

I

Informal Regulation of Criminal Markets in Latin America

POLICE, POLITICIANS AND DRUG MARKETS

“We simply entered favelas at night, killed two or three traffickers, seized a couple of weapons, and that was our measure of success.”¹ Former Rio de Janeiro Military Police Captain Rodrigo Pimentel said this quite matter-of-factly, as we sat in his office at O Globo headquarters in Leblon, an upscale neighborhood of the City of Rio. He was referring to the years when he worked in the notorious BOPE, the elite squad of Rio de Janeiro’s Military Police. He did not boast or bemoan this reality. It was just the way things were – and continued to be.²

This phrase could mostly sum up Rio de Janeiro’s response toward drug trafficking since redemocratization in the 1980s. Each year, violent, anarchic confrontations between military police and heavily armed criminal gangs rampage city life and cost thousands of lives. Police in Rio are not only overtly violent but also heavily corrupt. Extortion of drug dealers is commonplace. Police often intimidate, kidnap or torture traffickers to obtain bribes for a supposed “protection” they mostly do not deliver. For most of the democratic period, Rio de Janeiro has represented the crudest epitome of the drug war fought in Latin American cities outside of Colombia and Mexico (Lessing 2017).

However, a quick comparison with the neighboring state of São Paulo depicts a different scenario. In Brazil’s most populous state, the police

¹ Interview by author with former Police Captain Rodrigo Pimente I, Rio de Janeiro, September 8, 2014. Pimentel was the inspiration for Colonel Nascimento, the protagonist of the hit movie *Elite Squad*, played by Brazilian actor Wagner Moura.

² All translations in this book are the author’s own unless otherwise indicated.

2 *Informal Regulation of Criminal Markets in Latin America*

have reached an informal agreement, an *acordo*, with the main drug gang, the Primeiro Comando da Capital (PCC, First Command of the Capital), to maintain relative peace in the urban area. As a Military Police (PM) lieutenant told me, “[After 2006, when the agreement began] the PM never again raided a prison, or entered a cell to look for weapons, drugs, or cell phones. [PCC] prisoners have more freedom to have these things, to talk on their cell or to use the Internet in the prison. It’s part of the agreement (*acordo*) with the government.”³ Unlike in typical narratives of monetary exchanges between Mexican and Colombian drug lords and their state protectors, this agreement is not primarily based on corruption but on toleration. Police and criminals restrain their mutual aggression, enabling drug transactions on the one hand, and maintaining order on the other. São Paulo, once extremely violent, has been one of the most peaceful Brazilian states for decades.

Informal agreements with criminals are not exclusive to monopolistic drug markets like São Paulo. The state police in Greater Buenos Aires, the largest metropolitan area of Argentina, collected illicit protection rents with the complaisance or even complicity of governing politicians,⁴ and thus offered credible protection to certain drug dealers. As a former vice-minister of security told me, “Where there are better business opportunities, they [i.e., the provincial government] send better business managers [i.e., police commanders]. The police are a source of financing.”⁵ At the same time, the police managed to maintain relative order despite an extremely fragmented drug market.

However, such informal pacts are not always sustainable. The neighboring Argentine province of Santa Fe exhibited a similar pattern to Buenos Aires until it collapsed in the 2000s to make way for particularistic covenants between police and drug dealers, especially in Rosario, its largest metropolitan area. As a federal judge described, “Drug trafficking in Rosario became scandalous because police protection, which always existed but was contained, became decentralized, so every police precinct ran three or four bunkers.”⁶ Violence in Rosario – and the province – reached unprecedented levels.

³ Interview by author with Military Police lieutenant, São Paulo, October 30, 2014.

⁴ I use “rents” in this book to refer to the share of the revenues accrued from drug trafficking and other illicit activities collected by police officers (or other state actors) from criminals.

⁵ Interview by author with Marcelo Sain, Buenos Aires, July 25, 2013.

⁶ Interview by author with federal judge Vera Barros, Rosario, June 24, 2014.

As these examples show, police in Latin America do not just fight drug trafficking; they deal with it in multiple ways. None of these approaches are codified in written laws or procedural manuals. Rather, they illustrate the various *informal regulatory arrangements* that state officials in Latin America and other regions with weakly institutionalized polities systematically apply to administer illicit markets.

This book addresses the puzzle of how weakly institutionalized democracies can control drug markets and produce order in Latin American metropolitan areas. If the idea of ordered illicit markets sounds contradictory in and of itself, it seems particularly bizarre in Latin America, the most violent region in the world, which hosts 10 percent of the world's population but 33 percent of global homicides (Muggah and Tobón 2018). Furthermore, police in Latin America are widely regarded as abusive of citizens and complicit with criminals, an obstacle rather than a solution to security (Bergman 2018; Yashar 2018). Argentina and Brazil are no exception in this regard.

However, illicit markets in Argentina and Brazil exhibit great variation in violence not only between but also within these areas over time. While some initially turbulent districts managed to quell violence, in other more tranquil settings it spiraled out of control. Rio de Janeiro's predatory police provoked retaliation by traffickers, competitive violence between drug gangs and overall insecurity in marginalized neighborhoods. In the early 1990s, homicide rates in the city were above 60 per 100,000. Decentralized protection deals in Santa Fe also doubled homicide rates between 2008 and 2013, reaching an unprecedented 21 homicides per 100,000 people. By contrast, police in Buenos Aires and São Paulo were able to reduce criminal violence through collusion or nonaggression agreements with criminal gangs, respectively: in Buenos Aires, homicide rates were one-third the level of Santa Fe while in São Paulo they decreased from 50 to below 10 per 100,000 individuals and have remained low for more than a decade. I will show that such fluctuations in criminal violence can be understood as the embodiment of different state strategies to informally regulate illicit markets. While multiple scholars have explained variation in criminal violence in Latin America, very few have defined or explained informal regulatory regimes that govern illicit markets. Such is this book's premise.

Informal regulation involves the intentional exercise of authority by a public agency to monitor market participants and enforce nonwritten, shared standards. In this case, the public agency is the police, who are at least formally subordinate to elected politicians. However, whether and

4 *Informal Regulation of Criminal Markets in Latin America*

how politicians control their police is another central question, whose answer depends on politics. This book unpacks the relationship between elected politicians and police to explain the politics behind the different drug market regulation regimes in Latin American metropolitan areas.

I argue that political competition influences whether and how politicians manage to control their police, that is, the autonomy of police departments, which then affects how police officers employ toleration, protection and predation in relation to drug dealers. These systematic police responses produce different *informal regulatory arrangements*, with differing levels of violence by both criminals and police. This book presents a subnational comparative analysis of the four main metropolitan areas in Argentina and Brazil to show how these regulatory regimes emerge, persist or collapse. In doing so, I show how state regulation became more or less coordinated over time, and how this affected drug market stability and levels of violence. I also show how even corrupt police and politicians can produce order and shape illicit markets.

Drug trafficking is by far the most lucrative illicit market in Latin America (Reuter 2014). All countries in the region are involved in the drug trade, whether as producers of marihuana, cocaine or heroin;⁷ transshipment routes; exit ports or money laundering sites (UNODC 2012). Drug consumption in the region has also increased dramatically during the last two decades, according to a report by the Inter-American Observatory on Drugs (CICAD 2015). This illicit economy is also a major albeit contingent source of the violence in the region. Political scientists have explained variation in drug-related violence through the cohesion of the state's security apparatus (Snyder and Durán-Martínez 2009; Durán-Martínez 2015), drug geography (Yashar 2018), the state's conditional repression of trafficking (Lessing 2017) and the political alignment between different levels of government (Dell 2015; Osorio 2015; Trejo and Ley 2020).

This book proposes an alternative narrative of how state actors produce order in weakly institutionalized contexts with deeply embedded and potentially violent illicit markets. It makes two central contributions. First, I present a broader set of state responses to illicit markets. I specify four types of informal regulatory arrangements that encapsulate the different combinations of toleration, protection and predation that police can apply with respect to criminal markets: *coordinated coexistence*,

⁷ For example, all of the world's cocaine is grown in three countries: Bolivia, Colombia and Peru (Bagley 2012).

protection rackets, *particularistic negotiations* and *particularistic confrontations*. By the end of each case analysis in Chapters 3–6, the reader will appreciate how these arrangements emerged and shifted over time in each subnational district due to changes in political competition and police autonomy. I show that systematic patterns of state regulation of illicit markets prevail in each metropolitan area during a substantial period. In contrast with other works, which focus on criminal or rebel governance (Arjona 2016; Arias 2017), this book brings the state's governance of illicit markets and criminal violence back to the forefront.

The second key contribution of this book is a theoretical framework that connects political competition, police autonomy and drug trafficking regulation. These three components have rarely been analyzed in conjunction. On the one hand, there are innumerable studies on security forces in Latin America; although many of them refer to political competition, they mostly neglect the linkage between police politics and criminal violence. Meanwhile, most studies on the impact of political competition on criminal violence overlook tensions between police and elected politicians, hardly irrelevant in a region where police forces exhibit systematic corruption, inefficiency and abuse of human rights that jeopardize democratic legitimacy and politicians' electoral prospects. I posit that, to understand how states shape illicit markets in developing democracies, we first need to analyze the relationship between politicians and their security apparatus. In short, police responsiveness to incumbents in developing democracies should be explored rather than assumed (Post 2018).

I argue that increases in political competition over time (turnover) and between political actors (fragmentation) decrease incumbents' capacity to control the police and thus expand police autonomy. Autonomous police are more likely to regulate drug markets through *particularistic negotiations* or *confrontations*, which consist primarily of predatory techniques that (re)produce violence. By contrast, entrenched governments are more capable of controlling the police, whether to further their own interests (politicization) or to subject police to the rule of law (professionalization). Entrenched governments with concentrated power (less fragmentation) are more likely to politicize the police, while governments with dispersed power (more fragmentation) are more inclined to professionalize the force. Politicized police, on the one hand, regulate drug trafficking through *protection rackets* based on coordinated corruption. Professionalized police, on the other, employ coordinated toleration to stabilize drug markets through *coordinated coexistence* regimes. Both arrangements

6 *Informal Regulation of Criminal Markets in Latin America*

feature low violence by criminals and police. This book thus offers a novel theoretical framework to explore the relationship between democracy, policing and illicit markets. The remainder of this chapter situates this study within literatures on the state, police politics and criminal violence; describes the four types of regulatory regimes; presents the research design; and provides a roadmap for the rest of the book.

INFORMAL STATES, POLICE POLITICS AND
CRIMINAL VIOLENCE

This book contributes to three interrelated yet often estranged literatures in political science and social sciences more broadly. First, the informal side of states in developing democracies; second, the relationship between elected politicians and police – and bureaucratic agencies, more generally; and, finally, the causes and consequences of criminal violence, especially in relation to drug markets. While most of these studies center on Latin America, some of their findings might also apply to other developing regions.

Regulation and the Gray Zones of Criminality

Many scholars from various disciplines have uncovered the hidden layer of states in the developing world. Whether due to resource scarcity or political calculation, many developing democracies have failed to build strong formal institutions and egalitarian enforcement of the rule of law. The dramatic increase in crime – often fueled by the state – in Latin America since the 1990s fits into this narrative. Guillermo O'Donnell famously referred to spaces within the national territory where the state did not enforce the rule of law and fostered low-intensity citizenship as “brown areas” (O'Donnell 1993). Since then, several scholars have ushered innovative concepts to describe the informal (or illicit) traits of Latin American states, such as “parallel polities,” “grey zones,” “violent democracies,” “clandestine orders,” “forbearance,” “criminal governance,” “ambivalent states” or “the gray zone of criminality” (Leeds 1996; Auyero 2007; Arias and Goldstein 2010; Dewey 2015; Holland 2016; Arias 2017; Auyero and Sobering 2019; Trejo and Ley 2020).

This book aligns with these authors' premise that state illegalities are more than simply a matter of capacity. Informal regulation does not equate to state absence or weakness. On the contrary, regulation implies that state actors can credibly enforce the law against the criminals they

monitor. Although police in most developing countries certainly lack fundamental resources to perform their duties, such as proper wages, equipment and working conditions, the relative territorial fixedness of retail drug dealing in metropolitan areas affords police ample opportunities to detect and repress this criminal activity. In other words, the politics of regulation implies that state actors can choose when and how to enforce the law.

However, this book departs from these works by distinguishing and accounting for the systematic patterns by which states govern illicit markets, or different informal regulatory regimes. Where other authors see undifferentiated patterns or micro-level regimes, I show that there are relatively stable and internally coherent regulatory arrangements that account for the state's varied responses to drug markets. I also propose a theory of the influence of political competition and police autonomy in the emergence and collapse of these regimes, showing how they can vary over time, even in the same metropolitan area.

Police: From Destabilizers to Regulators

Police perform the quintessential task of the modern Weberian state: preserving the monopoly of legitimate violence within a given territory. Nonetheless, political scientists, even in the criminal violence literature, have often undertheorized how the relationship between elected politicians and their police forces affects the evolution of state responses to illicit activities. In this book, I apply the concept of police autonomy, understood as police's ability to control their internal governance and external operations without political interference, to analyze police-government relations in developing democracies. In these contexts, police autonomy does not depend solely on legal statutes but on the distribution of political power. With varying levels of autonomy, police regulate drug trafficking in diverse ways, applying different dosages of violence and corruption and provoking distinct levels of violence by criminals.

The main research on police in political science has come from the literature focused on the police reforms undertaken in Latin America and other third-wave democracies (Hinton and Newburn 2009). Police reforms refer to legal changes in the structure, organization and functions of the police to make it more accountable to the law, respectful of human rights and responsive to citizens (Bayley 2006, 23). Encompassing police reform has been the exception rather than the rule in Latin America. Reforms have typically floundered due to police resistance, partisan

8 *Informal Regulation of Criminal Markets in Latin America*

turnover (Davis 2006), corrupt linkages between police and politicians from different levels of government (Hinton 2006; Eaton 2008), societal clamors for punitive policies following violent crimes (Ungar 2009; Holland 2013) or politicians and bureaucrats' attempts to avoid blame for such crimes (Flom and Post 2016). Meanwhile, successful reforms rely on multiple idiosyncratic factors such as social activism (Fuentes 2005; Moncada 2009), mobilized scandals following police malfeasance (González 2020) or political and police commitment to reform (Arias and Ungar 2009). While extremely insightful, this literature explains the onset rather than the persistence of reform and has mostly overlooked the multiple patterns of accommodation between police and their political superiors (see as exceptions Beare and Murray 2007; Prado et al. 2012). Additionally, it has rarely addressed the impact of reform on drug markets and criminal violence (Sabet 2012 as exception). Through the examination of police autonomy, this book addresses these gaps, providing theoretical and practical recommendations to rethink policing in Latin America and beyond.

Within this literature, Yanilda González's book, *Authoritarian Police in Democracy*, stands out not just for its ground-breaking theoretical framework of institutional change but also for recasting the importance of policing as a basic state function. My study, however, focuses on how political competition impacts aspects purposefully omitted by her framework, such as the implementation, effectiveness, durability and outputs of different efforts by politicians to control the police (González 2020, 36). Moreover, I cover not only formal policies but also informal mechanisms, such as sharing rents from corruption, by which politicians achieve this objective.

Criminal Violence

Finally, this book builds on insights from a vast literature on criminal violence, in turn inspired by civil war and ethnic conflict studies. Most scholars in this burgeoning field have focused on the Mexican case, highlighting the destabilizing effect of increased political competition on criminal violence. They have shown that the decentralization of the national government and the state security apparatus (Ríos 2015; Durán-Martínez 2017), unconditioned repression by the state (Lessing 2017), lack of partisan coordination between national and local states (Dell 2015; Trejo and Ley 2020) and increased electoral competition due to democratization (Osorio 2013) are associated with greater conflict between state and criminals and higher overall criminal

violence.⁸ However, these studies rarely refer to the actual implementation of security policies by the state's security apparatus – especially the state and local police.

Ben Lessing's ground-breaking book, *Making Peace in Drug Wars*, is an exception in this regard. I share his premise that “few things shape cartels' incentives as thoroughly as state policy” (Lessing 2017, 3). However, I would add that, in addition to formal laws and policies, the state's *informal* regulation also shapes criminal actors' incentives as well as the overall dynamics of illicit markets.

This book also finds common ground with Angélica Durán-Martínez's *The Politics of Drug Violence*, since it focuses on the interactions between the same actors (politicians, police and criminals). Nonetheless, not only do I analyze different countries (in her case, Colombia and Mexico; in my case, Argentina and Brazil), but I also place greater emphasis on tensions between politicians and police rather than on other sources of state incoherence.

Furthermore, I focus on a different outcome than most of this literature since I do not concentrate primarily on criminal violence but rather on the different arrangements through which states regulate drug markets. I argue that political competition affects criminal violence indirectly, through police autonomy and drug trafficking regulatory regimes, which are built on different combinations of police violence and corruption. The following section will clarify this concept and introduce the argument.

INFORMAL REGULATION OF ILLICIT MARKETS

We are accustomed to hearing about regulation with regard to various activities. In the public policy, political science and economics domains, regulation refers to a government agency's⁹ monitoring, direction or supervision of certain economic activities¹⁰ like finance, telecommunications, energy and cybersecurity. Regulation can also entail protection of workers and consumers against exploitative labor practices, business cartelization or shoddy product quality. Overall, we tend to equate regulation with formal rules and instruments: laws, codes, procedures, checklists, manuals and so on. By contrast, it is rarer to think about informal

⁸ See Kalyvas (2015) for an illustrative summary of this literature.

⁹ Non-state actors, both economic and otherwise (NGOs, social movements, citizen organizations, etc.), might also perform regulatory activities internally (self-regulation) or with respect to a specific segment of society.

¹⁰ Government regulation can also apply to noneconomic spheres, such as the family, education, health and reproduction.

10 *Informal Regulation of Criminal Markets in Latin America*

regulation in the context of illicit markets, except to show how criminals evade the state's oversight (see as exceptions Beckert and Dewey 2017; Sain 2019). However, the core definition of regulation as "the intentional use of authority to affect behavior of a different party according to set standards" (Black 2001) can also apply to the state's *informal* response to drug trafficking and illicit markets more generally.

What Does It Mean That States Regulate Drug Trafficking?

While most countries' national legislation prohibits drug trafficking, states enforce these rules differently across their territory and over time. Drug trafficking is primarily an illicit market, which means that state actors, as business regulators, can seek to restrict its supply or demand and reduce its potential negative externalities. Police, as the main regulatory agency of the state security apparatus, can employ formal and informal enforcement mechanisms to affect criminals' behavior and the market in general.¹¹ Much of Latin American states' formal responses to drug trafficking have centered on militarized struggles to reduce supply (crop eradication, interdictions, arrests, etc.) while devoting scant resources to demand reduction strategies (prevention, treatment, rehabilitation and harm reduction).¹² Governments have sought to reduce the drug trade's main negative externality – criminal violence – through different crime control strategies, from "zero tolerance" to community policing or hot-spot policing. Some governments have adopted more draconian measures, such as the "kingpin strategy" in Mexico – arresting or killing the heads of different drug cartels to dismantle their organizations (Calderón et al. 2015).

This book focuses on the *informal* responses applied by the state to control drug trafficking. Legality is often a blurry line when fighting organized crime. Some of the formal responses mentioned earlier can also deviate from the law or break it entirely. For instance, police might kill a drug trafficker as part of a sanctioned operation or via unauthorized summary executions. However, the main premise of informality is that states do not simply repress but *regulate* drug trafficking. This involves different degrees of toleration, protection and predation of drug dealers to

¹¹ Other state agencies beyond the security sector also implement drug policies but have much fewer direct interactions with drug dealers.

¹² Rarer still is the implementation of formal decriminalization or legalization of various aspects of the drug trade. The Uruguayan model, in this sense, is still an exception in Latin America.