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HUMAN RIGHTHS VERSUS LAW AND ORDER?
The challenges of democratic control of violence in contemporary Brazil

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Abstract

Michel Wieviorka (2004) raises the hypothesis that Max Weber’s formulation of the legitimate monopoly of physical violence as the foundation of the Modern State, in Western societies, is exhausted. Although one can agree with this proposition, we cannot accept it in absolute terms should we consider the societies of the Extreme Occident (Rouquié, 1986) as it is the case of Brazil. In contemporary Brazil, in spite of changes as result of globalization in its different aspects, the democratic control of violence and urban crime continues to present challenges in at least two ways: on the one hand, the social control of endemic violence within civil society; and on the other hand, the control by the state of its repressive forces and that of civil society. This paper analyzes what has been done by civil society and by the State in contemporary Brazil in order to guarantee the rule of law as well as to reinforce a new concept of public security based on human rights and citizenship for all.

Key-words
Violence, crime, human rights, security public policies, democracy, Brazil.

The sociological problem and the theoretical framework

Gross human rights violations, combined with the violation of social, economic and cultural rights, in a climate of freedom of information have fostered the powerlessness of citizens in relation to the state, and this in turn, challenged their trust in the efficacy of democracy moreover in their beliefs about human rights as universal rights. The existence of a democratic rule of law1 that guarantees the exercise of civil and political rights are crucial dimensions of “quality democracies” (Diamond and Morlino 2004, Beetham 2004, and O’Donnell 2004). The key dimensions to assess the quality of democracy are: participation, competition, vertical and horizontal accountability, respect for civil and political freedom, political equality, and responsiveness.

The analysis of the democratic rule of law, as suggested by O’Donnell (2004), entails the examination of the legal system; the state and the government; courts, law enforcement and prisons; rules that govern state institutions; rights and guarantees for social participation and access to civil and human rights. The major actor here is the state, but not only we also need to focus on society, for if the state has legitimacy this emanates from the people. What drives people to legitimize non-democratic or patently authoritarian policies or actions by the state?

Max Weber’s definition of the State, derived from the Kantian tradition underlines three essential components of the modern state: the legitimate monopoly of

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1 A democratic rule of law is that which “ensures political rights, civil liberties, and mechanisms of accountability which in turn affirm the political of all citizens and constrain potential abuses of state power” (O’Donnell, 2004, pg.32).
violence, domination and territory. In modern society legitimate violence is that which is used, within the legal boundaries and limitations, to secure the sovereignty of the Nation State and or a threatened unit of the territory. Here legitimacy and legality overlap. This notion of a legality which is molded by the boundaries of a specific territory evokes the issue of governamentality as explored by Foucault (2004), for whom to govern is to establish certain type of relations between people and things, between wealth and peoples and between the territory and the protection of life.

More recent literature questions the adequacy of the classic Weberian concept of state monopoly violence and present State. Michel Wieviorka (2004), for instance asks how contemporary State, that has over and over failed to exercise full control of the economy: having to accept the informality of the labor market, of the shadow economy, illegal market, strengthening forms of infra and cross state solidarity and competition, regardless of whether they are exercised in a clearly delimited state territory or not, can exercise the monopoly of the use of force. It is not unusual for States to resort to illegal forms of violence: "it is ever more difficult for states to adopt their classic functions. The legitimate monopoly of physical violence seems more and more fragmented and, in practice, the famous Weberian formula seems less and less adequate to contemporary reality" (Wieviorka, 1997, p. 19).

More and more often obituaries are written for the Nation State, based on the argument of the loss of the state monopoly of physical violence. Herbert (1999) produced a summary of the contents of such obituaries: the argument most often used is that internal and external pressures challenge the legitimacy of the contemporary Nation State. External pressures are the result of economic and social globalization that undermine the sovereignty of the State. Such pressures involve the dissemination of patterns of consumption and production that, while strengthening the power of multinational corporations, weaken local states’ power to regulate the market and to prevent an abusive use of power by very strong groups against weaker ones. State power is also weakened by the dissemination of technologies that resulted in that capital, goods, information, peoples, concepts and ideas are now exchanged at rates never witnessed before.

The legitimacy of the Nation State is also internally challenged due to the cuts applied to the welfare state drastically reducing social safety nets. Such reduction would have multiple impacts; the realm of Law and Order would not be an exception to this. Budget cuts will have impact on Public Security policies as well. When different forms of highly profitable organized, transnational, entrepreneurial crime are growing, in particular drug trafficking, counterfeited products, money laundering, budget cuts can affect the efficiency of law enforcement agencies. This can encourage sectors of
organized crime to compete with the state over the dominance of territories, over the control of social organizations and even over social interactions at micro level. This exercise of dominance by organized forms of crime will be arbitrary and based on the instillation of fear. The loss of the state’s monopoly of physical violence undermines the legitimate cornerstones of the sovereign Nation-State and this is visible in three trends: a) the growth of communitarian forms of policing; b) the growth of private forms of security; c) transnational police operations. Garland (1996, 2001) and Shearing (1992) are without doubt the most important analysts of this process.

The arguments pro and against this thesis of a crisis in the political sovereignty of the Nation State vary according with how analysts understand the role that Kantian and Weberian traditions play in the constitution of modern state. Should analysts consider that the roles identified by Weber are all fulfilled, new political and institutional arrangements for crime control would be needed, moreover at this “new” era of globalization. Should this be the case the question pending would be in how far, in places such as Brazil the growth of violence is the result of a loss of control over the territory and as such represent the loss of the state’s legitimate monopoly of physical violence? In how far government’s policies to regain law and order and the state monopoly of physical violence achieve progress in this direction? In how far are such actions coherent with policies that aim at the protection of human rights be while enforcing law and order?

If the hypothesis that Max Weber’s formulation of the legitimate monopoly of physical violence as the foundation of Modern State, in the western society, is exhausted, can we still accept this proposition when we examine societies like Brazil? In a recent paper, Adorno (2005) explores the concept according to which, in contemporary Brazil, despite all changes brought by globalization in its different aspects, democratic control of violence and urban crime continues to present double a challenge: the need to exercise social control of endemic violence within civil society including in this forms of violence that overlap with gross human rights violations, and the control by both civil society and that of the repressive forces of the State.

**Human Rights and the control of violence in contemporary Brazil**

After 21 years of authoritarian regime (1964-1985), Brazilian society returned to the rule of law and to the democratic order. Since the middle of the 1980s’, this society has experienced economic, social and political changes. Important segments of the market have faced an accelerated process of technological modernization. The Brazilian industrial background – the most important in the Latin America – has acquired larger complexity. The services sector gained greater importance in the
composition of the gross domestic product. Economic policies, especially in the last 15 years, have been seeking rigorous control of the inflation and monetary stabilization.

A widespread privatization program was implemented in order to restrict the state intervention in the economy and to contain public expenditures. The Brazilian government stimulated the integration of the country to the globalized market and tries to face up the challenges posed by the development. In spite of the enormous social gaps and of the accumulated social deficit, there were advances in the field of education and of the public health. All this has been followed of substantive changes in the social relationship regarding gender, generations, races, and social classes which influence distinct fields of the social, political and cultural life.

The country survived serious political crises - like the impeachment of President Collor de Mello (1989-92) - without compromising the Rule of Law and democratic order, as was often the case in the past when confronted with institutional impasses. Democratic advances also can be identified in the: more transparency of the governmental decision-making process, greater freedom of the press, of ideas and of association, more citizen participation in public life, moreover in issues related to consumption and the environment. Social and political pluralism have been formally guaranteed by a peaceful cohabitation between political parties and civil organizations in Parliament as well as in civil society.

The new Constitution (1988), which marked the end of a period of twenty one years of authoritarian regime, it consecrated civil and public freedoms as well as it broadened social rights. Nevertheless, the concentration of wealth and the social inequality remains. In fact social inequality and the obstacles of access to justice it worsened whilst the society became more complex and denser. Social conflicts have become more intense.

In Brazil, the transition from authoritarianism to democracy was largely controlled by the authoritarian rulers and did not lead to a clean break with an authoritarian legal system and authoritarian institutions and practices. The rule of law, the legal system and the institutions responsible for protecting and promoting civil and political rights retain authoritarian characteristics, and fail to ensure respect for civil and political rights, even for members of organizations that are responsible for protecting those rights– police and prison officials, prosecutors and judges (NEV, 2007).

This constitutes a major challenge for us, as we are dealing with a reality in which progress, in access to rights, co-exist with the maintenance, and even growth, of lack of access to rights by specific groups or in specific areas of territories. A context where the “coexistence authoritarian institutions and practices at the local level within nationally democratic polities” (Armony and Schamis, 2005) is difficult to ignore. Latin
America and Brazil in particular seem to have witnessed the development of democracies, which can be classified as “low-quality democracy”, resulting in some public dissatisfaction or disenchantment and limited legitimacy.

The Brazilian democratic regime has achieved some stability and durability – particularly in the absence of viable alternatives, which has been the case since the breakdown of military governments and authoritarian regimes in Latin America in the 1980s and the socialist states in the 1990s. But has not yet been institutionalized and consolidated, and is subjected to recurrent crises.

Amidst this challenging political scenario the federal Administration, of both Cardoso and Lula, have tried to implement a national human rights’ program. The initiatives in the field of human rights are the better known than in the field of public security. In the first year of the first term of the Cardoso Administration a broad dialogue in society allowed for the development of the National Human Rights Program much influenced by the World Conference on Human Rights of 1993 in Viena. One of the major results of the Conference was the recommendation that countries should produce national human rights programs as means to integrate the promotion and the protection of human rights within their governmental priorities. The Program was launched with 226 measures, highlighted by the following aspects: a) not affected by party lines it has avoided ideological disputes the defense of human rights has become attached to the consolidation of democracy in Brazil; b) the Program expresses a partnership between organized civil society and the State, but a partnership in which the autonomy of the society is ensured. The program is not just a contract between the State and NGOs; c) human rights are recognized as indivisible as recommended by the 1993 World Conference; d) it also recognizes that human rights go beyond national borders and encompass rights from International Covenants and Treaties. The right to resort to international courts to ensure the protection of human rights at the domestic level was also recognized. This was a very ambitious and broad Program and the achievements are numerous.

In the realm of public security policies there were also several plans. Governmental plans spelt out the role of the federal government and that of the states in the provision of public security and defined in detail the measures that would be adopted to prevent drug traffic, and cargo hijacking, to improve arms control and to promote disarmament, to develop a system of data collection and of crime intelligence, to expand the program of witness protection. Other innovations were the creation of the National System of Public Security that was to integrate the public security approach of Law and Order to a human rights and social policies perspective: meaning that the reduction of crime and violence was understood to require the improvement of the
quality of life in general, in particular in the most need/precarious districts, under the form of violence prevention initiatives. These plans were to confront the growth of violent crimes as well as the persistence of gross human rights violence.

Since the 1980s, Brazil has experienced the growth of violent crime and in particular of organized crime. Homicide rates have soared particularly in metropolitan regions and among the youth (Peres, Cardia and Santos 2006), as it happened in other transitional and new democracies (LaFree and Tseloni 2006). Death caused by homicide has been rising for the past two decades as revealed by a number of studies (Adorno, 2005; Caldeira, 2000; Mello Jorge, 1998; Soares & all, 1996; Zaluar, 1993). Camargo & all (1995) noted that in Brazil throughout the 80’s deaths caused by violence grew by 60 percent while the overall mortality rate grew by 20 percent. Only two cities - S. Paulo e Rio de Janeiro - had concentrated around 21 percent of all homicides committed in Brazil. The same trends can be observed for the corresponding metropolitan areas. The victims of these deaths are male adolescents, living in the poorest districts of large cities. The homicide rate for male youth, between 15 and 19 years old, in S. Paulo jumped from 9.6 per 100,000 inhabitants to 187.7 during the period of thirty-five years (1960-1995). It is likely that in S. Paulo, as well as in other major cities of Brazil, such as Rio de Janeiro, part of these deaths may be related to conflicts between gangs, whether or not, connected the drug trade. The emergence of organized crime and especially of gangs of young delinquents seems to be a phenomenon typical of large urban centers like Sao Paulo, South America’s most important industrial city. Violent deaths and other social ills though overlap with poor access to social, economic, civic and even political rights as evidenced in a number of studies (Cardia, Adorno and Poleto, 2003; Peres et al, 2007).

In Brazil, according to Zaluar, the emergence of organized crime among Rio de Janeiro's low-income population is due to the breakdown of traditional mechanisms of juvenile socialization and of equally traditional networks of local sociability. In the past, these networks were based on relations of patronage between rich and poor and more recently on a new form of political clientage anchored in the numbers game and samba schools. The dismantling of these traditional networks of socialization was

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2 The sources to measure deaths by external causes present an array of problems. It is estimated that only 75 percent of such deaths are registered as such. Figures for the country are more precarious still since it is suspected that people do not inform the registrar office all deaths and or the registrar does not inform the Ministry of Health. To further complicate matters there are a very high number of deaths by undefined causes within “external causes” Cf. Camargo e outros (1995). There are also difficulties in integrating data from different sources. Cf. Feiguin & Lima (1995).

3 The lack of studies similar to those produced by Zaluar for Rio de Janeiro prevents reliable conclusions.
accompanied by a widening gap in parent-children relations that led to a redefinition of social roles. It also redefined the functions of socialization instruments like schools, social assistance centers and political organizations, which are now entrusted with roles that once belonged to parents.

It is precisely in this process of social transition, for which new socialization instruments have not yet been formed, and in which social safety networks promoted by the state are lacking, that organized crime, especially drug trafficking, attracts young dwellers of low-income housing projects or of the shantytown slums nestled in the hills of Rio de Janeiro. It is not a reaction against a world of injustices and moral degradation, nor an alternative to the lack of opportunities offered by the formal job market. What attracts these youths to organized crime is the access it offers to the world of consumption and the possibility of establishing a masculine identity associated to honor, virility and social status in an era marked by limited options of personal choice.

The result of this process is not, as Zaluar underscores, solidarity among the poor and excluded built around drug trafficking. The result is the explosion of individualism, which for youths means attributing more value to “weapons, marijuana, money, nice clothes and to the willingness to kill.”

In order to face violent crime, equally violent forms of control have been employed, very often with disastrous results. Often, claiming that they are under pressure from “public opinion”, public security forces set up procedures for police agencies to repress crime at any cost, even to the extent of disregarding the right to life of all circulating in territories occupied by suspects of crime, victimizing in the process citizens of all ages groups⁴. Over the end of the past decade and early years to this decade, police violence has escalated resulting in an average of 1200 civilians killed by the police in 2007 in Rio de Janeiro alone.

The federal government and state governments have resorted to military interventions – with the participation of the state military and civilian police, the Armed Forces and the Public Security National Force (formed by state military police officers) – to handle public security crisis and riots in the prison system, to fight organized crime, particularly drug traffic, to occupy “favelas” and poor neighborhoods, and to contain public protest, prison riots and even labor action (strikes) by police forces. These military interventions have not been subjected to legal, political or social controls and have been implemented in areas, for undetermined periods of time – as if there for some time an undeclared but de facto suspension of the rule of law, a non-declared

⁴ 122 children between 0 and 10 years were killed by police forces in Brazil during raids while searching for suspects, between 2000 and 2007. Eighty of the children were victimized by the police in Rio de Janeiro alone.
state of siege (Oliveira 2007 and 2003; Arantes 2007; Agamben 2007) had been declared valid for a specific part of the territory or against a certain part of the population branded as “suspect”.

Military interventions in public security are justified, as means to weaken organized crime and reduce crime and violence. However, they have increased the number of victims, human rights violations in law enforcement, and in actions to maintain order, and have met with violent responses from criminal organizations and groups. These, in turn, have increased public fear, insecurity and dissatisfaction with the performance of the government and that of the criminal justice.

Paradoxically, the chances of involvement of policemen (both civil and military policemen) in violent crime have also increased due to the financial rewards offered by drug trafficking, kidnappings and other criminal acts. Recent developments in Rio de Janeiro and S. Paulo, in which a considerable number of both civil and military police officers are accused of corruption seem to illustrate this paradox.

In addition to this, the involvement of civil and military police with execution groups has also been detected. Although they are not new in the country, the number of such groups seems to have more than doubled and become increasingly active in the years following the democratic transition. This has evolved not necessarily as a consequence of the political developments underway, but as the result of population growth and changes in the demographic and social composition of low-income classes living in poor neighborhoods of large Brazilian cities. Killings by the Military Police still occur and are officially excused as “a strict duty of obedience to job rules” or “resistance to arrest announcement”.

There has been a growing emphasis on training members of the institutions responsible for law enforcement and order maintenance for better respecting, protecting and promoting civil and political rights. This is the central point of the Public Security and Citizenship National Program announced by the Lula Administration in 2007. However, the absence, or fragility, of institutions and practices sustaining a democratic rule of law, particularly an independent, impartial, competent and authoritative judiciary, a liberal and democratic legal system, and a culture which upholds individual and collective rights (Karstedt 2006, Diamond and Morlino 2004, Beetham 2004), suggest it is unlikely that this training alone, will produce the expected results, even if it is implemented.

In fact, since the 70s, the police forces have undergone administrative reforms to become equipped to fight “public disorder” in the cities. However, the “modernizing” measures have contributed little to a level of operation compatible with the requirements of a democratic State, subjected to the rule of law. Neither has any such
measures contributed to the effectiveness of preventive/repressive patrolling or judiciary police functions. Patrolling for visibility with a theatrical showing off of force (Fernandes 1989) has not completely disappeared. During electoral campaigns it is common to see candidates from various parties threatening to enhance this theater if they are elected. In addition to this, corruption in the police forces seems to have intensified in the last few years (Mingardi, 1992).

Increases in public fear and distrust in government and criminal justice institutions have strengthened demands for increasing the scope and degree of punishment – as observed by Zimring and Johnson (2006) in the United States – and for broader military interventions in public security. There have been also increasing demands for private security services – which include legal and illegal services. Private militias and vigilant groups, with the participation of police officers, have been formed and expanded, with the tolerance and even support of police chiefs and state authorities. They have competed with criminal organizations and groups – which also sell protection services –, and this competition has become increasingly aggressive and violent, increasing also the number of victims and the magnitude of human rights violations (NEV, 2007; Peres et al, forthcoming). Given the low satisfaction with the political party system, with elected officials and with the judiciary, and the low trust attributed to all these groups, the very high trust and prestige of the military in Latin America, identified in the Americasbarometer, all combined give cause for concern, particularly as this is more accentuated among younger respondents, the group also more likely to support “populist measures at the expense of liberal democracy” (Seligson, 2007).

The challenges for the State to maintain its monopoly of the use of force are well known despite two decades of return to a democratic rule of law.Successive rebellions in maximum security prisons organized by members of organized crime such as Comando Vermelho e Terceiro Comando, (Red Command and Third Command) in Rio de Janeiro; and Primeiro Comando da Capital, (The First Command of the Capital) in São Paulo, responsible amongst others for the simultaneous riots in state prisons in the state of São Paulo in three moments (2001, 2003, 2006) an for a major crisis in public security in May 2006. Challenges from the criminal world are numerous: “rescuing” prisoners from maximum security prisons, holding law abiding citizens hostages to criminal elements in areas of major cities- dictating rules and subjecting people to their whims suggest the existence of urban territories where the law does not reach.

There have been recurring crisis in public security and in the prison systems, which reached a peak in the states of São Paulo and Rio de Janeiro in 2006 (Mesquita
and Salla 2007a and 2007b). Not surprisingly these crisis have created favorable conditions for reforms and policies which undermine the rule of law, the guarantee of civil and political rights and the democratization process – and may ultimately undermine the foundations of the democratic regime. Apparently democracy is failing to secure the most basic rights that of life and security of the person, without which other rights cannot be enjoyed.

The visible face of this crisis in the criminal justice system is impunity. (Dahrendorf, 1985). Public opinion not only perceives the growth of crime but also of impunity. Crimes are either not punished or the punishment is not as rigorous as expected. This opinion is not unfounded. But if punishment maybe sometimes slack, often some groups are over punished: this is the case of poor people, of blacks, and migrants when compared to white members of the middle and upper classes accused of similar offenses (Adorno, 1999). The prevailing image of the criminal justice system is that of a funnel: wide at the base and narrow at the bottom. Lack of trust in the criminal justice system is fed by this selective impunity. Ever most distrustful of the system citizens, who have the means, appeal more and more to private means of security. As result the sector of private security grows non-stop. Meanwhile the majority of the population is left to fend for themselves sometimes resorting to the “protection” of drug dealers to solve conflicts or to ensure their families’ physical integrity. Both forms of protection further erode the concept of public security.

Epilogue

Despite its breadth both the National human Rights Program and that of the successive National Public Security Programs, as yet, they have not succeed in achieving the reduction of collective fear and insecurity nor do they seem to have been able to reduce urban crime. The National Human Rights Program brought the issue of human rights to the political agenda and this was a major success but it has not managed to convince citizens that the promotion and protection of human rights is a pre-requisite of public security. The Programs failed to establish a positive link between human rights and public security. It is certain that some progress was made in the last two federal administrations (Cardoso and Lula) and that the resistance to human rights is no longer as solid as before, still average citizens have not established a connection between poor access to rights and fear of crime, of criminals and of violence in general.

It is necessary to monitor human rights violations, and the institutions, organizations and policies, that are expected to uphold the rule of law, ensure access to civil, political and social rights and provide remedies for rights violations. Monitoring has focused mainly on the rights to life, liberty and security of the person, criminal and interpersonal violence which undermine these rights, the criminal justice, and the
prison systems. Increasingly other rights such as economic, political, civil and cultural rights have also been monitored at the state and society arenas. The complex relations between these arenas, the difficulties to reform institutions, organizations and policies, to improve the performance, to disseminate democratic values, and to increase the level respect for and protection of human rights, have as result become more visible.

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