissertation Research Fellowship (2000–01), and a Fulbright Fellowship (2000–01, declined).

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This book is dedicated to my family: my wife, Sandra, who was a constant source of support; my children, Derek and Aaron, who took every step of this journey with me, and Liam, who livened the final stages of the trip; and my parents, Ray and Gladys Brinks, who by their example awakened my concern for the dispossessed.

And it is dedicated to the families of the victims of police violence, who suffer not only the loss of a loved one, but also indifference, hostility, and further violence in their quest for justice.

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Preface

As I began the research for this book, I approached the subject of police violence with some trepidation. Illegality and violence do not take well to transparency, and I anticipated some difficulty in producing information reliable enough to satisfy social scientific standards. And yet my personal experiences with the police during the Argentine dictatorship of the 1970s and the ongoing prevalence of state violence and impunity in the more democratic current period seemed powerful arguments in favor of addressing this issue in any discussion of the effectiveness of rights in Latin America. To complicate matters further, I believe we need to take seriously the notion of the legal system as a system with internal articulations among its various actors and institutions, and we must acknowledge the extent to which the legal system is articulated with its social, economic, and political context. Crafting responsive legal institutions in a context of social inequality and marginalization, on issues that raise powerful and conflicting emotions, is a complex, if not intractable, project. None of this is conducive to simple, elegant explanations.

As H. L. Mencken once said, however, “There is always an easy solution to every human problem – neat, plausible, and wrong.”¹ As a result, I chose to use a broad brush on a large canvas to paint a more complete picture of how the legal system works, across a variety of contexts, to respond to police abuses. Although the substantive focus is relatively narrow – the prosecution of police homicides – the project covers six different jurisdictions, in five different cities, in three different countries. To explain legal outcomes in each

¹ According to Wikiquotes, this quote appeared in “The Divine Afflatus,” *New York Evening Mail* (November 16, 1917) and was later published in *Prejudices: Second Series* (1920) and *A Mencken Chrestomathy* (1949).

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jurisdiction I look not only at the judiciary but also at the social, economic, and political context in which it is inserted, at the procedural structure that governs prosecutions, at the police and prosecutorial forces on which it relies, and at the various social actors at work in these prosecutions.

One cost of this approach may be some loss of detail, as it is difficult to strike just the right balance between the Scylla of unsupported generalization and the Charybdis of too much undigested information. Another cost is the loss of theoretical parsimony, as the arguments get increasingly complex in the attempt to faithfully mirror a complex reality. As Mencken might have suggested, I clearly do not offer a neat solution, but I do claim to offer a faithful analysis of the real processes that are at work in these cases. I believe the payoff is a useful reflection on questions of larger theoretical interest, illustrating how structure constrains actors, context affects institutions, politics modify institutional design, and institutions interact with each other.

Whatever the payoff, it should be clear that I could not have completed this task without a great deal of help along the way. A proper accounting of all the intellectual and personal debts I accrued over the course of this project would likely dwarf the book itself; here I present only a sampling. To Guillermo O'Donnell, my advisor, I owe a deep intellectual debt. Any reader of this piece who is familiar with Guillermo's work will undoubtedly see his fingerprints on every page, when I cite him and when I do not. Scott Mainwaring must have read a thousand pages of early drafts and exhausted a gross of red pens. His comments were always detailed and incisive, never cutting. One of the greatest benefits of this project has been the opportunity to learn from him. Michael Coppedge and Andy Gould have been a pleasure to work with and sources of useful and timely advice. The comments of all four often pushed me to think in new directions, in ways too many to acknowledge. They will no doubt recognize many of their ideas and suggestions in the text, and rue my failure to adopt others.

Many lawyers helped me along the way. Juan Méndez generously put me in touch with his vast network of human rights colleagues across the continent and commented on early drafts of various chapters. While in the field I had the help of courageous (and stubborn) human rights lawyers who push and pull on the levers of the creaky and reluctant systems of Argentina, Brazil, and Uruguay: María del Carmen Verdú in Buenos Aires, Silvia Osaba in Córdoba, Ariela Peralta and Susana Falca in Uruguay, Maria Beatriz Sinisgalli at the Centro Santo Dias and the whole staff of the Ouvidoria da Polícia in São Paulo, and finally Marília Veloso, who drove me all over Salvador for an intense and exhausting few weeks, and then took me and my family into her home for several days of much needed rest and relaxation.

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These lawyers are immersed in the daily reality I interpret here. Surely they will find in my conclusions a lot to criticize; I hope that they will also find some encouragement and useful information, from someone who is one step removed from that reality.

Of course, I could not have completed this research without the support of a number of extraordinary institutions. The Kellogg Institute for International Studies generously funded the preliminary research trip and has, over the years, made me welcome in that remarkable environment. The Social Science Research Council paid for nine months of fieldwork across six cities in three different countries through an International Dissertation Research Fellowship. The American Bar Foundation provided support and a stimulating intellectual environment during the crucial time of distillation and writing. Abroad, the Núcleo de Estudos da Violência of the Universidade de São Paulo – especially Beatriz Azevedo Affonso, Sérgio Adorno, and Paulo Sérgio Pinheiro – made São Paulo a slightly less imposing place and introduced me to many of the people I needed to know. The researchers of the Instituto de Ciencia Política, of the Universidad de la República in Montevideo, with their humor and knowledge of Uruguayan politics, made my all-too-brief visits to Uruguay as productive as they could be. The Coordinadora Contra la Represión Policial e Institucional (CORREPI), of course, in Buenos Aires and Córdoba, was the starting point for much of the information on which this project is based.

Last but not least, the final draft of this book owes a great deal to the numerous helpful suggestions of two anonymous reviewers and to the painstaking editorial help of Tracey Thomas. With this many talented and generous people and institutions helping me along the way, the only surprise should be that there remain as many errors as there undoubtedly are. They are, of course, entirely my responsibility.