

CORRUPTION, CRIME, AND
PUNISHMENT:

Recent Scholarship on Latin America

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CONSTITUTIONALISM AND DICTATORSHIP: PINOCHET, THE JUNTA, AND THE 1980 CONSTITUTION. By Robert Barros. (New York: Cambridge University Press, 2002. Pp. 368. \$65.00 cloth, \$25.00 paper.)

JUSTICE BEYOND OUR BORDERS: JUDICIAL REFORMS FOR LATIN AMERICA AND THE CARIBBEAN. By Cristina Biebesheimer and Francisco Mejía. (Baltimore, MD: The Johns Hopkins University Press, 2000. Pp. 216. \$21.95 paper.)

CRIMINAL AND CITIZEN IN MODERN MEXICO. By Robert Buffington. (Lincoln: University of Nebraska Press, 2000. Pp. 229. \$45.00 cloth, \$19.95 paper.)

GLOBALIZACIÓN, PREVENCIÓN DEL DELITO Y JUSTICIA PENAL. By Pedro David. (Buenos Aires: Zavalía, 2000. Pp. 814. N.p.)

RULE OF LAW IN LATIN AMERICA: THE INTERNATIONAL PROMOTION OF JUDICIAL REFORM. Edited by Pilar Domingo and Rachel Sieder. (London: Institute of Latin American Studies, 2001. Pp.179. \$19.95 paper.)

CORRUPTION AND POLITICAL REFORM IN BRAZIL: THE IMPACT OF COLLOR'S IMPEACHMENT. Edited by Keith Rosenn and Richard Downes. (Coral Gables, FL: North-South Center Press, 1999. Pp. 184. \$42.00 cloth.)

COMBATING CORRUPTION IN LATIN AMERICA. Edited by Joseph Tulchin and Ralph Espach. (Baltimore, MD: The Johns Hopkins University Press, 2000. Pp. 230. \$45.00 cloth, \$16.95 paper.)

ELUSIVE REFORM: DEMOCRACY AND THE RULE OF LAW IN LATIN AMERICA. By Mark Ungar. (Boulder, CO: Lynne Rienner Publishers, 2002. Pp. 273. \$55.00 cloth.)

Some three decades ago when I was in graduate school, a great deal of scorn was being heaped on a previous generation of scholars for their concentration on laws and their supposed failure to differentiate

between the written law and social reality. In the last decade or so, interest in laws and legal systems has reemerged as a central focus for historians, political scientists, economists, and those interested in the development of democratic capitalistic systems. The issue of fighting corruption in Latin America even permeates the popular press.¹

Why this change? It is undoubtedly due, in part, to the collapse of the Marxist paradigm with its emphasis on economic structures. Cultural history, often disguised under more modern names, has reemerged as a dominant trend, and legal systems and theories about crime and punishment have become an important subset within this larger enterprise. These studies expose elitist attitudes towards other social groups and reveal how the elite try to control other classes. The ideas of Michel Foucault also have been an important contributing factor. Crime, criminals, laws, and prison systems have all increasingly become part of the historiographical production. In a short period the production has been extensive and impressive.² The study of laws and legal systems have allowed for new and innovative ways of looking at critical issues in political and social history.³

For other disciplines this renewed interest in law seems, in part, to have come from other directions. The rise of brutal dictatorships throughout much of Latin America in the 1960s and 1970s and the re-emergence of democracy in the 1980s made clear the need for the rule of law. The impunity of the militaries made the question of civil rights and civil liberties loom very large.

Some of the subsequent problems of the resurgent democracies were also important. In many countries, corruption was perceived, probably correctly, as having reached new heights after the swing towards democracy and neoliberal economic systems in the 1980s and 1990s. The ability to compare the level of corruption fairly across eras and countries is difficult. As a number of the authors in the books under review point out, at least some of the perceived increase in corruption in the 1980s and 1990s is not simply due to rising levels of corruption, but rather to increased awareness of corruption resulting from more vigorous media coverage as well as public outrage towards corruption. The

1. See for example, Tina Rosenberg, "The Taint of the Greased Palm," *The New York Times Magazine*, 10 August 2003, sec. 6, p. 28–33.

2. See for example the fairly recent summary article by Ricardo Salvatore, "Criminal Justice History in Latin America: Promising Notes," *Crime, History and Societies* 2 (2): 5–14 (1998).

3. See for example the innovative recent Ph.D. dissertation of Line Schjolden, "Suing for Justice: Labor and the Courts in Argentina, 1900–1943," (Ph.D. diss., University of California, Berkeley), which examines how the legal system helped deal with the "social question" because other parts of the society were unable or unwilling to address the problem.

most famous example of intensive reaction was the uproar that led to the impeachment of the president of Brazil, Fernando Collor de Mello. This occurred in a country in which a relatively successful politician Adhemar de Barros, was known by an unofficial slogan, "He steals but he gets things done."⁴ The reaction against Collor de Mello was not unique. It was paralleled by the actions taken against Carlos Andrés Pérez the following year in Venezuela. Almost undoubtedly, corruption in many Latin American countries has gone through some invisible barrier and become so large that people have stopped tolerating it.

Coinciding with the rise of democracy or perhaps the move to neo-liberal economic systems is an almost universal increase in crime, which has forced societies and political systems to worry about public safety and law enforcement. This often appears to present governments with a Hobson's choice between a concern for civil liberties and personal safety.

As a number of the works under review make amply clear, the interest in law, legal reform, and law enforcement have not come only from internal sources. Outside factors have also contributed. Some interest in legal reform in Latin America existed in the United States in the 1960s as an outgrowth of modernization theory. Aid was sent to Latin America largely to help train lawyers, but this effort had died by the 1970s. Its collapse was due in part to the police training scandals but also resulted from the rapid falling off of interest (see Luis Salas in Domingo and Sieder 2001, 18–20). In the 1980s interest in legal reform reemerged as the United States rallied support among the North American public for its anti-Communist efforts in Central America. Emphasis was placed on protecting individual rights, and the idea expanded from there.

The so-called Washington consensus, with its emphasis on the free market and the popularity of economic theories on transparency, led to a belief in the need for efficient judicial systems that could protect contracts and foreign corporations, thereby limiting corruption. This allowed the interest in legal system reform to spread from development agencies such as the United States Agency for International Development (USAID) to international organizations primarily interested in economic issues such as the World Bank and the Inter-American Development Bank (IDB). The United States and multinational organizations such as the World Bank and the IDB have spent tens of millions of dollars on legal and judicial reform. European development agencies have also begun to focus on legal issues for a variety of reasons, including many of the ones mentioned above. Attempts to staunch the outflow of drugs from Latin America have also played a major role in the

4. Thomas E. Skidmore, *Politics in Brazil, 1930–1964: An Experiment in Democracy* (New York: Oxford University Press, 1967), 68.

increased outside interest in the legal world and law enforcement. So Latin America has seen a convergence of factors leading to more interest in law and legal systems both in the academic world and also in more practical spheres.

It would be difficult to argue that most, if not all, Latin American countries would not benefit from judicial and legal reform in order to create more efficient systems that would help apply brakes to rising corruption and the spread of crime. However, there is a great irony in pressure and funds coming from the United States at this time. The efforts at stopping corruption elsewhere have intensified as corporate scandals of arguably unprecedented size have erupted in the United States, with the most notorious example being Enron. Similar scandals have begun to appear in Europe as well (for example, the Dutch company Royal Ahold). The apparent and almost universal increase in corruption causes one to ponder whether the scandals are the result of poor legal systems or whether they reflect the moral and philosophical impacts of neoliberal economic structures that have emerged since the 1980s. Considerable irony exists in the United States' pressing for the depoliticization of the judiciary in Latin America, while the process of selecting federal judges in the United States has become increasingly politicized and many local and state judges are elected. More problematic is the potential for confusing reform with the conviction that one legal tradition (common law of the Anglo-Saxon tradition) is innately superior to the Roman tradition of civil law.

This renewed interest in the law is exemplified by the works under review. These books cannot easily be categorized. They are all interested in laws and their social impacts but there is not a common theme. Many are collections of essays with different authors, and some chapters are stronger than others.

A HISTORICAL BENT

Buffington's *Criminal and Citizen in Modern Mexico* does not resemble the other books reviewed here. It is very much a work of history, examining the ideas of criminology, penology, and anthropology in Mexico during the nineteenth and first part of the twentieth century. The goal is to show how intellectuals in these fields helped structure the ideology and the nature of the society by "delimiting internal social boundaries" (8). As Buffington expresses it,

... this is a study in exclusion. Generally, it examines criminality in modern Mexico—how elite notions of crime and criminal behavior developed and changed . . . In Mexico elite constructions of crime represented contested areas of the social terrain, places where generalized notions of criminality transcended the individual criminal acts to intersect with larger issues of class, race, gender,

and sexuality. It was at this intersection that modern Mexican society bared its soul (8).

Although Buffington's claims seem to be somewhat overstated, what we have is an intriguing account of elite ideas about crime and "deviance" from the late colonial era to the early revolutionary period. The series of essays shows how groups of Mexican intellectuals borrowed ideas from abroad and attempted to shape them to their vision of the Mexican reality. As Buffington demonstrates, elite visions of that reality showed remarkable little change over time.

The work is composed of discrete chapters that examine views of crime, both "intellectual" and more popular; prison reform; autonomy given to judges in sentencing; views of homosexuality; and a chapter on post-revolutionary applied anthropology, which Buffington sees as connected to criminology. The latter, although interesting, does not fit well with rest of the book.

This is a work that is totally tied to the world of ideas, since little attention is paid to the practical impact of ideas. Heavily influenced by Foucault, it is mainly about discourse, as shown by Buffington's comment: "The Mexican Revolution was ultimately a struggle to control political discourse . . ." (87). What Buffington has given us is an interesting view of intellectuals' ideas about crime and Mexican society. It gives us an important critical lens to examine elites's visions of their society.

Barros's *Constitutionalism and Dictatorship* examines the uses of law by the leaders of the armed services in Chile during the Pinochet era, and also has a strong historical bent. It raises some interesting theoretical questions about the importance of law and about the nature of power during the period of military rule in Chile in the 1970s and 1980s. The central question that he addresses is whether the Chilean military, by creating laws and a constitution, manufactured a situation that was self-binding. It seeks to answer "a central problem within modern political theory: the nature of absolute power and whether rulers who hold such power can effectively constrain themselves with institutions of their own making" (1). Another important theme is whether Augusto Pinochet had to share power with other military officers. The key to the study is Barros's use of a new source, the minutes of the Junta, which allows the author to show internal debates within that body and the government in general in more detail than was previously possible (information on some of the most sensitive decisions is still not available).

The author argues that the military did limit its own power and ultimately was forced to give it up. Within the Junta, the navy and the air force worked to balance and block the growing power of Pinochet. The two smaller services seem to have been motivated largely by a desire to retain their own power, but this had important consequences. Barros

emphasizes the creation of laws and the Constitution of 1980 as essential to blocking the expansion of Pinochet's power and to creating self-binding mechanisms. It is fascinating to see the importance placed on laws and legal forms, especially, for example, in contrast to their peers in Argentina. However, it is difficult to say whether this interest in law was real or was a tool used by the navy and air force to attempt to block Pinochet's growing power and of course protect their own. In other words was it just part of a power game, at least until the end of the military period, when to some extent the logic of the laws that had been drawn up helped end the regime? Nevertheless, as Barros points out, it is unclear whether this use of law prolonged or shortened the military's time in power since it lessened the friction between the services, as well as ultimately forced the retreat from power.

Although the Junta was able to limit Pinochet's power, how it succeeded in doing so is less clear, in part, because as already mentioned, the documents are silent on some key decisions; nor is the impact of some of the decisions always clear. The style of the book is somewhat of a hindrance, since the reader is buried by tremendous quantities of detail. Still, the Chilean armed services did to some extent bind their own power by creating laws and a constitution. As importantly, Pinochet's power was limited by the other branches of the military, although he usually seemed able to get what he really wanted. However, according to a recent interview given by former Junta member and air force General Fernando Matthei, the Junta had to block an attempt by Pinochet to remain in power after losing the plebiscite in 1988.⁵

CONTEMPORARY REFORM

The examination of institutionalized corruption and the drive for legal reform characterize the other books under review. *Rule of Law in Latin America*, edited by Pilar Domingo and Rachel Sieder, grew out of a conference organized by Sieder and Celia Szusterman in London at the Institute of Latin American Studies of the University of London in November 1999 that brought together academic experts and people from agencies that grant aid for legal reforms.

The book starts out with two excellent chapters that trace the history of outside aid to judicial reform, the agendas of the reformers and granting agencies, and some of their problems. The chapter by Luis Salas raises serious questions about how well the reform efforts are designed and about the coordination between granting agencies. For example, Salas points out that in Nicaragua more than eleven donors were

5. La Nación Online, 11 August 2003. Accessed at http://www.lanacion.com.ar/03/08/11/dx_510921.asp [no longer available].

involved in rule of law reform and although the programs overlapped, there was very little effort made to coordinate activities. Salas seems much more pessimistic about the efficacy of the reform movement than does Thomas Carothers, the author of the other introductory chapter.

These two are followed by three chapters written by employees of donor agencies (USAID, the World Bank and the IDB) that present the views of the granting agencies towards judicial reform, though the chapter by the employee of the World Bank, Maria Dakolias, focuses on reform and civil society rather than the positions of the World Bank per se.

The conclusion by the editors is more than just a summary, since it raises crucial questions about the nature of the enterprise of judicial reform. The volume also contains appendices listing the grants for legal reforms from both USAID and the IDB. This is a good book that outlines the basic scope of the reforms.

Christina Biebesimer and Francisco Mejía's *Justice Beyond our Borders*, published by the IDB, is intended to provide ideas for judicial reform (a version is also available in Spanish). It is essentially a source book of ideas for those in Latin America or the Caribbean who intend to carry out some type of legal reform. One chapter has a brief discussion of reforms in many other regions of the world. Another looks at legal aid models that might be useful in Latin America. A third chapter studies judicial reform in the Spanish Basque region. The intended audience of practitioners of legal reform will probably find it useful, but most readers may find it of interest principally to see what ideas are being offered to Latin America as a basis for reform.

Mark Ungar's work *Elusive Reform* is based on the belief that to consolidate democracy, the rule of law is absolutely essential because formal activities such as elections are simply not sufficient. To make this point and to examine efforts at reform, Ungar looks at the state and the rule of law with special attention given to prisons, the police, the independence of the judiciary, and access to justice and community solutions. The author addresses these issues in a general way and then uses examples from Argentina and Venezuela as well as some illustrations from Bolivia. Ungar outlines the history of these problems because he believes that the past partly determines the current state of affairs. He then discusses some of the reforms that have taken place. He chose Argentina and Venezuela as examples because of the extent of their reforms.

The questions raised are of importance and the presentation is interesting. However, from the perspective of a historian, the historical material is not detailed enough to be enlightening nor to demonstrate path dependency. For example, the brief historical overview of the Argentine police is just not long enough to draw meaningful conclusions. In two pages the author goes from the colonial period to the fall of the military

in 1983. It is true that the police have always played a key political role but their doing so in the eighteenth century proves little, and more information on recent times would be more helpful. The author was not fortunate in his choice of countries to use as examples, since by mid-2003 they both represent some of the best illustrations of political collapse.

The book by Joseph Tulchin and Ralph Espach comes out of a conference held at the Woodrow Wilson Center in 1996 that looked at long-term approaches to the problems of corruption and assessed the viability of various anti-corruption measures.⁶ A basic assumption is that the old theory (i.e., that corruption may at times be efficient since it helps to grease the wheels) can no longer be taken seriously and that corruption has become more of an issue since 1989. The latter seems to be based on the premise that the collapse of communism is related to increasing concern over corruption, although this reviewer does not find this logic convincing. The introduction stresses that increased democracy, less government, and open markets did not, as hoped, bring less corruption, and a consensus exists that something needs to be done. The rest of the work is divided into three sections. The first is theoretical. This includes an econometric demonstration that corruption is costly to the economy; an examination of the idea of integrity pacts to deal with the problem that laws of some countries favor corruption in other places; a discussion of the problems created by corruption in Italy; and, an argument that leaner governments are not necessarily cleaner. The latter chapter by Susan Rose-Ackerman is particularly interesting in its treatment of trade-offs. She argues that a smaller government may lead to more honesty, but not unless institutional and legal reforms accompany the shrinking state.

The next section is labeled "Theory Meets Reality." The first chapter, by Lawrence Whitehead, with his usual delightful style, points out that the theories postulating that corruption should decrease with democracy and a free market economy do not bear out very well in Latin America. According to Whitehead there are no easy short-term or even medium-term solutions to this problem, and concentrated foreign interest will likely backfire. Luigi Manzetti supplements a theoretical discussion of market reforms without transparency with examples from the Brazil of Collor de Mello and the Argentina of Carlos Menem. Carlos Eduardo Lins da Silva, in examining the problem of institutionalized corruption and the ability of the press and other media to limit corruption, finds that in Brazil this ability is limited due to reporters working

6. The interest in corruption and the problems that it creates has also begun to enter the historical literature. See for example, Alfonso W. Quiroz, "Implicit Costs of Empire: Bureaucratic Corruption in Nineteenth-Century Cuba," *Journal of Latin American Studies* 35 (3):473–511 (August 2003).

for the government and by the media's political ties (a somewhat different impression of the media is given by Thomas Skidmore in Rosenn and Downes, 8–9). The last chapter in the second segment and final section contains perspectives from representatives of the World Bank, the IDB and USAID. All in all, this is a worthwhile collection.

Pedro R. David is a jurist and a sociologist, who was for many years a ranking employee of the United Nations. His book is a series of twenty-four essays, some of which were published previously. They are general and some were developed out of speeches. Not surprisingly, they stress the international nature of crime and the blindness of governments in trying to deal with the issue. The articles tend to be rather broad in scope and without specificity; there is no organizing theme. One of the more interesting articles does not fit well with the rest of the book. In it David compares U.S. universities with Latin American universities, drawing on his many years in both. The overall work does give an important perspective that justice and criminals' impact are often international; organized crime problems in Latin America are in part due to demand for drugs in the United States.

The growing popular revulsion against corruption, actions taken against it and the potential limitations of these responses are well illustrated by the book on Brazil's impeachment of Collor de Mello edited by Keith Rosenn and Richard Downes. This is a crucial incident since public opinion and politicians forced a president from office because of corruption. The book looks at the wider nature of the crisis and what it says about Brazil's political culture. It is a well-balanced work that presents equal contributions of material from Brazilian and North American scholars.

The book begins with Thomas Skidmore's placing Collor de Mello and the impeachment process in a historical context, which Skidmore does with his normal clarity and precision. A series of chapters then examine the structural problems of the Brazilian political system and how they have helped create ever more corruption. Barbara Geddes and Artur Ribeiro Neto argue that the weaknesses of presidents, their inability to form workable coalitions in Congress, and the overrepresentation of the more backward regions of the country have led to the growth of corruption. Other chapters look at the impeachment process and its constitutional impact, and at the prospect for consolidating democracy through political reform, institutional reform, and the conflict between civil society and political society. The editors compare the reaction to corruption in Brazil to that in other Latin American countries in the concluding chapter.

While the chapters are on the whole good and enlightening, the timing of publication has not been kind. The book grew out of a conference in 1993 and was published six years later. Some of the envious

comments directed towards Argentina's political and economic institutions are no longer apt (see, for example, 14, 15 and 45). At least in mid-2003 not many would look to Argentina as a model to imitate. Still, the book as a whole has stood the test of time.

The book underlines the fact that social scientists, both Brazilians and Brazilianists, tend to look for structural causes of problems. They place the blame for political corruption on a weak presidency, too many parties, the way seats in congress are distributed and so on. I have no doubt that these and other structural issues create problems and contribute to corruption, but Brazil's level of corruption seems not to be out of line with that of its neighbors. Therefore, other factors clearly are at work, and identifying those has yet to be done.

CONCLUSIONS

The recent interest in crime, corruption, and laws reflect intellectual trends both in Latin America and the rest of the world. It also represents a reaction to a very real set of problems that show no sign of disappearing. The "easy" solutions—smaller governments, deregulation of the economy, the return to democracy—have not yielded less corruption and crime. In some ways this should not be surprising; as a number of the works examined here have indicated, there is no simple trade-off. Smaller government also means government less able to protect its citizens. The recent spate of business corruption in the United States and elsewhere indicates that this trend exists almost everywhere, though in varying degrees. The universality of the problem shows the difficulty of dealing with corruption. It is not a transitory problem. It is partially caused by shifts in the nature of economic and/or political systems. Morals have also changed, and one cannot discount local histories of corruption. In addition, the emphasis on protecting the rights of the individual potentially comes into conflict with a fear for personal safety created by soaring crime rates.⁷

The problems of crime and the need of legal system reform and law enforcement will be with us for a long time. This will undoubtedly continue to spur the intellectual production of works focusing on the law and crime. Those who study contemporary problems will not have the field to themselves. Scholars are always influenced by the critical issues of the day.

7. For example, in the working class suburbs of Buenos Aires where crime rates are very high, there are several politicians who are quite successful, despite a history that ties them to repression during the military regime of the 1970s, because they seem to offer a strict stand against criminal elements.