

# Introduction

by **Jo-Marie Burt** | George Mason University, LASA President | [jmburt@gmu.edu](mailto:jmburt@gmu.edu)

**Enrique Desmond Arias** | City University of New York | [desmond.Arias@baruch.cuny.edu](mailto:desmond.Arias@baruch.cuny.edu)

Latin America has a long history of violence and institutionalized impunity. After the end of military dictatorships that ruled much of the region during the 1960s, 1970s, and 1980s—in which state-sponsored violations of human rights were massive and systematic—there was hope that democracy would create the foundation for governance based on the rule of law and respect for human rights. Efforts in some countries to bring rights abusers to justice through various judicial proceedings and truth commissions further buoyed hope in the consolidation of democracy and the rule of law in these new democracies.<sup>1</sup>

It soon became evident, however, that many of these regimes were failing to protect citizens from violent acts by state officials as well as by criminals and other violent actors amidst what are often referred to today as wars on crime or on drugs. In some instances, too, democracy gave way to increasingly authoritarian modes of governance, further eviscerating rights and increased levels of insecurity and violence.

Today the Western Hemisphere is the world's most violent region. According to the United Nations 2021 world homicide study, there are approximately 130,000 murders in the region annually. Latin America accounts for roughly 28 percent of the world's homicides while it has just 8 percent of the world's population. Put another way, Latin America has a homicide rate of 19.91 per 100,000 inhabitants, five points higher than sub-Saharan Africa, the next closest region in this ledger of violence. Relatively few of the perpetrators are ever brought to justice. This

violence is borne most heavily by the young, the poor, and members of historically excluded racial and ethnic groups.

## Impunities

In this special dossier, we seek to draw attention to the enduring problem of impunity in Latin America and the tragic consequences for sizable portions of the region's population. We have both worked on this issue in different contexts over the course of our careers and view impunity as one of the greatest challenges facing the region today. Impunity is a key topic of LASA2024, one of the constituent elements of the theme, ***Reacción y resistencia: imaginar futuros posibles en las Américas*** and also a special program track we created for this year's Congress to foment discussion and debate of this critical problem. Here we bring together essays by scholars and practitioners to examine impunity across Latin America considering its roots, effects, and possible responses. As part of our effort to imagine possible futures for the region, we believe governments, scholars, and civil society must prioritize the intimately interrelated problems of violence and impunity. We asked our authors to consider how today's governments are rooted in histories of impunity and violence and what strategies can be adopted by national governments, the international community, and civil society to respond to these enduring problems.

The essays in this dossier point to three important insights. First, they highlight the continuities of violence across democratic and authoritarian regimes, revealing the ways that violence is

<sup>1</sup> There is a vast literature on these different mechanisms. See the dossier, "Verdad, Justicia y Memoria," published in *LASA Forum* 51:1 (Winter 2020), <https://forum.lasaweb.org/past-issues/vol51-issue1.php>.

embedded in historic social structures that demand redress. Impunity may be legislated, as in amnesty laws or other legislation that limits or obstructs the investigation and prosecution of criminal actions, or it may be the result of de facto arrangements, such as the systematic underfunding or co-optation of judicial institutions. In either case, when human rights violators are allowed to walk free, as they were at the end of most of the region's dictatorships, this tends to perpetuate rather than restrain violence. Ending abuses requires state action against abusers, not just a change in political leadership. Without action, the same forms of violence simply reemerge in new ways in successor regimes.

Second, the essays reveal the varied vectors of impunity in society. While much of the literature on impunity focuses on acts undertaken by state agents, these essays highlight the role of different types of social actors in acts of violence, including local businesses, organized crime networks, and powerful members of society who commit abuses against their fellow citizens. A key lesson from these essays is that addressing impunity requires not just tackling state violence but also abuses committed by non-state actors. There is often an expectation that these will be treated as common crimes but when systematically ignored or abetted by state officials, they can become broader forms of abuse that require more specific and systematic redress.

Finally, the essays point to the utility of local, regional, and national efforts to organize against impunity and in favor of the rule of law. Amidst the very real struggles of addressing impunity enjoyed by the socially and politically well-connected, this dossier shows how sustained efforts to hold people to account can aid society in organizing to address abuses. This holds out hope not just of addressing the violence and abuses Latin America faces today, but other broader social challenges that build on the same dynamics of impunity, such as crimes against the environment.

## **Brazil: Impunity, Past and Present**

This dossier contains three powerful essays about Brazil. Mariana Joffily reflects on the continuities between the civil-military dictatorship that ruled Brazil between 1964 and 1985 and the current democratic regime or Nova Republica. These continuities can be defined by a single word: impunity. They emerged, Joffily argues, in part out of an amnesty decreed in 1979 that prevented the prosecution of dictatorship-era abusers. The law also granted freedom to dissidents who had been jailed and tortured by the dictatorship, establishing a false equivalency between victims of the military regime and agents of the dictatorship who committed crimes on its behalf. Joffily shows how from 1985 forward under various governments of the Nova Republica, at the behest of politicians and jurors from the political center and center right, continued to uphold the amnesty law, preventing any real justice for perpetrators of dictatorship-era human rights abuses. She argues that this impunity has contributed to nostalgia for the military regime and to the more recent concomitant rise of a new far-right advocating for the return to many of the policies of that regime.

Yanilda Gonzalez and Débora Silva examine impunity in the context of police violence in São Paulo, Brazil's largest metropolitan area with more than 22 million inhabitants. Building in part on Silva's personal experiences of state violence against members of her family, this essay argues that ongoing police violence in Brazil stems from the long history of impunity enjoyed by members of state security forces. The authors analyze the long history of police death squads in São Paulo, noting that police violence accounts for 13% of total intentional violent deaths in Brazil, a remarkable number by global standards. For Gonzalez and Silva, this present-day state violence is part and parcel of a long history of official violence against Brazil's population, in particular against poor and non-white Brazilians, that predates both the current democratic regime and the 1964 to 1985 authoritarian regime. The authors ask if addressing disappearances committed during the dictatorship era would have diminished police violence in the early

years of the New Democracy, and whether accountability for state violence such as the Crime of May, a series of killings in 2006 that left over 100 dead at the hands of police, would have stymied violence over the last generation. The essay emphasizes the importance of understanding the continuities of violence across different eras and regimes in Brazil and the necessity of responding to those abuses to prevent further crimes.

Daniel Hirata and Carolina Grillo take up a similar set of questions in the context of Rio de Janeiro. Working with highly detailed data that they have gathered on police violence and armed territorial control in that state, they also emphasize the continuity of violence between the dictatorship and today's democratic regime. The authors identify historic connections between illegal groups and elements of state security forces under both the dictatorship and the contemporary democratic regime. They show that police have long been aligned with illegal groups to advance different political and economic projects. During the 1990s, police-connected death squads evolved into territorially based protection rackets known as militias, which compete for urban space with drug gangs. Where these groups can establish dominance, police are able to make profits from the local protection rackets that they set up. The authors show how police use their power within local police battalions to aid these militias in attacking neighborhood-based gangs that often make their money from drug trafficking. The authors show how police operations result in increasing violence against the civilian population just as those same operations also strengthen the hand of corrupt police developing income streams related to these protection rackets. Hirata and Grillo thus draw attention to not only the continuity of violence between the dictatorship era and today's democracy but also the profit motives underlying this system of violent policing.

### **State and Societal Violence and Impunity**

Rebecca Hanson's essay on Venezuela takes up many of these same themes, examining police violence under Maduro's authoritarian regime.

She observes both the high levels of police violence and the varied ways that police profit from that violence. Critical to Hansen's essay is the idea that police violence is not systematically directed against the populace simply to support the regime, but rather, deployed in parochial ways that seek to advance the interest of particular policing units. The highly decentralized violence ultimately supports the Maduro regime, Hanson argues, by providing funding to these various security forces through their protection of illicit activities but also by preventing the consolidation of possible security forces operations against the regime. The operation of varied security actors operating apart from one another but in highly violent ways protects the regime from being overthrown but with extremely nefarious results for the Venezuelan people.

In another essay on Venezuela, Laura Cristina Dib-Ayesta and Carolina Jiménez Sandoval emphasize the importance of transitional justice in any future democratization process. Echoing the concerns raised on this issue about Brazil, the authors argue that addressing the recent serious history of state violence in Venezuela is essential to building a robust democratic transition. The essay highlights several key factors important to promote effective transitional justice. These include international assistance to build a transitional justice mechanism tailored to Venezuela's experience and the importance of preparing Venezuelans to understand the transitional justice process and its importance in that country. They emphasize four fundamental principles of transitional justice that should be central to such an effort: truth; reparations; guarantees against future violence; and the construction of memory. Finally, they argue that any working transitional justice process in Venezuela requires four minimal conditions: the reestablishment of judicial independence; accountability for human rights abuses; Venezuela's reinsertion into international human rights organizations and mechanisms; and a clear framework for the transitional justice process. A nuanced and thoughtful transitional justice process as outlined by the authors may help Venezuela avoid the pitfalls of some of its neighbors.

Jose Miguel Cruz and Jonathan Rosen's essay on El Salvador examines the role of criminal groups in governing neighborhoods, laying out different modalities of governance that these groups exercise, particularly in impoverished neighborhoods. They show how in their management of these communities and in the relationship that gangs maintain to the state, these gangs gain a measure of impunity from both state and social sanction. Their insights highlight how impunity is not only a problem involving the punishment of state actors. The failure to punish gang members and other non-state actors contributes to the institutionalization of impunity, undermines rule of law, and allows citizens' rights to go unprotected.

### **Strategies to Combat Violence**

Rachel Schwartz's article on Guatemala addresses an important effort to respond to impunity. She details the work of the United Nations International Commission against Impunity in Guatemala (CICIG) from 2008 to 2019. She shows the importance of its anti-corruption efforts and how those efforts mobilized the populace in favor of the rule of law. She also shows how a corrupt elite alliance was able to eventually end the CICIG. Even so, she argues, the CICIG, through its mobilization of the populace in favor of rule of law and against corruption, had a lasting legacy. Large portions of Guatemalan society had become connected because of their support for that organization's prosecutions of corrupt elites. This has perhaps contributed to the recent election, against all odds, of Bernardo Arevalo, a first-term congressman of a newly formed political movement Semilla, as an anti-corruption candidate. These successes point to the importance of seeking to hold officials to account even when those efforts promote backlash or may not succeed in the courts. Efforts to do so can engender political mobilization and alliances that provide long-term support for such efforts as the population rallies around good governance and holding corrupt officials to account.

The essay by Juan Carlos Ruiz Molledo takes up a very different set of concerns from the others while offering a unique perspective on the

problem of impunity for other types of crimes. Over the course of debates about rights, there has been extensive reflection about the evolution from narrow conceptualizations of rights as civil and political rights to an understanding of rights that includes social, economic, and cultural rights as well as collective rights. Ruiz examines environmental rights as a collective right, specifically of indigenous communities in his native Peru. Specifically, Ruiz reflects on the importance of a recent court decision recognizing the Marañon River, one of the most important rivers and water sources in the country, as a legal entity with inherent rights (as a subject of rights). Ruiz was one of the lawyers representing indigenous Kukama women in this historic case, which follows similar decisions in Colombia involving the Atrato River, among others. He argues that this ruling effectively expands our understanding of collective rights around environmental needs. This case emphasizes the need to broaden our discussions about impunity to include environmental issues as well as indigenous rights at a time when population growth, the expansion of extractivist industries, and climate change exacerbate tensions within the societies and polities of the region. Considering the argument developed in the Schwartz essay, these efforts to combat environmental impunity reflect on the seeds of potentially critical issues in terms of building political responses and equitable regimes in the region.

### **Beyond Impunity**

In systems based on the rule of law, there are a set of rules and norms codified in law; all persons are subject to and equal before the law; and an independent judicial system exists to uphold the law and investigate and prosecute violations of the law. In systems based on impunity, there is no punishment—and no expectation of punishment—for grave crimes, including human rights violations, grand corruption, and arbitrary deployment of state power. Impunity is the exercise of power without accountability. With no accountability, arbitrary rule becomes the norm, the space for civil society shrivels, and corruption and criminal networks flourish.

Even as Latin America has made important strides in holding heads of state accountable for serious crimes, including grand corruption, abuse of authority, and crimes against humanity, impunity remains a central feature of life in much of the region. In addition, in many countries the legal system is becoming a tool used by powerful reactionary elites to attack and immobilize individuals and groups working for progressive social change, a practice often referred to as “lawfare.” This includes environmental activists, indigenous and Afro-descendant leaders, journalists, and human rights defenders. In some countries, these tactics are being deployed against independent judicial operators as well.

The persistence of impunity also presents fundamental challenges for addressing present-day violence and organized crime in Latin America. Throughout the region, there is near-total impunity for gender-based violence and femicides; for police violence, especially against racialized indigenous and Afro-descendant populations; as well as organized crime, including white-collar crime, such as the massive Odebrecht corruption scandal. Impunity breeds more violence, more corruption, and more organized crime. This dossier, like the special program track of the same name we organized for the LASA2024 Congress, aims to draw attention to the persistent problem of impunity and weak rule of law in Latin America, to the continuities between past and present systems of impunity, and examples of different paths forward to mobilize against impunity. //