

Legal Equality and Effectiveness
in the Courts of Argentina, Uruguay and Brazil

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I. Introduction¹

Scholars studying Latin American democracies use terms such as legal poverty and truncated citizenship (O'Donnell 1993), illiberal democracy (Diamond 1999), or disjunctive democratization (Holston 1998) to denote a series of perceived failures of the rule of law in the region. The failure essentially revolves around the inability or unwillingness of the newly democratic regimes to effectively protect civil liberties, despite the emergence of new political rights. This failure can be observed even in countries that have made apparent commitments to improving the legal framework for civil rights protection. In Argentina torture and killing by the police remain quite common despite the introduction of additional human rights protections in a 1994 constitutional reform. Reports from human rights organizations confirm that Brazil's 1988 constitution remains, in large part, dead letter law, with shocking prison conditions, the rampant use of torture as an investigative tool, and egregious rates of police violence and homicide. In short, rights are ineffective for large portions of the population, and not everyone is equal before the law.

In this paper, I will do three things. Using police killings as the test case, I first summarize results of an earlier paper (Brinks 2002) in which I measure the extent to which rights are violated, evaluate just how ineffective the courts have been in various locations in protecting basic civil rights, and measure degrees of inequality present in each of five court systems in Brazil, Argentina and Uruguay. Then I consider two very basic competing explanations for the failure of the courts to enforce laws against arbitrary police killings, to determine whether courts

¹ I would like to acknowledge the financial assistance of the Social Science Research Council through its International Dissertation Year Fellowship program and the Kellogg Institute through its Seed Money program, and the invaluable help of the people at CORREPI in Buenos Aires and Córdoba, and the Ouvidoria da Polícia, in São

are either unwilling or unable to enforce them (or both).² Finally, I will connect the two different types of failures with the frequency of violations and the targeting of various social groups, and with levels of ineffectiveness and inequality within the courts.

II. Theoretical Framework

A. Measuring effectiveness

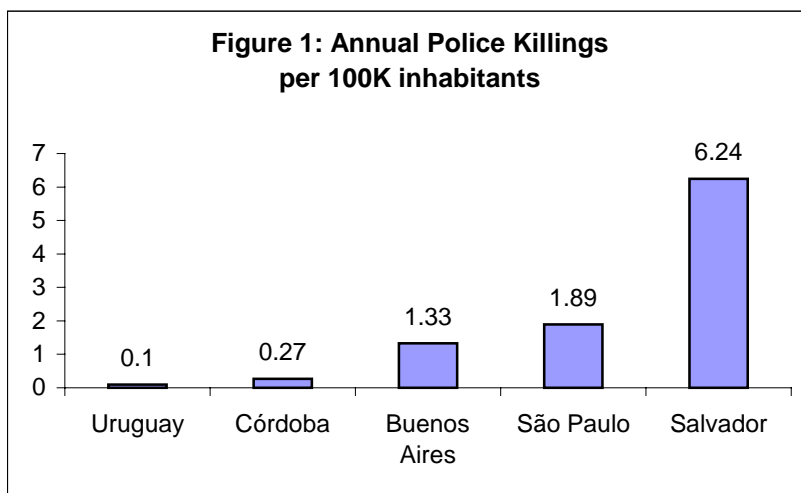
The effectiveness of a right in a given polity can be felt at two different levels. First, of course, it is visible in the frequency of violations. But almost as importantly, it will be seen in the readiness and capacity of the courts, who are the ultimate mechanisms for redress in a modern state, to intervene to redress those violations. Moreover, in a modern democracy, all citizens (at least) should be equal before the law. Inequalities in the application or enforcement of the law, though present everywhere, are technically aberrations, inconsistent with full democratic citizenship. I set out to measure just how effective certain rights are at both of these levels in five different legal systems operating in Argentina, Brazil and Uruguay, as well as to evaluate the degree of inequality with which these violations or judicial failures affect different groups.

To measure the frequency of violations I gathered information compiled by official instances and civil society organizations, whenever it was available. Where it was not, I conducted my own review of online newspaper archives, human rights reports, and similar sources. From these sources I compiled a list of victims of police homicides, and from this list I drew a sample to build a database consisting of about 600 criminal cases in which a security agent – a police officer or other agent of the state – is accused of unlawfully killing an individual. Using interviews, court records and archival materials, I gathered information on

Paulo, as well as many others. Without their help the field research for this project would not have been possible.

these cases during the course of about a year of fieldwork in five geographic locations: all of Uruguay (which has a unitary system), the federal and provincial courts acting in the City of Buenos Aires and the surrounding metropolitan area, the federal and provincial courts acting in Córdoba, and the state courts acting in two cities in Brazil, São Paulo and Salvador.

The data show that rates of violations vary dramatically not only across countries but also within them, from one city to another, as shown in Figure 1.

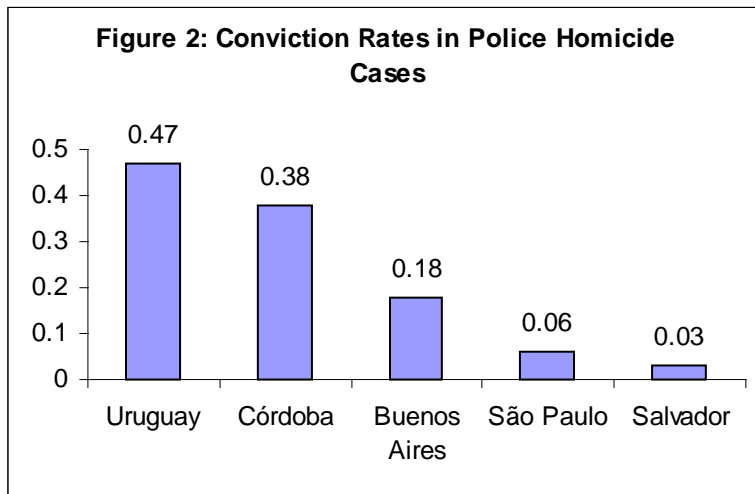


In Córdoba, the figure is derived from materials compiled by the Coordinadora contra la Represión Policial e Institucional; in Buenos Aires, the source is the Centro de Estudios Legales y Sociales; in São Paulo, the Ouvidoria da Polícia do Estado de São Paulo; in Uruguay, materials from Servicio Paz y Justicia, a search of online newspaper archives and other human rights reports; and in Salvador, a study conducted by the Justice and Peace Commission for the Archdiocese of Salvador. For Salvador the number averages only four years of data, for the others it averages annual figures for all or most of the 1990s.

Similarly, the judicial response to these violations varies dramatically from one jurisdiction to another. Figure 2 compares the proportion of convictions for all five locations, based on the sample I compiled. In Salvador I was unable to piece together anything even approaching a representative sample of police homicide prosecutions. Instead, I interviewed a number of legislators, prosecutors, lawyers, and others who are concerned with the problem of police violence, and compiled a list of about 30 cases that attracted media attention in the last

² Clearly, this is only the first step in a complete explanation for the failure of the courts to perform adequately. In subsequent work, I will be examining the institutional, social and political roots for the cognitive and normative

decade. On the strength of the interviews, and since I was unable to find nearly any instances in which a police officer was actually convicted for killing someone, even in very public cases, as we will see below, I estimated a conviction rate about half of São Paulo's.



In this calculation I included only cases that involved official police conduct, whether in or out of uniform, excluding cases in which police officers kill someone in a quarrel or similar private dispute. Note that the locations with the lowest conviction rates are those with the highest rates of police homicides. If the formal rules were being strictly enforced, and the enforcement capacity of all these systems were approximately even, we might have expected quite the opposite: the more restrained police forces should be killing only in clearly justified circumstances, thus producing a lower conviction rate. This result validates the sampling method, which is meant to exclude clear-cut cases in which the police was merely responding to armed aggression. Clearly, the cases with the worst human rights performance also show the poorest judicial performance.

Not only do levels of violations and judicial effectiveness vary dramatically, but so do degrees of inequality, at both levels. And here we find somewhat of a paradox. Uruguay, as we

might expect, shows very low levels of inequality at both levels, to go along with its higher effectiveness. What socio-economic inequality there is can be found not in the courts but in the initial violations, which disproportionately affect persons living in marginal neighborhoods – though the degree of inequality is not as high as in the other jurisdictions. Córdoba, however, despite its relatively strong performance at both levels, shows a great deal of inequality both in the distribution of initial violations and in the judicial response to these violations. Shantytown dwellers, for example, are more than 18 times more likely to be killed by the police than others; and conviction rates are more than twice as high when the victim was a member of the middle class than when the victim was not.

Buenos Aires also shows high levels of inequality in the distribution of violations, but surprisingly low degrees of socio-economic inequality in judicial outcomes. In Buenos Aires, however, we find that extra-legal considerations play an important role in determining which cases will lead to a conviction: cases in which there are popular demonstrations, or cases in which the victim's family retains a lawyer to accompany the prosecution (with, in most cases, accompanying civil society pressures) are almost the only cases in which the courts consent to convicting a police officer of murder. Moreover, if the victim appears to have a violent past, the murder will go unpunished, no matter how egregious the violation. This last rule also applies in São Paulo, where persons with a violent past may be executed with impunity. Here violations are very strictly targeted to the lowest classes, and yet judicial outcomes do not vary appreciably by social class. In Salvador, in turn, there are almost no convictions to speak of, even when the victims are relatively middle class, and have become public figures, as we will see. All these results are summarized in the following table, which shows the outcomes I will explain in this paper:

Table 3: Categorizing cases in terms of effectiveness and inequality

	City	Uruguay	Córdoba	Buenos Aires	São Paulo	Salvador
Initial violations	<i>Effectiveness of laws</i>	High	Medium high	Medium low	Low	Very Low
	<i>Socio-economic inequality</i>	Medium	Very High	High	Very High	High
Judicial performance	<i>Effectiveness of courts</i>	High	Medium high	Medium low	Low	Very low
	<i>Socio-economic inequality</i>	Low	High	Low	Low	Low

B. The informational and cognitive bases of effectiveness

To what can we attribute this variation in outcomes? Many argue that the courts, in São Paulo or Buenos Aires for example, *don't* enforce the laws because they *won't* enforce the laws. For these critics, the courts are politically subservient to the executive, or the repressive tools of an exploitative capitalist system, or populated by judges who are reactionary throwbacks to an authoritarian past, or enclaves of the upper class with no commitment to extending equality before the law to the popular classes. On the other hand, others, especially people from within the legal system itself, would argue that when the courts *don't* enforce the laws it is because they *can't*. They point to institutional weaknesses, lack of funds or training, and similar obstacles to efficient and effective adjudication. The first step in explaining the failure of the courts, then, is to establish whether key system actors – such as the police, prosecutors or judges themselves – can't or won't effectively enforce the rights at issue here.

To explore this distinction, I begin from the proposition that, in order to produce correct results, the system must first gather correct information about the cases it will judge, and then

correctly process that information, applying legal standards. That is, first it must learn about and re-create within itself the fact(s) it must judge, and then it must apply a standard or rule of decision to those facts. The first part of this is perhaps less obvious: the legal system does not actually judge *o*, the unobservable social object which is the subject of the proceedings, but *o'*, its re-creation of that object through the incorporation of evidence and arguments in court filings and oral proceedings.³ Simplifying considerably, the second task consists of the selection of the applicable standard and its application to one version or another of *o'*. Creating *o'* is a shared (and contested) task, the burdens of which are allocated differently in different systems and in different kinds of cases. In the criminal context, this task is theoretically carried out by the state – the police, the prosecutor⁴ – in opposition to the defendant. The final decision on the exact contours of *o'* is up to the designated fact-finder, who might be the jury, a judge, or a panel of judges.

To discuss these issues I will borrow some terminology from Niklas Luhmann's (1985; 1988) idealized description of the legal system. First, he says, the legal system must be cognitively open. That is, it must be able to learn from its environment, not only in terms of accurately recreating *o*, but in many other ways as well. At the same time, the legal system must be normatively closed – that is, in producing legal decisions and standards it must use rules derived from the corpus of the laws according to the logic of the legal system and not rules of decision resulting from, for example, pressures from powerful political or economic actors, the short-term compulsion of a bribe or threat, etc. Any failure of the legal system to produce the

³ Indeed, rules of evidence and procedure often deliberately introduce distortions into *o'* for policy reasons: In the United States, for example, the judge will often exclude true, relevant information on the grounds that it might appeal to the prejudices of the jury and thus unfairly bias the result.

⁴ In the more inquisitorial systems, which Brazil and Argentina have largely abandoned though Uruguay continues to employ, the judge is in charge of building the factual record.

legally correct result in a given case can in theory be placed into one of these two categories: a failure of either normative closure or cognitive openness (or both).⁵ That is, when it errs the system is either in the dark about the true facts, or applying the wrong standard, or both.⁶

By cognitive closure I mean that, in judging a particular legal case, a system has failed to reconstitute legally essential characteristics of o, so that the technically correct application of legal standards to o' produces an incorrect outcome. For a legal system as a whole, while categorical distinctions are somewhat misleading, I will attribute a low conviction rate to cognitive closure when it appears that most of the failures can be attributed to the failure to present the ultimate decision maker with complete and accurate information about the cases in question.

By normative openness I mean the (more or less) conscious application of a rule of decision that is not derived from the law in a particular legal case, as when a judge's ruling or a police officer's decision to act is affected by a bribe or a personal relationship with a party, or by a belief that a certain type of behavior is not reprehensible even though may be illegal.⁷ At the system level, normative openness means that a system is repeatedly and consistently susceptible to outside influences in its decision-making in regard to particular cases. I will categorize the systems at issue here as normatively open when the evidence suggests that a low conviction rate

⁵ I will mostly speak about these distinctions (between cognitive openness and closure and normative openness and closure) as if they were categorical distinctions, though they clearly are not. In the conclusion I return to a more continuous version of this classification.

⁶ A claim that the laws are unfair as written is a radically different claim that depends on a pre-legal normative judgment. In this study I take the laws to set the normative standards the legal system must uphold rather than importing normative standards from outside the law or outside the legal system at issue. Similarly, a claim that the courts are unable to enforce compliance with their decisions falls outside this framework. For an analysis of the factors that affect whether elected officials (and others) might comply with judicial decisions, see Staton (2002). In my cases, the decisions affect single individuals most immediately, and in most cases it appears that compliance with a decision is less of an issue than getting the right decision to begin with.

⁷ We might think of this last category of explanation as an extended version of jury nullification. See, e.g., Marder 1999 and literature cited therein. My argument is broader than a jury nullification argument, in that I consider the possibility that any (or all) of the actors in the legal system may be enrolled in the nullification project.

is predominantly the result of the application of extra-legal rules of decision, applied regardless of whether the known facts establish a rights violation under legal standards. In classifying each legal system, I will use both summary information derived from the sample of cases and brief case studies of individual prosecutions.

A given system may, of course, be afflicted by either, both or neither of these conditions, giving rise to a classic two-by-two table for classifying how the systems operate:

		Cognitive Dimension	
		Normatively Closed Cognitively Closed	Normatively Closed Cognitively Open
Normative Dimension	Normatively Open Cognitively Closed	Normatively Open Cognitively Closed	Normatively Open Cognitively Open
	Normatively Open Cognitively Open	Normatively Open Cognitively Closed	Normatively Open Cognitively Open

Ideally, we should be able to place any given legal system, in regard to any given class of cases, into one of these four cells. Moreover, there should be a direct connection between the normative and cognitive capacities of the system and the levels of effectiveness and inequality in its outputs. This brings us to the third step in the analysis: the connection between these two dimensions of the legal system, and the observed levels of effectiveness and inequality.

C. The Symptoms of Normative Openness and Cognitive Closure

The cognitive and normative characteristics of the system are likely to have predictable consequences for legal outcomes both directly, at the judicial level, and indirectly, at the pre-judicial level.

1. At the judicial level

In the normal criminal case, the state itself is technically responsible for ensuring the cognitive openness of the system, in theory rendering the material resources of affected parties

(victims of human rights violations, for example) irrelevant to the outcome, and fostering socio-economic equality before the law. But in the cases at hand claimants – either by the proxy representation of the prosecutor or more directly by the participation of an affected individual – are seeking to assert rights in court against resistance by the police, the legal system’s principal information supplier. This should produce a general tendency toward cognitive closure in these cases, which must be overcome by either the claimants or other actors in the system. Unless the system has strong alternative sources of information, we would expect full cognitive openness only when the police expect to be exonerated. These alternative sources of information could be located either outside the system, when an empowered population generates the information directly, or inside the system, when the state continues to generate the requisite information, bypassing the police blockade.

To the extent the state fails to assume the burden of information production, we would expect inequalities of outcome that are associated with socio-economic variables, simply because a greater investment of resources by claimants is required in order to overcome the hurdles to presentation of information. At the margin, when no one has sufficient resources to overcome the informational deficiency, the system becomes completely ineffective, and inequality also disappears.

The normative openness of the system more directly generates ineffectiveness, because courts will not convict if they are applying a contrary “invasive” rule. For example, if the hypothesized normative intrusion is blanket permissiveness in the use of deadly force by the police, then almost by definition we will see no convictions in such cases. But there is no guarantee that the informal rule will produce results contrary to the formal laws in every instance. As a result, the lack of autonomy in the judiciary adds an element of apparent

randomness that is not necessarily associated with the resources of the claimant – we get results in accordance with the law whenever the operative rule happens to coincide with it. The randomness is resolved if we can identify the operative rule. So if the problem is political dependence, then when it is politically expedient we will get a conviction; if in addition the courts are courting public opinion, convictions will result in cases in which there is public pressure to convict and no political pressure to acquit. In short, we should observe the presence of inequality of outcomes that is not necessarily associated with socio-economic status, while socio-economic status loses importance.

2. At the pre-judicial level

What do these features of the judiciary mean for rights at the pre-judicial level?

Certainly, there are many variables that affect the level of violence employed by the police, including their level of preparation, civilian and other extra-judicial oversight mechanisms, the level of violent crime in society, etc. (see, e.g., CELS/HRW 1998; Chevigny 1995; Skolnick and Fyfe 1993), all of which are beyond the scope of this paper. But it is likely – at least, it is the basic premise of any legal system – that the anticipated response by the courts will influence the way in which the police use lethal force. We might expect, of course, that an effective judicial response will reduce the overall level of violations. But the courts can influence police behavior in two other ways as well: First, the police are the system's primary information generating agency, so they can choose to produce more or less information (and more or less accurate information) about the incident in question. Second, in these cases, the police are also committing the violations, and can affect the sorts of cases that are presented to the system; that is, they can select, to some extent, whose rights will be violated and under what circumstances.

Therefore, in situations of uncertainty, or if they anticipate that they will be judged in a

way that is contrary to their preferred behavior, they will focus on populations with fewer resources and take measures to obscure the facts in individual cases. If they anticipate that the state will intervene to force the production of information anyway, they will minimize the number of violations. If, on the other hand, they anticipate informal rules of decision that might exonerate them, they will violate more frequently and more openly, with less provocation, selecting the cases (or generating information) to match, focusing less on socio-economic conditions and more on the characteristics that might be demanded by the rules in question.

Given this general tendency toward cognitive closure, the key factor in producing levels of effectiveness and inequality will be the extent to which the affected population has the resources to overcome police resistance (whether personally or with the assistance of NGOs), or the extent to which the state continues to assume the role of information-generator, bypassing the police. If the system relies heavily on individual initiative, we would expect greater inequalities, while if the state or NGOs take up the burden, inequalities would diminish.

D. Other literature on the topic

Journalistic accounts, the reports of international NGOs such as Amnesty International and Human Rights Watch, domestic NGOs such as the CELS and CORREPI in Argentina, SERPAJ in Uruguay, the Archdiocese of São Paulo and the Comissão Teotônio Vilela in the same city, as well as articles by comparative political scientists all argue that an effective rule of law still eludes many of the countries of the region (Hammergren 1999; Mendez, O'Donnell, and Pinheiro 1999; Stotzky 1993). But with some exceptions, comparative political scientists have not undertaken a systematic empirical study of the effectiveness of Latin American legal systems. Some have essayed highly abstract theoretical models of the origins of legal restraints on government (e.g., Weingast 1997), while others pursue more empirical studies looking at the

issue of police homicides (e.g., CELS/HRW 1998; Holston 1998) but do not offer a systematic look at the judicial response to them. And many who are studying the judiciaries of Latin America tend to focus on the independence of the judiciary at the highest levels, rather than its effectiveness in everyday cases (Carrio 1996; Helmke 2000; Helmke 2002; Larkins 1998; Malamud-Goti 1996; Nino 1996; O'Donnell 1994; Rhenan-Segura 1990; Verbitsky 1993). This study, in contrast, looks at the effectiveness of the courts that come in daily contact with people who are striving to make their rights count.

The literature on the failures and successes of judicial reform in the region has focused more closely on judicial performance, but by and large these authors rely on very impressionistic accounts of judicial performance, focus very narrowly on one legal system, or use widely disparate criteria for measuring performance (Hammergren 1999; Pásara 2000; Prillaman 2000). Or their focus is more closely on the political process of reform and the failures of that process rather than on the actual performance of the courts (Domingo 2001). The collection of essays in Mendez, et al. (1999) does address the reach of the legal systems to the poorest sectors of society, but none of the empirical essays in that volume answers the central questions of this project: to what extent are laws universally effective in various democratic countries, and what causes laws to be more effective in some systems than in others. Thus there is an important gap in the political science literature on Latin American democracies. Observers agree that the rule of law is a critical challenge for these democracies; at the same time, a key component of this concept – the effectiveness of the legal system in guaranteeing rights and enforcing obligations for all equally – is given little or no empirical or theoretical treatment.

On the other hand, the literature on police violence tends to approach the issue theoretically from an international normative standpoint, couching the analysis primarily in terms

of human rights violations and focusing on the acts themselves, rather than how these acts are inserted into the legal and judicial fabric of the regime. Moreover, while most of these works make reference to the impunity the police enjoy in these cases, their analysis is based on impressionistic accounts and the selective treatment of notorious cases rather than a more broad-based analysis of the data (CELS 2000; CELS/HRW 1998; Chevigny 1995). The study that comes closest to this one is Cano's (1999) study of the role of the military justice system in the State of Rio de Janeiro or Zaverucha's (1999) study of military justice in the state of Pernambuco, and they both focus on a single jurisdiction and a system that, since 1996, no longer has jurisdiction over the most serious cases involving homicides. There is also a similar study of the impact of race on judicial outcomes in the U.S. juvenile justice system (Poe-Yamagata and Jones 2000), but it is purely empirical, and does not extend beyond the United States.

III. Classifying the cases on normative closure and cognitive openness

In this section, I will examine case outcomes in each of the systems in the study to determine whether each case should be classified as either cognitively closed, or normatively open, or both.

A. Open and Notorious Violations: Normatively Open and Cognitively Open Systems

In this category, the legal system will by definition show a relatively free flow of information about potential violations up into the system, and yet fail as a result of the application of informal rules that are contrary to the operative formal laws. The first challenge in identifying these cases is theorizing the distinction between mere behavioral regularities (which might not be the result of rules) and informal rules. The distinguishing characteristic of a rule is,

in theory, observable: rules will support secondary (enforcement) conduct to be applied to rule-breakers (Hart 1961).⁸

Thus, when a behavioral regularity is the result of the application of an informal, alternative rule, there should be some signs of its existence. For example, we should see conduct in accordance with the rule: particular cases in which the system produces a result that is clearly contrary to what the formal rules would produce, given the information that was available to the decision-maker. We should see secondary conduct enforcing the rule in those instances in which it is breached (if any): some evidence that actors who attempt to apply the formal rule over the effective informal rule are disciplined. There should be evidence that the relevant actors anticipate that others will know and respect the rule, so that the rule structures decision making in anticipation of its application. And, in the case of informal rules at least, there should be a high percentage of outcomes in accordance with the hypothesized rule. What follows is an evaluation of the evidence to determine whether certain results we observe in Salvador, Buenos Aires and São Paulo are attributable to the existence of an alternative rule of decision or whether the system is simply impermeable to information about these cases.

1. Police homicides in Salvador

All the evidence suggests that the judicial response to homicides, including police homicides, is dismal in Salvador. Homicide cases that are not solved in the first 15 days by the local police delegation are devolved to the *Delegacia de Homicídios de Salvador*. In October 1998, the investigator in charge, a person with 7 years' experience in that job, estimated that nearly 70% of the 1000 pending cases on file in that *delegacia* involved the Military Police,

⁸ The theoretical development of the notion of informal rules, and an analysis of the "Violent Victim" cases discussed below is treated extensively in Brinks (forthcoming, *Comparative Politics*), while a comparison with the Salvador cases appears in Brinks 2003.

often in cases that had all the indicia of an execution.⁹ In the same year, to cover a population of 2.5 million with the third highest level of violent crimes in Brazil, this centralized office had 13 investigators and three cars, and did not even have its own phone line. Understandably, its record for solving crimes is not impressive. The only general estimate of effectiveness I was able to obtain was that there were only about 60 suspects in custody at one time in connection with the more than 1,000 unsolved cases pending at the *delegacia*. Even if all those in custody were police officers, a highly unlikely event, that would mean only a minimal percentage of these cases are even being prosecuted. Two things are likely, therefore: that policemen who kill enjoy nearly complete impunity, and that this is not exclusive to the police.

The lack of resources of the *Delegacia* suggests cognitive closure, but the fate of several well-publicized cases argues rather for normative openness. Even well documented high profile cases in Salvador are marked by nearly complete impunity. The case of Heloísa Gomes dos Santos and her partner, Manuel Ferreira dos Santos, is considered a typical one by the entities and individuals I interviewed in Salvador. Manuel was a former Military Police Corporal. His son Valdemir was killed for refusing to comply with an attempted extortion by a group of Military Police officers acting in a certain neighborhood of Salvador. Heloísa and her partner began a very public campaign to bring these policemen to justice. Heloísa in particular became a very public figure. Soon after they began their campaign, Heloísa and Manuel received several death threats, and on June 21, 1998, they were shot to death as they sat in their car in front of the hospital where Heloísa worked as a nurse.

Since then, of the four witnesses who, along with Heloísa and Manuel, testified against

⁹ The president of the Military Police Corporals' and Privates' Union of Bahia suggested that the figure could well rise above 70%. He defended his colleagues only by pointing out their lack of preparation and resources and arguing that the *Polícia Civil* committed just as many crimes.

this group of policemen, two were murdered, one disappeared and is presumed murdered, and one is in hiding under the auspices of Bahia's witness protection program. There have been no convictions in connection with either the underlying crimes, the murder of Manuel's son, the murder of Heloísa and Manuel, or the murder of the other three witnesses. As an unpublished report by the Justice and Peace Commission put it, in light of the complete inaction of the police and the justice system in the case of a public figure like Heloísa, who else would even consider speaking out in these cases? Their very public murder serves the dual purpose of signaling to others that disregard of the rule of lenity favoring the police will be severely punished, and of suppressing information in the particular case.

Another case of considerable prominence is the case of Robélio Lima dos Santos. On October 11, 1999, Robélio was apprehended after he and three others committed a bank robbery that resulted in one police officer being seriously wounded. Robélio was photographed as he was handcuffed and placed in the back of a police wagon. In the photograph one can clearly see that he has only one non-life-threatening wound in the pelvic region. Some time later he arrived at the Emergency Room dead, shot in the chest with at least two different weapons. The local press published an editorial that reported the justification offered by other police officers in defense of those who had killed this *bandido*. They noted that the arresting officers were aware that one of their colleagues had been shot and seriously wounded, and that it was likely they had acted out of vengeance. This attitude is "wrong, but accepted at an emotional level," they argued. The editorial concludes, "Policemen do not act as these Bahian ones did if they do not feel protected" (A Tarde, 10-13-99. Editorial: Mais que mil palavras [Worth a Thousand Words]). The four police officers who were in the car when Robélio was murdered were initially arrested for the crime, but in the nearly three and a half years since the event, no convictions have resulted.

A more typical case, and one that received considerably less media attention, is the case of Sérgio Silva Santos, a physically handicapped youth who lived in one of the *favelas* around Salvador. On January 22, 1999, five police officers on midnight rounds decided to question a group of men standing around a street-side vending post. One of the police officers had drawn his gun as he approached the men and he accidentally fired a shot, wounding Sérgio in the neck. Not knowing what to do, they loaded Sérgio in the police car, took him to a remote region, debated briefly and executed him. At least two officers took part in the actual shooting. Then they placed a gun in Sérgio's hand and prepared a report that said he had died in an exchange of gunfire with the police.

Eventually, confronted with the witnesses to the initial wounding, the evidence of the victim's physical disability and other damning evidence, one of the five disclosed what had actually happened, describing the entire sequence of events. In spite of all this, four years later the accused are still employed by the police, and remain free. The judge's office claims that the difficulty in moving forward with the case lies in locating the witnesses to the initial event. This should come as no surprise, as on April 16, 2000, we read that "one of the main witnesses in the killing of the physically handicapped Sérgio Silva Santos ... was beaten to death in Nordeste de Amaralina, the neighborhood where he lived" (A Tarde, p.7).

There are many more stories like these, including the cases of no less than ten journalists who were killed in Bahia during the 1990s. A Tarde carried out an extensive investigation into these ten cases and was able to secure the names of suspects in every case, noting that politicians and police officers were often the principal suspects. The daily concluded that "in traveling through the eight cities in which the crimes occurred, A Tarde's reporting verified – in only 7 days of investigation – that the criminals enjoy impunity purely as a result of the omissions of

the Courts and the Civil Police. There are witnesses and proofs for each of these crimes” (A Tarde, 4-2-2000). Ironically, the less publicized killings are surrounded by much less violence. There are few complaints, even fewer investigations, and the cases are routinely ignored, so that they do not even merit violence against witnesses.

What accounts for the apparently high level of impunity for these murders in Bahia? Can we conclude that key actors within the system are intentionally looking the other way, as police officers carry out an informal “social cleansing” mandate? Indeed, there is considerable evidence that an informal institution permitting the killing of perceived *marginais* rules the streets (and courts) of Salvador. First, we can observe a high number of actions in accordance with the hypothesized informal rule – the rate at which the police kill is three times higher than in São Paulo, the next highest place and a place with an already exceptionally violent police force. Then there is the absence of secondary conduct enforcing the contrary, formal, rule – there are virtually no reports of convictions of police officers for killing someone in the course of their duties. Those who dare run counter to the rule, as did Heloísa, Manuel and the other witnesses in that case, are punished, while those who act within the rule enjoy nearly complete impunity.

In addition, the conduct of the police itself is evidence that they know and rely on this rule: they are especially casual about their killing, so long as it is within the course of their duties, and clearly expect impunity. The case of Sérgio, the disabled youth who was first wounded and then summarily executed makes this point clearly: the police preferred to kill someone in cold blood, in an attempt to set up an “ordinary course of duties” killing, than to be caught having wounded someone by mistake. Moreover, it was not one panicked police officer who did this, but no less than five, after some deliberation. Similarly, it was not one enraged police officer who shot and killed Robélio in the back of the police wagon, but at least two, while

two others were in the car with them. These are not “rogue cops;” they are acting in accordance with accepted and established patterns of conduct.

The lack of interest in effective prosecution extends to the political class, claims Nelson Pellegrino, then a state legislator and now the leader of the Worker’s Party in the lower chamber of the National Legislature. He blames the governing party, the PFL, for a complete lack of interest in the problem, to the point of refusing to approve bills that would have required the police to compile more detailed information on these killings. Even the media are to some degree complicit. Commenting on the newspapers’ persistent habit of noting the criminal history of victims (even if unrelated to the incident itself), Espinheira says “it’s as if there is a tacit understanding that a recidivist *can be eliminated*, while another who has never been arrested was in fact *murdered*, with the full moral and legal import society assigns to such an event” (A Outra Face da Moeda, p.35).

There may be investigators and prosecutors who are serious about investigating these cases, but they are themselves often punished and they often end up outside the system. Marília Veloso, a former prosecutor in the military justice system, related that her attempts to pursue violent police officers were impeded by her superiors, until she quit out of frustration. Nilton José Costa Ferreiro, the former police investigator who relates the story of the near confrontation between Civil and Military Police in the Dossier, also quit. Costa Ferreiro was actively pursuing an investigation into Military Police participation in extermination groups. He had weathered various death threats and other forms of intimidation by the police; his decision to quit came after his efforts to investigate were met with the warning that he himself would be prosecuted for abuse of power if he continued. One judge I spoke to – who insisted on anonymity, and would only meet me at night, away from her office – argued that if she disobeyed the official line,

whatever it may be, her livelihood as a judge would be threatened. In her view, even judges who might want to investigate these crimes are prevented from doing so by direct and indirect pressures.

In short, (a) there does not appear to be effective recourse for those suffering from rights violations to an enforcement agent that is not co-opted by the informal rule; (b) the enforcement agents within the system who attempt to enforce the law are themselves punished for doing so; and (c) the latter have no recourse to a superior enforcement agency who can redress the secondary violation. For all practical purposes, then, the rule that governs is one of impunity for police officers who kill, at least so long as they are seen to be carrying out their social cleansing function.

2. *The “Violent Victim” exception to laws against police violence*

It should perhaps come as no surprise to find that the same legal system treats different cases differently. This is often the criticism leveled by judges and lawyers at empirical studies of the legal system – in an attempt to abstract patterns they ignore important differences among the cases. One such difference became apparent in the course of this study. Case outcomes suggest the presence of an effective informal rule in São Paulo and Buenos Aires that precludes punishment for police officers who kill persons perceived to be violent criminals. There is no evidence that a similar rule operates in Córdoba, and the data suggest that it does not apply in Uruguay. As noted, I analyze these cases in detail elsewhere (Brinks forthcoming), so here I will limit the presentation to showing the effects of the rule, as summarized in the following table.

City	CONVICTION RATE (TOTAL N)		
	Conviction Rate in non-Violent Victim cases	Violent Victim Cases	All Cases
Buenos Aires	26% (256)	0% (16)	24% (272)
Sao Paulo	11% (149)	0% (70)	7% (219)
Cordoba	44% (90)	50% (2)	44% (92)
Montevideo	30% (20)	80% (10)	47% (30)

As expected, in São Paulo and Buenos Aires none of the cases I coded as belonging in this category led to a conviction. In Uruguay and Córdoba on the other hand, there is no evidence that this rule is driving the outcomes. Although the Uruguayan system shows a higher conviction rate in Violent Victim cases, the difference is not statistically significant. In Córdoba there are simply not enough of these cases to ground a conclusion one way or the other, though the fact that one of only two cases in this category ends in a conviction is suggestive. In Buenos Aires and São Paulo, therefore, the courts are clearly open to an extra-legal rule placing those with a violent past outside the protection of the courts.

B. Effective Application of the Law: Normatively Closed, Cognitively Open Systems

The conviction rate in Uruguay is quite high compared to Buenos Aires or São Paulo, and socio-economic status appears to have, if anything, the inverse effect of what we might expect. In the courts at least, results – the effectiveness of rights – are independent of class, shantytown residence, and similar socio-economic indicators. At the same time, it appears that the police are much less violent than in the other cases, though they continue to target lower socio-economic status people, and act most freely in the so-called “conflictive” neighborhoods of Montevideo. The police most clearly target those who have some involvement with crime – Uruguayan police are second only to São Paulo police in the degree to which they do this. This combination of low

socio-economic tolls and high effectiveness in the courts, with a moderate impact of social class and high effectiveness in the streets, is consistent with expectations for a cognitively open and normatively closed system. To determine whether or not this describes the Uruguayan system, we must once again turn to the actual judicial cases, and analyze the process to identify the conditions of success and the causes of failure, if any.

That the Uruguayan judicial system is capable of absorbing the requisite information in these cases is apparent from the results in several key cases. The two cases that might have been expected to pose the greatest informational challenges actually ended in successful prosecutions, thanks to the efforts of the judge and prosecutor, who managed to produce expert testimony and witnesses to unveil the true events. In both of these cases the police resisted the prosecution and corrupted the factual record. In both, the victim is a relatively marginal social character – one a cattle rustler, the other a smuggler – and the case occurred in an isolated location with few or no witnesses. And yet in both, prosecutors and judges worked together to generate and incorporate the information necessary to convict.

The Uruguayan judiciary's record is not perfect, of course. In two of the most publicized cases the courts are completely in the dark about what actually happened. Fellow rank and file police officers are clearly protecting those who actually committed the crime, and the courts are helpless to penetrate the veil of silence. In one of these cases, however, the judge at least proceeded as to those who could be identified – supervisors who should have prevented the violence.

It does not appear, however, that the system is overly susceptible to outside pressures. In contrast to most Latin American judiciaries, Uruguayan judges have a general reputation as incorruptible and independent. They enjoy the highest rates of popular confidence of all

countries included in the latest Latinobarómetro survey. In a survey of users of the system carried out on behalf of the Supreme Court in 1995, 80% of lawyers indicated that judicial personnel were generally serious about carrying out their tasks. And in response to questions regarding the main problems limiting effective access to justice, no one mentioned corruption or lack of independence. The problems listed were, rather, the lack of technical training on the part of judicial employees, the lack of human and material resources, long delays, and the cost of litigation (Gonzalez & Miranda 1995 unpublished data on file with author). In a similar survey of barriers to access to justice, Uruguayan sociologist Rafael Bayce notes the high respect earned by functionaries within the justice system (1996 unpublished data). The judges' conduct in the cases examined here supports this conclusion. In short, there seems to be considerable evidence that, on the whole, the system is quite proactive in generating the requisite information, and that judges seek to apply the legal framework to the best of their ability.

C. See no evil, hear no evil, speak no evil: Normatively Open, Cognitively Closed systems

This is, in one sense, the worst combination, since it involves a failure of both requisite conditions for an effective judiciary. At the same time, outcomes are not necessarily expected to be worse than in the cases of normatively and cognitively open systems such as Salvador, in which the free flow of information is essentially the result of the normative failure of the system. A system that is applying extra-legal norms will produce the “correct” result whenever the actual norms applied happen to coincide with the legal norms. As noted earlier, if the normative openness of the system is caused by a more or less general susceptibility to political, public or other pressures, then we would expect the performance of the system to fall somewhere in the middle, between a high performing system and one that refuses to convict under any circumstances. The Buenos Aires judicial system in Routine Policing cases is the best example

of this among my cases.

The difficulties the system encounters in securing information about police homicides are evident in Buenos Aires. The most common complaint by activists, victims' relatives and others in connection with these cases in Buenos Aires is that the police doctor the crime scene, corrupt the record, intimidate witnesses, produce false forensic results, and generally hamper the incorporation of accurate and complete information into the legal record. While these claims are usually hard to confirm, in some cases they are quite demonstrable, as when a gun found on a victim is later traced to the *comisario* in charge of the operation (the case of Luis Selaye) or when neighbors observe the body being removed from the trunk of a police car and placed at the location where the confrontation supposedly took place (the case of Gustavo Gallorini).

I have entered markers in my database in all those cases in which advocates for the victim or court records provide detailed and specific allegations of evidence tampering. According to these sources, the police in Buenos Aires added a gun to the crime scene in nearly 20% of all routine policing cases in my sample – and in 55% of the cases in which the victim was simply executed, a situation that is under greater police control than when the police shoot a fleeing suspect or a demonstrator, for example. Similarly, they staged a confrontation after the fact by moving the body, shooting into the air or at their own cars, placing a gun in the victim's hand or similar means, in 45% of the routine policing cases and 75% of the executions. Nearly 10% of the cases include some kind of falsified forensic report produced by police experts and introduced by the defense.

The police also take more drastic measures to impede an investigation. They threatened witnesses in 22% of the Buenos Aires cases. In one case the police threatened an entire lower class neighborhood with the complete withdrawal of police protection if they did not cease

protesting a murder. Nor are these empty threats. Ten percent of the cases in my sample involve a victim who was most likely killed because he or she was a witness in another case. The Supreme Court of Buenos Aires in October 2001 issued an opinion in which it accused the Buenos Aires police of killing and coercing minors who complained of ill treatment while in custody (Acordada No.3012). The CELS extensively documents stories in which witnesses have been threatened, injured or killed (CELS/HRW 1998). The police have also threatened lawyers for the victim's family in 8% of the cases, sometimes anonymously, sometimes not. One of the lawyers I spoke to had his car firebombed. More generally, others within the police force covered for their colleagues, by failing to cooperate in one way or another, in 35% of the cases. The purpose of all this, of course, is to create a record that will support a ruling that the police were simply defending themselves from armed aggression.

Published studies of police violence in Buenos Aires and São Paulo support my conclusion on this point (CELS/HRW 1998; Chevigny 1995). In commenting on a recent case, the CELS writes:

[This case] occurred in the context of an institutional pattern that promotes complicity and covering up these facts, forging proofs and attempting to present these murders as confrontations. In addition, it makes evident the refusal of those in charge of the Buenos Aires police to investigate these events, to adopt any preventive measures as to those charged until the courts require it, or to develop any policies whatsoever to reverse the increase in police violence (my translation) (CELS 2001)

Does this pattern of misrepresentation and intimidation produce the desired results? Of course, if it were never successful, we would not expect the police to use it so consistently. But evaluating its impact in actual cases is difficult since, if it is apparent even to an outside investigator that in a given case they have subverted the factual record, by definition they were not very successful. Still, there are numerous cases in which advocates for the victims are persuaded that the full facts of the case – facts that would demonstrate that the killing was indeed

illegal – remained unknown to the courts due in large part to police activity. And a review of many of the cases makes it evident that, even when it wants to actively prosecute a case, the legal system in Buenos Aires is often handicapped by its inability to gather information about police homicides.

At the same time, advocates for the victim often work hard to uncover and supply the true facts surrounding the death, and the judicial system – prosecutors and judges – is somewhat complicit in its blindness. Prosecutors could have taken the arguments of the relatives more seriously in all these cases, and pursued the case on the strength of circumstantial or forensic evidence, as happens in Uruguay. But the role of the cover-ups and subterfuge seems to be to offer the courts adequate cover to rule in favor of the police. The courts, even when they do not visibly disregard facts in the record, seem to be skewing that record to produce outcomes favorable to the police, especially in politically sensitive cases. In the case of Nestor Zubarán this is quite clear. Nestor was shot in the back by the chauffeur to the then-head of the Federal Police. The victim's family retained CORREPI lawyers to represent them, but the court consistently refused to take the evidentiary measures they requested, and then dismissed the case for failure of proofs.

This evidence that the courts are at least partly complicit in their own blindness demonstrates that the courts are, in many cases, bending to pressure applied by the police. It is not uncommon for the prosecution itself to ask for the acquittal of a police officer. Many of the lawyers I talked to related that they felt as if they were swimming against the current in these cases: the entire system was pitched against a conviction so that even if one of the actors were favorable – a certain judge in La Plata, or a progressive prosecutor in San Martín – other actors would hinder their actions. The results, where the police defendant has the backing of the police

corporation, are evident: the conviction rate when a police officer is accused of killing someone in a quarrel – and the police corporation, presumably, has no reason to back the police officer – is twice that in routine policing cases, where the police have an interest at stake.

Many of my contacts made arguments along these lines. One of my interviewees in Buenos Aires, a lawyer who has acted in dozens of police violence cases, argued that the propensity of judges in Buenos Aires to exonerate the police is inversely related to the extent of press coverage of police abuses and political support for restraining the police. Initially, she said, it was very difficult to get a verdict against a police officer. Then it became much easier, coinciding with certain very public cases (the so-called “*masacre de Wilde*” of October 1994, among others) and a wave of popular protests against police abuses. But then there was a reaction from politicians and others against increasing crime and violence and a consequent decline in popular support for strict limits on police violence, and it became again harder to get a conviction. All of the lawyers and activists I spoke to agreed that judges are more likely to convict if there are loud demonstrations in the street outside the courtroom.

Others among the lawyers interviewed who represented victims’ relatives, argued that the rank and standing of the police officer involved made a great difference in the way the case was treated. If the police officer in question was a “*gil*” (a loser, someone of low standing, or out of favor with police authorities, in Argentine slang) they said, then the case could proceed with little difficulty. But if the police corporation stood behind the perpetrator, then the case would languish and the judge would be unmotivated or outright hostile to the prosecution. By the same token, a lawyer with political or media connections can often prevail on judicial personnel to move the case ahead, they said. In other words, political and social pressures can sometimes move the courts in the direction of a conviction.

The task of generating more information is often taken up by certain collective entities that have stepped into the gap. The CELS is one such entity, conducting studies of police behavior, monitoring and publicizing police violence, and taking on a few landmark cases. CORREPI takes a more activist approach, both within and outside the courts, providing legal representation in both criminal and civil cases against the police, and taking a hand in political demonstrations. CORREPI's sharply leftist ideological position more naturally aligns it with victims from the popular classes, and it tends to balance out the disparity of resources for these classes. This intervention is crucial. These organizations can generate information, mobilize political resources on behalf of victims, and translate their claims into a legal language the courts can apply. The results are apparent: I have no convictions in Routine Policing cases in my Buenos Aires sample in which the affected parties are not assisted by an outside lawyer, and in most of these the attorney belongs to an NGO, most often CORREPI.¹⁰

In conclusion, in Buenos Aires the police nearly always try to present these cases as the repression of violent criminals, fabricating evidence if necessary. In those instances in which the victims do not come from a middle class context, and do not have the requisite resources and mobilization, the police are likely to succeed in that characterization – either because the judge and prosecutor have little incentive to dig deeper than the police version, or because there would be no credible witnesses available at an eventual trial to contradict the police version. It is only when civil society actors step in to make up the deficit that the courts are both willing and able to convict.

¹⁰ I should note that CORREPI's cases are over represented in my sample, since they assisted me in locating and identifying cases.

D. Garbage in, Garbage out: Normatively Closed, Cognitively Closed systems

The final category is one in which the courts tend to apply the law more strictly according to its own logic, but are for one reason or another hampered by their inability to gather the requisite information about the cases they are judging. In this category, bad outputs are more often the result of bad inputs than of bad processing. I place the São Paulo and Córdoba courts in this category, in connection with Routine Policing cases. Here, my review of the cases suggests that the investigative failures are similar to those in Buenos Aires, though more common in São Paulo and less so in Córdoba, while the courts have no qualms in ruling against the police when they are actually presented with the requisite facts.

1. Routine Policing cases in São Paulo

Many people will argue that the justice system in São Paulo is simply at the service of repression, and lacks a commitment to effectively prosecute a violent police force – especially in connection with the popular classes. The very low conviction rate lends credence to this belief. Thus it is important to establish whether the problem in São Paulo truly is a lack of sufficient information, or simply permissiveness on the part of the courts in cases involving the lower classes. The first piece of evidence, of course, is the conviction rate itself. In São Paulo, in contrast with the Violent Victim cases in which the conviction rate is 0%, and Private Violence cases in which it is 56%,¹¹ the conviction rate in Routine Policing cases is low – 6% – but not nil. This suggests that there is not a (universally applied at least) blanket rule permitting the use of lethal violence by the police.

Indeed, interviews with key participants in the system support this conclusion. There is at

¹¹ These are cases in which a police officer kills someone in the course of a private dispute, as in a fight, or domestic violence incident.

least a core of prosecutors and judges that take these cases very seriously, and are working hard to improve the performance of the judicial system in this respect. I spoke to several judges who are aware of the information put forth by the Ouvidoria about police excesses and cover-ups. They use the initiative afforded to them by their greater control over the investigation (as compared with common law judges) to demand more thorough investigations in some of these cases than prosecutors would typically conduct. One judge has even sent cases back to the Attorney General using an extraordinary legal mechanism, when the prosecutor in charge of the case refused to prosecute and insisted on dismissal of the case. I also spoke to several prosecutors who argued that their office is doing all it can to aggressively pursue cops who kill innocent civilians, and pulled out case files to prove their point.

At the same time, it is clear that the system, somewhere, is failing in prosecuting the police. Nearly 65% of all these cases in São Paulo are dismissed early on by agreement of the prosecutor and the judge, ostensibly because the evidence is insufficient to establish that the incident involved the excessive use of force. Even the few cases that go to trial fail more often than not to produce a conviction – 60% of the tried cases end in acquittals.

A look at individual cases confirms that whether or not they succeed depends on the quality of the information presented in court. In 1984, for example, the police removed two *favela* residents, Valdeci Antônio da Silva (17) and Roberto Thomaz de Oliveira (18), from a gypsy taxicab run by an acquaintance. Their bodies were found hours later, in an empty lot, with close range gunshot wounds. Family members believe they were misidentified as having some involvement in the shooting of the son of a police officer, and executed by a group of police officers. The police officers who acknowledged killing them were brought to trial on September 18, 2000 before a São Paulo jury. In this case the prosecutor deemed the case worthy of

prosecution, the judge agreed, but the record of the jury's vote shows that the jury acquitted the police officers on grounds of legitimate self-defense.

On the face of it, the result is inexplicable. The autopsy report shows that the wounds were consistent with an execution. The taxi driver could have confirmed that the boys were unarmed, were arrested without resistance and were last seen handcuffed in the back seat of a police vehicle. But at the trial, the only witnesses were the two police officers. Under Brazilian rules against self-incrimination, they were able to tell their story without subjecting themselves to cross-examination. The prosecutor called no witnesses because the driver, also a resident of the *favela*, was unavailable, and even the lawyer who was looking after the interests of the family did not appear at the trial, feeling that there was nothing she could do. Thus the only version of events presented to the jury with any evidentiary support (albeit the self-interested testimony of the accused), was that the two young men had met the police with armed resistance under cover of darkness, and had been killed when the police responded by shooting into the overgrown lot where they were allegedly hiding. This is the story the jury accepted.

Many other cases make the same point. In some, the case fails because the only witnesses are not seen as credible – *favela* residents are seen as living on the edge of the law, and therefore cannot be trusted to testify truthfully against the police. Josevaldo Fernandes de Sousa was killed less than a block from the door of his shantytown residence. Five other *favelados* testified that a certain military police officer, Sérgio Chelas, had accosted him at the door of his *barraco*, inquiring after the whereabouts of another person. Not receiving a satisfactory answer, neighbors believe, Chelas waited until Fernandes left home a few minutes later, and shot him. In echoes of the Córdoba failures, the jury chose to believe that these uncouth, semi-literate witnesses were all lying simply to get a policeman in trouble.

Witnesses might fail to show up for the trial: the prosecutor failed to prove Military Policemen Alves dos Santos and Batista de Lira killed José de Oliveira Rios, when most of the witnesses to their dispute and his summary execution disappeared before trial. Sometimes the evidence is available but not presented in court: The case against the killers of Anderson Monteiro dos Santos was dismissed on the grounds that they had killed him in the course of an armed confrontation. In his request for dismissal the prosecutor failed to note a medical report suggesting that he had suffered a rather severe beating before being shot. The case against the military police officers who killed CA Santos was also dismissed after they testified that he ran from a car they had been chasing, shooting back at them. His friends and relatives insist that he could not walk without crutches, but this information did not make it into any of the legal filings. In short, prosecutors and especially courts are presented with the police version of events and very little contrary evidence they find sufficiently credible.

On the other hand, in those cases in which witnesses deemed credible by the courts are able and willing to testify against the police officers, there can be a conviction. In the case of Júlio César Antunes de Miranda, outside witnesses with no connection to the victim testified that he had tried to evade police who simply wanted to check his identity, was cornered, and was heard pleading for his life shortly before he was killed. In that case, the jury by a narrow margin convicted the two police officers of excessive use of force. According to the records, the jury was willing to approve of the use of force in general, but by a vote of 4 to 3 believed that the police officer had intentionally exceeded permissible limits on the use of force.

Along the same lines, the police officer who killed Eneas da Silva, 12, who ran away from the police when he was discovered leafing through a pornographic magazine, was convicted and sentenced to 13 years in prison. In that case, the prosecution survived a falsified

autopsy report, a planted gun, false testimony from the police officer and his colleagues, and the intimidation and beating of eyewitnesses. At the trial, a second, accurate, report was introduced, the eyewitnesses testified despite the threats, and the trial court in the end chose to believe that the child who was killed was unarmed. In this case, the prosecutor ensured that there would be an adequate factual record to support a conviction (prompted perhaps by media and international NGO attention to the case) by going so far as to exhume the body to conduct a second autopsy. The only useful generalization about all these cases is that the prosecutions fail, when they fail, for lack of sufficient reliable and accurate information to paint the events as an abuse of rights rather than a legitimate use of force against a criminal.

Most of the victims are poor, and many are from the *favela*. The levels of impunity feed the common perception that justice in Brazil only responds to the rich. The question is whether *favelados* are victims of a classist norm or simply unable to effectively supply information about their case to the legal system. The effect of retaining an attorney suggests the latter. This factor quadruples the probability of a conviction, regardless of social class. In fact, for families who have retained the services of an attorney to accompany the prosecution the likelihood of a conviction is more than twice as high in São Paulo as in Buenos Aires. For those that do not have an attorney on the case, the conviction rate approaches 0 in both cities. This is consistent with the hypothesis that there are informational problems in both places, but, if only a legal claim is presented effectively, the courts are more likely to process it correctly here than in Buenos Aires.

There is other evidence of the cognitive closure of the system. As in Buenos Aires, the police in São Paulo are adept at manipulating the record. One former police officer testified that the police will go so far as to put a gun in a deceased victim's hand and pull the trigger, then present the resulting gunpowder residue as evidence that the victim died in an exchange of

gunfire with the police. Using the same approach as I described for Buenos Aires, I coded fully 25% of all the cases in São Paulo as showing evidence that the police added a gun to the scene. At the Ouvidoria, I was told that the police in São Paulo often carry two weapons, the police-issued one that is registered and can be traced back to them, and another, sometimes with the serial number filed off, that can be used in questionable shootings or left as a decoy at the scene. Whether this is the reason or not, I often saw Military Police officers on the streets of São Paulo carrying two handguns. In my sample of cases there is evidence that the police experts produced falsified forensic reports in 5% of the cases, and engaged in other kinds of tampering in nearly 10% of the cases. The shooting is presented as a confrontation in 77% of all cases, while this can be confirmed by independent evidence in only 20% of the cases. In short, the system rarely gets enough good information about these cases, but in the few cases in which there is strong evidence to back a claim, the courts are willing to convict.

2. Routine Policing cases in Córdoba

Córdoba is different than São Paulo on both effectiveness and inequality: while the conviction rate in Córdoba is vastly higher than in São Paulo, results are much more unequal when we compare across various social groups. As a result, it might seem odd to place the two cases in the same category. And yet a careful review of individual prosecutions suggests that the courts in Córdoba, as in São Paulo, are often quite serious about applying the law when all the facts are before them, but in many cases fail to secure critical information necessary to convict. At the same time, paradoxically, there is slightly more evidence in Córdoba than in São Paulo of cases in which judges refuse to convict despite the available information, though not as much as in Buenos Aires. In comparison to Uruguay, the difference is primarily one of the actors charged with resolving the information gap caused by police resistance to these prosecutions – there, state

agents, here private actors – and their relative success.

The conviction rate in Córdoba is almost 40%, higher than in all the other locations, with the exception of Uruguay. In four out of ten cases then, the system is able to put together the information and the will to convict a police officer who commits homicide. Moreover, many of the successful prosecutions are quite unremarkable – routine cases, routinely processed to a conviction. The case of Carlos Valenzuela, a working class youth in his twenties, is such a one. He was shot in the early hours of the morning, after leaving a party, in the course of a routine police operation that went out of control. His case generated little attention, and led to a conviction with little prompting from anyone outside the legal system. The Córdoba activists knew little about the case, and had not taken an active role at all in connection with it. This case was processed by the state, with little additional investment from outside actors.

The cases of Sergio Bonahora and Ariel Lastra are almost identical and show the same pattern as the last. These two youths were killed after separate traffic stops that ended in police harassment and the victims' attempt to run away. Both cases ended in a conviction, despite some attempts on the part of the police to stage a confrontation. All these cases appear to have proceeded to a successful conclusion with very little prompting from outside the system, other than the victims' families. Still, none of these victims were engaged in any criminal activity at the time they were shot, so perhaps we could explain the convictions on the grounds that the courts are protecting "honest citizens."

In the case of Luis Gorosito, however, this explanation will not work. He was suspected of being a thief, and was killed in an operation following a robbery. Another police officer named Cuadro was killed in the same operation, allegedly by Gorosito (though Cuadro's family and the lawyers who work for Gorosito's family believe the police officer was actually killed by

his fellow officers). It should be clear by now that a case in which the police killed a criminal suspect after the death of another police officer is not, in most of the jurisdictions evaluated here, a prime candidate for conviction. His case did not trigger popular demonstrations or a great deal of media attention. Most of the witnesses to his execution were police officers who argued that he had been shot in an armed confrontation. And yet, on the strength of mostly forensic evidence, the Córdoba provincial court chose to convict. The only identifiable extra-legal positive factor in the case was that the victim's family retained a private attorney to accompany the prosecution.

Lest we think the wheels of justice run too smoothly and of their own volition in Córdoba, we should take a look at two cases in which civil society intervention seems to have been determinative. Miguel Angel Rodriguez was the son of migrants from Salta, an impoverished province in Argentina, who lived in one of the poor neighborhoods that surround Córdoba city. He was only 15 when a police officer, angry that the teenager had allegedly stolen a soccer ball from the policeman's son, shot him in front of his house. By the time of trial, the police had raided the family's house, witnesses had been threatened, and Sergio Pérez, an 18-year-old neighbor who saw the shooting, had been murdered. In spite of all this, the prosecutor decided to charge the police officer with merely negligent homicide, a decision that triggered large demonstrations against the prosecutor. In the end, the court decided that he should be charged with intentional homicide, and he was convicted. Sergio Pérez, in turn, was first threatened, and ultimately killed by César Cruz, a colleague of the defendant in the Rodriguez case. Cruz was also convicted of homicide in spite of attempts to make Pérez look like a criminal.

So much for the convictions, but under what circumstances are prosecutions likely to fail

in Córdoba? The set of cases in which a prosecution failed to produce a conviction are rather a mixed bag. The results of the inequality analysis show that results are highly dependent on the social class of the victim, so I will begin by examining the cases of underprivileged victims.

Cristian Rodriguez, Diego Ordoñez, and Roberto Ordoñez Salazar have this in common: they all lived, and died, in the *villas* that surround Córdoba city. All three were killed in the villa itself, and in all three cases there was at least one witness. In at least two of the three cases, the victims were in custody or kneeling with their hands in the air when they were shot.

In all three cases, the witnesses were intimidated, and according to lawyers involved, were not deemed credible by the courts. One lawyer related how the witnesses had a very difficult time describing what they had seen in a way that would satisfy the judge. She said the witnesses were so scared when they were called in to relate what they had seen before the judge, the prosecutor and the defense attorneys that they contradicted themselves on secondary issues and could not put together a coherent story. Ultimately, in all these cases, the prosecutor and the judge accepted the police version over the witnesses', and the cases were dismissed. At least the last two of these three, if not all three, are borderline cases. On the one hand, the courts ignore witnesses to the event, which could support a finding of normative openness. On the other, the witnesses are, by admission of the advocates themselves, not very effective and insufficiently credible for a system that, properly, should demand high quality information before convicting anyone. This supports a finding of cognitive closure. Many other cases incline the balance in favor of the latter interpretation as a more pervasive theme in Córdoba: either there are no witnesses, or the only ones are individuals with a criminal record whose testimony is not believed.

Thus far, then, the tally shows a number of cases that failed partly through lack of interest

on the part of prosecutors, but mostly through a lack of witnesses or the lack of resources and education of the existing witnesses. Occasionally, however, we see among the acquittals a case that seems only explicable by a decision on the part of the judge to overlook the excessive use of force. This is most clear in the case of Silvio Sánchez, Carlos Sarria and Luis Martín. All three were in the same cell of a local prison in which a riot broke out, but Martín was a federal prisoner imprisoned on a federal drug charge, while the other two were provincial prisoners held on provincial charges. All three were killed in the same cell at the same time. The trial relating to Sarria and Sánchez was held in provincial court, while Martín's took place in federal court. The federal court, on essentially the same facts, convicted the shooters, while the state court acquitted them. This disparate outcome seems the result of a different appreciation for the latitude that ought to be given law enforcement in repressing prison inmates – in this case, given the circumstances of the case, nearly complete freedom.

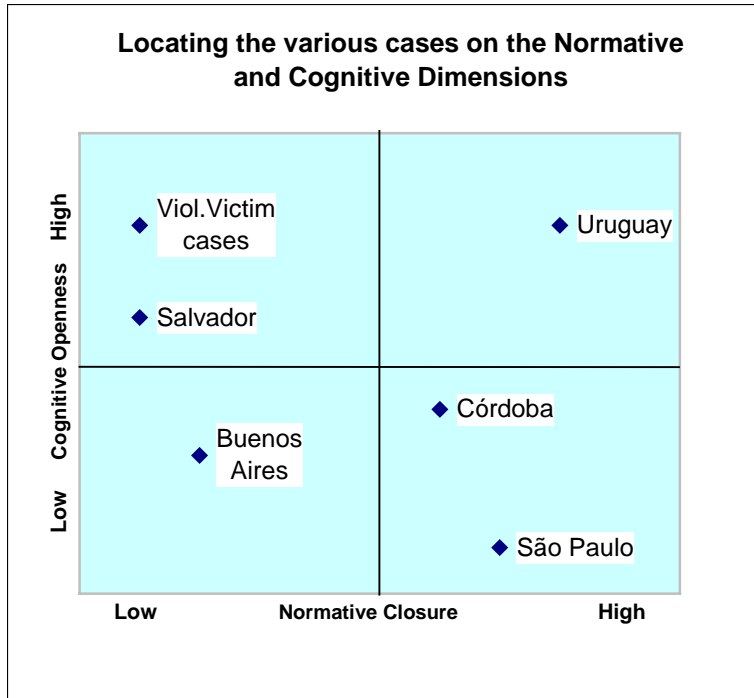
To summarize the normative and cognitive capacities of the system in Córdoba: In many of the cases that fail, the balance of the evidence points to an information gap that is not being filled by the state. At the same time, information is not completely closed off – there is, after all, enough information to ground a conviction in nearly half of all cases – though it appears that this is not due to the effort of prosecutors and judges but of the affected parties. And for the most part judges seem to apply the law in a straightforward manner, though there are a few cases in which judges choose to disbelieve witnesses from the margins of society, or in which there is little explanation for the failure to convict other than sympathy for the defendant police officer or lenient standards for police behavior.

On the positive side, there are quite a few convictions for obstruction of justice – more, in fact, than in any other jurisdiction – in which the killer's superiors or colleagues who assist in the

cover-up are also prosecuted and convicted. This at least suggests that the courts do not welcome police help in easing the cases toward dismissal. And judges seem to take these cases more seriously than prosecutors: in at least two of my cases, the judges convict despite a request by the prosecutor to acquit for insufficient evidence, and in one the judge insisted on a more serious charge than the prosecutor offered. As a result, I place Córdoba within the normatively closed and cognitively closed category, though on a more continuous scale it would probably be located very near the border with both normative and cognitive openness.

IV. The effect of normative and cognitive failures on effectiveness and inequality

In this section I will summarize what we have learned from the comparative analysis of the various jurisdictions and the various types of cases within each jurisdiction, and connect it to the levels of effectiveness and inequality observed in the various systems. While thus far I have made categorical distinctions between normative openness and normative closure, and cognitive openness and closure, it should be clear from the nature of the concepts themselves as well as from the discussion of the cases that there are degrees of openness and closure. To illustrate this, I have made an admittedly impressionistic evaluation of the performance of the cases on a scale of one to ten, and located the cases on a graph, below. While the scores are intended more as a visual summary of the information presented than as a precise quantification of the state of rights in each case, the scoring is based on my review of the cases and all the information presented in this paper. The rank ordering of the cases along each dimension, I believe, is quite reliable.



This graph more accurately reflects, for example, the difference in the degree of cognitive closure between Córdoba and São Paulo – while most of the cases that fail in both places do so for failure of proofs, this happens much more often in São Paulo than in Córdoba. And while courts in Uruguay do a creditable job of unearthing information and seriously pursuing murders committed by policemen in the course of their duties, they are far from perfect in this regard. On the other hand, while I classified Buenos Aires as normatively open and cognitively closed, there are committed judges and prosecutors in Buenos Aires, and occasionally they wholeheartedly go after one of these cases and cobble together the record that will support a conviction. Similarly, São Paulo’s judges are a professional lot, but there are a number of them, sometimes decried by their own colleagues, who are simply not interested in looking too closely at what they consider the police have to do to keep a semblance of order in the often-violent streets of São Paulo. Moreover, there do not appear to be any judges willing to protect the rights of persons with a violent past. Finally, the courts in Salvador, I believe, have a pretty good idea of what is going on

in these cases, but the police still offer them plenty of cover by keeping a relatively tight lid on the flow of information up out of the *invasões* where they do much of their killing. The killing of Violent Victims in São Paulo and Buenos Aires seems to be more open than that. What follows is a summary of the information that led to the placement of each case into the above scheme, and how that has affected the levels of effectiveness and inequality in each place.

A. Uruguay

In Uruguay I found that the system is, with some exceptions, quite able to acquire information about these cases, and that judges treat the cases according to the rules, with little evidence of inequality based on the characteristics of the victim. There was no evidence of a Violent Victim exception in Uruguay, and in fact, one of the cases in which the system worked the hardest and produced a positive result was one in which a life-long cattle rustler was killed on the border with Brazil. If there was evidence of a difficulty, it was in acquiring information when the police closed ranks around the shooters. Thus we would expect the system to fail, when it does, for lack of information about the case, and not because judges bow to pressures to acquit against the weight of the evidence. Moreover, in the cases in which a conviction ultimately ensued despite resistance from the police, it was the judge and prosecutor who developed the information. So we also would expect a good faith effort at investigating the event on the part of state actors outside the police, when the police itself are not doing so.

This relatively effective judicial performance is matched by a drastically lower level of violations overall. Indeed, one policeman who was interviewed after being beaten in a scuffle claimed that he was inhibited in using his own weapon because the courts are far too strict on police officers who use them, a claim the papers gleefully picked up (El País, 8-25-00. “Policía Atada de Manos [Police has Hands Tied]”). This is an easy excuse, and not necessarily to be

taken at face value. Still, in São Paulo or even Buenos Aires it would be laughable, while in Uruguay it has at least the semblance of credibility. At the same time, police violence is still somewhat targeted to the underprivileged and to the “conflictive” neighborhoods of Montevideo; and there is still evidence that the police seek to pervert the factual record. In short, there is still an attempt to keep information from the judicial system by selecting the victims and suppressing information, but the attempt is less successful in the Uruguayan case than in the others.

B. Buenos Aires:

Some civil society actors accept the argument that the low conviction rate in police cases in Buenos Aires is the result of an official if informal policy to repress the poor and preserve the liberal economic order the state has put in place.¹² But in some regards, the results are not as poor as might have been expected given the dismal public opinion of the courts. In Buenos Aires we find a higher conviction rate than in São Paulo and lower levels of socio-economic inequality in judicial outcomes than in Córdoba. At the same time, the conviction rate is quite low compared to Uruguay and Córdoba, troublesome cases are often left to age into oblivion, and the system is quite sensitive to extra-legal considerations. The courts are unresponsive unless a claimant is willing to invest significant personal and political resources into pressing for the desired result. The general tendency is to do nothing or to exonerate the accused police, unless civil society mobilizes popular demonstrations, claimants retain attorneys to accompany the prosecution and press for more effective action, and the victim appears to be free of connections to violent crime. The execution of Violent Victims goes unpunished.

What are the consequences for effectiveness and inequality when we have such a combination of normative openness and cognitive closure? It is no surprise to find a lower

conviction rate when the police do not perform their investigative function, as is clearly the case in Buenos Aires. And the other state agents that could in theory supply the deficiency do not. In Buenos Aires, during the time covered by this study, either the prosecutors or the judges were technically in charge of the investigation and could have pressed for a more thorough investigation, though in practice they have little in the way of independent investigative resources. But there is little evidence of an attempt on the part of judges or prosecutors to pressure or by-pass the police in order to permit a more complete investigation. In fact, judicial officers appear content to rely on the information brought out by the police itself, such as it is.

Thus in Buenos Aires it falls to non-state actors – persons from among the victims’ social network, with or without the assistance of an NGO – to bring information to the attention of the courts. The dependence on private action should tend toward socio-economic imbalances in the outcomes but these are partly redressed by the aggressive action of CORREPI’s lawyers, whose actions are, if anything, inversely proportional to the material resources of the victims. Moreover, the economic inequalities are further obscured by the apparent randomness injected into the process by extra-legal considerations that weigh on the courts’ performance: popular demonstrations, media attention, the lack of political cover for the perpetrator, and the like. In short, the police are quite successful in restricting the evidence presented to the ultimate decision maker, with a certain degree of complicity on the part of judges and prosecutors. At the same time, judges and prosecutors are sensitive to public and political pressures, so that if the facts become known through the actions of claimants and their advocates, and the case achieves a certain notoriety as a result or triggers popular demonstrations, they become much more likely to convict.

¹² See, e.g., CORREPI email communication with author (11-01-01).

At the pre-judicial level, the low conviction rate is reflected in a high level of violations, on a par with São Paulo's record in recent years. The uncertainty of judicial results also matches extensive efforts to hide violations, including doctoring the scene of the crime, producing false information, and violence and intimidation of witnesses. These efforts are more likely to succeed when they affect the underprivileged, with the result that, as expected, the police do target the popular classes.

C. Córdoba:

In Córdoba for the most part judges appear to judge cases fairly, but prosecutions often fail for lack of credible information to support the charges. Thus I classified the system as normatively and cognitively closed. On the normative side, there is no evidence of a Violent Victim Exception, and there is little evidence that the criminal record of the victim makes much of a difference. But there is often a classist flavor to the failure of information: when the violation takes place in the *villas*, if there are witnesses, they are often scared and intimidated, and judges do not find them sufficiently credible. Prosecutors at times must be prompted to take a firmer stand in these cases, though judges have occasionally stepped in where the prosecutors would have taken a more lenient view. As everywhere, the police resist prosecution, and engage in significant attempts to obscure the facts, which individual claimants must overcome mostly on their own. As expected, this is accompanied by a sharp inequality of outcomes tied to the victims' economic position. Also as expected, the police strongly target lower class victims, though not as strictly as in São Paulo. Finally, the violation rate is lower, to match the higher conviction rate.

D. São Paulo:

The qualitative analysis of cases places São Paulo in the normatively closed, cognitively closed category. That is, the judiciary in São Paulo appears to be little influenced by outside pressures or extra-legal norms – with the significant exception of Violent Victims, whom the justice system as a whole has placed outside the protection of the law. At the same time, São Paulo's courts appear to be quite cognitively closed, so that crucial information is missing in case after case. Witnesses are afraid to come forward, or simply disappear before a trial can take place, evidence is subverted, the police successfully craft confrontation scenes, and the victim population is overwhelmingly taken from the disadvantaged, including a high percentage of shantytown residents. As a result, São Paulo has a truly dismal record of convictions, matched only by Salvador's.

The expectation was that a system that is normatively closed and cognitively closed would place more informational burdens on claimants, so that material resources would be more important in determining outcomes. At first glance it appears that this expectation is not borne out at the judicial level in São Paulo, since class does not have a statistically significant effect on outcomes. However, a closer look reveals that with the sole exception of innocent bystanders shot by mistake, violations are so targeted to the underprivileged that there is an almost uniform lack of resources among the victim/claimant population. This equality in failure, therefore, is the result of a shared lack of resources to meet the demands of the justice system.

The nearly complete record of success in quashing a successful prosecution at least partly explains the high incidence of violations, while the need to keep information from judges and prosecutors accounts for the strict targeting of lower class victims and the pervasive cover-ups. Judicial results show the police have a nearly free hand in dealing with *favela* residents, and

especially in confronting those they know to be habitual criminals or those killed in the commission of a crime. This also matches up with the high value of these tolls, which showed that the São Paulo police are the most targeted to the killing of persons with some connection to crime, and to residents of the *favelas*. This is some evidence, at least, that the police are playing to perceived weaknesses in the judicial system by violating the rights of those least likely to make the system work.

There is one significant normative intrusion in São Paulo represented by the Violent Victim exception. While the vast majority of prosecutions appear to fail, not because of the failure to apply the law but for evidentiary reasons. At the same time, conviction rates are the result of a large number of individual decisions by a large number of different actors. And the treatment of victims with a criminal record here, in contrast to Buenos Aires, where that variable is not significant, suggests that there is at least a certain percentage of judicial actors who extend the Violent Victim exception to cover perceived criminals more broadly. In particular, São Paulo juries, who are for limited purposes the ultimate decision makers, appear to be taking the rights of *marginais* less seriously.

E. Salvador:

As expected, Salvador demonstrates that the cases with the lowest conviction rates and the highest violation rates are those that fall in the normatively open, cognitively open category. In addition, again as expected, the non-economic tolls prove to be more important in these cases. The legal system in Salvador is complicit in a general acceptance of police violence. The police rely on and protect their right to take nearly completely free action in enforcing public order in the course of their daily duties; investigators and prosecutors do little to redress the situation; and the courts look the other way. The result is that those few who dare to complain are violently

punished, and even the notoriety resulting from public shootings or the killing of public figures does not result in a conviction. Heloísa and Manuel were relatively middle class, and mobilized significant civil society resources, and yet their killers enjoy complete impunity. The result in terms of violations is the highest level of police shootings of any of the cases, three times higher than in São Paulo, affecting people from all walks of life.

Even this extreme case, however, resists categorical measures. Although the notorious nature of many of the violations suggests the justice system is normatively open, accepting illegal police violence as a routine tool of social control, police suspects still take extreme measures to ensure that people like Heloísa and Manuel do not press their case too strongly. This suggests that, under the right conditions, it is indeed possible that the courts would take these cases seriously enough to convict. This case in particular, for example, came about when the police were covering up illegal activities, and thus could expect the system to take a dimmer view of the killing. There is less evidence of these extreme measures of information control in Routine Policing cases. In most cases, the killing is committed under circumstances almost certain to become general knowledge, little is done to hide the facts, and yet no convictions ensue.

V. Conclusion

As seen in the following table, the results support the hypothesized connections between these two dimensions of the legal system and its results, in terms of effectiveness and inequality.

Table 1: Effectiveness, inequality, and normative and cognitive failures

	Normative openness	Normative closure
Cognitive openness	<p><u>Cases:</u> Salvador, Violent Victim cases in SP and Bs As.</p> <p><u>Expected Outcomes:</u> In courts: Low SE inequality, high non-SE ineq. No judicial effectiveness</p> <p>At police level: High non-SE inequality High levels of rights violations for disfavored population.</p>	<p><u>Cases:</u> Uruguay Routine Policing cases</p> <p><u>Expected Outcomes:</u> In courts: Low SE inequality High judicial effectiveness</p> <p>At police level: Some SE inequality Low levels of violations</p>
Cognitive Closure	<p>Cases: BsAs Routine Policing cases.</p> <p><u>Expected Outcomes:</u> In courts: High SE and non-SE inequality Medium/low effectiveness depending on number of cases that match intrusive norm.</p> <p>At police level: High SE and non-SE inequality High level of violations</p>	<p>Cases: São Paulo and Córdoba Routine Policing cases</p> <p><u>Expected Outcomes:</u> In courts: High SE inequality, low non-SE ineq. Effectiveness depends on degree of cognitive closure.</p> <p>At police level: High SE inequality Level of violations depends on anticipated degree of closure</p>

The one picture that is more or less constant in all the cases is, unsurprisingly, the attempt by the police to shut down the flow of information to the courts. In all the locations studied, with more or less success, the police target the underprivileged, destroy evidence, corrupt the record, threaten witnesses, and doctor the crime scene. The difference in outcomes, more often than not, lies in the willingness and capacity of the legal system to find alternative sources of information – either through the efforts of other state agents like prosecutors or judges, or through civil society initiatives.

Ensuring the production of information and its incorporation into the legal record thus becomes a key factor in improving the performance of the courts in prosecuting human rights violations for at least three reasons. First, even when we manage to fix the normative problem – that is, when the courts no longer tolerate high levels of police violence – the police will still

attempt to prevent effective prosecutions. Second, it is clear that in a majority of cases in almost all the locations there is an insufficient flow of information to satisfy the demands of a criminal prosecution. And third, it is often the production of information that itself begins to generate pressures for good results, resulting in increased normative closure in these cases. This is visible in Buenos Aires, and I believe it is the principal contribution of the *Ouvidoria da Polícia* in São Paulo, in recent years. Either way, then, the task of improving judicial performance is likely to require the enhancement of the legal system's cognitive openness.

REFERENCES

- Cano, Ignacio. 1999. O Papel da Justica Militar na Investigacao das Mortes de Civis Pela Policia no Rio de Janeiro. *Policia e Sociedade Democratica* 1 (1).
- Carrio, Alejandro. 1996. *La Corte Suprema y su Independencia*. Buenos Aires: Abeledo-Perrot.
- CELS, (Centro de Estudios Legales y Sociales). 2000. *Derechos Humanos en Argentina: Informe Anual 2000*. Buenos Aires: Eudeba.
- CELS, (Centro de Estudios Legales y Sociales). 2001. La Continuidad de los Patrones de Violencia Policial. Buenos Aires, Argentina: CELS: Archivos de Hoy.
- CELS/HRW, (Centro de Estudios Legales y Sociales / Human Rights Watch). 1998. *La Inseguridad Policial: Violencia de las Fuerzas de Seguridad en la Argentina*. Buenos Aires: Editorial Universitaria de Buenos Aires.
- Chevigny, Paul. 1995. *Edge of the Knife: Police Violence in the Americas*. New York: The New Press.
- Diamond, Larry Jay, ed. 1999. *Democracy in Developing Countries: Latin America*. 2nd ed. Boulder, Colo.: Lynne Rienner Publishers.
- Domingo, Pilar. 2001. *Rule of Law in Latin America: The International Promotion of Judicial Reform*. Austin: Institute of Latin American Studies.
- Hammergren, Linn. 1999. Fifteen Years of Justice and Justice Reform in Latin America: Where We Are and Why We Haven't Made More Progress. <http://darkwing.uoregon.edu/~caguirre/papers.htm>.
- Hart, H.L.A. 1961. *The Concept of Law*. Oxford: Clarendon Press.
- Helmke, Gretchen. 2000. Ruling Against the Rulers: court-executive relations in Argentina under dictatorship and democracy. Unpublished Dissertation, University of Chicago Department of Political Science, Chicago.
- Helmke, Gretchen. 2002. The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy. *American Political Science Review* 96 (2).
- Holston, James, & Caldeira, Teresa P.R. 1998. Democracy, Law and Violence: Disjunctions of Brazilian Citizenship. In *Fault Lines of Democracy in Post-Transition Latin America*, edited by F. Aguero and J. Stark. Coral Gables, FL: North-South Center Press.
- Larkins, Christopher. 1998. The Judiciary and Delegative Democracy in Argentina. *Comparative Politics* July, 1998:423 - 442.
- Luhmann, Niklas. 1985. *A Sociological Theory of Law*. London: Routledge & Kegan Paul.
- Luhmann, Niklas. 1988. Closure and Openness: On Reality in the World of Law. In *Autopoietic Law: A New Approach to Law and Society*, edited by G. Teubner. Berlin: Walter de Gruyter.
- Malamud-Goti, Jaime. 1996. *Game Without End: State Terror and the Politics of Justice*. Tulsa, Okla.: University of Oklahoma Press.
- Mendez, Juan E., Guillermo O'Donnell, and Paulo Sergio Pinheiro, eds. 1999. *The (Un)Rule of Law and the Underprivileged in Latin America*. Notre Dame, IN: University of Notre Dame Press.
- Nino, Carlos Santiago. 1996. *Radical Evil on Trial*. New Haven, CT: Yale University Press.
- O'Donnell, Guillermo A. 1993. On the State, Democratization, and Some Conceptual Problems: A Latin American View with Glances at Some Postcommunist Countries. *World Development* 21 (8):1355-69.
- O'Donnell, Guillermo A. 1994. Delegative Democracy. *Journal of Democracy* 5:55-69.

- Pásara, Luis. 2000. *Las Decisiones Judiciales en Guatemala: Un Análisis de Sentencias Emitidas por los Tribunales*. Guatemala: Minugua.
- Poe-Yamagata, Eileen, and Michael Jones. 2000. *And Justice for Some Building Blocks for Youth*, 2000 [cited 2000]. Available from <http://www.buildingblocksforyouth.org/justiceforsome/jfs.html>.
- Prillaman, William C. 2000. *The Judiciary and Democratic Decay in Latin America: declining confidence in the rule of law*. Westport, CT: Praeger Publishers.
- Rhenan-Segura, Jorge. 1990. *La Clase Política y el Poder Judicial en Costa Rica*. San Jose, Costa Rica: Editorial Universidad Estatal a Distancia.
- Skolnick, Jerome H., and James J. Fyfe. 1993. *Above the Law: Police and the Excessive Use of Force*. New York: The Free Press.
- Stotzky, Irwin P., ed. 1993. *Transition to Democracy in Latin America: The Role of the Judiciary*. Boulder, Colo.: Westview Press.
- Verbitsky, Horacio. 1993. *Hacer la Corte: La Creacion de un Poder sin Control ni Justicia*. Buenos Aires.
- Weingast, Barry R. 1997. The Political Foundations of Democracy and the Rule of Law. *American Political Science Review* 91 (2):245-263.
- Zaverucha, Jorge. 1999. Military Justice in the State of Pernambuco After the Brazilian Military Regime: An Authoritarian Legacy. *Latin American Research Review* 34 (2):43 - 73.