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Mediation as a Catalyst for **Judicial** Reform in **Latin America**

SEC-NOTE-1:

** J.D., The Ohio State University Michael E. Moritz College of Law, 2000; M.L.S., University of Pittsburgh, 1995. Currently a staff attorney for the mediation practicum at the Moritz College of Law, Emily Haynes worked as Chief Justice Moyer's law clerk at the Supreme Court of Ohio from 2000 to 2002, where she was also the Reporting Coordinator for the drafting committees of the Uniform Mediation Act.

NAME: Chief Justice Thomas J. Moyer *

BIO:

* J.D., The Ohio State University Michael E. Moritz College of Law, 1964. Thomas J. Moyer has served as Ohio's Chief Justice since 1987. A national advocate for mediation, he received the Better World Award from the Ohio Mediation Association in 1999 and the Whitney North Seymour Medal from the American Arbitration Association in 2000. He co-chaired the American Bar Association drafting committee for the Uniform Mediation Act, model legislation for mediation in state courts. & Emily Stewart Haynes**

SUMMARY:
*... Systemic corruption and inefficiency within many **judicial** systems of **Latin America,** coupled with violence and unlawfulness from these countries, have resulted in increasing public disfranchisement toward those systems and government in general. ... Specifically, in addition to helping parties circumvent corrupt officials and aiding in the reduction of inefficiency in the **judicial** system, mediation programs can address violence and unlawfulness in society. ... After setting up the problems regarding societal violence and the judiciary's inability to channel that energy into constructive and democratic avenues, Part IV examines the prospect of mediation as a tool of **judicial** reform. ... Subpart B provides descriptions of actual mediation programs in place in Argentina, Bolivia, Ecuador, Nicaragua, and Peru. ... For instance, when discussing adopting mediation techniques in post-soviet Russia, a North American mediator stated that learning mediation techniques is "taking the first step toward democracy . . . . When you are resolving disputes, you are governing yourself. ... Also in 1997, the Mediation Center expanded to include a Community Mediation Program in Buenos Aires, with the goal of "harmoniz[ing] neighborly coexistence, improv[ing the] quality of life, and creat[ing] a change in attitudes. ... " The varieties of mediation processes discussed in this paper can directly affect the very serious problems of systemic corruption in the **judicial** system, violence, and an inability to communicate peacefully within society at large. ...*

TEXT:
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*Systemic corruption and inefficiency within many **judicial** systems of **Latin America,** coupled with violence and unlawfulness from these countries, have resulted in increasing public disfranchisement toward those systems and government in general. Vigorous **judicial** reform efforts are essential for addressing these multifaceted problems, and are currently being proposed by academics, governmental officials, nongovernmental organizations (NGOs) and public interest groups both within and without **Latin America.** The thesis of this article is that efficient and effective mediation*

*programs should be an interval part of any reform effort for two reasons. First, mediation helps parties circumvent corrupt officials and can reduce inefficiency in the **judicial** system. Second, mediation programs can foster more participatory societies by educating and changing societal modes of communication and methods of resolving disputes.*

*Part II of the article provides an overview of the violence and unrest in **Latin America,** while Part III discusses the inability of the current **judicial** systems to stay that violence and unrest. Part IV examines the prospect of mediation as a tool of **judicial** reform, analyzing mediation as an alternative mechanisms to traditional litigation and as a means for societal education and encouragement of democratic means of problem-solving.* [*620] *Part IV also provides descriptions of actual mediation programs in place in Argentina, Bolivia, Ecuador, Nicaragua, and Peru. Many of the laws and programs are strikingly similar to American models, yet some are uniquely Latin American, such as Bolivia's sponsorship tradition and the Justice of the Peace programs in Peru. Finally, Part V calls for the establishment of various forms of mediation programs to address the problems of **judicial** corruption, systemic societal violence, and public disenfranchisement with government. In countries with a history of abuse of political power and disincentives for public participation in the resolution of important decisions, mediation offers a process in which individuals take back a measure of control over his or her own destiny.*

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I. Introduction

Systemic corruption and inefficiency in many **judicial** systems of **Latin America** have resulted in widespread public mistrust and unrest. Violence and unlawfulness continue unchecked by any rule of law, while public disenfranchisement towards **judicial** systems and government in general increases daily. **Judicial** reform is one step toward decreasing this violence and unlawfulness, as well as one step toward the reinvention of democratic governance. Democracy in this sense is not the American definition, which "focuses on the formal institutions and elections, [but] emphasize[s] instead the need to incorporate the 'democratization of social and economic conditions.'" n1 It is, instead, a form of government that embraces public participation at all levels.

The thesis of this article is that efficient and effective mediation programs established by the government should be an integral part of any **judicial** reform effort. Specifically, in addition to helping parties circumvent corrupt officials and aiding in the reduction of inefficiency in the **judicial** system, mediation programs can address violence and unlawfulness in society. Essentially, mediation programs can foster a more participatory or democratic society by educating and changing peoples' modes of communication or methods of resolving disputes. Mediation does this not by suppressing conflict, but by encouraging the people involved to look upon conflict as an opportunity to improve not only their particular situation, but interactions within their families, their communities, and society as a whole.

Part II provides an overview of the violence and unrest in **Latin America,** while Part III discusses the inability of the current **judicial** systems to stay that violence and unrest. After setting up the problems regarding societal violence and the judiciary's inability to channel that energy into constructive [*622] and democratic avenues, Part IV examines the prospect of mediation as a tool of **judicial** reform. Subpart A analyzes the theory of mediation as a tool to provide alternative mechanisms to traditional litigation and as a means for societal education and encouragement of democratic means of problem-solving. Subpart B provides descriptions of actual mediation programs in place in Argentina, Bolivia, Ecuador, Nicaragua, and Peru. Finally, Part V concludes by encouraging Latin American governments to establish various forms of mediation programs to address the problems of **judicial** corruption and systemic societal violence.

II. Violence, Unrest and Amnesty Laws

Latin American societies experience profound and disturbing levels of violence from both governmental bodies and private vigilante groups. For example, human rights nongovernmental organizations and the United States State Department have documented "grave abuses, including extrajudicial killings, torture, and arbitrary arrests." n2 Women, children, and indigenous peoples of **Latin America** are particularly at risk, and are "subject to violence, harassment, and discrimination." n3 Prison conditions often include torture, and police abuses in general are rampant throughout the region. n4

As further proof of the disparity between the persecuted and powerful of **Latin America,** the countries of Argentina, Brazil, Chile, Guatemala, Honduras, Peru, El Salvador, and Uruguay have recently passed amnesty statutes for governmental officials responsible for these abuses "in the name of national reconciliation." n5 These statutes compound the problems and cause further estrangement between the persecuted and their governments. n6 In essence, these amnesty statutes perpetuate governmental silence regarding human rights abuses, and may actually serve to

increase public mistrust of government and inhibit the establishment of true participatory democracies. This public mistrust is widespread throughout **Latin America** and is described in Section III. A.

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As can be expected, Latin Americans run the gamut on the issue of "national reconciliation." For instance, Costa Rican ex-President and Nobel Prize winner Oscar Arias Sanchez has said "it is still necessary for the Latin American family to attain reconciliation, but not at the expense of pardoning all of the crimes of those who committed them." n7 In contrast, Uruguayan President Julio Maria Sanguinetti has declared "we've pardoned terrorists, who had some responsibility for the violations of human rights, so it is natural to have amnestied the military as well." n8 However, according to families of the victims of General Pinochet's bloody regime in Chile, "no healthy, solid, stable democracy can build itself upon a foundation of forgetting the most serious crimes against the right to life, integrity and freedom." n9 In other words, while "disclosure of the truth is [only] part of ensuring that justice will be done," it is a necessary and integral requirement of a democratic society. n10

When analyzing the causes of violence in conflict in **Latin America,** scholars generally agree that the extreme poverty and marginalization of much of Latin American society can produce both systemic and sustained violence, as well as "sporadic and spontaneous but extremely violent uprisings." n11 These analysts posit that this violence emerges not only under authoritarian governments, but also under "democratic systems that fail to provide opportunities for social, economic, and political participation." n12

However, poverty and marginalization are not the sole causes of violence. At a micro level, familial relationships and community institutions that once worked to prevent and resolve conflicts are in the process of being [*624] destroyed through modernization. n13 For example, "the destruction of extended family structures, the rural-urban migration, [and] the diaspora of indigenous communities" exacerbate the inability of families and communities to resolve their own problems and conflicts. n14 In the process of urbanization, "the sense of solidarity and mutual responsibility within families, neighborhoods, and communities is lost." n15 Without that sense of solidarity and mutual responsibility, people involved in conflicts are less likely to work at resolving their problems, and more likely to resort to unconstructive forms of dispute resolution. For example, life in villages is much more interdependent than urban life, so that the risks of having a neighbor one barely knows at odds with you are just not as significant as being at odds with a neighbor your own family has known for years.

Moreover, most Latin Americans are more familiar with authoritative regimes in which officials make decisions for them n16 than with participatory forms of government in which citizens may make their wishes known in a legitimate and systematic manner. The vast majority of citizens may not have agreed with those official decisions under dictatorships or military rule, but politically and socially they were powerless to make the decisions themselves. In other words, the decades of authoritarian regimes of the 1970's and 1980's n17 often prevented the establishment and integration of popular decision-making at all levels, from familial and societal to political. When people are prevented from making their own decisions and resolving their own problems, they are similarly prevented from learning and using constructive forms of conflict resolution, and healthy change in society is impossible. n18

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Although participatory governments are emerging, structural change from authoritarianism to more participatory, but not always stable, forms of government does not necessarily translate into systemic social change, especially when the newer forms of government permit corruption to continue. This disenfranchisement of the vast majority of citizens, both current and historical, has often led to violence. For our purposes, violence in **Latin America** can be separated into two broad categories: governmental violence in the form of human rights abuses; and reactionary violence by society in response to those abuses. While certainly not comprehensive, the following sections provide an introduction to these abuses and acts of violence in various countries of **Latin America.**

A. Argentina

Argentina maintained over twenty years of silence with regard to its "dirty war" between 1976 and 1983, in which "more than 10,000 people [were] kidnapped by security forces and disappeared, presumably killed, in addition to the 4,000 confirmed dead." n19 Amnesty laws of 1986 and 1987 set a sixty-day statute of limitations and established an irrefutable presumption that a member of the state services, excluding the highest level commanders, cannot be held independently liable. n20

Demands from an Argentine "federal court, human rights groups, politicians, clergy, and even the repentant torturers and killers" failed to motivate the government to break the silence. n21 Finally, in 1994 General Martin Balza, the head of the Argentine Army, admitted to acting outside of the law. n22 Although several other military commanders spoke of similar "excesses," Balza was denounced by the military and called "a crook" by [*626] Argentina's then-President Carlos Saul Menem. n23 Earlier, President Menem had specifically praised the military's activities, calling on Congress to promote two naval captains who were self-professed torturers and "'not to look back' at the bloody repression of the past, but to get on with healing wounds and unifying the country." n24

By 1996,

confessions by certain perpetrators had finally led the armed forces to admit some responsibility. Hundreds of children, the babies originally of people killed in the years of terror, had been farmed out as war booty to perpetrators of the crimes, and to others [not considered subversive]. The rightful grandparents had no knowledge of where these children were now, and the children themselves had lost their own identities. n25

In a claim brought by the Grandmothers of Plaza de Mayo (Abuelas de Plaza de Mayo), two hundred children were alleged to have been kidnapped, including infants born in a military hospital. n26 Unfortunately, although the kidnapping and disappearance of minors is specifically excluded from the amnesty laws, the irrefutable presumption against liability alluded to earlier nonetheless makes claims such as these extremely difficult to prosecute. n27

As of 2000, ten retired officers of the armed forces had been placed under house arrest in connection with the alleged kidnappings. n28 While the armed forces publicly acquiesced with the prosecution of retired officers in connection with the kidnappings, they expressed concern with officers on active duty providing testimony or information to the courts. Army Chief Lt. General Ricardo Brinzoni proposed instead a "reconciliation panel" involving the army, human rights groups, and the Catholic Church that would [*627] attempt to determine the fate of these children without resort to the courts. n29 This idea drew governmental support, but it was abandoned when human rights organizations rejected it outright. n30

Argentina currently suffers extreme police brutality and violence. Minors, alleged criminals, homosexuals, and transvestites are the targets of this brutality, with eleven men proving they had been tortured and killed while detained by the police in 2000 alone. n31 In addition, allegations of beating of minors by the police reached a total of 159 cases in the first seven months of 2000. n32 Despite these statistics, investigations and prosecutions of the police are sporadic. n33

B. Bolivia

In Bolivia, eighteen military dictatorships from 1965 to 1982 resulted in the assassination, torture, and disappearance of numerous people. n34 Established in 1982 by then-President Hernan Siles Suazo, the National Commission of Inquiry into Disappearances documented 155 cases of disappearances during this period. n35 Various truth commissions also state the regimes' tactics resulted in the killing of 76 persons, the forced exile of more than 6,000, illegal detention and often torture of 14,000, and infliction of serious bodily injury to 204. n36 Recently, conflicts between the "government and coca growers . . . have led to grave abuses by the government against campesino [farm worker] activists." n37 Specifically, detainees were forcibly transported to "remote jungle and highlands areas" and housed in inadequate shelter, thus exposing them to a "high-risk of illness." n38 In addition, human [*628] rights organizations point to the "kidnapping and torture by security forces of Waldo Albarracin, president of the Asamblea Permanente de Derechos Humanos de Bolivia" (Permanent Assembly of Human Rights of Bolivia) as a chilling reminder of the relationship between Bolivian officials and human rights organizations. n39

Finally, in 1995, in response to demonstrations by labor unions, teachers, and campesinos (farm workers), the government called a 90-day state of siege that prohibited all union and collective activity, "forbid[ing] citizens [from] carry[ing] weapons, impose[d] a curfew, and allow[ed] the government to detain people without charges." n40 According to labor union Central Obrera Boliviana executive secretary, Oscar Salas Moya, who had been imprisoned during the siege, the Bolivian government's response to the demonstrations and their mass detention of union members showed that the government "does not know how to live in a democracy, and prefers a dictatorship." n41

C. Brazil

Two hundred deaths attributable to Brazil's military regime (in power from 1964 to 1985) have been reported. n42 Governmental torture was widespread during the regime, and included "near-drowning, electric shocks to sensitive

areas of the body, exposure to extreme heat or cold, and severe beatings during extended periods of interrogation." n43 Kidnapping intended suspects was not uncommon. n44

Although Brazil became a democracy in 1985, n45 governmental violence has continued. In conflicts between twelve million landless campesinos and [*629] landowners between 1986 and 1996, approximately one thousand campesinos were killed by either police or private paramilitary groups hired by landowners. n46 In a particularly grisly police confrontation in 1996, twenty-three campesinos were killed either execution style at point-blank range or beaten to death, while fifty more were injured. n47 An internal police investigation found the police guilty only of "lack of discipline," and placed the responsibility for the massacre on the surviving campesinos. n48 In 2000, "police prevented buses carrying hundreds of [unarmed] landless workers from entering Curitiba, capital of Parana state." n49 The officers "hurled tear gas canisters and fired rubber bullets into the crowd," injuring two hundred and killing one person with a live bullet. n50 The inability to hold police accountable for these atrocities is twofold: human rights violations currently are heard in politically corrupt state courts and police violations are heard in internal tribunals "which rarely punish officers for rights abuses." n51 According to the Catholic Comissao Pastoral da Terra, of these murders, "only 47 cases made it to court and, of those, only five led to a conviction." n52

Highlighting these conflicts are the economic realities of rural Brazil. For example, large farms comprised 55.2 percent of all rural property in 1996, and were owned by 2 percent of all landowners. n53 While these farms "only produce[d] 11 [percent] of the food consumed in the country, they receive[d] 80 [percent] of the rural bank credit." n54

Violence in Brazil is not limited to rural conflicts. For example, urban police in Sao Paulo were estimated to be responsible for the deaths of more [*630] than 1,000 people each year in 1991 and 1992. n55 In the state of S o Paulo alone, police are reported to have killed 525 civilians in 1998, 664 in 1999, and 489 in the first six months of 2000. n56 Analysis of autopsy reports of 222 victims killed by gunfire in 1999 revealed that fifty-one percent had been shot in the back while twenty-three percent had been shot five or more times, suggesting that the killings were not the result of a legitimate use of force during shootouts, as Brazilian authorities routinely reported. n57

In addition to state-sanctioned violence, death squads comprised of soldiers, police, and mercenaries defend the status quo against political insurgents, criminals, and even gangs of street children in Rio de Janeiro. n58 A report by the S o Paulo chapter of the Brazilian Bar Association revealed that "the military police and death squads paid by shantytown shopkeepers killed most of the nearly 1,000 street children slain [in S o Paulo] in 1990." n59 Their actions are "officially tolerated, if not directly encouraged" by the government. n60 Often, these killings are also encouraged and appreciated by the poor, who "feel every bit as besieged by crime, if not more so, as the rich and middle class do." n61

Nor are prisons any safer than the streets. Police massacred 111 prison inmates at the Carandiru prison in 1992. n62 In retaliation for a prison disturbance in 2000, police at the "Americana City Jail in S o Paulo state . . . made more than one hundred detainees strip and then run a gauntlet. Police in two parallel lines beat the semi-naked prisoners with whips, bats, iron bars, bottles, and other objects; afterwards, they poured vinegar and saltwater over the prisoners' open wounds." n63 Finally, human rights groups [*631] and public prosecutors have documented numerous instances of mass beatings in juvenile detention centers throughout Brazil. n64

Protesters have had limited success in bringing past atrocities to light. Responses to calls for justice led Brazil to officially recognize as dead 136 missing political activists. n65 In 1995, President Fernando Henrique Cardoso enacted a law that published the list of dead, and ensured financial compensation for the victims' families. n66 Although the military perpetrators of the deaths are still immune under the amnesty law, "Brazil was convinced that the adoption of a reparation policy with regard to past events was a moral obligation in societies that had triumphed over authoritarianism." n67

D. Chile

The Chilean Amnesty Decree Law of 1978 grants amnesty to all persons who committed criminal offenses related to General Augusto Pinochet's military government between September 1973 and March 1978. n68 The law "applies to both actual perpetrators and accomplices before and after the fact," and "does not discriminate based on the motives for the crime. It applies equally, no matter if the crimes were committed out of personal animosity or in furtherance of state policy." n69 Furthermore, the law "has no provisions for an investigatory body to consider the amnestied acts in a non-criminal context. Nor does it provide a means of civil redress for victims to seek pecuniary compensation, either from the perpetrator or from the state." n70 The United Nations has condemned the Decree, stating that it is incompatible

with "the duty of the State to investigate human rights [*632] violations, to guarantee freedoms from such violations and to ensure that similar violations did not occur." n71

Three years after General Pinochet was defeated in a plebiscite in 1988, the Chilean Government's Commission for Truth and Reconciliation presented its findings regarding his reign of terror from 1973 to 1988. n72 The Commission reported that the Pinochet military government tortured and killed 3,197 Chileans. n73 Unofficial reports suggest a range of numbers from 5,000 n74 to 30,000, n75 and neither of these figures includes thousands of others who survived "torture, arbitrary arrest or exile." n76 The Commission also reported chilling prison conditions, in which "people were tortured with electric shocks, choking, confinement and even animal rape." n77

Although General Pinochet has been directly connected with these atrocities, he has not yet been tried in a court of law. Arrested in 1998 in London, Pinochet is currently involved in a complicated case revolving around the issues of sovereign immunity and Britain's ability to extradite Pinochet to Spain. n78 In August of 2001, the Supreme Court of Chile affirmed a lower court decision to remove Pinochet's immunity. n79 Although [*633] Pinochet's poor health may make it unlikely a trial on the substantive issues of the General's orders to torture and kill will commence, the removal of his immunity has been seen as a landmark victory for human rights and rule of law advocates. n80

Also in 2001, talks known as the Roundtable Dialogue, established by former President Eduardo Frei, resulted in an unprecedented accord between the military, police, human rights attorneys, and representatives of churches and civil society. n81 The accord, enacted into law by Congress, commits the military and police to provide the fullest information possible regarding the whereabouts of the disappeared within six months and includes an acknowledgement by those forces of their responsibility for the atrocities committed during Pinochet's regime. n82

E. Colombia

In Colombia, violence has escalated into perhaps the "dirtiest war" in **Latin America.** In the last forty years of confrontation between "guerrillas, the government, the mob, paramilitaries," and drug dealers, 70,000 people have been killed, while 600,000 have been displaced. n83 According to the Colombian Commission of Jurists, the average number of victims of political violence and deaths rose to fourteen per day in 2000. n84 In addition to these direct casualties, violence of everyday life in Colombia results in the murder of over 30,000 people every year. n85 Pressure tactics by guerrillas include "periodical attacks on town which they destroy public buildings and steal from local banks, the use of kidnapping, extortion of landowners and merchants, ambushes, laying of personnel mines and constant bombing of oil [*634] pipelines and electricity towers." n86 Guerillas and paramilitaries drove as many as 300,000 Colombians, mostly women and children, from their homes in 1998 alone. n87 Dominican Embassy members have been kidnapped, the Palace of Justice has been attacked, and numerous political leaders have been assassinated. n88 According to the International Commission of Jurists, thirty-one judges, lawyers, and prosecutors were the targets of threats, intimidation, or physical attacks in Columbia in 2000, while over one hundred other people in the administration of justice were harassed. n89

Official governmental response through the military has included countless battles and failed peace talks. n90 "Government security forces have [also] committed extrajudicial killings, disappearances, and massive internal displacement in the name of combating paramilitaries and guerillas." n91 For example, in 1999, the army fired on civilians, including elementary school children on a field trip. n92 The "soldiers fired for forty minutes, ignoring the screams of the adult chaperones." n93 Six children died, their deaths seemingly justified by army commander General Jorge Mora's contention that "these are the risks of the war we are engaged in." n94 Although a detailed analysis of these complicated and bloody confrontations is not possible here, it suffices to say that Colombian society lives in constant fear of these groups, and "the violence in general is a far- reaching illness in Colombia." n95

F. Peru

In 1983, the Peruvian government transferred counterinsurgency operations from the police to the military in an effort to subdue guerrilla [*635] groups. n96 In the following nine years until President Alberto Fujimoro assumed office in 1992, human rights organizations documented over 4000 disappearances and 500 extrajudicial executions. n97 In 1995, Peru enacted the First Amnesty Law, covering the years of 1980 to 1995. n98 The law grants amnesty to military, police, or civilian personnel who have committed "common or military crimes, whether within the jurisdiction of civil or military courts." n99 It has only one limitation: that the crime is "derived, originated from, or a consequence of the fight against terrorism." n100 After a trial court found the law inapplicable to crimes committed during the 1991 massacre at Barrios Altos, the Peruvian Congress passed the second amnesty law in 1996. n101 The second law prohibited **judicial** review of the first amnesty law, declaring that "amnesty . . . is a right of grace . . . which can only be

granted exclusively by Congress." n102 In 2001, Congress proposed a third amnesty law to extend amnesty to human rights crimes committed since 1995. n103

Although outlawed in 1998, torture remains widespread throughout Peru, as are physical attacks and death threats against journalists. n104 A commission established by President Fujimoro in 1996 recommended and secured the release of 481 prisoners wrongly charged under antiterrorist laws; however, the commission's mandate expired in 1999 and has not been renewed. n105 Human rights groups note that "more than 50 applications approved for release by the commission await decision by the president, while four or five times that number have been presented" by these groups, with no action taken. n106

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In July of 2001, President Fujimoro "dissolved Congress and assumed dictatorial powers." n107 Fujimoro's campaign for a third consecutive term was marked by physical violence, criminal accusations, death threats against journalists for the opposition, and physical attacks on opposition rallies. n108 During his inauguration, police "fired tear gas cartridges from moving vehicles and roof-tops as well as from positions in the street, sometimes at body height and directly at protesters." n109 Human rights organizations and others suspect government complicity with regard to arson of several public buildings in the capital during the inauguration, after which armed guards attacked "firemen and destroyed firefighting equipment, harassed journalists, and threatened human rights observers, who were prevented from gaining access to the scene." n110 Although no one knows the direction President Fujimoro will take Peru, given the environment of violence and intimidation in which he assumed his dictatorial powers, further progress in human rights and legal reform is not expected.

G. Uruguay

The United Nations Human Rights Committee has expressed serious concern regarding Uruguay's "Ley de Caducicad," or "Law of Expiry." n111 The law imposes a statute of limitations on human rights violations committed by the military and police during the military governments of 1973 to 1985, namely, the disappearances of 134 Uruguayans during that time period. n112 Speaking for the committee, Chairman Christine Chanet of France asserted that the law "sacrificed elements of justice for peace," and that "not every matter could be resolved through financial reparation; neither [*637] justice nor peace should be allowed to suffer." n113 In response to these criticisms, Uruguay noted that the law had been supported in a referendum and upheld by the Supreme Court, and that with the reestablishment of basic freedoms the issue would be addressed at a future time. n114

In 2000, Uruguayan president Dr. Jorge Batlle Ibanez established the Comision para la Paz (Peace Commission) to clarify the fate of all those Uruguayans who "disappeared" between 1973 and 1985. n115 However, the Commission does not have the power to compel the testimony of witnesses, and at present it has gathered only information available from international organizations and the victim's families. n116 In addition, even if evidence surfaces regarding the military perpetrators of those crimes, the Amnesty Law prevents those military perpetrators from being brought to justice. n117

III. Inability of the Current **Judicial** System to Stem Violence Through Accountability

La movida para mis amigos, y la ley para mis enemigos.

(Deals for my friends, the law for my enemies.)

Latin American saying

Corruption at all levels is a hallmark of many **judicial** systems in **Latin America,** and it results in a judiciary largely unable or unwilling to bring to justice perpetrators of the violence described above. Now that many Latin American countries are currently undergoing long and painful transitions from authoritarian regimes to more participatory forms of government, **judicial** reform has become a priority for both national and international [*638] organizations. However, this transition stage dramatically increases opportunities for corrupt behavior and has resulted in **judicial** systems riddled with corruption and hamstrung by inefficient and ineffective bureaucracies. n118 Low compensation and weak monitoring systems have traditionally been causally linked to the corruption, causing some scholars to observe that the corruption is a rational result of weak deterrence, since "corrupt activities occur when the marginal returns from crime exceed the marginal returns from legal occupation by more than the expected value of the penalty." n119 Judges who fight against that corruption not only put their careers in jeopardy, but expose themselves and their families to serious, and often fatal, bodily injury. n120 In Colombia, "drug dealers often give officials the

choice between plata o plomo (money or lead bullet)." n121 In addition, Colombian judges are routinely harassed and threatened whenever they preside over "cases involving members of the armed forces or paramilitary, narcotics or guerilla organizations." n122

One Mexican commentator postulates that this corruption and inefficiency has its origins in "the old Spanish colonial state-with its enduring paternalism, corruption, bureaucracy, and extreme centralization," and can never "be exorcised completely." n123 Moreover, according to Peruvian commentator Javier de Belaunde:

[T]here is a growing sense of **judicial** insecurity, of lack of protection of citizens in the face of violence and abuse . . . structural impunity for those who violate the law . . . an even louder call for respect for the fundamental [*639] rights and public freedoms . . . and justice has remained bound to the structure of colonial society. n124

Without a strong **judicial** system that fairly enforces rational laws, the economic, social, and political framework of democratic government and society will be undermined. n125 Minister Marcos Aburto Ochoa, President of the Supreme Court of Chile, has said that "people can survive without wealth, and even without good health; they may live badly, but they will survive. What they cannot do is live without justice. Justice is part and parcel of the quality of life-and is the most urgent issue facing the world today." n126

The hypothesis of this article is that mediation can address some of the problems of corruption, inefficiency, and ineffectiveness. This section provides a discussion and analysis of how the current corruption, inefficiency, and ineffectiveness of Latin American **judicial** systems was established under authoritative regimes, and is maintained under the current transitional democracies. Specifically, Subpart A discusses the public mistrust of the **judicial** system. Subpart B then analyzes the underlying reasons for this mistrust, i.e. the causes of current corruption of the judiciary and court officials. In addition, B.1 concerns the inherent administrative problems relating to court inefficiency and ineffectiveness, and shows how the **judicial** system as currently administrated reinforces and institutionalizes inefficiency. Subpart B.2 then describes the lack of **judicial** independence, and provides possible political and procedural reasons for this **judicial** subjugation.

A. Public mistrust

Magistrate Judge Wayne Brazil has theorized, "[o]ver time, in a democracy, the people will comply only if they trust and respect the courts as [*640] institutions." n127 Without trust in the judiciary, societies have no reliable methods "to ensure that the other institutions can be held accountable," and will therefore have no reason to trust the so-called "democratic" governments in general. n128 Perception of the judiciary as incorruptible is therefore essential to a well-run democratic system, since if the judiciary "or other groups are perceived as being exempt or above the laws . . . the legitimacy accorded it by the people, will be seriously lacking." n129 Accordingly, increasing the public's trust and respect in the judiciary by rooting out corruption and ineffectiveness must be a fundamental element of any **judicial** reform program. n130

Unfortunately, "a world competitiveness report that rates **judicial** systems of the world not only on the basis of efficiency but also on the opinions of users and public confidence, puts all Latin American systems except Chile's in the bottom 20 percent." n131 In general, Latin Americans view the administration of justice as "slow, tending to favor those in power, and corrupt." n132 Specifically, surveys in Argentina, Brazil, Ecuador, and Peru found that "between 55 percent and 75 percent of the public manifest a very low opinion of the **judicial** sector." n133 In many countries, this makes the judiciary "less trusted than either the national police or intelligence services." n134

For instance, sixty-five percent of Argentineans surveyed believe that the system was "unjust, partial, biased in favor of the rich, corrupt, above the [*641] law, politicized, [and] prone to personal favors." n135 Even in Chile, survey respondents described their **judicial** system as "bad, inefficient, discriminatory, arbitrary and slow." n136 According to a 1989 survey by the Corporation for University Promotion, eighty-three percent of those surveyed "expressed a negative opinion about the justice system in general, frequently referring to its discriminatory character." n137 In Colombia, a public survey ranked its judiciary "forty-fifth out of forty-six countries in a 1998 study of public confidence in the fair administration of justice." n138 Another poll found that eighty-nine percent "thought that judges were susceptible to bribes, and eighty-five percent thought that judges did not apply the law evenhandedly." n139

Surveys have also found that judges are thought to be more concerned with personal gain than justice, and the system in general is not perceived as attracting and keeping high-quality judges and personnel. n140 In Peru, a survey conducted in 1999 found that a full sixty-one percent lacked "confidence in the honesty of judges." n141 One consequence of this mistrust is the under-use of the system to address serious abuses. For instance, Chileans and Ecuadorians complain about corruption and abuses to the media, rather than to the judiciary. n142 And as stated earlier

in Section II, claims of human rights abuses by Brazilian police must currently be heard either in corrupt state courts or internal police tribunals. Of the over one thousand murders of landless campesinos, only forty-seven cases have been brought to court, and only five have sustained convictions. n143 In short, understandable public mistrust in the judiciaries of **Latin America** permeates every aspect of that [*642] **judicial** system, and has disastrous consequences for establishing and maintaining viable democracies.

B. Corruption of the **Judicial** System

In **Latin America,** corruption as an everyday occurrence was established in colonial times under Spanish rule, where "venality, graft, peculation, and personal use of public funds attended the operation of government at all levels." n144 Defining corruption can itself be a difficult task, since acceptable norms of behavior are often diametrically opposed to legal requirements. n145 For example, legally acceptable fees for filing a case in **Latin America** must be supplemented with substantial bribes (rents) to **judicial** officials and personnel. In Argentina, Brazil, Ecuador, and Venezuela, these bribes account for eight to twelve percent of court costs to parties. n146 Bribes have become such an integral and expected part of the **judicial** systems in **Latin America** that the average person, "who cannot receive a public service due to an inability to pay the legal fee, ceases to demand the public good from the official system." n147

Judicial incentives for accepting and demanding these bribes range from "low salaries, opportunities, bad working conditions, greed, tradition, and fear." n148 These factors are compounded by "short, fixed terms," "insecure and inadequate **judicial** pensions," and secret **judicial** appointments. n149 Finally, although Latin American systems prohibit ex parte communication between judges and parties and their counsel, in practice judges routinely meet with counsel to discuss their case. n150 These communications present those judges with "almost unlimited opportunities to exact favors for their services." n151 Fortunately, public opposition to **judicial** corruption has [*643] increased as **Latin America** has begun the difficult transition from authoritarian regimes to true participatory democracies. n152 For example, Argentineans now rank corruption as the second most significant cause of problems in the country. n153 According to Jorge Bacque, the 1999 head of the national bar association and former chief justice of the Supreme Court of Argentina, "[i]t's no longer enough to talk about corruption. If substantial changes aren't made, the **judicial** system will hit bottom." n154

Latin American legal scholars Buscaglia and Dakolias speculate that the presence of the following factors increases the ability of the judiciary and **judicial** personnel to extract bribes from parties and counsel wishing to use the court system.

Greater administrative power in the hands of fewer judges;

Procedural complexity;

The lack of accessible legal databases to aid in the widespread publication of **judicial** opinions;

The lack of ADR processes offered by the government; and

The inability and unwillingness of private parties to act in concert to prevent and abstain from bribery. n155

This subsection will discuss various aspects of this **judicial** corruption. Subsection B.1 will discuss the administrative problems that give rise to and are exacerbated by corruption, while Subsection B.2 will describe how the current selection and retention of the judiciary acts to encourage corrupt behavior and inhibit **judicial** independence. Finally, this subsection will analyze how the lack of stare decisis and unclear jurisdictional boundaries provide opportunities for arbitrary and corrupt decisions.

1. Administrative Problems

Administrative problems in Latin American **judicial** systems surround both court administration, involving budgets and personnel, and case management. Individual courts are invariably administered directly by judges, yet "few are sufficiently trained in accounting and financial [*644] affairs." n156 In many countries these administrative duties account for sixty-five to seventy-five percent of a judge's time, and cause corresponding delays in **judicial** decision-making. n157 Because administrative duties account for much of a judge's rent seeking capacity (i.e. opportunity for bribery), most judges are unwilling to delegate these administrative responsibilities. n158 The result is "gross inefficiency in record management, case-flow and caseload management, and maintaining case statistics and archives." n159

Another wrinkle in this administrative problem is the fact that most Supreme Courts of **Latin America** maintain control over the overall **judicial** administration, often requiring lower courts "to make the simplest requests to a centralized office." n160 The Supreme Courts also centralize **judicial** budgets. n161 Budgets are allocated to specific courts without local input, and are often routinely and spectacularly deficient in terms of actual caseloads. n162 For example, court staffs in Ecuador are assigned according to regulation and "without reference to caseloads[,]" so that "in some courts there is a shortage of personnel and others there is a surplus." n163 Overall however, **judicial** budgets are inadequate and "allow for only minimal standards of justice." n164

One byproduct of systemic corruption manifests itself in endless delays. The time to disposition in **Latin America** has reached "unprecedented proportions," n165 with "[civil] cases commonly tak[ing] up to 12 years to be resolved in court." n166 A lack of standards relating to time to disposition exacerbates the situation, and increases the opportunities for rent seeking. n167 [*645] According to a **judicial** specialist for the World Bank, delays permeate every facet of the legal system in **Latin America,** and can exponentially increase litigation costs.

In a South American country that I visited, each time users of the justice system inquired as to the status of their case, they had to wait patiently in a line for two hours, only to reach the window of the office and rudely be told that the person they were looking for was not available. n168

Current case management in **Latin America** is marked by **judicial** passivity. Over ninety percent of Chilean judges agreed that judges fail to actively move cases through the system, and rely on counsel and litigants to "determine the speed of litigation." n169 Pasara postulates that adherence to "ritualistic formalism, bureaucratic behavior, and lack of legal interpretation all contribute" to this passivity, and results in the classic example of the "persons held in pretrial detention who have no attorney: they will remain in detention, and may never even get a verdict. Someone else has to 'move the case,' for the judge will not." n170 This means that plaintiffs are often at the mercy of wealthy defendants who wish to delay as long as possible.

Criminal cases fare little better in **Latin America.** In Colombia, threats to judges, witnesses, and prosecutors have resulted in the successful prosecution of only three to seven percent of all crimes committed nationally. n171

One factor that encourages these types of delays and hampers efficient administration is the lack of information technology within the **judicial** systems. Computerization of routine tasks would not only make "the processing of cases more efficient," but would significantly decrease the opportunities for court personnel and judges to "request bribes for moving cases along." n172 For example, a recent study of Chilean and Ecuadorian courts found that "increasing the use of computer monitoring [*646] systems . . . cause[s] a decrease in the reports of corrupt practices." n173 Thus, in addition to providing for easier outside review of **judicial** decisions in individual cases, the outside review made possible by computer monitoring and access to decisions would help make legal decisions more consistent within jurisdictions.

In contrast to the significance between information technology and efficiency, a factor that does not apparently have a strong correlation to delay is the number of judges in a jurisdiction. Studies have shown that "the correlation between the number of judges per million inhabitants and efficiency is low." n174 This makes sense when one considers that the current judiciary has a built-in incentive to maintain current delays in order to capitalize on maximum "rents." In other words, **judicial** reform solely based on increasing the number of judges will not translate into decreased time to disposition due to those built-in incentives. In contrast, an increase in judges willing to decide cases expeditiously without requiring parties to resort to bribery would translate into decreased time to disposition.

In sum, administrative deficiencies play a very large role in sustaining the current inefficiency and ineffectiveness of Latin American **judicial** systems. While in part a result of lack of financial resources, the most significant problems arise from centralized management, lack of local control and input, **judicial** passivity regarding case management, and in general, the poor administrative skills of the judiciary. Any substantial reform effort must be cognizant of the inherent opposition the current judiciary has towards that reform. This is because the current judiciary has an enormous vested interest in maintaining the status quo: decreased acceptance of rent seeking activities will substantially decrease both their incomes and influence as judges. In other words, administrative reform cannot be carried out by the current "winners" of the **judicial** systems, because these players have no real incentives to change the system. For these reasons, reform efforts must "ensure that short-term benefits compensate for the loss of illicit rents previously received by court officers responsible for implementing changes." n175 Only with these short-term benefits in place may a reform effort hope to change the fundamental problems in the administration of **judicial** systems. n176

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2. **Judicial** Independence

Judicial independence is said to be the cornerstone of any successful reform. n177 This independence encompasses freedom from interference from other governmental bodies, from other judges within the system, and from acceding to the wishes of political parties. n178 According to Ely, the judiciary itself is responsible for establishing and maintaining this independence, because "one of the surest ways to acquire power is to assert it." n179 Without this independence, studies demonstrate that legal uncertainty increases in systems in which jurisprudence is often based more on political interference than legal reasoning. n180 However, **judicial** independence in emerging political systems may or may not be appropriate if the goal is **judicial** reform. For example, an independent judiciary could be a benefit for **judicial** reform or an impediment if that judiciary wishes to preserve rent seeking activities for its own benefit. n181 The following is a discussion of the lack of **judicial** independence in **Latin America,** and consequences this has for any meaningful **judicial** reform.

Latin American judiciaries have traditionally been subservient to the legislative and executive branches, and have no practical power to "clearly define laws promulgated by the legislatures." n182 This subservience dates back to colonial times when the viceroy, or representative of the king, sat on the superior **judicial** body and had substantial power to interpret the law. n183 This tradition currently manifests itself in legislative and executive interventions in specific cases that only serve to "destroy public confidence and trust in the **judicial** system." n184

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Unfortunately, many Latin American judiciaries are not free from pressure from higher courts either. For example, judges from the Chilean Supreme Court and Courts of Appeals "call lower court judges and weigh in with their opinion on certain cases." n185 Also in Chile, the Supreme Court annually ranks all judges, giving the court a great deal of power over **judicial** careers. n186 Some of these rankings "have been interpreted as punishment of lower court judges who have gone too far in contesting the Supreme Court's holdings on human rights issues." n187 Finally, as shown in the discussion of the Colombian judiciary's choice between plata o plomo in Section III, political parties such as drug dealers and paramilitaries have an inordinate amount of influence over **judicial** decisions.

Yet there are other factors that impinge upon **judicial** independence in **Latin America.** For example, the lack of stare decisis and unclear jurisdictional boundaries in terms of geography and subject matter have translated into an inability of Latin judiciaries to "make objective and well-reasoned decisions in order to hold the other two branches of government accountable." n188 Finally, low **judicial** salaries, inadequate or insecure pensions, and ineffective disciplinary and appointment systems all contribute to encourage and permit judges to not only accept and demand bribes but to tailor their **judicial** opinions for financial gain. n189

VI. Mediation as a Catalyst for **Judicial** Reform

Given the above described violence and demonstrated inability of Latin American judiciaries to control and channel the motivations behind that violence into productive opportunities for change, the remainder of this article will analyze the possibilities of mediation as a catalyst not only for **judicial** reform, but also for societal change. Subpart A will discuss how mediation can alleviate current systemic problems in Latin American legal systems. Subpart B then describes mediation programs already in place throughout **Latin America** highlighting procedural distinctions and their causes.

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A. Theory of Mediation

According to Mares, Latin American fears of violence center on "the survival of democratic systems." n190 The Central American Treaty for Democratic Peace of 1995 identified four principles for ensuring peaceful societies and maintaining these democratic systems:

The rule of law;

The strengthening and perfecting of democratic institutions;

The subordination of the armed forces to constitutionally mandated civilian authorities; and

The maintenance of an active, flexible, and mutually collaborative dialogue. n191

Aside from the reference to armed forces, the remaining principles relate directly to the themes of this article. That is, **judicial** reform encompasses the rule of law and the reinforcement of democratic institutions, which, we will show, can be strengthened and facilitated through mediation. Subsection A.1 explores mediation as an alternative to a corrupt **judicial** system, paying particular concern to the role of mediation in current and future **judicial** reforms. Yet mediation goes beyond structural reform of the **judicial** system. Societal changes are also possible through the judicious use of mediation as a tool to establish and maintain collaborative dialogue. Accordingly, Subsection A.2 fleshes out this idea of mediation as a mechanism for collaborative dialogue to establish and maintain a culture of non- violent and constructive social interaction in **Latin America.** Finally, by allowing for an official alternative to the current **judicial** system, mediation can strengthen public trust in that system and in government in general. Subsection A.3 analyzes mediation from this perspective, and demonstrates how effective court mediation programs can increase public confidence in the system.

1. Mediation as an Alternative to a Corrupt **Judicial** System

Acknowledging that the situation in **Latin America** regarding **judicial** inadequacies is serious, many countries are attempting to implement reforms that will revitalize and legitimatize the legal system. For example, many countries have established **judicial** councils to nominate judges, establish and [*650] enforce professional standards, and determine budgetary needs. n192 Others have passed procedural reforms to help hold judges publicly accountable for their decisions. n193 However, as discussed earlier, these reforms are at odds with **judicial** rent seeking activities, and as such cannot be expected to have immediate success without a drastic overhaul of the current judiciary. For example, although legal education regarding public rights is essential for improving access to the courts, many court officials "consider a public that is aware of its legal rights a threat to their rent seeking activities." n194 Therefore, meaningful reform of legal aid services cannot be accomplished while judges continue to demand these destructive bribes.

Although mediation itself will not solve the systemic deficiencies in Latin American **judicial** systems, it may be "the most immediately viable response[]" to the corruption, inefficiency, and damage to most Latin courts. n195 Essentially, viable mediation programs allow the public to bypass "the corruption and delays of the formal justice system, thus reducing **judicial** caseloads and opportunities for rent seeking." n196 In Chile and Ecuador, a study done on corruption and its causes in the **judicial** system demonstrated that the introduction of private sector mediation and arbitration in those countries reduced **judicial** corruption by a substantial amount. n197

Because most of **Latin America** is precluded from using the formal justice system in that they cannot afford to pay the substantial bribes to **judicial** officials, mediation could also substantially increase access to justice. n198 This would have the greatest impact on the poor, since they would have recourse to an official dispute resolution process for perhaps the first time. In addition, emerging businesses often forego bringing cases to court because their financial constraints preclude them from offering the mandatory bribes. Because of this inability to have recourse to the **judicial** system, many "are deterred from entering a market." n199 Mediation would allow these businesses to have some forum for relief.

Gender also plays a role in lack of access in **Latin America.** Because women are much more likely to be illiterate, "they have a much lower level [*651] of knowledge about their legal rights and the **judicial** system." n200 For example, Peruvian women constitute seventy-three percent of the illiterate population. n201 And in Chile, a survey "found that 30.5 % of the women, as compared to 21.7 % of the men, did not know their legal rights." n202 Coupled with the fact that domestic cases constitute over one-third of **judicial** caseloads throughout **Latin America** and the majority of clients of legal aid offices are women, n203 this lack of legal knowledge results in severe disadvantages for Latin American women. In addition, at least one country has until recently "prevented spouses from bringing legal actions in courts." n204 Because of these disadvantages, many Latin American governments are establishing mediation programs for family cases. According to some scholars, however, "[a]lthough ADR may not be the ideal mechanism given the imbalance of power, it may be the only justice available to women." n205

Unfortunately, although mediation may permit parties to circumvent corrupt **judicial** systems, the judiciary may initially feel quite threatened by the existence of court mediation programs. For example, they may feel that these programs threaten their power and influence over the system, and may even be concerned that the program may divert possible opportunities for rent seeking. Nonetheless, some scholars posit that these judges may eventually "come to rely on [mediation administrators] for their skills as professional managers." n206 Lightened caseloads may also help alter these opinions. Finally, court mediation and the existence of mediation administrators may force judges to concentrate more on their important decision- making powers, and less on their more lucrative administrative duties. n207 In other words, court mediation programs may encourage the judiciary to delegate administrative responsibilities.

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2. Mediation as a Mechanism for Collaborative Dialogue

Shonholtz has defined democracy's underlying mission as "the creation of acceptable, fair, and neutral venues and forums for the peaceful expression of conflict." n208 In a well functioning democracy, conflict between groups stimulates creative thought and encourages parties to find responsive and thoughtful resolutions. According to de Tocqueville, a properly functioning democratic society fosters the "delimitation of government prerogatives and [creates] a context for constraining arbitrary or intrusive state power." n209 Conflict resolution is the natural vehicle for this properly functioning society, since the process of identifying and addressing conflict enables governments to understand the needs and desires of their citizens. Such understanding of the nuances to a conflict makes possible targeted governmental action to bring about needed social change. In a sense, "social change produces conflicts and conflicts bring about social change." n210

However, conflict can become destructive when governments fail to respond to changing needs of society, and when social and political "structures perpetrate social injustices against different sectors of the society." n211 It is in societies in which conflict has traditionally been defined as violent or bad that conflict becomes something to be feared and avoided at all costs. In the context of societies currently transforming themselves from authoritarianism to more participatory forms of governance, "the zones of conflict" that societies encounter may actually increase. n212 This is because in authoritarian societies conflict is stifled, and decisions are made by officials without systematic discussion and input from below. In contrast, in democratic societies, people are the instigators of change and may express their disagreement in nonviolent and official ways through dialogue, voting, and peaceful protest. For these reasons, societies in transition to democracies [*653] will actually experience greater opportunities for expressing their disagreement than before. This both increases the need for nonviolent and effective forums, and increases the risk of societal disintegration if these forums are not available.

In **Latin America,** the history of violent confrontation and authoritarianism has resulted in a scarcity of legitimate and non-threatening forums for the peaceful resolution of societal and individual conflicts. Although not all countries have been exposed to civil or external war, governmental corruption and private vigilantism throughout the region have resulted in an unofficial "war" between governments and their citizens. That is, deeply felt public mistrust of government and the inability of the judiciary to stem both governmental and private violence towards marginalized populations has brought about an environment of such hostility and danger that manifestations of further violence are increasingly common.

According to a Nicaragua group operating under the auspices of the International Commission of Support and Verification and the Organization of American States, transforming these societies into viable and peaceful environments requires a comprehensive, four-part approach to conflict resolution. n213 The group based these recommendations on the needs of post-war Latin American societies with established international peace missions. The four-part approach hinges on participation by marginalized groups for its success. First, "mediation, conflict resolution, human rights protection, and violence-deterrence" are needed to support and sustain the peace process, in part by strengthening state institutions and civil organizations. n214 Second, civil organizations and popular constituencies must participate individually and collectively in any conflict resolution process. n215 In other words, to be effective and sustainable, conflict resolution processes must be participatory at all levels of society, and not used exclusively by state officials.

Thirdly, "the local peasant communities [must] become participants in the peace process, not just objects." n216 However, in order for these communities to become true participants, attention must be paid to their organizational development. That is, local communities must be allowed and [*654] encouraged to develop and strengthen their local governments in order for them to be effective participants. Without their effective participation, conflict resolution processes will not be able to "respond to the specific needs of the people in the most efficient, practical, and realistic manner." n217 Finally, peace should stimulate the growth of these peasant groups, and afford them an atmosphere conducive to the development of self-representation. n218

Thus, by utilizing mediation in this way, mediation can act as a unifying process by bringing disparate groups together to work collectively to establish peace in war torn societies. However, mediation is also integral to establishing and sustaining democratic forms of governments, regardless of whether that society is post-war or in a relatively peaceful transition to democracy. For instance, when discussing adopting mediation techniques in post-soviet Russia, a North American mediator stated that learning mediation techniques is "taking the first step toward democracy . . . . When you are resolving disputes, you are governing yourself." n219 Because democracy is founded on the fundamental

idea of political negotiation through compromise and problem solving, n220 it can be seen "as the development of the legitimacy of laws and the reasonableness of individuals" to understand that "several truths can exist simultaneously." n221

Mediation is ideally suited to helping parties understand these truths, since an effective mediation forces people to listen to one another and allows them to hear those thoughts and feelings through the neutral language of the mediator. Essentially, mediation enables people to develop constructive methods of communication, n222 so that even if no resolution is reached at the session, parties will hopefully internalize these constructive skills so that [*655] future conflicts may be peacefully resolved. At the very least, participants will have heard the views and concerns of the other side, and will understand those concerns to an extent not realized previously.

In addition to the more familiar, individual-focused court mediation programs, an unofficial multiparty mediation process called interactive conflict resolution has been developed. n223 The model uses a panel of scholars and practitioners to act as mediators and facilitators and provide substantive knowledge for the parties. This substantive knowledge encompasses dispute resolution theory, but is essentially based on the panelists' ability to "explain the origin and escalation of the conflict [in question] through comparison with other conflicts." n224 Using academicians rather than the government officials circumvents the long-standing public mistrust of government, and provides participants with panelists they can hopefully respect. This is because Latin American academia has traditionally been an arena in which free expression and thought is encouraged, and where those at odds with the government have been accepted.

Similar to the four-part Nicaraguan approach, interactive conflict resolution relies on expanding the number of participants. For example, rather than negotiation only between official representatives of groups in a conflict, interactive conflict resolution encourages participation by influential representatives such as "scholars, politicians, army generals, ex-presidents, journalist[s], popular leaders and businessmen." n225 The goal of interactive conflict resolution is to utilize this goodwill towards academics, and help parties learn to communicate effectively with each other "with the hope that this communication will produce deeper understanding, mutual recognition and respect and possible hypothetical solutions to the conflict." n226 Essentially, like mediation, interactive conflict resolution aims to change the learned behaviors of "violence and prejudicial thinking" to "peaceful and cooperative thinking." n227

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3. Mediation as a Spur to Increase Public Confidence in the System

As described in Section III.A, public mistrust in the judiciary and in government permeates every aspect of Latin American society. Any meaningful **judicial** reform must make acquiring and sustaining the public's trust a fundamental goal, or those reforms will eventually, and perhaps even spectacularly, fail. Implementation of effective court mediation programs may help the state attain this goal. According to Judge Wayne Brazil, a high-quality court mediation program "increases the public's confidence in and respect for our system of justice and, by giving the parties a service they really value, increases their sense of gratitude toward the government and their sense of connection to our society." n228 This gratitude, in turn, helps the public accept "the legitimacy of having democratically developed norms govern relations within our country." n229

Unofficial mediation can also encourage sustained **judicial** reform, but through indirect channels. According to Judge Helen Highton of the National Civil Court of Appeals of Argentina, "there is [in Argentina] no culture nor practice in favor of settlement, consensus and conciliation, so creating a frame in which to discourage litigation as the only way to resolve disputes, is relevant." n230 Essentially, these mediations can work to encourage a more democratic and participatory society by teaching parties how to communicate with each other effectively. These societal changes can build a reservoir of citizens able to interact effectively and nonviolently. In turn, the citizens will be more able to effectively negotiate their conflicts, and correspondingly more able to understand and assert their legal rights to a fair and effective **judicial** system. This undercurrent of citizens well versed in conflict resolution and legally savvy regarding their political and legal rights will put pressure on both the **judicial** system and government, in general, to change to suit their now identified needs. In short, effective mediation programs can encourage democratic modes of communication, and enable parties to begin [*657] to understand how to function efficiently in a democratic society. Essentially, mediation programs "prioritize consensus." n231

B. Description of Actual Mediation Programs in Place

In 1993, the Inter-American Bar Association resolved to recommend to their national bar associations that mediation in family law disputes should be promoted and encouraged. n232 In addition, they proposed continuing legal education for judges and lawyers regarding family mediation. n233 The Association noted that Argentina and Colombia

had already established such programs, and stated that these processes were a "fundamental and irreplaceable pillar" of any **judicial** system. n234 This section describes current and past mediation programs in **Latin America.** Unfortunately, information about these programs is difficult to obtain, and in many cases only brief references are available. For example, in 1995 Dakolias wrote that Chile had a "70 percent success rate for mediation proceedings," yet specific information about these proceedings is unavailable. n235 Similarly, Dakolias writes that the El Salvadorian Procuraduria settled a majority of mediated cases regarding child support and alimony in less than two months. n236 However, no further information is available. Finally, many countries already possess the legal framework for mediation in their Codes of Civil Procedure, but have not yet established any mediation programs. n237

Accordingly, this section concentrates on describing and analyzing mediation programs for which substantial information exists. Specifically, B.1 describes Capital University's efforts in Nicaragua, in which the University co-sponsored experimental mediation programs and trained local mediators with country-specific training materials. Similarly B.2 discusses Argentina's established and thriving court and community programs, while B.3 involves USAID-sponsored court mediation in Ecuador, and B.4 [*658] describes Colombia's National Conciliation Program, a process very similar to mediation.

In addition to pure mediation as we know it in North America, many Latin American countries have both informal and formal Justice of the Peace systems. These systems are in many aspects very similar to mediation. Section B.5 analyzes one of these systems in Peru, concluding that Justice of the Peace systems are an attractive adaptation of mediation that resonate with traditional practices in many Latin American countries. Finally, B.6 discusses Bolivia's seven hundred year-old tradition of "sponsorship," a form of interfamilial mediation.

1. Nicaragua

In 1993, Nicaraguan mediators mediated over four hundred disputes in a variety of settings, including "divorce and child custody, landlord/tenant, labor grievances, petty crimes and nuisance problems." n238 The mediators were trained by the Center for Dispute Resolution at the Capital University Law and Graduate Center, and included "judges, attorneys, police officers, labor department officials, social workers, psychologists, teachers, pastors and priests." n239 The training was the result of several trips by Capital personnel to meet with governmental officials, pastors and priests, police, courts and local bar, the Legal Office for Women, and a law school dean. n240 Representatives from these groups worked jointly with Capital personnel to adapt "mediation training programs and materials to the Nicaraguan culture." n241 Although eventually over sixty mediators were trained by Capital personnel, initial offerings were limited to representatives from the above groups. In 1994, Capital co-sponsored a permanent mediation office with the law school at the National University of Nicaragua in Leon. n242 Employing a full-time director, the office "offers mediation trainings," and supervises over forty cases per month. n243

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2. Argentina

In Argentina, public opinion rated corruption as the second most pressing problem facing citizens in 1999. n244 When implementing court annexed mediation in Argentina, a primary motivation was the perceived corruption "and a desire to put into place a new system for the resolution of conflict." n245 In 1991, a newly formed Mediation Commission from the Ministry of Justice was given the go-ahead to draw up a National Mediation Plan. This plan included "the creation of a mediator corps, a school for mediators, and a pilot scheme in civil law administration." n246 North American mediators were invited to Argentina to give mediation trainings, so that by 1992 Argentina had certified sixty mediators. n247 Of the sixty mediators, ten were chosen in 1994 to establish a Mediation Center authorized in the civil law pilot scheme. n248 This Center operates under ethical standards similar to those in place in North American mediation programs, and accepts cases referred either by the parties or by judges. n249 Soon after the establishment of the Center, the Supreme Court of Argentina joined with the Ministry of Justice to implement mediation, and the project expanded to ten courts. n250 Following the lead of many North American programs, the Center gave mediation training and education to those courts' "[j]udges, court secretaries, and Juvenile Court advisers." n251

In addition to these established court programs, the Center provides training courses for interior provinces, and "offers mediation internships in urban district centers." n252 In 1994, the Center had a sixty-five percent settlement rate overall, with a seventy percent settlement rate in family and patrimonial cases. n253 This is in spite of the fact that judges refer "the most difficult cases or those that have already been in the **judicial** system for five to eight years to the mediation center." n254

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In 1995, Argentina statutorily established mandatory mediation. n255 The statute requires that parties to mediation be represented by counsel, and keeps mediation proceedings confidential. n256 For cases referred from a court, the mediator must have a law degree and be on a national register maintained by the Ministry of Justice. n257 Specifically, cases referred from a judge must be mediated by lawyers with four years of seniority and certification as a mediator. n258 Co-mediators in these cases must have a psychology or social work degree plus four years of experience. n259 Finally, if parties settle, they are responsible for the mediator's fees, but if they do not settle, the "mediator's fee is paid out a special state fund." n260 Because corruption in the **judicial** systems results in almost mandatory bribing of officials, although parties have a slight monetary reward for failure to settle, (i.e. mediator fees paid by the state) they are still better off financially if they settle and avoid endless delays and expenses of litigation.

In 1997, the legislature decided to give further impetus to parties to use mediation. A statute was enacted for federal and local courts in Buenos Aires City that allowed parties who paid settlements arising out of mediation or negotiation to forego paying the mandatory tax of three percent required if the party had paid after **judicial** resolution. n261 For example, if a court ordered Party B to pay Party A the equivalent of $ 10,000 dollars as damages in a medical malpractice suit brought by Party A, Party A would be statutorily required to pay a three percent tax on the amount. Law 24,573 allows parties who have secured settlements in mediation to avoid paying this tax. However, if the court is required to enforce the settlement, the tax cannot be avoided. n262 In addition, the statute allows parties to negotiate without regard [*661] to legal precedent. n263 Although insurance companies were dismayed, because of the possibility of avoiding the tax "[c]laims that seldom [are] brought to court because of the small amount" were, in 1997, "flooding mediation rooms." n264

Also in 1997, the Mediation Center expanded to include a Community Mediation Program in Buenos Aires, with the goal of "harmoniz[ing] neighborly coexistence, improv[ing the] quality of life, and creat[ing] a change in attitudes." n265 The Program is composed of sixteen centers and has thirty-two mediators hired by the city. n266 As of 1999, the Program had handled nearly 1500 mediation requests, with 969 cases mediated and more than 600 resolved. n267 The Program expanded into multiparty mediation, "in which groups of residents discuss solutions for neighborhood problems with institutions or businesses." n268 For example, one successful mediation involved garbage "accumulating at a site adjacent to the railroad track" in a residential neighborhood. n269 The garbage collection company and a railroad service had denied full responsibility, but in a mediated settlement involving area residents and the companies, the garbage collection company and the railroad agreed to jointly clean and collect the waste. n270 Finally, in addition to these efforts, mediators at the Program have begun teaching conflict resolution in primary and secondary schools. Their goal is to "reduce the level of violence, and strengthen democratic and participatory values." n271

3. Ecuador

In 1999, USAID identified United State's national interests in Ecuador as "the preservation of political stability and peace in the region," and "the strengthening of democratic institutions in order to reduce threats to the [*662] democratic process." n272 Citing endemic corruption and a corresponding growing demand for "a more responsive and accountable government" from civil society organizations in Ecuador, USAID and the government of Ecuador launched an initiative in 1999 to provide court mediation to "fill the void created by ineffective government institutions." n273 Caseload concerns are also cited as instrumental in implementing these programs. n274 In addition, private mediation for business concerns has been established, as well as "less formal, community-based approaches for conflict resolution with indigenous communities and other organizations working with the poor." n275

The World Bank also supports initiatives to provide legal services and mediation to underserved populations. n276 Women's legal service centers in Quito and Guayaquil offer legal aid, including mediation representation, as well as medical and psychological services. n277 Center personnel include staff lawyers, psychologists, and medical assistants. Although data for mediation sessions is uncertain, the Quito program provided legal services to over 641 women in 2000, resulting in 100 new cases. n278

In addition, recently established women's centers in Duale and Santa Elena provide services to an average of thirty women per day in a population of 80,000 and 100,000 respectively. n279 Each center staffs two lawyers, two psychologists, and two social workers, and fourteen mediators are shared between the centers. n280 In addition to providing legal representation, the centers provide shelter, educate women on the laws, and draft and advocate for domestic violence statutes. n281 Training and prevention of domestic violence and violence in general is also offered to clients, families, religious groups, and students. n282

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4. Colombia's Conciliation Program

In Colombia, efforts to introduce mediation have resulted in Article 116 of the 1991 Colombian Constitution, which vests citizens with the power of administering justice on a temporary basis. n283 Conciliation, as used in Colombia, is mediation as it is understood here in the United States. Colombia's system is three- tiered. The first tier consists of the administrative agencies of the Colombian Family Welfare Institute, which is authorized to conciliate family issues. n284 The second tier is court conciliation by judges, before or during trial, while the third tier is comprised of private conciliation centers. n285 As of 1993, Colombia had ninety-two private conciliation centers authorized by the Ministry of Justice. n286 Each center is required to have one hundred members and be functional for two years. n287 Four centers are located in universities and two in bar associations. n288

Training for mediators is mandatory, and it is offered by the Ministry of Justice. n289 In addition to general mediation and conflict settlement techniques, training sessions can include discussions on specific legal areas such as civil, labor, family, administrative, and criminal, as well as legal and administrative aspects of running a conciliation center. n290 In addition to family matters (legal separations, child custody and visitation, and alimony issues), conciliation has been used in agricultural cases and contract disputes. n291 Radio advertising, flyers, and community presentations are used to promote the training. n292

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A pilot program in the beginning stages in 1993 established neighborhood centers in five cities. n293 The pilot program has four stages. The first stage involves the training of mediators and is done through the means outlined above. n294 The program establishes the centers in highly populated areas with low economic resources and poor access to the justice system, n295 perhaps due to preliminary data from the private conciliation centers that found conciliation to be most successful in the poorer areas in terms of settlement rates and numbers of conciliations. For instance, neighborhoods like Guadalupe and Palmeras had a settlement rate of one hundred percent, while in high middle class neighborhoods "the lawyer reads the paper and does not conciliate." n296 Finally, the program has an evaluation stage. n297

5. Peru's Justice of the Peace System

Like many Latin American countries, Peru is a heterogeneous country with diverse ethnic groups such as Spanish, peasant, and indigenous communities. n298 However, Peru's justice system is perceived as one that not only fails to recognize the distinct cultural and social realities of peasant and indigenous litigants, but also requires them to express themselves in Spanish even though many of them speak only rudimentary Spanish, if any at all. n299 In addition to these fundamental concerns, endless delays and corruption have resulted in a public that views judges as unjust and immoral grafters. n300

The Justice of the Peace system, established through **Judicial** Organic Law, Article 61, provides official justice for these peasant and indigenous groups. Every population center within Peru has at least one justice of the peace. n301 The system relies on local justices elected by their communities to supplement the broader program. n302 Although the position is non- [*665] compensatory, serving is considered an honor. n303 Seventy percent of the justices are not legally trained, but all are local residents and "generally [belong] to the same social class as the parties to a conflict . . . ." n304 Similar to conciliators, they "often have little or no formal training in resolving disputes, and propose solutions until the parties agree on one." n305

Although the Justices are legally required to follow the law, many cases revolve around non-legal issues that do not rise to a cause of action in official courts. n306 This occurs even though the justice officially has jurisdiction for only the following types of cases: "monies due and owing; support and alimony matters; urgent, temporary intervention with juveniles who committed antisocial acts; evictions; and injunctions governing personal property." n307 For example, couples often come before a justice of the peace for "jealousy or nonfulfillment of domestic obligations." n308 The justice is required by custom and tradition to listen to the two sides and come up with the solution based not only on law, but also on "the culture and customs of the locality." n309 Because the justice is not limited to legal claims, he or she can act more as a mediator to help the parties resolve underlying personal issues and begin "at the source of the conflict in order to promote a lasting social peace." n310

Roughly forty-seven percent of all cases in Peru, with the exclusion of Lima, are handled by justices of the peace, with sixty-three percent of those litigants satisfied with actions taken by the justice. n311 In addition to familiarity with

language, litigant satisfaction is bolstered by simple procedures, low cost, accessibility, and the perception that the justice of the peace is honest and just. For traditional communities, membership of the justice in the community affords the community a measure of social control, since families and neighborhoods are more interconnected and closely knit than modern communities, in which people tend to move around with more frequency, and not know their neighbors. n312 These traditional communities [*666] have higher rates of dispute settlement than more modern ones, perhaps due to the desire to use conciliation to maintain equilibrium in their complex social relationships. n313 (For more discussion on the ability of the traditional community to manage conflicts, see the introduction to Section II, supra.)

6. Bolivia's Tradition of "Sponsorship"

The Aymara culture in Bolivia supports a very old form of mediation called sponsorship, "in which the sponsor of a married couple clearly participates in the resolution of conflicts without imposing any position." n314 Similar to a mediator, the sponsor brings the family together so that they may listen and be heard and helps them resolve their problems. n315 Because Bolivia's urban communities are experiencing tremendous rural-urban migratory flow, current police and **judicial** systems are unable to adequately service the areas. n316 For example, while the city of El Alto has a population of 400,000, its police force consists of only 200 men. n317 Instead of allowing their communities to disintegrate due to these tremendously inadequate services, the largely traditional and formerly rural families are combating possible violence with the "sponsorship" tradition.

V. Conclusion

At the first inter-American meeting on **alternative dispute resolution** held in Buenos Aires in 1993, it was clear from the reports of the sixteen countries represented at the meeting that the movement for adoption of mediation is universal in its appeal. Where formal court programs are established, mediation offers access to the institutions of the justice system. Where ADR is manifested in neighborhood justice centers, as in Argentina, or conciliation centers, as established throughout Columbia, the goal of the activity is the same-providing citizens with a place and a process for the peaceful resolution of their disputes. All participants agreed that factors such as cost, [*667] timeliness, and level of satisfaction of the disputing parties were fundamental elements that drove the acceptance of mediation. n318

Whether the economy and political system of a North American, Central American, or South American country is robust and stable or depressed and volatile, the benefits of mediation are consistent. Many of the laws and programs are strikingly similar, yet some are uniquely Latin American, such as Bolivia's sponsorship tradition and the Justice of the Peace programs in Peru. Notwithstanding any differences, the perspectives of the Buenos Aires participants coalesced to produce goals and purposes that are inter-American. That would not be a profound conclusion if it were not such a dramatic contrast with the other conclusions of this article regarding the inefficiencies and abuses in most of the **judicial** systems in **Latin America.**

Every society that has adopted a democratic system of government has recognized that the stability of all democratic institutions rests upon a justice system founded on principles of equal access, impartiality, and independence. The Honorable Gladys Stella Alvarez of Argentina, a leading proponent of Argentina's mediation programs, speaks of mediation's "essentially democratic nature," and of its capacity to bring about a "paradigmatic social change" from litigation and violence to "pacification and cooperation." n319 The varieties of mediation processes discussed in this paper can directly affect the very serious problems of systemic corruption in the **judicial** system, violence, and an inability to communicate peacefully within society at large. For example, court mediation programs operated under the aegis of the **judicial** system can allow parties to circumvent corrupt practices and resolve their disputes in a timely and efficient manner.

Moreover, the intensity of interest and participation of citizens in their government is determined in large measure by the intensity of their trust for governmental institutions. The creation of that trust is particularly difficult in countries with a history of abuse of political power and disincentives for public participation in the resolution of important decisions. Mediation should be most attractive in those circumstances because it gives to the individual a measure of control over his or her own destiny.

FOOTNOTES:

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regional en America Latina: El Grupo de los Ocho, Informe Annual RIAL (1988)), a v a i l a b l e a t http://wwics.si.edu/subsites/ccpdc/pubs/mares/mrfr.htm (last visited Oct. 21, 1999).

n2 Special Report: Human Rights Still a Serious Problem in South America Despite Democratic Rule, Notisur-Latin Am. Pol. Affairs, Feb. 14, 1997, 1997 WL 8654691.

n3 Id.

n4 See id.

n5 See United Nations Human Rights Committee, NGOs Decry Impunity For Perpetrators of Disappearances and Killings; Call for an End To Torture, Apr. 4, 1996, available at http://www.unep.org/restrict/dpi/presrel/prs04-04.009.

n6 Id.

n7 Mares, supra note 1 (quoting Oscar Arias Sanchez, El Mundo Despues de la Guerra Fria: Los Principales Retos, Paz y Seguridad en las Americas Dec. 9, 1996).

n8 Id. (quoting Julio Maria Sanguinetti, in Un entretien avec le President Sanguinetti, Le Monde, Nov. 3-4, 1984, (cited in Charles Guy Gillespie, Negotiating Democracy 219- 21, 248 (1991)).

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n10 Remember-Chile: General Pinochet and Human Rights Abuses, Jorge Mera, Chile: Truth and Justice Under the Democratic Government, in Naomi Roht-Arriaza ed., Impunity and Human Rights in International Law and Practice 179 (1995), available at http://www.remember-chile.org.uk (last modified Apr. 27, 2000).

n11 Mares, supra note 1, at executive summary.

n12 Id.

n13 See Jorge Correa Sutil, Modernization, Democratization and **Judicial** Systems, in Justice Delayed: **Judicial** Reform in **Latin America** 97, 102 (Edmundo Jarquin & Fernando Carrillo eds., 1998).

n14 Id. at 102.

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n16 See Dr. Jose Maria Cier, President of Libra Foundation. 1 Encuentro Interamericano sobre Resolucion Alternativa de Disputas 12 (1993).

n17 See Maria Luisa Bartolomei, The Globalization Process of Human Rights in **Latin America** Versus Economic, Social and Cultural Diversity, 25 Int'l J. Legal Info. 156, 163 (1997).

n18 See Camilo A. Azcarate, Psychosocial Dynamics of the Armed Conflict in Colombia, Online Journal of Peace and Conflict Resolution 2.1 (March 1999), available at http://www.trinstitute.org/ojpcr/toc2 1.htm. Mr. Azcarate is the Government Programs Coordinator in the Massachusetts Office of Dispute Resolution.

n19 Argentina: Military Apologizes for Abuses During Dirty War, Catholic Church Follows Suit, Notisur-Latin Am. Pol. Affairs, May 5, 1995, available at 1995 WL 2370073. Note: The National Commission on the Disappeared, established in 1983 by then-President Raul Alfonsin, officially held this number to be 9,000. See United States Institute of Peace, Truth Commissions D i g i t a l C o l l e c t i o n , a v a i l a b l e a t http://www.usip.org/library/truth.html (last updated Aug. 27, 1999).

n20 See William W. Burke-White, Reframing Impunity: Applying Liberal International Law Theory to an Analysis of Amnesty Legislation, 42 Harv. Int'l L.J. 467, 491-92 (2001).

n21 Id.

n22 See id.

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n25 United Nations Human Rights Committee, NGOS DECRY IMPUNITY FOR PERPETRATORS OF DISAPPEARANCES AND KILLINGS; CALL FOR AN END TO TORTURE, Apr. 4, 1996, available at http://www.unep.org/restrict/dpi/presrel/prs04-04.009; Human Rights Watch World Report 2001, Human Rights Developments: A r g e n t i n a , a v a i l a b l e a t http://www.org/wr2k1/americas/argentina.html (last visited Sep. 28, 2001).

n26 See Human Rights Watch World Report 2001, Human Rights Developments: Argentina, available at http://www.org/wr2k1/americas/argentina.html (last visited Sep. 28, 2001).

n27 See Burke-White, supra note 20, at 492.

n28 See id.

n29 See id. Perhaps in response to public sentiment for the plaintiffs, the Supreme Court of Argentina has refused a petition of the Supreme Council of the Armed Forces to transfer the case to military courts. See id.

n30 See id.

n31 See id.

n32 See id.

n33 See id.

n34 See Esteban Cuya, Las Comisiones de la Verdad e n A m e r i c a L a t i n a , a v a i l a b l e a t http://www.derechos.org/koaga/iii/1/cuya.html (last visited Jan. 27, 2003).

n35 See United States Institute of Peace, Truth Commissions Digital Collection, available at http://www.usip.org/library/truth.html (last updated Oct. 4, 2002).

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n44 See id. at 189.

n45 See Andrea Steuer Zago & Lionel Pimentel Nobre, The Brazilian Citizen Constitution, The Environment and Taxation, 20 Loy. L.A. Int'l & Comp. L. Rev. 507, 507 (1998).

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n48 Brazil: Capture of "Chico" Mendes's Killer Highlights Rural Violence, Notisur-Latin Am. Pol. Affairs, Aug. 2, 1996, available at 1996 WL 8089421 [hereinafter Brazil: Capture].

n49 See Human Rights Watch World Report 2001, Human Rights Developments: Brazil, available at http://www.hrw.org/wr2k1/americas/brazil.html (last visited Mar. 13, 2003).

n50 Id.

n51 Brazil: Police Massacre, supra note 46.

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n53 See id.

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n55 See Mares, supra note 1, at Table 4. For comparison, New York City had twenty-seven deaths in 1991. Id.

n56 See Human Rights Developments: Brazil, supra note 49.

n57 See id. The report, released by the police ombudsman in July of 2001, also found that over half of the victims had no prior criminal record. Id.

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n59 Nancy Scheper-Hughes & Daniel Hoffman, Kids Out of Place, Part 2, North American Congress on **Latin America,** Report on the Americas (1994), available at http://www.pangaea.org/street children/latin/sheper2.htm (last visited Mar. 13, 2003). For further information regarding street children, see Brazilian journalist Gilberto Dimenstein's book, Brazil: War on Children (1991).

n60 Mares, supra note 1, at 6.

n61 Scheper-Hughes & Hoffman, supra note 59.

n62 See Human Rights Developments: Brazil, supra note 49.

n63 Id.

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n65 See United Nations Human Rights Committee, Commission Continues Debate on Human Rights of Detainees, Efforts to End Torture, Press Release HR/CN/721 available at http://www.un.org/News/Press/docs/1996/19960410.hrcn731.html (Apr. 10, 1996) .

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n67 Id.

n68 See United Nations Human Rights Committee, Human Rights Committee Concludes Sixty-Fifth Session Held At Headquarters From 22 March to 9 April, Press Release HR/CT/540 available at http://www.un.org/News/Press/docs/1999/ 19990409.hrct540.htm (Apr. 9, 1999); Chile: Legal Brief on the Incompatibility of Chilean Decree Law No. 2191 of 1978 with International Law, Amnesty International, available at http://web.amnesty.org/aidoc/aidoc pdf.nsf/index/AMR220022001 ENGLISH/$ File/AMR2200201.pdf (last visited Mar. 13, 2003).

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n71 See Human Rights Committee Concludes, supra note 68.

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n76 Remember-Chile: General Pinochet and Human Rights Abuses, Letter from 31 Members of the United States House of Representatives to President Clinton (Feb. 24, 2000), available at http://www.remember-chile.org.uk/declarations/00-02- 24usreps.htm (last modified Apr. 27, 2000).

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n81 See id.

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n84 See Human Rights Watch World Report 2001, Human Rights Developments: Colombia, available at http://www.hrw.org/wr2k1/americas/colombia.html (last visited Mar. 13, 2001).

n85 See Azcarate, supra note 83.

n86 Id.

n87 Harold Hongju Koh, Conference on Human Rights in Colombia, Medellin, Colombia, Apr. 10, 1999, available at http://www.state.gov/www/policy remarks/1999/ 990410 koh colombia.html (last visited Sep. 28, 2001).

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n89 See International Commission of Jurists, Attacks on Justice 2000-Colombia, available at http://icj.org/article.php?sid=101 (last modified Aug. 13, 2001).

n90 See Azcarate, supra note 83.

n91 Koh, supra note 87.

n92 See Human Rights Developments: Colombia, supra note 84.

n93 Id.

n94 Id.

n95 Azcarate, supra note 83.

n96 See Burke-White, supra note 20, at 486. Guerilla groups include the Shining Path and the Tupac Amaru Revolutionary Movement.

n97 See id.

n98 See id.

n99 Id.

n100 Id.

n101 See id. at 488.

n102 Id. at 489.

n103 See Human Rights Watch World Report 2001 Peru: Human Rights Developments, available at http://www.hrw.org/wr2k1/americas/peru.html (last visited Sept. 28, 2001).

n104 See id.

n105 See id.

n106 Id.

n107 Id.

n108 See id.

n109 Id.

n110 Id.

n111 See United Nations Human Rights Committee, Press Release HR/CT/511, Human Rights Committee Concludes Consideration of Report by Uruguay, United Nations, available at http://www.un.org/News/Press/docs/1998/ 19980327. HRCT511.html (last modified Mar. 27, 1998); Amnesty International, URUGUAY: The case of Simon Riquelo-A 25-year-struggle for truth and j u s t i c e , a v a i l a b l e a t http://web.amnesty.org/ai.nsf/Index/AMR520012001?OpenDocument&of= COUNTRIES%5CURUGUAY (last modified July 26, 2001).

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n117 See id. However, this has not prevented the prosecution of the Uruguayan military and police in other countries. In June 2001, Argentinean judge Rodolfo Carnicoba Corral ordered the preventive detention of three

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n118 See Edgardo Buscaglia & Maria Dakolias, An Analysis of the Causes of Corruption in the Judiciary, 30 Law & Pol'y Int'l Bus. 95, 95 (1999).

n119 Id. at 97-98.

n120 See William Ratliff & Edgardo Buscaglia, **Judicial** Reform: The Neglected Priority in **Latin America,** 550 Annals Am. Acad. Pol. & Soc. Sci. 59, 65 (1997).

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n123 Edgardo Buscaglia Jr. et al., **Judicial** Reform in **Latin America:** A Framework for National Development 2 (1995) (quoting Enrique Krause, Old Paradigms & New Openings in **Latin America,**" Jan. 1992 Journal of Democracy 20, 21).

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n133 Buscaglia Jr. et al., supra note 123, at 5.

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