

# **The Persistence of the “Mano Dura”: Authoritarian Legacies and Policing in Brazil and the Southern Cone**

*Anthony Pereira  
Department of Political Science  
Tulane University*

*Mark Ungar  
Woodrow Wilson International Center for Scholars*

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## **Abstract**

Democratic transitions in Brazil and the southern cone have had relatively little impact on patterns of policing. Close military-police ties, militarized training and doctrine, high rates of violence, a lack of effective court oversight, and continuity of organizational forms and personnel are all characteristics of the police in contemporary Argentina, Brazil, Chile, and Uruguay. Why has there been so little change in policing in these new democracies? Some scholars argue that these patterns are a legacy of recent military rule, but we argue that they are a legacy of an authoritarian state rather than just of specific authoritarian regimes. Other scholars attribute variation in new democracies to different modes of transition, but we assert that civil society support and political interests are more important than the initial transition in the enactment of police reforms (or the lack of them). Finally, we explain that the degree of police centralization powerfully influences reform efforts in these Latin American democracies.

## **Introduction**

In Latin America, violence by the police – and its support by the law, courts, and state agencies – was an integral part of authoritarianism. But the transitions to democracy did not have the impact on police forces that they did on more prominent actors such as political parties and military high commands. “Police” here refers to state security forces responsible for domestic “law and order,” which includes military and intelligence agencies as well as police forces. Public security policies and police use of an “iron first” (mano dura) approach to law enforcement were not part of the transition negotiations, and so the police did not face questions about their personnel, training, practices, orientation, loyalties, and responsibilities to other state agencies and the public – if they faced them at all – until later on in the democratic era. As a result, practices such as the summary execution of criminal suspects endured throughout the region. Only when public concern about police violence, corruption, and lack of accountability rose

has police reform been enacted. But even when put in place, police strength and insulation have prevented many reforms from being carried out.

This paper focuses on efforts by contemporary governments to reverse authoritarian legacies on state security forces, which is vital to the understanding of Latin America's new democracies.<sup>1</sup> These forces are made up primarily of police forces and military agencies with internal policing authorities. The continuation of close links between the military and the police in much of Latin America, and the military's domestic deployment, does not allow a neat analytical separation between the two. Throughout Latin America, widespread abuses by this range of forces continue to be left unpunished as the range of targets has expanded from political troublemakers to entire sectors of society, particularly those that are "marginal." Institutional restructuring, better-designed laws, and greater public involvement in demanding state protection of citizenship rights and the accountability of security forces are all necessary to alter such conduct. Few changes measure the deepening of democratic standards better than the control of state security forces that had long been instruments of repression and impunity.

This paper examines such reform in Brazil, Argentina, Chile, and Uruguay, neighboring countries that share similar political histories and contemporary conditions. It first discusses assumptions about policing and democratic transition, showing the extent to which practices associated with modern authoritarianism – such as repressive tactics and a lack of judicial oversight – had already existed and in most cases were only reinforced by recent authoritarian regimes. We argue that the weakness of Latin America's contemporary democracies should be attributed not just to the regimes immediately preceding them, but also to earlier regimes – some of them formally democratic – that diminished accountability and civil rights.

Examining contemporary democratization in the four cases, we then assert that the impact of the mode of transition was delayed and mediated by "normal" post-transition politics. In particular, we found that public support for and mobilization around police reform is crucial to its enactment and success. In response to society's heightened post-authoritarian awareness of the state's repressive potential,<sup>2</sup> the bulk of such reforms in most countries has been based on restrictions of police power, including removal of military control over police operations, purges of abusive officials, new investigatory and oversight agencies, and restrictions on detention. But with increases in economic inequality and violent crime throughout Latin America, public safety and order have also become a priority. Because most reform involves reductions in police power, as a result, forces seen as effective against crime are generally spared less pressure for change than those seen as ineffective. Most Latin American societies have a high tolerance for police excess if it is seen as a price of effective crime control; citizens may be distrustful or even scared of the police but "confident" in its effectiveness and fearful that reforms will reduce it.<sup>3</sup> But when crime and police excesses increase simultaneously, citizens start to associate the police's power with their inability to control crime. Police officials are so involved in corruption and are so unaccountable, many societies realize, that reform is needed to improve their performance. This shift in opinion is most important for reform because it gives officials the political support to enact change. As Tables 2 and 3 suggest, in fact, there is an inverse relationship between public confidence in the police and the level of police reform. Public confidence in the police was lowest in

Argentina, where police reform after the transition has gone the furthest, and highest in Chile, where it has barely occurred at all.

Third, we find that the level of centralization greatly influences how, but not whether, police reform takes place. Police reform is a national issue in unitary states such as Chile and Uruguay, where the main police forces are national, but is a regional issue in the federal states of Brazil and Argentina, where the main police forces are under state (in Brazil) or provincial (in Argentina) governments. Reform in unitary states thus requires more political capital than it does in decentralized states, but unitary states also offer reformers the possibility to re-engineer the country's entire set of security forces in one fell swoop. In decentralized states, the trade-off is reversed.<sup>4</sup> Even when sufficient political support for police reform does not exist nationally, reformers can succeed in one region. However, this creates internal discrepancies with piecemeal and heterogeneous changes that do not exactly encourage those states and provinces more resistant to change. A poorly implemented decentralization, in addition, may lead to greater abuse. Historically, centralization was promoted to make state services more effective. But because of the state's limited capacity, centralization tended to reduce its presence in outlying areas, causing a de facto decentralization in which local powers enforced the law. Contemporary democracies, in an effort to be both more efficient and accessible, are now decentralizing many state functions. But this process may repeat historical patterns: When decentralization turns over administrative burdens to local governments unprepared to balance them with individual rights and societal demands, oversight of the police is likely to be weakened. When involving basic constitutional guarantees, therefore, decentralization may inadvertently increase abuse in localities with lower levels of accountability.

### **I The Question of Authoritarian “Legacies”**

The extent to which the behavior of state security forces in Latin America can be described as an authoritarian legacy is controversial for several reasons. First, because it is not the deployment of violence itself that distinguishes an authoritarian from a democratic regime, but rather, the degree to which state violence is subject to a rule of law.<sup>5</sup> Democratic as well as authoritarian regimes employ violence against individuals and groups who appear to violate the legal order. Second, since levels of societal violence have risen in Latin America during the current democratic era, it is impossible to separate long-term historical patterns from contemporary pressures, which also cause violent state actions. Third, many opponents of authoritarian regimes blame current maladies on those regimes, sometimes indiscriminately, while many defenders of the old regimes commit the opposite fallacy by attributing current levels of state violence to the “disorder” permitted by democracies.

Discussing security forces and violence requires us to decide what does - and does not - constitute a democratic system of public security, exactly what was authoritarian about the security forces of undemocratic regimes, and what concepts and methods best explain the past's impact on the present. At one end of the methodological spectrum are broad conceptions of authoritarian legacies that see them as so pervasive and deeply rooted as to make significant security force reform after democratic transition virtually impossible. At the other end is the outright dismissal of the concept of authoritarian legacies and the view that electoral competition in new democracies will naturally induce

similar patterns of reform despite countries' historical variations. Our own study of police reform in post transition Argentina, Brazil, Chile and Uruguay produces no evidence to support either of these two extreme views. While significant reform of the police has occurred in some countries, there is no discernible tendency towards institutional convergence across even these cases, which are neighboring countries that share considerable historical and political characteristics. Similarly, the substantial variation across these cases suggests that democracy itself does not make reform of security forces natural or inevitable.<sup>6</sup> In contrast, we argue that that such reform is determined by a combination of long-term practices (including authoritarian legacies<sup>7</sup>), democratic politics, and the degree of centralization of the security forces. Throughout Latin America, security forces have sunk their roots deep into the state, with practices and authorities that continue into democracy. In the wake of a quick collapse of authoritarianism, however, a new democratic regime has a better chance of reforming the police than a regime emerging out of a pact with authoritarian actors. In the new democratic era, reform will be shaped by political actors' responses to public opinion – but not necessarily in a way that reduces police power. Finally, democracies where the police are part of provincial government will have more opportunities and patterns of change than unitary states.

Because of the centrality of the state, the literature on state formation is as important as that on democratic transitions. Much of the state formation scholarship (Centeno, 1997; Holden 1999; Karl 1997; Mann, 1993; Migdal, 1988; Peloso and Tenenbaum 1996; Rueschemeyer, Stephens and Stephens 1992; Stanley 1996; Tilly 1992 and 1998) sees authoritarian legacies as arising from multiple, accreting changes in state institutions.<sup>8</sup> Tilly (1992: 75) and Schirmer (1999: 96), for example, identify the separation of military and police forces as a central element of Western European state formation as well as of the development of a modern conception of consent-based law. As Tilly writes (1998: 223-224), “If you had to judge whether a state was democratic or not on the basis of a single organizational feature, whether the police reported to the military or to civilian authorities would serve as an excellent guide.”

The state formation approach suggests that authoritarian regimes in Latin America in the 1960s-1980s reversed and postponed the separation between military and police forces. Such an argument rests on a counterfactual hypothesis: had civilian, democratic regimes remained in place in these countries during this period, the pre-existing separation between military and police forces would have been maintained and extended. One test of such a hypothesis is Spain and Portugal, which share many of the same traditions and institutions as Latin America, but democratized earlier and were subject to the democratic influence of their European neighbors. (Latin America, in contrast, began to integrate much later, and was influenced during the Cold War by policies that often strengthened the state's coercive capacities.) Such a comparison, in fact, shows that policing and military functions have been separated more clearly in the Iberian countries than they have in the four Latin American countries discussed here.

Much of the transition literature attributes the longevity of authoritarian legacies to the mode of transition to democracy (Agüero 1998; Haggard and Kaufman 1997; Munck and Leff 1997). The politics of the transition are seen as constituting a “critical juncture” (Collier and Collier 1992) or moment of “punctuated equilibrium” (Krasner

1984) which sets parameters on subsequent institutional change. In our case studies, indeed, the extent of police reform does generally reflect the degree of control that the authoritarian regime had over the transition. Such control was highest in Chile, lowest in Argentina, with Brazil and Uruguay in between, which corresponds inversely to the low, high, and moderate, degree of police reform in each case. However, these reforms were not part of the transition itself and instead were negotiated during the “normal” politics of the post-transition period. Furthermore, the reforms came late: thirteen years after the transition in Argentina, eight to ten years after the transition in Brazil, and four years after the transition in Uruguay. This suggests that the impact of the mode of transition on the police is less direct and substantial than it is on other policy areas. Since police practices have been built up primarily over the long-term process of state formation, rather than during any specific regime, these practices are likely to remain below the radar in most transitions.

*Table 1: Police Reform in Argentina, Brazil, Chile, and Uruguay After Democratic Transitions*

| Country   | Mode of Transition | Degree of Police Centralization | Degree of Public Confidence in Police <sup>9</sup> | Extent of Police Reform <sup>10</sup> |
|-----------|--------------------|---------------------------------|--|---------------------------------------|
| Argentina | Collapse (1983)    | Decentralized forces            | 16%  | High                                  |
| Brazil    | Pact (1985)        | Decentralized forces            | 33%  | Medium                                |
| Chile     | Pact (1990)        | Unitary force                   | 63%  | Low                                   |
| Uruguay   | Pact (1984)        | Unitary force                   | 47%  | Medium                                |

## **II Case Studies of Authoritarian Legacies in Policing**

In this section, we apply our three-part argument about policing and post-transition reform to Argentina, Brazil, Chile, and Uruguay. First, while the most recent authoritarian regime in each country made policing more repressive, militarized, and less accountable to the public, it built upon a long tradition of repression and generally exacerbated pre-existing tendencies rather than created new institutions and practices from scratch. Authoritarian legacies in policing are thus legacies of an authoritarian state more than that of a particular regime. In fact, similarly violent approaches can be found in countries without an authoritarian regime in the recent past, such as Venezuela and Colombia. Second, while variation in the mode of transition in the four cases helps account for the differential degree of post-transition reform, the impact of the transition was drawn out by the give and take of “normal” democratic politics. In particular, the enactment and types of reform have depended on changing levels of public support and mobilization. Third, the degree of centralization influences the formation of reform coalitions in each country, with reformers in decentralized polities (Argentina and Brazil) working on the provincial and state level, and would-be reformers in centralized Chile and Uruguay trying to effect change on the national level.

While these conditions lead to different changes in each country and province, those proposals usually center around ten major police reforms, listed in Table 2. Many

of them focus on altering the police force itself, from personnel changes to new forms of training. Most others are the creation or strengthening of oversight bodies, such as the courts, ombudsmen, or civilian commissions. As Table 2 describes, the four case studies have different records of adopting these central police reforms. In line with Table 1, and our argument about long-term practices, democratic politics, and state structure, this table shows the contrast in each area of reform among the four case studies.

*Table 2: Reforms of the Police in Post-Transition Argentina, Brazil, and Chile*

| Measures   | Argentina                   | Brazil          | Chile | Uruguay |
|--|-----------------------------|-----------------|-------|---------|
| Formal de-linking of police agencies from the military               | Yes                         | Yes             | No    | Yes     |
| Personnel Purges   | Yes                         | No              | No    | No      |
| New discipline bodies and programs of police misconduct              | Yes (Buenos Aires province) | Yes (São Paulo) | No    | No      |
| New programs of civilian input                                       | Yes                         | Yes (São Paulo) |       |         |
| Reformed criminal code   | Yes                         | No              | No    | Yes     |
| Creation of ombudsmen (Defensoría del Pueblo) for citizen complaints | Yes                         | Yes (São Paulo) | No    | No      |
| Changes to police training   | Yes                         | Yes             | No    | No      |
| Restrictions of police detention authorities                         | Yes                         | No              | No    | No      |
| Reorganization of police affiliation to enhance judicial oversight   | Yes (Buenos Aires Province) | No              | No    | Yes     |
| Removal of police from military court jurisdiction                   | Yes                         | Partial         | No    | Yes     |

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| Changes to police training   | Yes       | Yes             | No    | Yes     |
| Restrictions of police detention authorities                         | Yes       | No              | No    | Yes     |
| Reorganization of police   | Yes       | No              | No    | Yes     |

|  |     |         |    |     |
|--|-----|---------|----|-----|
| affiliation to enhance judicial oversight          |     |         |    |     |
| Removal of police from military court jurisdiction | Yes | Partial | No | Yes |

## Brazil

The Brazilian case illustrates three important points about policing in new democracies. First, while the 1964-85 authoritarian regime made changes in police organization and deployment that remain in place today, the overall problem of violent and insufficiently supervised police forces is an old one. The military regime adapted pre-existing institutions for its own purposes, and the tendencies of the police to be repressive, insulated from popular control, and subservient to political overseers were already well entrenched before the 1964 military coup. Second, our study shows that support for police reform from a chief executive – in this case, Brazilian president Fernando Henrique Cardoso – is insufficient for successful reform in the absence of strong public support. Third, Brazil shows how the degree of police centralization crucially affects the tactics of those advocating police reform, and that decentralized states present both advantages and disadvantages to would-be reformers. Where police forces are decentralized and administered at the state level, as in Brazil, reform requires less political capital than it does nationally, enabling significant changes to be enacted in states such as São Paulo. But reform in such a polity will ultimately be a patchwork with little homogeneity. In the Brazilian case, in the early and mid-1990s improvements in the investigation of citizens' complaints of lethal police violence in São Paulo existed side-by-side with violently repressive policing in the neighboring state of Rio de Janeiro.

Brazil's police forces are relatively decentralized and pluralized, reflecting the country's relatively low degree of internal conflict as a colony and nineteenth-century independent state, at least in comparison to Argentina, Chile, and Uruguay.<sup>11</sup> Aside from the small federal police force limited to specialized areas such as drug trafficking and border protection, the country's police are organized primarily at the state level. State police are split into two parts, the civilian police (*policia civil*) and the military police (*policia militar*, or PM) both of which are under the nominal power of the state governor. (The military retains substantial control over the budget, training, and equipment of the military police.) The military police is responsible for routine street patrolling, monitoring public order, and arresting criminal suspects. Once an arrest is made, the suspect is turned over to the civilian police, who run the investigation.

From colonial times to the present day, Brazil's police have exhibited authoritarian tendencies. These include the habit of punitive policing, in which the officers administer corporal punishment when they apprehend suspects, and serving the immediate political interests of the government in power by regarding certain forms of dissent as criminal. These tendencies, whose roots lie in the slave owning and imperial past, were nurtured by political leaders in the twentieth century. Colonial policing was relatively rudimentary. Vigilance was performed by unarmed civilian watchmen (*guardas*) hired by town councils, as well as local inspectors (*quadrilheiros*) appointed by local judges (Holloway 1993: 29). However, these officials had no more powers of arrest than ordinary citizens had and merely represented higher authorities. The development of

the police as a separate state institution began in the early nineteenth century, in the era that culminated in Brazil's formal independence from Portugal in 1822. But the real foundation of Brazil's contemporary police forces came in the wake of an 1831 riot by the Guarda Real de Polícia, who were acting in sympathy with a rebellious army unit stationed in Rio. Following the suppression of this revolt, the Guarda was dissolved and replaced by the Corpo de Guardas Municipais Permanentes, which was designated the Corpo Militar de Polícia de Corte in 1866 and the Polícia Militar in 1920 (Holloway 1993: 88). Significantly, it was administered by the civilian Ministry of Justice rather than the military.

Major changes in Brazilian policing occurred in the 1920s, as increasing labor mobilization spurred officials to increase state capacity to control the working class. The creation in 1925 of the Delegacia de Ordem Política e Social (DOPS) in the industrial state of São Paulo, later duplicated in other states, marked the advent of a police force specifically oriented towards the repression of government opponents and political dissidents. In 1928, São Paulo's Secretary of Justice and Public Security affirmed that the DOPS had managed to identify 102,654 of the state's 300,000 workers, and was satisfied that there was no significant organization among them that could perturb public order (Pinheiro 1991: 111). The DOPS, along with other new and specialized police organizations, later became a pillar of the dictatorial rule of Getúlio Vargas (1930-45).

Significant changes in policing also occurred under the military regime of 1964-85. Bayley (1985: 65) observes that authoritarian regimes tend to centralize policing; during this period, *de facto* (if not *de jure*) centralization and militarization did in fact take place in Brazil. The military regime's creation of the federal police and national intelligence service (Serviço Nacional de Inteligência, or SNI, a sort of CIA and FBI rolled into one), and after 1967, placed the state police forces under the command of army generals in the war against "subversion." Civilian police forces engaged in "ostensive" (non-investigatory) policing were folded into the PMs,<sup>12</sup> which were reorganized to fit a militarized conception of public security (Pinheiro 1996: 27), while the investigatory capacities of the plain-clothes civilian police were relatively neglected.<sup>13</sup> U.S. training and influence played a role in this metamorphosis.<sup>14</sup>

The authoritarian regime reshaped the judiciary as well as the police. A 1965 decree removed all crimes against "national security" from the civilian judiciary and placed them in the hands of military courts. Thousands of civilians were prosecuted in these courts, some of them for offenses involving little more than the mere expression of anti-regime opinions. While the use of military courts to prosecute civilian dissidents ended with the military regime, military court jurisdiction over the military police was retained under democracy. A 1977 constitutional amendment transferred crimes carried out by military police against civilians from the jurisdiction of civilian courts to state military courts – a modification preserved after the transition.<sup>15</sup> In contemporary Brazil, all cases in which PMs are accused of human rights violations against civilians – except intentional homicides, transferred back to civilian courts in 1996 – are still heard in state military courts, resulting in high levels of impunity in these cases. Such an arrangement is particularly problematic because neither the state nor the local police are subject to consistent or strict disciplinary mechanisms. With a strong belief in the efficacy of lethal violence in fighting crime (Chevigny 1995: 161), police regularly



intimidate, torture, kill, and "disappear" arrested suspects. Both civilian and military officers block judicial investigations and delay taking suspects whom they have shot to the hospital. Similarly, the police often fill out a "resisting arrest" form, which leads to entirely different type of inquiry, and one that rarely involves formal charges. Although the police have thirty days to complete their investigation, this timetable is rarely kept, and usually stretches out into months and sometimes years. Under the law, suspects not convicted within a certain time period once the investigation has begun cannot be punished at all. When suspects are police officers, this statute of limitations is used to allow them to remain unpunished, lending impunity to police acts.

Though the police are in charge of their own inquiries, prosecutors can perform their own investigations and indict officers. But this parallel investigation rarely occurs because some of the overworked prosecutors do not consider victims of police shootings a priority. When they do and cases reach the courts, convictions are rare, and those officers who are convicted are often given suspended sentences. In addition, the family of the victim may appoint an assistant to the prosecution, who participates in all levels of inquiry. But most families are not educated enough or are too fearful to take this procedure. Cases within the state military judiciary can take up to ten years, and many of the ineffective civilian courts are biased in favor of the police and have poor witness protection programs. The branches of government with constitutional "police power" over all security agencies have not exercised this power adequately. The national Congress and state legislatures have rarely taken action on police issues or enacted laws regarding police discipline.

Clearly, democratization – which has led to considerable improvements in political freedom and electoral choice in the country – has not solved the problem of unaccountable security forces in Brazil. However, particular incidents have generated demands for reform. In March 1997, for example, nine military police officers were arrested after a photographer videotaped them physically abusing motorists and trying to extort money from them at a roadblock set up to apprehend drug traffickers in a São Paulo suburb. The video – showing one policeman shooting at a car driving away from the roadblock, killing that car's passenger – was aired shown throughout Brazil and provoked considerable public anger. In addition, a police strike in ten Brazilian states in June-July 1997, marked by armed confrontations between the police and the military in some cities, helped persuade much of the public that carrots as well as sticks are necessary for improved police performance, and that the police should be paid more if they are to adequately protect society.<sup>16</sup>

Despite this generally bleak picture, several reforms initiated under the democratic regime hold promise, such as efforts to inculcate normative adherence to human rights among the police and citizens. The discussions surrounding the 1988 constitution, which amply recognizes human rights (see especially title II, chapter 1, article 5), may have increased societal awareness of the importance of rights and lowered public tolerance of police abuses. The 1996 promulgation of the National Program for Human Rights under Cardoso was intended to have a similar effect (Presidência da República 1996). Among other things, it authorized the Federal government to undertake a survey of cities and states in order to identify and restrict funds to those regions where human rights violations were particularly common. The Plan also mandated the inclusion

of human rights material in police academy courses, urged the improvement of methods of selecting, training, and disciplining officers, and advocated the immediate suspension of members of the police who engage in violence against civilians. In the medium-term, it suggested the creation of community councils to oversee police performance, and the adoption by police of community policing tactics.

Cardoso submitted the plan to the national congress, where opposition to many of its provisions quickly materialized, by legislators as well as by outside actors such as the military police. One of the first manifestations of this opposition occurred in September of 1996, when the bill to transfer jurisdiction of police crimes over civilians to civilian courts was passed by Congress in greatly revised form, limiting the transfer to cases of alleged intentional homicide only. Six months after the National Human Rights Plan had been announced by the president's office, none of its measures in the area of public security had passed in the Senate (Human Rights Watch 1997: 81).

Despite the obstacles to police reforms at the national level, the state of São Paulo initiated some measures that have had success in reducing police violence. Several of these were internal to the state military police force. Training in human rights was initiated, and new forms of community policing were implemented, and a mandatory counseling program was formed. In 1993, a Program to Retrain Police Involved in High Risk Situations (PROAR: Programa de Acompanhamento de Policiais Envolvidos em Situações de Alto Risco) was created to remove police officers involved in fatal shootings from their beats, assign them administrative duties, and require them to undergo three months of psychological counseling before being evaluated a return to street patrol. The police saw this as punishment, because many of them had second jobs that they squeezed between patrol shifts, but that were impossible to maintain with regular daytime administrative shifts (Human Rights Watch 1997a: 51-52). A different type of reform went outside the police itself and invited civil society to monitor police performance. Around the same time as PROAR's formation, the state government established the office of ombudsman for the police, and appointed a well-known human rights activist to the position. In his first six months, the ombudsman received 1,247 complaints, of which 246 concerned police violence. The ombudsman gave the latter his top priority, and asked authorities for more information in each case (Human Rights Watch 1997: 52).

Evidence suggests that these measures did have an impact on the propensity of the military police to kill civilians. Evidence suggests that these measures did have an impact on the propensity of the military police to kill civilians. Whereas a reported 1,074 and 1,470 civilians were killed by military police in the greater metropolitan area of São Paulo in 1991 and 1992 respectively, this figure dropped to 243 in 1993, 333 in 1994, 331 in 1995, and 106 in 1996 (Chevigny 1995: 148; Human Rights Watch 1997: 51). However, this decrease was not permanent. Data on police killings for the state of São Paulo as a whole, for which greater São Paulo city constitutes the largest component, indicates that the rate gradually climbed again until it reached 839 in 2000.<sup>17</sup> The last figure is still disturbingly high – the police in New York, a city comparable in size to São Paulo, killed 25 civilians in 1993 (Chevigny 1995: 67) – but it represents a significant decrease from the 1991-92 figures. The creation of internal and external mechanisms to

make police officers accountable to superiors, the courts, and the public when they use deadly force appears to have influenced this sharp decline.

The case of São Paulo illustrates an important point about security force reform. Commitment to change on the part of top political leaders may not be sufficient for successful reform. While Brazil's president supported the National Human Rights Plan, Congress, with strong political ties to state governors and police and military institutions anxious to defend their own prerogatives and control, was able to block most of its provisions. Second, the weight of public pressure may compensate for lack of support at the top. In São Paulo, both the state governor and mayor had reputations for being tolerant of police violence; the reforms described above were initiated after a prison massacre of October 1992 that evoked widespread public condemnation of police heavy-handedness. Third, a mix of internal and external accountability mechanisms is likely to be more effective than exclusive reliance on one or the other.

In contrast with São Paulo, the state government of Rio de Janeiro dealt with authoritarian legacies in a way more injurious to human rights. In 1995 the state governor appointed Nilton Cerqueira, a former general who was active in the military regime's repression, to head the Secretariat for Public Security. Cerqueira initiated a policy of awarding "bravery" bonuses and promotions to military police officers, which in practice were given to those who killed criminal suspects, regardless of the circumstances. Police killings of civilians then doubled; one study indicated that between May 1995 and April 1996, at least 179 police officers were promoted and given bonuses for incidents involving the deaths of 72 civilians and six police officers. In some of these cases, autopsies suggested that the victims were killed in summary executions (Human Rights Watch 1998: 92). Another study showed that of 301 cases in which the Rio PMs had killed civilians between 1993 and 1996, prosecutors in the state military justice system did not prosecute the officers in 295 (98 percent) of the cases, choosing instead to simply archive the cases – even with evidence of a summary execution (Cano 1999: 16). In 1998, the bonus and promotion program was discontinued, and Cerqueira stepped down. Since then, the Rio police have been planning to reform, focusing, as in Chile, on professionalization, efficiency, and improved social relations. The Under Secretary of Public Safety, Luiz Soares, says that the force plans to improve coordination between civilian and military forces, incorporate new technology, train officers “to become community police officers,” and form committees with civil society groups. At the same time, he acknowledges that political opposition, police attitudes, the slow judiciary, and financial constraints will make these changes unlikely.<sup>18</sup>

In general, the prospects for the reform of the security forces in Brazil vary from state to state and come under cross-pressures of various kinds. At the same time that some analysts talk of the "militarization" of public security (Zaverucha 2000) due to the increasing intervention of the Army into public security questions, there are also proposals to “civilianize” the military police and to abolish state military courts. But it is nevertheless clear that the increased power and autonomy of the security forces that occurred under military rule has endured under democracy. And a statist and authoritarian conception of the legal order, which approves of a "strong hand" against crime, and tolerates the summary execution of criminal suspects, remains deeply

entrenched among the public. Under such circumstances, Brazil's authoritarian legacies in the realm of public security are likely to impede reform.

### **Argentina**

Of all four cases, Argentina's police have undergone the most significant post-transition reforms. Major purges of police and intelligence personnel, a de-coupling of police and military forces, changes to the criminal code and laws, the creation of civilian boards, an improvement of judicial oversight, and alterations in police training all occurred in the 1990s, primarily in Buenos Aires province and the Federal Capital (see Table 2). The country's transition to democracy had a greater impact on policing than in new democracies, since the quicker collapse of its authoritarian regime opened up greater prospects for institutional reform than did the pacted transitions of Brazil and Chile. However, the fact that such changes occurred a decade after Argentina's 1983 transition suggests that the impact of the transition mode on policing is neither direct nor inevitable, and that reform is unlikely to be included in the transition pact itself. The type of transition may make police reform more likely, but its achievement must be obtained via "normal" post-transition politics.

As in Brazil, contemporary patterns of policing in Argentina are primarily the product of a long and gradual process of state formation rather than the innovations of a particular authoritarian regime. And like Brazil, Argentina demonstrates the significance of civil society mobilization and of a federal structure. Change has been enacted mainly in the Federal Capital and in the Province of Buenos Aires, due in part to strong mobilization by civil-society organizations against police violence and impunity. However, reform has been far slower in other provinces, where such mobilization has been less intense.

Since the time of Spanish rule, the power of the executive, the subservience of the judiciary, and the centrality of the security forces in Argentina have generated an authoritarian approach to policing that continued into the post-1983 democratic period. In particular, a growing crime rate and public support for "law and order" has allowed many violent practices to continue. Much more than Brazil's 1964-1985 or Uruguay's 1974-1984 authoritarian regimes, though, Argentina's brutal 1976-1983 dictatorship led to a broad, deeply-rooted questioning state security forces' role. A federal structure made up of autonomous provincial governments, as in Brazil, has also opened up challenges to authoritarian legacies.

In colonial Argentina, there were no professional police forces, and in Buenos Aires each of the city's eight sub-divisions, *comisarías*, policed itself. An irregular rural police force began in 1755, quickly acquiring both summary power of judgment and a reputation for arbitrary abuse. In 1799, an armed force within the military was established to handle general security in the Buenos Aires area. In 1810, Argentina's first independent government created the *Policía General* and declared itself in charge of "monitoring order, public tranquility and individual security."<sup>19</sup> Upon independence, the government "began on a vigorous and rapid road to concentration of police power, a shedding of municipal and neighborhood structures, and the creation of a State Police" (Maier 1996: 133). In 1826, it created the Central Police Department in the city of Buenos Aires, along with a day-time and night-time police forces. The power of these and other security agencies increased as Argentina endured a prolonged period of civil

war between the Unitarians and Federalists, much of it under the dictatorship of Juan Manuel de las Rosas (1829 to 1852), whose main pillar of support was his own security agency. The 1853 constitution brought an end to the civil war, and the federal judiciary and legal codes were established in the 1860s. But the courts were occupied during their first years with questions of federalism rather than of constitutional rights, while the new Supreme Court supported de facto governments and often limited judicial authority. In 1872, all police services were unified and the city of Buenos Aires took on more of the provincial police's duties. These bodies were run mainly by the military, but after Justo José de Urquiza's ouster of Rosas began to be gradually subsumed under civilian control. When the capital city of Buenos Aires was ceded to Federal jurisdiction in 1880 (hereafter "Federal Capital"), the province handed over its Central Police Department to the national government, which led to the establishment of the Capital Police and the Police of the Province of Buenos Aires.

Despite the cessation of hostilities, control of the population continued to be a top government priority. The first penal code was introduced in 1886 to help rein in growing crime rates, and the government began using punishments such as internal exile. Throughout the country, in addition, "punitive social control of the disfavored classes was carried out by" legislation of the provincial caudillos and their judges. A parallel urbanization occurred through increased powers for city police agencies through harsh laws and a criminal code based on the one in Spain that had been derogated there because it was based on "the most inquisitorial moment of Spanish penal process legislation of the last century and a half" (Zaffaroni 1994: 254-5). As a result, the constitution's guarantees of individual rights and accountability fell behind these public order and criminal policies.

As immigration and industrialization generated unrest at the turn of the century, the police adopted more professional training and technology and repeatedly clashed with groups such as the anarchist and socialist unions popular among Southern European immigrants. In 1909, the Buenos Aires police killed eight and wounded forty in an attack on a labor protest. The notorious Tragic Week of 1919, in which the military violently crushed an outbreak of labor agitation, began with the capital police's intervention in a strike of metallurgical workers. Such violence spawned anti-leftist vigilante squads that killed labor organizers and were a precursor to right-wing hit squads such as the Argentine Anti-Communist Alliance (AAA) of the 1970s. In line with these developments, the judiciary became more restrictive of habeas corpus, denying it in favor of police powers in cases of preventative detention, even though "it was obvious that judges could not ignore worsening police abuses" (Dromi 1985: 13). The Supreme Court upheld new internal exile laws, the 1902 "residence" law that gave the executive sole authority to expel or deny the entry of any foreigner, and the 1910 "Social Defense" law.

After the military took power in 1930, the police became a pillar of repressive regimes legitimized by the judiciary. The police began to utilize wide ranging powers, often through ordinances and "regulations" such as edicts, which continued during returns to formal democracy. Under Juan Perón's 1946-1955 rule, the use of torture increased, especially as his government's popularity waned. Attempts were made after 1955 to eliminate such abuse, but it continued under the elected Radical governments of 1958-1962 and 1962-1966, when the military structured the police and ran its day-to-day

operations. During this time, the Supreme Court upheld laws passed by de facto governments as long as they did not conflict with constitutional regimes' laws; and rejected the habeas corpus petitions of arrested labor leaders placed in military courts. When the armed forces returned to power in 1966, the power of state security forces increased and the police continued to train and operate under the military. The government demoted the constitution behind its "Revolutionary Objectives," created a federal penal courts for those accused of revolutionary activity, and proliferated decrees that eventually became full-fledged laws. Rising violence and failing governments only quickened this repressive pattern. Left-wing guerrillas grew in strength during the 1973-1976 Perón governments, while the AAA attacked leftists with "the active engagement of the Federal police."<sup>20</sup> The military took repression to new heights after its 1976 coup, when up to 30,000 people were "disappeared" and "all three armed services had the full support of the security branch of the federal police, forming espionage networks and clandestine operations with each."<sup>21</sup> The Supreme Court declared itself incompetent to investigate the whereabouts of "disappeared" persons and accepted laws that subject civilians to military tribunals.

Despite the frequent regime changes between 1930 and 1983, authoritarian practices only became more entrenched in that time. Police edicts, widespread torture, the constitutionality of de facto regimes, the legality of de facto laws, the increasing power of provincial police agencies, the Supreme Court's near-complete support of military governments on policing, and the executive's authority over internal security all created powerful authoritarian legacies after 1983. The military's repressive 1976-1983 rule, its economic mismanagement, and its failed 1982 Malvinas invasion led it to go through one of the most thorough purges in all of Latin America's democratic transitions. But even though the police were central to the 1976-1983 government's practices, they enjoyed continuity in both structure and power after the transition. The Radical government of Raúl Alfonsín did improve police training, tighten internal discipline, and replace top police officials responsible for abuses during the dictatorship. But the government's main concern was to strengthen individual rights through amparo and habeas corpus guarantees. And amid Peronist obstruction in Congress, military unrest, and an economic crisis, this focus left little room for police restructuring. The majority of the population in the 1980s, in addition, was either ambivalent or in favor of maintaining strong police forces.<sup>22</sup>

Many authoritarian practices, as a result, continued into the 1990s. Even personnel from the authoritarian past found top positions in provincial police forces. Well-known ex-military officials such as Luis Patti, a mayor and gubernatorial candidate for the March 2002 elections, and Aldo Rico, a former military official who led a military uprising against the 1980s trials of the former junta leaders, have been police comisarios in Buenos Aires province. A Secretary of Domestic Security in the 1990s – the country's highest law enforcement authority – was an official for six years in the police body specializing in kidnapping, torture, and killings during the 1976-83 dictatorship. He once stated that it is necessary to sacrifice individual liberties for better security,<sup>23</sup> and proposed returning legal validity to the spontaneous statements given to the police. Old approaches to training also continued. Training in the Policía Federal Argentina (The PFA,<sup>24</sup> responsible for enforcement of federal laws and of all laws within the Federal

Capital), for example, focuses on “respect for authority” on physical training, with civil rights education remaining “just on the surface, without conviction, to show to society,” according to one official.<sup>25</sup> Neither of the two bodies that handle internal complaints – the Agency of Administrative Investigations and the Agency of Preventative Investigations – has “any independence. They can't do anything against comisarios. They can only take on small issues [and] individual problems.”<sup>26</sup> The process behind periodic suspensions and dismissals remains secretive.<sup>27</sup> Combined with low salaries, such poor accountability and discipline has generated corruption in nearly every Federal Capital comisaría.<sup>28</sup> As it spreads to other state agencies, money extorted by the police makes reform “virtually impossible, as civil official stand only to lose if they cooperate in prosecuting corrupt police” (CELS and Americas Watch 1991: 8).

Gradually, internal security threat shifted from political ideology to common crime, fueling and fueled by the state’s own tough criminal policies. The government of Carlos Menem (1989-1999) built up its security apparatus, such as through formation of the Superintendency of Security following the 1994 car bomb destruction of the Federal Capital’s Jewish Community Center (AMIA), and promoted wide powers for police agencies, particularly intent on allowing them to stop crime in the “pre-criminal” state.<sup>29</sup> After the personnel purges and rights guarantees under Alfonsín, the first police reforms in democratic Argentina were usually taken in response to specific incidents of abuse. In 1991, for example, the death of a 17-year-old died in a police station prompted Congressional modification of the Organic Law of the Federal Police to allow the police to detain a person only if there is reasonable suspicion of criminal activity (or when the person does not produce adequate identification), and to reduce from 24 to 10 hours the maximum time allowed for such detentions. Menem vetoed the bill but was overridden. But substantial challenges to the police’s authoritarian legacies only came later. As macroeconomic conditions stabilized at the expense of equality and employment, rising rates of violent crime created a widespread sensation of societal breakdown that the police and courts were incapable of slowing. About 85% of the residents of the Buenos Aires area considered it probable that they will be a victim of a crime, for example, and fewer than 5% of violent criminals are incarcerated. Starting to believe that the police was too involved in corrupt activities to actually slow down crime, the public began to generate pressure for change.

For the PFA, pressure when the autonomy granted to the Federal Capital in the 1994 constitution led to a grassroots campaign for the elimination of the PFA's edicts, which are among its oldest and most unaccountable sources of power. Edicts are internal police regulations allowing for detention of individuals for up to 30 days based primarily on non-criminal behavior. The PFA’s 23 edicts, which date back to 1772 but were created mainly since 1932, range from “scandal” and “drunkenness” to unlawful firearm possession. In reality, the edicts were used to detain “undesirable” individuals, such as youth, the unemployed, immigrants, transvestites, and political protesters. By the 1990s, the PFA was devoting approximately 60% of its resources to edicts and making approximately 153,000 annual arrests under them. But as they failed to slow increasing crime, the edicts began to come under scrutiny. Then, in 1994, the new national constitution gave the Federal District status as a province, generating a wide citizen movement to push for the elimination of the edicts in the new province’s first

constitution. Battling heavy pressure from the PFA and the national government, the constituent assembly – dominated by the opposition Radical and Frepaso parties – approved the edicts' elimination. But a new code that replaced the edicts did not dampen the controversy. The police stridently resisted the change – in the first half of 1997, as the edicts were being phased out, they detained an average of 413 persons per day, which was a yearly average of 301,490. Then, in March 1999, President Menem issued a decree giving the PFA new powers very much like those of the edicts.

A parallel political shift was occurring in Buenos Aires province, home to a third of the country's population, where the 47,000-strong provincial police agency is the country's largest force and continues many repressive and unconstitutional authoritarian-era practices. Argentina's constitutions have always granted “police power” to the provinces – an authority upheld consistently by the courts,<sup>30</sup> which have generally adopted a “broad” interpretation of “police power”<sup>31</sup> that gives police agencies wide legal authorities. Such decentralization can make reform easier in progressive provinces or states, it also enables stand-pat provinces and states to preserve the status quo and the *mano dura* preferred by hardliners. As in other countries, in addition, reform requires funds such as those to raise salaries in order to stem corruption. As the country's ongoing recession shrinks expenditures – the 1998 PFA budget was a quarter of what it was in 1995 – the possibilities for improving training and technology become even more remote in every province.

In Buenos Aires province, most residents favored tough policing since 1983. Since the transition, in fact, provincial officers have been implicated in drug trafficking, extortion, extra-judicial killings, “trigger happy” (*gatillo fácil*) shootings, the 1997 murder of photojournalist José Luis Cabezas, the 1994 AMIA bombing, and use of *submarino seco* (“dry submarine”), in which a detainee's head is placed in a plastic bag until the point of asphyxiation. Many of the police's most popular *comisarios*, in fact, were high level officials during the dictatorship and who as police officials favor a *mano duro* approach. As with the PFA, internal regulations changed little after the transition to democracy. Structure and preparation continue to be very militaristic, with the bulk of cadets' training dedicated “to marching, as if they were soldiers”<sup>32</sup> while “the surest route to advancement into elite squads” seems to be violent confrontations with suspected criminals.<sup>33</sup> Edicts also give the police wide leeway in making arrests, and torture continues to be a common practice in police station. Creating and overseeing an effective police force had apparently been regarded as too costly, leading to a “solution” in which individual officers extort funds through “taxing” crimes such as prostitution, gambling, and drug trafficking – and which skirts the government's budgetary limits. With low salaries, many officers are among the estimated 40,000 employees of private security firms. A lack of oversight aggravates these patterns. The province's Human Rights Office functions as a type of ombudsman on rights complaints, but does not have the political authority to press charges or the political authority to wrest changes from the government. The provincial legislature receives denunciations, but does not conduct investigations and its Peronist majority is reluctant to undermine executive power. Congress' Human Rights Commission, which monitors state officials and developing educational material, has had little impact. The police act “for repression, not prevention. This is part of the history of the police, of decades of the same pattern.”<sup>34</sup>



By the mid-1990s, however, the population grew skeptical of the force's ability to combat crime. The campaign to find Cabezas's killers, for instance, attracted strong support from the media and human rights organizations and made it the most striking example of public mobilization against police impunity of all four cases reviewed here. More broadly, citizen concerns over the police's excesses and effectiveness grew so much that they began to impinge on the political prospects of provincial governor Eduardo Duhalde, the 1999 Peronist candidate for President. Beginning in 1996, he began to formulate a complete re-structuring of the force. In a plan designed by his Secretary of Justice and Security, León Arslanian – who led the trials against military officials of the 1976-1983 dictatorship – Duhalde dismissed nearly 5,000 officials and completely re-structured the agency. Previously, the one centralized hierarchy was run from the provincial capital and divided into functional areas, such as personnel and judicial affairs. But the “new”<sup>35</sup> police force was decentralized into 18 departments, coinciding with the province's judicial districts. Each department is run by an official who is directly accountable to the Secretary of Justice and Security, a civilian. The functional division also has changed, from one large force to an investigative police of around 5,000 officials, a Security police of about 35,000 officers, and smaller agencies for transportation security and for the provincial penitentiary system. Popular participation was also instituted through citizen forums at the community, municipal and department levels. Furthermore, the provincial legislature has passed a new criminal code, which, by creating oral trials and strengthening the authority of the public ministry, reduces the police's authority in the criminal penal process.

Because they challenged both authoritarian legacies and patterns engrained during the democratic era, these changes have generated widespread and violent resistance. Many judges and elected officials, including the chair of the Senate's Security Commission, opposed the changes. Reactions from the police have been particularly strong, involving attacks against political officials as well as among police officers. While a total of 23 officers died in the line of work in 1997, 15 provincial officers were killed in acts of revenge by other officers in just in the first month of 1998.<sup>36</sup> The 1999 Buenos Aires provincial gubernatorial campaign revealed the reform's other vulnerabilities. During the campaign, Arslanián resigned because of attacks against the reform by the Peronist candidate, national Vice President Carlos Ruckauf, who associated police killing with justice, asserting that “the bullet that kills the delinquent” is “society's response to the bullet that kills innocent people.”<sup>37</sup> Since the reforms do not lessen the power of the governor over the police, Ruckauf's victory immediately raised doubts over whether the reform will be enforced at all. The new governor favors restricting bail and widening the police's powers to question prisoners and to conduct random searches, and he appointed notorious military official Aldo Rico as the province's Chief of Security.<sup>38</sup> But even if Ruckauf held back from such policies, continuing increases in crime – robbery and assault rose by 46 percent between 1997 and 1999<sup>39</sup> – may alone lead to a popular clamor to scrap the reform in favor of more immediate action. Finally, the reforms did not create the oversight that roots out police abuses. The reform dismantled corrupt agencies, but without accompanying increases in the police's budget – of at least six-fold, according to analysts – corruption and police “dependence” on bribes will continue.<sup>40</sup>

Under the current government of Governor Felipe Solá, Arslanian has returned as provincial security chief. He has re-introduced many of these reforms, focusing on five: First, reactivating the citizen security forums in order to include citizen organizations and neighborhood representatives in police oversight and policy formation. The plan also decentralizes the police into three areas – security, investigations, and transport. One new addition is the establishment of a police for greater Buenos Aires, incorporating the urban belt – the *conurbano* – around the capital that has the country’s highest population density and crime rate. The formation of such a force would require reform of Law 12.155, which regulates police structures, but in the meantime the provincial government intends to hire 500 selective officials to prioritize “complex” crimes such as kidnapping and narco-trafficking, and will place 1,500 additional officers in the *conurbano*. The plan also includes budget and salary increases for the lowest-ranking officers, as well as a single hierarchy instead of separate ones for officials and for sub-officials. The government also plans to form a new police academy that will bring in 600 new officers each year. Resistance by police and other officials, though, has also returned. Opposition to the plan has led the government to water it down by making participation voluntary by mayors in the *conurbano*. The appointment of prosecutors associated with Duhalde’s political network, in addition, have led to fears that police abuse – the primary problem with the provincial police – will continue to remain un-prosecuted.

The federal government is also experiencing a new cycle of reform and resistance. Currently, the federal government is under immense pressure on the issue of public security. Along with purging over a hundred top police officials, the Kirchner administration has developed a broad National Security Plan with new investigative agencies, crime mapping, judicial reforms like neighborhood prosecutors and jury trials, and penitentiary reforms like new prison facilities. It will create a Federal Agency of Investigation and Internal Security, strengthen and add new laws against corruption and white collar crime, bring in non-police actors into criminal policy-making, and form a new national crime map. In addition, the Ministry has introduced a plan to give financial rewards to the police of *comisarías* whose jurisdictions have the highest drop in crime rates each month. The city of Buenos Aires, in coordination with the Ministry, also has a community security plan with neighborhood security forums, networks, and coordinators who work with residents to resolve problems causing crime.

But institutional and political obstacles are already undermining these changes. Institutionally, the PFA maintains practices which prevent effective and accountable policing. Training, for one, is highly technical, without the education on the sources and patterns of crime that officers need to combat it. The focus on both the sub-official and official academies is on physical training and knowledge of laws rather than analysis and discussion of criminal policy and social conditions. Among the top ranks, there is also little analysis of crime’s causes or patterns, and commissioners lack incentive to develop specific responses to main types of crime – particularly in poorest areas, which police enter only in special operations or for their own corruption networks. Such poor training is particularly harmful when combined with unclear laws. On the use of force, for instance, the police use little more than general UN guidelines without training of how it applies in practice, fostering unwarranted use of force and a cover-up of resulting

fatalities: one of every four killings in the capital is by police, and number of civilians killed rose 89% and police 132% between 1996 and 2002.

The police's control of finances and internal affairs also fosters corruption and abuse. Heads of the sub-official academy keep funds earmarked for firearms and bullets, for example, allowing cadets to graduate without sufficient training.<sup>41</sup> The current system of officer evaluation and promotion discourages innovation in crime-fighting that might lead to mistakes but is necessary for real improvement.<sup>42</sup> Sub-officials are assigned to patrols of a four-block area, with very constricted autonomy, and their promotion depends almost entirely on a lack of problems and their academy exam score rather than positive actions or specific skill development.<sup>43</sup> Although the government talks of the need for "community policing," finally, aside from the City of Buenos Aires's community security program, the PFA has no commitment to regular citizen involvement, the basis of any community policing program. The PFA's current "community policing" plan is to put all of its 500 newest academy graduates in plazas – which is not community policing, and is destined to fail.

Politics have also begun unraveling both the government's Security plan and projects for internal police reform. In April 2004, a massive Buenos Aires demonstration of nearly 200,000 people demanded greater security. It was triggered by the kidnapping and killing of a young man, Axel Blumberg, whose rescue was bungled by Buenos Aires provincial police. The protest generated a raft of tough laws in Congress, including increased rates of incarceration and police powers. The protest also put the government in a bind, since it forced it to tailor its Security plan to the new demands. Ongoing protests by unemployed movement and other groups put even greater pressure on the government, particularly after deadly clashes with the police. Internal policy splits over how to respond to violent protests led to the ouster of the Minister of Security, Justice, and Human Rights and his entire team. Since these officials had spearheaded the security plan, the changes has now put the whole project in doubt.

So from early on, police power in Argentina has been an intrinsic part of political relations, institutional structure, and legal interpretations – forming a legacy rooted as much in 19th Century caudillismo as in 20th Century authoritarianism. The fact that real change in the police did not happen until a decade after the 1983 transition shows that changes beyond those of the transition itself were needed to reverse authoritarian legacies. On the one hand, the Buenos Aires restructuring was far more extensive than any changes in Brazil, Chile, or Uruguay. Reforms were also made in certain provinces, such as Mendoza, Córdoba and San Luis, as well as at the national level with the end of the PFA's edicts and by actions by Presidents, such as former President de la Rúa's dismissal of 1,500 military and civilian intelligence agents in February 2000 and current President Néstor Kirchner's dismissal of 107 top PFA officials.<sup>44</sup>

### **Chile**

As the mode of transition literature would suggest, Chile – where the democratic transition was most effectively constrained by the prior authoritarian regime – has experiences the least amount of post-transition reform of all of our cases. The main branch of the police force has not been formally separated from the military, remaining a branch of the armed forces. Nor has there been much change in officer training, oversight over the police, and public input. Military courts continue to have jurisdiction

over cases in which members of the police have been accused of abuses against citizens. Even full presidential control over the head of the police forces has yet to be fully established. But while the effects on policing of Chile's seventeen years of Augusto Pinochet's military rule (1973-1989) appear to be strong, even in this case we find that major aspects of police behavior are rooted in earlier periods rather than exclusively in recent military rule. Hence, it confirms our assertion that authoritarian legacies in policing are primarily legacies of an authoritarian state, and not of a particular regime. Second, the barriers to police reform in Chile seem higher than in the other two cases, both because public support for and mobilization around police reform is relatively low, and because the centralization of the police forces means that a relatively large amount of political capital is needed for reform to be successful.

Chile is a relatively homogenous country with a tradition of early state consolidation and constitutional rule. Its police forces are centralized and, like those of Brazil, divided between an essentially military force (the Carabineros) and civilian investigative police (Investigaciones). Of the four cases discussed here, Chile has the most legalistic political tradition and its police enjoy the most popular support (see Table 3). In addition, while police torture of criminal suspects is common, Chile has not experienced the level of lethal police violence that Argentina and Brazil do, and also has one of the lowest murder rates in the Americas, even though concern about public safety is relatively high (see footnote 6).

Together, centralization, a steady history of institutional expansion, public fear of crime, and a delicate political balance have led to very few reforms since the end of the military regime in 1990. Instead of explicitly challenging the police's authoritarian tendencies, the government has strengthened the Carabineros and other forces. While the provincial structure of Brazil and Argentina led to many more opportunities for police reform in those countries, Chile's centralized government has not allowed similar openings. While post-authoritarian patterns of abuse led to greater moves toward reform in Argentina and Brazil, the lack of such excesses in Chile has dampened the push for change. Finally, while the authoritarian governments in were broadly rejected in Argentina and Uruguay, the high levels of support for Pinochet in Chile have also reduced political drive for changes that challenge state security forces.<sup>45</sup>

The Carabineros have a long history of centralization, growth, professionalization, and more concern about effectiveness than civil rights. Modern policing began after the 1891 civil war, when small agencies run by the national government were established in the capital of Santiago and nearby Valparaiso. Abuses and poor discipline, though, soon led to the army's intervention in these forces. National organization of the police started in 1903 with the creation of the Regimiento de Gendarmes and in the establishment of the Escuela de Carabineros five years later. Military control and unification of diverse law enforcement agencies increased in the 1920s, particularly with the 1924 establishment of the Police School. The contemporary Carabineros were founded in 1927, when, under the first government of General Carlos Ibáñez, three different police organizations, including the Carabineros, were fused into one. These new Carabineros, while formally directed by the Ministry of the Interior, were considered to be military forces and could be put at the disposition of the Ministry of War at the president's discretion. In its first several years, in fact, the Carabineros "constituted the principal repressive instrument of

the nascent national militarism” (Frühling 1997: 83). The Policia de Investigaciones were then created in 1933 and, like their counterparts in Brazil, have engaged in competition and conflict with the Carabineros due to overlapping jurisdictions and blurred lines between their functions and those of the military police.

Though Carabinero personnel were stationed throughout the country, the national government retained tight control over them. Between 1933 and 1963, it added on to the agencies a wide set of specialized forces, such as a youth agency, a hospital, an air patrol, and a forest agency, as well as a well-equipped and armed unit, the Grupo Móvil, designed to be used against demonstrations. In 1960 it enacted the Ley Orgánica de Carabineros, which removed the partial dependency on the Defense Ministry. Attention to the police and its needs continued during the leftist Allende government (1970-1973), which was worried about the level of its political allegiance.

Many of the force’s authoritarian practices, however, developed during the Pinochet years. When it took over in 1973, Pinochet’s junta declared the Carabineros a military agency on equal footing with the three branches of the armed forces, and a year later returned both the Carabineros and Investigaciones to the Defense Ministry. The Carabineros then expanded rapidly, adding on sub-agencies such as the Special Police Operations Group in 1979, an intelligence operation called the Dirección de Comunicaciones de Carabineros (DICOMAR) in 1983, and the Special Police Activities sub-agency in 1985. Military- Carabinero ties strengthened during these years as well, particularly around military intelligence training of Carabinero officials. In the year following the coup, nearly a third of reported rights violations attributed to police officials. By June 1974, internal security authority reverted to the Carabineros and the newly created Dirección de Inteligencia Nacional (DINA, or Directorate of National Intelligence), that soon became responsible for both the most accumulation of intelligence and most state killings. In 1977, DINA was eliminated and replaced by the Central Nacional de Informaciones (CNI), which also focused on leftist groups but was better able to keep its operations secret. The CNI clashed with DICOMAR, and when the kidnapping and killing of three Communist party members by DICOMAR in 1985 led to protests, DICOMAR was dissolved and the Carabineros’ chief resigned. After the Pinochet government was defeated in the 1988 plebiscite, it instituted many changes in the Carabineros before it handed over power to an elected government in 1990. It formalized the force’s dependency on the Defense Ministry, gave an eight-year immobility to its directors, and, for the first time in the country’s history, shifted the power for hiring, transferring, and dismissing top officials from the President to the Carabinero chief.

Upon taking power, the government of Patricio Aylwin initiated a series of basic reforms. It dissolved the CNI, reformed the Law of Security to reinforce democratic principles, and began citizen participation programs. It gave the Carabineros jurisdiction over the Arms Control and other laws, and emphasized its professional nature and focus on “common crime.” Since then, in fact, the democratic regime has added on new agencies, such as the 1993 establishment of a new Public Information and Security agency to handle police intelligence, expanding a police force that had already been greatly enlarged by the Pinochet regime. The governments have also increased the budget and personnel of the Carabineros, more than did their authoritarian predecessor

and, some say, beyond its own infrastructural capacity. As a percentage of the national judiciary, the police's budget has been far higher since 1990 than it was in the authoritarian regime's last five years.

Despite this attention, serious tensions have arisen between the Carabineros and the democratic regime. The governments of both Aylwin and his successor Eduardo Frei failed to transfer the agency back to the Interior Ministry, even under a compromise that would move only some of its functions. In 1992, the Carabineros rejected the evolving National Plan for Citizen Security, developed by a representative committee, primarily on the grounds that it was an incursion into police authority. In 1995, tension arose between Carabinero head Rodolfo Stange and President Frei over Stange's role in the cover-up of the 1985 killing of three communists by Carabineros. Although Stange eventually resigned, the fact that President Frei could not dismiss him, instead only asking for his resignation, highlighted the insulation of the police forces from the elected president, even when the head of those forces was implicated in a crime.<sup>46</sup> In addition, demands for extra security by municipalities have created conflict between local government and the police. Finally, the Carabineros have not fundamentally altered their system of discipline and complaints. Information about citizen complaints is not available to the public, and there are no internal agencies to investigate charges of abuses by officers. Given the Carabineros' role under authoritarianism, this lack of change is unusual. In a 1994 report entitled "Human Dignity as a Principal of Institutional Doctrine," in fact, the Carabineros barely mention the 17 years of dictatorship at all.

In democratic Chile, crime consistently comes in as one of the public's three main concerns, sometimes ahead of health, poverty, education, and salaries,<sup>47</sup> with a vast majority of people believing that crime and violence levels are increasing. In addition, the police enjoy a level of citizen confidence far beyond any recorded in Argentina, Brazil, or Uruguay.<sup>48</sup> These two trends have created political incentives to expand and strengthen the police rather than to reform them or examine their authoritarian legacies. Similarly, while Chile's criminal justice system still violates due process rights, it is speedier and more efficient than most of its regional counterparts. Just over half of all prison inmates are unsentenced – a high level, but among Latin America's lowest. If Chile's police were decentralized, then a shift in public opinion, police effectiveness, or the criminal justice system could open up opportunities for reform at the local or provincial level. Absent the less likely occurrence of such a shift at the national level, the chances for long-term structural change are much dimmer in Chile than in the rest of the region.

### **Uruguay**

Because some reforms were adopted relatively soon after the transition, Uruguay comes closest to fulfilling the predictions of the mode of transition literature. The Uruguayan military had a weaker position in the transition negotiations than did its Chilean and Brazilian counterparts. This weakness, along with public views of the military's rule as repressive and heavy-handed (in terms of torture and incarceration, not in killings) led to demands for reform after its downfall in 1984. But as in Argentina and Brazil, police reforms were not actually part of the transition pact, and were instead the product of rather cumbersome, evolutionary politics. The stable party system, along with the distraction of several plebiscites on military amnesty, led to a delayed and more

cautious approach to reforming security forces and criminal laws. But popular pressure for change kept reform on the agenda, and because of the country's unitary structure, like Chile, that pressure was exerted at the national instead of the regional level. The first reforms were structural alterations and civil rights protections, and, as crime and police abuse increased in the 1990s, changes were made in the criminal justice system.

Policing has always been under the purview of the national executive in Uruguay, and until recently all security forces were usually run by the armed forces. The first known forces were established in 1730 by the Governor of Rio de la Plata, and in 1797 the Governor of Montevideo created an additional force in the territory. In 1827, two years after independence, a decree gave police agencies greater authority to apprehend suspects and the prisons were put under their authority. But other regulations enacted the same year obliged police authorities to turn over "delinquents and information" directly to judges instead of to the government, which was the procedure up until then. In 1829, the first Law of the Organization of the National Police laid out the organization and the command structure of the police, while a decree the same year placed a military colonel as head of the police. The police were officially transferred to the Interior Ministry, and the 1830 Constitution further specified the police's powers.

Internal violence, political instability, and tension with neighboring Argentina and Brazil led to expansion of security forces and to separation of the growing police force from the military. The police expanded further along with the population boom in the latter half of the 1800s. An 1874 law re-organized the police in both the capital and the interior, adding the new position of subcomisario and re-dividing the police districts of Montevideo, the capital city. A new "Police Guide" was published in 1883, and in 1887 the Montevideo police was split into a Municipal Police and a Security Police.

As political and economic uncertainty increased at the turn of the century, the police were strengthened. The government formed the Security Squad, in 1895 (renamed the Republican Guard in 1916) and the "anti-disturbance" Metropolitan Guard in 1924, and in 1926 reorganized many forces in its most comprehensive police reform to date. Under the reformist governments of José Batlle y Ordóñez (1903-7 and 1911-15) and the 1917 Presidential power-sharing agreement, Uruguay did not experience the same levels of violent labor and social protest racking its neighbors at the time. Nevertheless, the economic downturn at the end of the 1920s and the split in the dominant Colorado Party did lead to a coup in March 1933 by a coalition of minority factions of the Colorado and National parties and some industrial and agricultural interests. The de facto regime did not use the military for internal security violent repression; that task fell primarily to the police. A rash of strikes in mid-1933, for example, were met with mass arrests and use of torture on detainees. Many newspapers were shut down, while worker meetings and strikes were prohibited. Democracy was restored with the 1942 elections, but the police had gained many new powers during the previous nine years. By the 1960s, though, failure of both the Colorado and National parties to turn around a deteriorating economy and halt sliding wages led to increased political and social polarization as well as labor movement radicalism. By the end of the decade, popular agitation prompted an increase in exceptional powers by the executive and of the military's domestic role. It also led to the emergence of the Tupamaros, an armed guerilla group started by rural laborers and organizers who responded to police suppression of their protests. The government

reacted with tough law enforcement measures. In 1967, a decree formed the Department of Intelligence and Liaisons, and in 1971 the Organic Police Law unified the police and gave it national jurisdiction. But the police's inability to stop the Tupamaros led to ever harsher approach, including dismissal of lenient police officials and the widespread use of torture. This approach was stepped up after the military assumed control in 1973, such as through a 1974 executive decree creating the Republican Guard Regiment under the command of the Montevideo Police chief.

The transition to democracy in Uruguay began after the military lost a plebiscite in 1980, pushing it into negotiations with the parties that led to democratic elections in 1984. During this phase, though, human rights were not a central point of contention. The human rights movement was relatively small, and not well connected with the parties, which themselves had been compromised by their cooperation with the military during its rule, and had no grassroots domestic or international human rights connections. In particular, the popular mobilizations instigated by rights organizations clashed with the tone and priorities of the military-party talks. The Colorado party "deliberately ignored" human rights and pursued "a two-track policy: on the one hand it publicly supported truth and justice, while on the other it made private arrangements with the military to prevent just these policies" (Brito 1997: 91). As a result, the government of José María Sanguinetti (1985-1990) had no clear rights policy or commitments. But there was enough public pressure to oblige it to address rights issues, leading to developments such as Law 16.011 of 1988, which gave every citizen the right to use an "action of amparo" to challenge the action of state officials that violate any constitutional rights (Freitas, 1993). The 1985 Law for the Reintegration of the Exonerated (*Ley de Reposición de Destituidos*) rehabilitated thousands of public employees and cut back military courts to their pre-1974 jurisdiction. The dominant post-1984 interpretation of Constitutional Article 253, which outlines the military powers, was restrictive; Congress, for example, interpreted "military crimes" as those committed only by military officials, and not civilians, as during the military era.

But most political attention in the first five years of democracy was on the issue of amnesty. Sanguinetti's 1985 National Pacification Project (*Proyecto de Pacificación Nacional*) released all political prisoners and created a National Repatriation Commission to help re-integrate returning exiles. Aside from right-wing protests for excluding police and military officers, the law had wide public support. But dealing with the authoritarian regime's rights abuses proved more divisive and drawn-out. In December 1986, as a series of accusations were to appear in court, Congress approved the government's Amnesty Law (*Ley de Caducidad de la Pretensión Punitiva del Estado*), in which "the State relinquishes the exercise of penal actions with respect to crimes committed until March 1, 1985, by military and police officials whether for political reasons or in fulfillment of their functions and in obeying orders from superiors during the *de facto* period."<sup>49</sup> But government stonewalling of human rights charges in the courts, officials' supported of military claims over them, stalled investigations, and secretive Congressional reports all led to the *Nunca Más* report written by human rights organizations and then to an April 1989 referendum to derogate the 1986 Amnesty Law. In the charged referendum campaign, harsh attacks were made by both sides, the government questioned the morality and patriotism of the repeal's supporters, the



Electoral Court bent the voting rules against the supporters, and military officials issued dire warnings of potential unrest if it passed. These tactics caused the referendum to fail by a narrow margin, but the controversial conduct of the campaign – as well as big support for the measure in Montevideo – led not to a sense of resolution but only of more injustice.

Though immediate changes in personnel and affiliation were made to Uruguay's police during these first years, as in Argentina, its structure remained largely intact. In the Organic Police Law, which was enacted in 1972 and modified in 1980, the country's unitary police hierarchy – headed by the National Police (PN: *Policía Nacional*) – was made part of the executive branch's Interior Ministry. Under the National Police are two networks of law enforcement agencies. One network is made up of nineteen regional offices, *jefaturas*, including the largest one, in Montevideo. The other is comprised of 15 specialized agencies, including the Intelligence Police, the Crime Prevention Police, a Penitentiary Police, and an investigatory Technical Police. The *Inspección Nacional de Policía* was formed in 1992 in order to improve coordination among these functional and regional agencies, as well as their relations with the courts and the Public Ministry. Other agencies, such as the Narco-Trafficking Unit, were added as the police's work expanded.

While such expansion caused some concern, police agencies are not as politicized as they are in the rest of the region and so debate over their role has been less charged. But growing economic strains and debates over the state's role in the 1990s brought renewed attention to policing. In particular, increases in crime as well as of protests against police abuse prompted tougher anti-crime measures as well as increased officer accountability. In 1995, the government enacted the Public Security Law, which obliges officers to exercise a proportional use of force, to use weapons only as a last resort, and charges those who fail to take action against serious crimes with a "crime of omission." The law also includes many anti-crime provisions, such as one that allows the placement of juvenile criminals in adult prisons.

Efforts were also made to improve prosecution of reported police crimes, which had long been channeled into an understaffed internal police investigatory agency that could only recommend disciplinary actions. The judiciary has also had a poor record of prosecutions. In 1999, for example, legal action was brought by the widow of a criminal suspect who died under suspicious circumstances while in police custody the previous year. The first court dismissed the charge against the main suspect, and an appeals court order for a new investigation by was shelved by the prosecutor and a higher judge. Criticism of such actions led to gradual improvements in prosecutions. While only a few convictions occurred between the mid-1980s and the mid-1990s, in 1999 the Interior Ministry reported that the courts had investigated or convicted 179 officers, 117 of whom were charged with abuses while on duty.

This stepped-up legal accountability was part of a broader improvement of the criminal justice system. Because of excessive delays and poor public defense, up to 90 percent of prison inmates were untried in the early 1990s. Through parole and other programs, this percentage was reduced to about 75 percent by the end of the decade – the average for Latin America. As in the rest of the region, this high percentage was another product of the gap between the written law and its daily application. A 1980 statute says

that police confession obtained before the detainee appears before a judge and attorney (without police officers present) is invalid, and that judges must investigate allegations of mistreatment. However, in the 24-hour period in which police may hold detainees incommunicado before presenting them to a judge, practices such as threats and forced confessions continued to be common. While judges officially headed criminal investigation, their overloaded dockets and poor administrative support allowed this power to be gradually taken over by police officials. Cumbersome written procedures, an understaffed Public Defense agency, and little public concern for detainee rights also caused a systematic breakdown of due process that allowed the police to dominate the criminal justice system. Uruguay's lack of a guarantee against self-incrimination further undermined due process rights.

As in other countries, realization of this structural abuse led to criminal justice reform. In 1997, Uruguay reformed its penal process code to ease the investigatory burden of judges to allow for speedier and more impartial trials, to strengthen the investigatory and prosecutorial authority of the Public Ministry, and to clarify the police's investigatory role. The new code also replaced written trial procedures with oral ones, since proceedings based on written documents submitted to judges are notoriously slow throughout Latin America, and are biased in favor of the prosecution, which has better access to evidence and investigatory specialists. Oral trials were first introduced in 1990, but they were made optional and most judges chose to stick with the written system. After the new code was adopted, however, budgetary problems and political disagreements have delayed its implementation until at least 2004. As in the other case studies, politics can derail even cautiously moderate reforms.

Because of economic problems and greater attention to accountability since the mid-1990s, there have also been efforts in Uruguay to streamline and decentralize police administration. The 1995-2000 Sanguinetti government set up an Executive Committee for State Reform to investigate and rationalize expenses and structures throughout the state, while the 1999 Ley Cristal (Transparency Law) criminalized abuses of power by government officials, such as the laundering of funds related to public corruption cases. For the PN, these changes have encouraged greater efficiency. In 2000, for example, the police planned to increase hours dedicated to crime prevention, to decrease recidivism by 1%, to increase by 5% the percentage of resolved cases, and to decrease by 12% the amount of time needed to relay information among law enforcement bodies (CEPRE 2001).

Since 1998, in addition, the Inter-American Development Bank (IDB) has been implementing a comprehensive "Citizen Safety" project involving community crime prevention, improvements in police training and relations with community groups, campaigns against domestic violence, and creation of a new penitentiary center. One of its most successful programs is the *Centro Nacional de Rehabiliación*, which provides real educative and professional rehabilitation for young offenders.<sup>50</sup> As part of this wider effort, in 2000 Uruguay began a gradual police decentralization in order to achieve "an optimization of human and material resources" (*El Día*, March 27-28, 2000), geared primarily toward fortifying the 19 local jefaturas with new equipment and updated technology. An strengthening of police training, with more funds for more course in the

police academy, has also helped to professionalize the police and has greatly increased public confidence in them.<sup>51</sup>

As discussed above, however, decentralization can undermine police accountability in localities with lower levels of accountability. Combined with an unstable economy, such plans may not lead to all of the improvements envisioned.

### **Conclusion**

Many police practices in Argentina, Brazil, Chile, and Uruguay are not authoritarian legacies. Many forms of corruption, brutality, discrimination, and shoddy investigation began after the democratic transition, and can also be found in countries that have not endured authoritarian regimes in the last few decades. Security forces everywhere abuse their authority and reflect the prejudices and limitations of the societies from which they draw their personnel. Even extra-judicial executions and legal impunity of security officials pre-date recent military regimes. Authoritarian regimes, of course, did carry out practices of widespread and often unprecedented terror, and during the negotiations of the democratic transition downplayed the issue of policing.

But such actions were also part of a larger process of state formation. One of the more significant authoritarian legacies for the security forces in our four cases, for example, was the postponement of the separation of internal police institutions from externally-oriented military forces – a separation that occurred earlier and was sustained in much of Western Europe. Latin America's particular path of state formation was influenced by a range of factors, such as weak capitalist and middle classes, a prior tradition of military intervention, a history of internal conflict, and Cold War politics. But a militarized conception of public security was promoted by both civilian and military regimes, with institutional changes reinforced by an ideology that regards security forces as enforcers of the law who should work outside of it in order to preserve order. Constitutions (such as that of Brazil) that give the military the ultimate responsibility to ensure "law and order" are but one meta-legal example of a mentality that has long pervaded everyday interactions between citizens and security force officials. As the militarization of policing and the development of the "mano dura" approach developed, it acquired public support as well as reinforcement by the most recent military regimes. These are therefore legacies of authoritarianism in state-society relations and not of one particular regime. As governments face increasing popular pressure to control crime, it remains to be seen whether reforms will reinforce this essentially authoritarian approach to public order or strike out on a new path towards a more democratic legal order.

In each country examined here, there have been reforms of the security forces to make them more accountable to and less insulated from society. The significance of such reforms have been highest in Argentina, average in Brazil and Uruguay, and lowest in Chile – an outcome that corresponds roughly with democratic transition literature. Chile, where the authoritarian regime most tightly controlled the transition, has had much less reform than Argentina, where the authoritarian regime basically collapsed. But the impact of this variation – at least in the area of policing – is indirect, delayed, and mediated by post-authoritarian politics, especially in the cases where police forces are decentralized. As seen in Argentina and Brazil, the fate of police reform proposals depends primarily on upon public views of crime and the ability of politicians to exploit those views. It is thus

too early to predict the long-term relationship between security forces and the public. Political support backed by durable coalitions will be necessary to continue and deepen the reforms.

The degree of centralization of the state is also a crucial factor in explaining the role of security forces in the transitions. In Chile, police centralization, low public concern over police actions, and a relatively high degree of public confidence in the police facilitated the persistence of a *mano dura* and denied reformers the political capital to affect change. In Uruguay, where the police are also centralized, a weaker authoritarian regime gave way to a civilian government that allowed some reforms. In decentralized Argentina, the impact of the transition on the security forces was also mixed, with reforms advancing in certain provinces more than in others, but in most cases outpacing the political and financial capacity to implement them. In Brazil, where decentralization of the security forces at the state level is most marked, significant police reforms have occurred in São Paulo, but not on the same scale elsewhere. At the same time, the police in many states are more violent (measured by the killings of civilians) than they were under the authoritarian regime. Authoritarian legacies in policing can be overcome in Brazil and the southern cone, but not easily or quickly. To a significant extent, successful reform seems to have to come “from below”, via public support and mobilization for change, in conjunction with opportunistic elected politicians who can exploit such civil society pressure for their own advantage.

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<sup>1</sup> Tanner (2000: 101) observes that most books on democratic transitions have completely ignored the police, without even listing them in the index.

<sup>2</sup>Lecture at a conference on “The Rule of Law and Governance in Latin America,” at the Fletcher School of Law and Diplomacy, Tufts University, April 15, 1999. At the time, Diego-Sayán was the executive director of the Andean Commission of Jurists in Lima, Perú. He later became Peru’s Minister of Justice.

<sup>3</sup> We find that levels of violent crime do not alone correlate with the public’s willingness to support police reform. Chile has the lowest homicide rate of the three countries analyzed here, but the least public mobilization around and support for police reform. However, in a recent survey, eleven percent of Chileans said that crime and lack of safety were major problems facing the country, compared to nine percent in Argentina and six percent in Brazil. Thus, the perception that crime is a problem (rather than reported crime) may turn public opinion against reform and instead to hard-line policing. The poll cited above was printed in “Neighbors...and Friends?” in the *Wall Street Journal-Americas*, 1998. The poll was carried out between January and March 1998 by RAC and Mori International of Princeton, New Jersey. The margin of error is 1 percentage point in Latin America as a whole and an average of 3.5 percentage points in each country. The poll was apparently not conducted in Uruguay.

<sup>4</sup> An important recent work on Latin American decentralization is Willis, Garman, and Haggard 1999, which points out that formally unitary states may, in some areas, be more decentralized *de facto* than Federal ones. However, in the area of policing, the degree of decentralization does correspond roughly with the unitary-federal divide.

<sup>5</sup>Schirmer (1999: 96) asserts that what distinguishes democratic legality from authoritarian forms of it is that in the former, “the socially approved use of force” is “the distinguishing element of law.” But since authoritarian violence is often approved by many segments of the population, it is perhaps more precise to say that in authoritarianism citizen rights are “securitized” (“constantly subject to qualification and denial whenever they are deemed to be in conflict with the security interests of the state”).

<sup>6</sup>For an interesting contrast in the assessment of post-transition security forces, and in particular the question of the degree of military control of domestic policing, see McSherry (1997), Zaverucha (2000), and Norden (1996). The first two authors see the continued power of the military in domestic security arrangements in Argentina and Brazil respectively, and attribute this to a failure by civilian political elites

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to establish effective civilian control over all aspects of the military's activities. Norden comes to a wholly different conclusion about Argentina. The disagreement is interpretive rather than factual, and stems fundamentally, in our view, from different conceptions of 1) the proper baseline from which to measure changes in civil-military relations since the transitions, and 2) the model by which contemporary realities should be judged or, in other words, what kinds of expectations are reasonable in judging post-authoritarian legacies.

<sup>7</sup>Leonardo Morlino's injunction to be clear about legacies, and his suggestion that they be broken down into legacies for and against authoritarianism, at the level of regime institutions, elites, social groups, and masses (in both the short and long run) are very constructive and consistent with the distinctions made here. From Figure 1 in Morlino hand-out at the first meeting of the authoritarian legacies working group, September 15 1997.

<sup>8</sup>For the distinction between state and regime, see Fishman 1990. O'Donnell (1999a: 134-135) emphasized that many of the problems of the quality of new democracies can be attributed to the nature of their states.

<sup>9</sup>Source: Miguel Basanez, Marta Lagos and Tatiana Beltran (1996) *Reporte 1995: Encuesta Latino Barometro, 1996*. Mexico: Agosto; Table 27H. The question was, "How much confidence do you have in the police?" and the percentage is of those responding "a great deal" or "some."

<sup>10</sup>Extent of police reform: qualitative assessment by authors on the basis of information summarized in Table 2.

<sup>11</sup>Argentina suffered from an extended period of civil war in its first half century of independence. Uruguay experienced many armed struggles in the same period, including the Brazilian invasions (1825-1828) and the Guerra Grande (1839-1851). Chile, which unified under a strong state relatively early, had civil wars in 1859 and 1891. Brazil, in contrast, experienced a relatively smooth transition from colony to independent monarchy to republic in the nineteenth century. While occasional secessionist movements were suppressed by the center, major civil war was avoided. This comparison seems to confirm Bayley's argument that a significant cause of police centralization is the violent resistance to central rule in the process of state formation. Bayley 1985: 69.

<sup>12</sup>The PMs were placed back under the command of appointees of elected state governors in 1982.

<sup>13</sup>Interview with Congressman Hélio Bicudo, January 23, 1995.

<sup>14</sup>Between 1959 and 1969, 641 Brazilian police officials received training in the United States or at the International American Police Academy in Panama. A program managed by the United States Agency for International Development (USAID) supplied equipment, management consulting, and training to police in Brazil and assisted in the creation of the Federal Police in 1965. From testimony of Theodore D. Brown, chief of AID public safety program in Brazil, before the Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Relations, U.S. Senate, Tuesday, 4 May 1971, pp. 1-6. See also Huggins 1998.

<sup>15</sup>Constitutional Amendment 7 of April 13, part of the so-called April Package. From Holston and Caldeira 1998: 269. The political circumstances of this measure are described in Costa Couto 1998: 203. The reform had been proposed as a bill by the executive but rejected in a Congressional vote. President Geisel then closed Congress and decreed the measure as a constitutional amendment. The amendment largely stands today - a striking, specific example of an "authoritarian legacy" in the institutional realm.

<sup>16</sup>Survey research indicates strong support in Argentina, Brazil, and Chile for devoting more resources to the police. In a poll taken between December 1998 and January 1999, 84 percent of Argentines, 89 percent of Brazilians, and 80 percent of Chileans agreed that the government should spend more on the police. From "The Free Market Still Scores Highly Among Latin Americans", special supplement to the Wall Street Journal-Americas, 1999. The poll was conducted by Latinobarometer, and the margin of error is one percentage point for the Americas as a whole, and 2.5 to 4.5 percent for individual countries. No data was provided for Uruguay.

<sup>17</sup>From "Polícia de SP Mata 68 civis por mes em 2002" in the *Folha de São Paulo* June 24 2002, p. C1. The 2000 figure is for the state of São Paulo as a whole, whereas the 1991-1996 figures are for greater metropolitan São Paulo. With almost half the population of the state and much higher rates of violence than elsewhere in the state, the latter is the primary component of the former. The article cited above, covering police killings of civilians by the São Paulo police from 1991-2002, gave figures only slightly different from the ones from greater São Paulo city provided by Chevigny and Human Rights Watch.

<sup>18</sup>Interview, Vera Institute, New York City; July 10, 1999

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<sup>19</sup>Official registry of the Argentine Republic, Buenos Aires: 1879, Volume I. Although the town council ordered some orders to the police, most came from the ruling junta. Sanguinetti, Esteban Adolfo, "Evolución Histórica de la Policía," *Mundo Policial*, Año 22, No. 71, Buenos Aires, Policía Federal Argentina, Febrero-Marzo 1992.

<sup>20</sup>PFA official who spoke on condition of anonymity; Author Interview, December 13, 1996.

<sup>21</sup>Centro de Estudios Legales y Sociales (CELS) and Americas Watch, *Police Violence in Argentina*, (Buenos Aires: CELS, December 1991), p. 7; and Rock (1985), p. 363

<sup>22</sup>In a 1994 poll, 60% of respondents favored giving more power to police agencies.

<sup>23</sup> Verbitsky, Horacio, "Seguridad o libertad?" *Página/12*, February 22, 1998, pp.3-4

<sup>24</sup> Officially, the PFA has always been a part of the Interior Ministry. But with the preponderance of military regimes, it had really been directed by the military up until 1983. While Article 2 of the PFA's Organic Law places it in the Interior Ministry, Article 15 subordinates "the headquarters of the Federal Police to a superior official of the Armed Forces of the Nation."

<sup>25</sup>Interviewed on condition of anonymity; December 1996.

<sup>26</sup>ibid.

<sup>27</sup> Internal PFA disciplinary action takes one of four forms: warning, arrest, suspension, or dismissal.

<sup>28</sup>In November 1997, for example, the killing of a police official exposed a ring of top officials involved in robbery and extortion. See "Policía Contra Policía," *Pistas*, Junio de 1998, pp.57-59

<sup>29</sup>When two officials of the PFA were detained in 1998 for torturing a detainee, their excuse that "he lives in a permanent pre-delinquency state" was a common one. Verbitsky, Horacio, "Seguridad o libertad?" *Página/12*, February 22, 1998, p.3

<sup>30</sup>In 1869, the Supreme Court ruled in *Empresa Plaza de Toros c/Provincia de Buenos Aires* that "it is a fact and also a principal of constitutional law, that the 'police' of the provinces is the responsibility of local governments ... to safeguard the "security, health and morality" of their populations.

<sup>31</sup>In 1959, the Supreme Court said in *Russo c/Delle Dome* that is "has accepted a broad notion of 'police power'... Before the pressing necessity to face the damages-risks created by this emergency situation and to reduce or mitigate its effects..." See Herraiz, Hector Eduardo, *Poder de Policía*, Universidad de Buenos Aires, 1968

<sup>32</sup>Roberto Vasquez, Subsecretario de Seguridad de la Provincia de Buenos Aires; author interview, August 19, 1998

<sup>33</sup>CELS and Americas Watch, 1991, p.7

<sup>34</sup>Provincial Deputy Juan Carlos Lema, Chair, Human Rights Commission; author interview, December 1, 1994

<sup>35</sup>Roberto Vasquez, Subsecretario de Seguridad de la Provincia; author interview, August 19, 1998

<sup>36</sup>"La guerra de los botones," *Pistas*, No.18, 13 de Febrero de 1998

<sup>37</sup> Oteiza, Eduardo, "Consecharás tempestades," *Clarín*, August 8, 1999

<sup>38</sup> Rico was on record saying that "it is necessary to kill [delinquents] in the street without any doubt and without having pity." "El carapintada por la boca muere," *Página/12*, March 10, 1998, p.12

<sup>39</sup> "Quieren usar custodios privados para prevenir y reprimir delitos," *Clarín*, July 28, 1999, p.38. As a provincial police official, Rico said that "it is necessary to kill [delinquents] in the street without any doubt and without having pity." "El carapintada por la boca muere," *Página/12*, March 10, 1998, p.12

<sup>40</sup> In addition, in February 1999, the provincial government formulated a plan to allow an increase from 24 to 48 hours the time that the police can hold someone detained for identification, and to ease the ability of the police to carry out inspections without previous court authorization.

<sup>41</sup> Interviews with cadets and sub-officials, PFA, May 2004

<sup>42</sup> Interview with Alejandro Hayet, Jefe Departamento de Investigaciones Judiciales, May 24, 2004.

<sup>43</sup> Interviews with PFA officials, May 2004; Visita a Comisaría 32 and interviews with its commissioner, sub-commissioner, and two street officers (sub-comisionados), May 25, 2004.

<sup>44</sup> From "New Argentine President Orders Purge of Remnants of 'Dirty War,'" in *The New York Times*, 16 February 2000, p. A12.

<sup>45</sup> This remains true even after the initiation of legal proceedings against Augusto Pinochet in early 2001.

<sup>46</sup> Human rights lawyer Hector Salazar was also prosecuted in Chile's military courts merely for making remarks to the media to the effect that if he were a *carabiniero*, he would not obey Stange. Salazar was

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charged with “sedition”, showing how the legal apparatus can be used by defenders of a “mano duro” approach to policing. Interview with Sebastian Brett, Santiago, Chile 6 June 1998, and Hector Salazar, Santiago, Chile on the same date.

<sup>47</sup>In a CEP-Adimark poll, crime was given top priority among 58.6% of respondents, followed by health at 47.7%.

<sup>48</sup>In a 1996 poll conducted by Adimark, the directors of both the *Carabineros* and of the *Investigaciones* received approval rates of over 70%, while 63.9% of respondents said that police officers are helpful.

<sup>49</sup>Diario Oficial, Documentos, 325 (22295) 1981

<sup>50</sup>Visit to Centro Nacional de Rehabilitación, August 28, 2003.

<sup>51</sup>Visit to Police Academy, August 26, 2003; Interview with Inspector General Celso Rodríguez, Director de la Escuela Nacional de Policía, August 25, 2003.

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