



Hybrid violence and criminal governance in Latin America^{☆☆}

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1. Introduction

Since the turn of the century more people in Latin America have been killed or otherwise afflicted by violence and insecurity than during the times of dictatorship, repressive regimes, guerrilla uprisings, and armed conflict (1960s–1990s). Latin America has turned into what is on average the most lethal region in the world in terms of homicide rates. The 2013 Regional Human Development Report (UNDP 2013, v) mentions that “in the last decade, more than one million people have died in Latin America and the Caribbean as a result of criminal violence”. In 2012, Latin America’s citizens represented only 8 percent of the world’s population; however, they produced around 37 percent of the world’s homicides in that year (Chioda, 2017, 1). Since then, regional statistics have not really improved.¹

Formally at peace and formally democratic, one of the most salient aspects of this violence is that it is not explicitly directed at acquiring or defending state power. Rather, it is labelled ‘criminal’ or ‘social’ and includes not only everyday forms of direct violence and coercion but also institutional and symbolic forms of violence. These dimensions, in turn, rest upon a long history of social inequality, exclusion, and elite privileges that are often enveloped as structural violence.

Except for drug-related violence corridors in Colombia, Central America and Mexico, Latin American violence is largely urban (Koonings & Kruijt, 2015). According to the Mexican NGO *Seguridad, Justicia y Paz* (2020), of the 10 most lethal cities of 300,000 inhabitants or more in the world in 2020, seven are Mexican. Of the 50 most lethal cities, 40 are Latin American or Caribbean: 17 are Mexican, 11 Brazilian, six Venezuelan, two Honduran, two Colombian, one Jamaican, and one Puerto Rican. Of the remaining cities, five are American and five South

African.²

What is behind these dismal statistics? After the disappearance of the dictatorships and the re-democratisation process in the course of the 1980s new and violent non-state actors emerged, not aiming at revolutionary political transformations like the former guerrilla groups but aspiring to become a ‘regular’ element with prestige and negotiating power in the economy and society. They operate in criminal, violent, clandestine or at least extra-legal ambiances. But they are not hidden or invisible. They vigorously put forth their claims to local, municipal, regional, and national involvement. They control larger or smaller territories or commercial corridors for smuggling, levy taxes on ‘their’ people, provide ‘protection’ by eliminating ‘adversaries’ (legal or illegal competitors) and try to establish an economy of uninterrupted profits and a society of continued legal impunity, replacing official rule of law by criminal justice and extra-legal order making. So, despite the apparent non-political nature of this system of violence, it does have far-reaching repercussions for social life as well as for politics, governance, the law, and the state. In this contribution we seek to examine the implications of contemporary violence in Latin America for order making and governance.

The article is developed as follows. As a starting point we combine two concepts, namely protracted hybrid conflict and criminal governance, to frame the paradox of violence in Latin America. This paradox rests on the proposition that chronic violence coincides with formally democratic states that are, in a conventional sense, not at war. We will then look briefly at the historical context of violence, state and hybrid order making in Latin America. Subsequently we will explore three specific and intersecting mechanisms of criminal governance in Latin America: state capture, layered micro-sovereignty, and state

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¹ Between 2010 and 2021 Latin American and Caribbean yearly homicide rates oscillated between 19.9 and 24.4 per 100,000. For the same period global yearly rates were relatively stationary around 6 per 100,000. See Homicide rates data assembled by UNODC at <https://dataunodc.un.org/dp-intentional-homicide-victim-est>, consulted 26 July 2023.

² Seguridad, Justicia y Paz, *Metodología del ranking de las 50 ciudades del mundo* (2020). <http://www.seguridadjusticiaypaz.org.mx/sala-de-prensa/1597-metodologia-a-del-ranking-2020-de-las-50-ciudades-mas-violentas-del-mundo> (retrieved 23 June 2021).

transgression. In the conclusions we will reflect on the political implications of criminal governance in relation to debates about post-violence and more peaceful forms of order and rule.

2. Protracted conflict, hybrid violence, criminal governance

We concur with Barnes' (2017: 968) argument in favour of the inclusion of chronic criminal violence into the debates on political conflict and violence. Chronic urban and criminal violence has in fact been incorporated in recent scholarship of protracted armed conflict. In particular urban areas have come to be seen not only as emerging sites for asymmetrical warfare but also as arenas of new, long-lasting, hybrid forms of armed conflict and collective violence. At first sight this refers to notorious examples of intra-state armed conflict being waged in or extended to cities, or cities being affected by the economic, social and political spill-overs of war (Beall et al., 2011; Esser, 2004). Well-known examples of cities in so-called war-torn countries in the post-World War II and post-Cold War era include Beirut, Mogadishu, Medellín, Karachi, Goma, Kabul, Bagdad, Mosul, Homs, and Aleppo. In some cases the term *urbicide* has been used (Fregonese, 2009) while a plethora of case studies show the entanglement of politics-driven armed conflict with other forms of interpersonal, economic, criminal, and social violence (Büscher, 2012; Pech et al., 2018). The hybridity of these protracted conflicts emerges from the fusion of military confrontations, factionalist political violence, and organized crime, as well as the impact on socio-spatial regimes, governance, and power relations.

In Latin America, the use of war frames to analyse or denounce this violence is commonplace. Both the statistical magnitude and lived experiences of violence in many urban areas and in specific production zones and trade corridors of the drugs economy in Latin America resemble violence in conflict-torn cities, regions, and countries elsewhere. Notions such as 'war on crime', 'war on drugs', and 'pacification' are widely used in Latin America. Increasingly this criminal and urban violence has been addressed by a securitized and militarized doctrine for public order and law enforcement that resonates with the post-911 discourse of the 'war on terror' (Müller & Hochmüller, 2017). In turn, the debate on conflict resolution, peacebuilding, and reconstruction lacks a clear perspective on how to relate standard peacebuilding formats to the hybrid violence in such protracted urban conflicts not just in Latin America but across the globe (Turkmani, 2022).

Still, there are significant differences between the Latin American violence and other, more conventional forms of protracted hybrid conflict. The most important divergence lies in the articulation of Latin American violence with relatively consolidated and formally democratic states. This has profound consequences for order making that cannot simply be reduced to the often-mentioned fragility of the rule of law – or even the state as such – in contemporary Latin American democracies. Therefore, to unravel the hybrid entanglement of violent crime and legal governance within this type of protracted conflict we will use the notion of criminal governance which we see as a specific elaboration of Arias and Goldstein's (2010) concept of 'violent democracy'.

We understand criminal governance to be the exercise of power or the ability to govern for illicit objectives (partly) outside of the legal-bureaucratic-democratic frame of the modern state or by corrupting or transgressing the latter's institutional boundaries. This exercise of power or ability to govern not only rests on the appropriation and application of the means of coercion beyond the legal state monopoly but also on the reconfiguration of rules and laws as a strategy of order making and legitimization. Put differently, rules and laws are part of the ordering dimension of criminal governance both in terms of it being effective (in power, resource extraction, disciplining) and 'legitimizable' (in the sense of seeking but not necessarily obtaining legitimacy). This notion of criminal governance resonates with debates on plural or hybrid order making (Arias, 2017; Arias & Davis Rodríguez, 2006; Dewey, Míguez, & Saín, 2017). Criminal governance is not (just) rule by criminals; it is built upon complex entanglements of collaboration,

collusion, and substitution that involve the legal state and non-state, extra-legal and violent actors. We agree with Dewey et al. (2017) that these hybrid orders are not only backstopped by coercion but also by legitimacy provided by functional outcomes in terms of livelihood, social order, and protection.³

To further unravel the role of criminal governance in relation to protracted hybrid violence in Latin America we examine three basic and often intersecting mechanisms of criminal governance: (1) state capture by extra-legal and violent actors, meaning that politics and state institutions are influenced or controlled by agents that have a criminal or coercive agenda; (2) sovereignty disputes at the local level when non-state armed actors establish territorial forms of control in a setting of 'layered' or 'nested' sovereignty; (3) state transgression, meaning state agents and institutions that engage in extra-legal economic and political forms of conduct. We will suggest that these mechanisms of violent order making invoke peculiar sets of rules and laws, respectively dubbed quasi-legality, layered rulemaking and legal transgression. But before we go into this typology, we will briefly sketch the historical and socio-political context of violence, state, and order making in Latin America.

3. State, criminal power and hybrid order making

Early twenty-first century Latin American democracy is intrinsically violent and violent pluralism has been normalized in social and political life and the functioning of many state institutions (Arias & Goldstein, 2010). The interplay between the state and violence generates variegated yet interlocking dynamics of the criminalization of governance. We do not reduce this problem to state weakness or state fragility as such. State weakness is not a helpful notion if it rests on a mere catalogue of peripheral shortcomings vis-à-vis the central (or North Atlantic) ideal type of the legal nation-state. Rather we seek to understand the endemic and historically grounded entanglements of the legal state (that is often quite strong or at least big) and extra-legal actors as co-producers of violence.

A first entry point is provided by the history of state-making in Latin America. In all but a few Latin American states (notable exceptions often mentioned are Chile, Costa Rica and Uruguay) this history generated cycles of elitist and authoritarian rule, personalism and patrimonialism as tools of the political trade, and limited and contested institutionalization of politics and public policy. This had implications for coercion and internal pacification as a register of state strength or weakness. Formally liberal-constitutional and secular from its inception, Latin American state making not only took recourse to cycles of state authoritarianism but also relied on the outsourcing of public violence to local power holders and private 'violence brokers' (Cruz, 2016; Hau, 2014). Under neoliberalism, Latin American states reinvented coercive violence through securitization of development (Müller & Hochmüller, 2017) and criminalization of poverty and protest (Wacquant, 2003), to wage, in Gledhill's (2015) terms a 'new war on the poor'.

This trajectory of state-making also generated a legal paradox often attributed to the region. On the one hand, Latin American nation-states appear 'hyper-legalistic': the propensity to codify political relations,

³ Dewey et al. (2017) build their conceptual argument on the idea that formal and informal forms of order and rule are combined. Although we also use the term 'informal' in this paper, this is mostly in a vernacular sense to indicate the absence of legal codification and institutional recognition, from the point of view of the legal state. However, the essence of the concept of hybridity, that we prefer, is that it allows to go beyond the dualism that is implicit in the formal/informal dichotomy. Formal rules and institutions (including forms of violence, as in public law enforcement) may at the same time serve other agendas – such as extortion – and take different shapes – like extrajudicial executions. The inverse is also the case, for instance in situations of gang or vigilante rule in cities like Kingston, São Paulo and Rio de Janeiro where de facto control of extra-legal armed actors impose a de facto legitimate order in collusion with state entities and politicians.

public institutions, and social norms in an elaborate corpus of laws and regulations through which the centrality and sovereignty of order making through the legal state is constantly performed (Sieder et al., 2019). On the other hand, laws and regulations are subjugated, in practice, to the structures and contingencies of power and privilege mediated by horizontal and hierarchical social relations: *obedezco pero no cumplo* or *para os amigos tudo, para los inimigos: a lei* are often invoked apocryphal dictums. Rather than seeing this as a form of pre-modern cultural dualism we understand this legal paradox as an environment that is conducive to the hybridization of law under violence and criminal governance in recent decades. Hyper-legalism and the proliferation of legal professionalism have been a strategy to counterbalance the vulnerability of the law, legal institutions, and legal practice. This has been put in even sharper profile by the current wave of violence in ‘democratic’ Latin America: Moriconi (2018: 499) concludes that the ‘norm of legality has lost its moral persuasive power’ making the illegal legitimate; and Schultze-Kraft, Chinchilla, and Moriconi (2018: 470) speak of ‘criminal orders’. So, criminal governance rests on coercive violence and the hybridization of rules and laws.

As we will explore in more detail in the following sections, the reconfiguration of order, law and rules under violence and criminal governance rests on specific problems of ‘stateness’. First, the limitations of state capacity produce not just violent and fragmented (‘transgressive’) law enforcement as such but what Méndez, O’Donnell and Pinheiro (1999) have called the ‘unrule of law’: punitive state violence, misapplication of legal norms, and impunity, especially towards the excluded sectors of society that figure as second- or third-class citizens. Second, limitation and fragmentation of the reach of state institutions and the interlocked emergence of non-state violent actors reshape sovereignty in socio-spatial terms. The legal state suffers a fragmentation or breakdown of sovereignty while non-state, extra-legal or criminal ‘sovereigns’ appear to produce this breakdown and fill the voids (Koonings, 2012). If we define sovereignty in an abstract sense as the manifest and internally and externally endorsed capacity to rule and govern, recent scholarship has expanded the classical notion of exclusive territorial and legal sovereignty wielded by states into notions such as nested, layered or hybrid sovereignty (Blom Hansen & Steputtat, 2006) and into other domains than politico-territorial rule. Such multiple articulations of sovereignty point at diverse ways in which violent coercion and subjective legitimacy to rule territories and populations can be combined beyond the boundaries of legal citizenship. Third, inequality and exclusion both underlie and are reproduced by the intersection of state fragmentation, violent actors, and hybrid sovereignty (Jaffe, 2013).

Thus, an ecology of structural violence ensues where disjunctive citizenship, informal livelihood, vulnerability, and grey spaces reproduce, normalize and lend legitimacy to violence as an acceptable ordering principle. We locate our three types of criminal governance and hybridized order making in this environment of violent democracy.

4. Political infiltration and state capture

Criminal and violent actors have an interest in politics and state power for two fundamental reasons: protection and leverage. Protection means shielding their activities and organizations either directly by preventing law enforcement operations or more generally through influencing security and other relevant policies. Leverage means using the state to boost their illicit interests and to diversify in new and apparently legal economic and political fields, e.g., through laundering, clientelism, or electoral politics. The mechanisms to achieve this are infiltration of politics, the capture of public office and state institutions, bending or neutralizing the application of formal law, or performing as if being endowed by official legality as a ‘state simulacrum’. Criminal actors rely on a combination of resources to achieve this, in particular corruption, coercion, and constituencies. Corruption means the use of economic resources to influence politicians and civil servants or to occupy positions in the state. Coercion is based on the capacity to wield

extra-legal violence to pressure state agents and populations into compliance. Constituencies refer to the mobilization of popular support and the creation of legitimacy, again using a combination of economic, social, cultural, and legal resources (Dewey et al., 2017). Depending on the size, reach, and interest of the criminal actors, infiltration and capture occurs at different levels of scale and can be incidental or systematic. Here we focus on criminal (drug trafficking) cartels as the most visible agents of state infiltration and capture in Latin America.

The scale of action of the large cartel-type drug trafficking organizations, most notoriously in Colombia and Mexico, their degree of internal organisation, their level of armament, and their budget volume is of vital importance. The immense cash surplus originated by drugs production and transport allows the leadership to corrupt and buy civilian authorities, politicians, judges, prosecutors, police officers, military commanders, mayors and municipal and regional authorities, and even cabinet members (Grillo, 2016; Lessing, 2019; Teiner, 2020). Trafficking of drugs is also trafficking of influence, by intimidation or corruption. The flip side of corruption is coercion. The unbridled possibility to use violence enables coercion by executions of authorities and community leaders, by killing and kidnapping of opponents and ‘enemies’, by extortion of uncooperative entrepreneurs and bankers, and by killing or intimidating journalists. Mexico has become one of the most dangerous countries for journalists. The third pillar, constituencies, allows armed and criminal actors to mobilise support in exchange for employment and protection, to influence or infiltrate the state. The arrests, in 2020, of General Cienfuegos (Mexico’s secretary of defense 2012–2018) as Padrino of the H2 cartel and of Mexico’s top official Genaro García Luna (head of Mexico’s Federal Investigation Agency 2001–2005 and secretary of public security 2006–2012) because he accepted bribes from the Sinaloa cartel demonstrate these close encounters between the legal and the criminal (further underscored by Cienfuegos’ subsequent release after a Mexican diplomatic demarche).⁴

The enormous economic surpluses generated by these organizations, coupled with their widely known use of specialized security outfits and groups of *sicarios* (contract killers), enable the leaders to infiltrate in the political structures, ‘buying’ members of parliament to obtain legislation and exemptions, mayors (for identity papers), and functionaries at the registration offices (for property titles). They finance electoral campaigns to control politicians. They employ the services of individual policemen and officers of the armed forces, as intimidating vigilantes or members of ‘cleansing groups’ (see a.o. Brophy, 2008). Higher echelons of the security forces can also be bought. In some extreme situations (Pablo Escobar was the most significant example) they nurture public ambitions and provide themselves with political functions. But the widespread use of recruited politicians (known in Colombia as *para-políticos* like in ‘paramilitaries’) is less ostentatious (Romero 2007; López Hernández, 2010). Control and penetration mechanisms in nearly all Latin American countries are manifold, if not at the national, then surely at the municipal levels, also in the megacities of Buenos Aires, Rio de Janeiro, São Paulo, Mexico City and Caracas (Kruijt & Koonings, 2015): direct infiltration in the executive (cabinet members) and the legislature; buying influence, protection by the security forces (the armed forces, the police, the intelligence bodies); interference with the electoral system (financing candidates during electoral campaigns); influence in the mass media (by selective assassinations of journalists and installing fear that causes self-censorship); local forms of ‘armed clientelism’ (violence-backed carrot and stick policies); and interference with social movements (from social protesters to indigenous movements).

If we oversee this bewildering panorama three basic modalities of political infiltration and state capture come to the fore. First, the

⁴ See *El País*, 15-01-2021; Exonerado Cienfuegos, el general investigado por narcotráfico y que provocó un choque entre EE UU y México | EL PAÍS México (elpais.com), consulted 14-09-2021.

corruption or extortion of state agents or institutions to protect or support criminal organizations and activities. More run of the mill examples would be the bribing of judges, local police commanders, mayors, and civil servants as well as the capture of public funds and projects through 'armed clientelism'. Second, we see the self-attribution of state functions by criminal or coercive groups who in many cases adopt the label of *autodefensas*. Crime fighting and community protection are adopted as remits for legitimation and serves as a barely effective cloak for criminal enterprise. Third, there are the efforts to directly influence or enter politics, mostly through campaign funding or vote-banking. The implications of this order-making mechanisms for rules and laws are what we call 'quasi-legality'. Seeking such a hybrid relation to the legal state for protection and impunity, capturing rents from public funds, wielding state power directly, or performing a simulacrum of the state, would allow violent and criminal agents and groups to mobilise or twist formal rules and laws to support their economic, social, and political purpose.

5. Power in gangland: urban sovereignty disputes and territorial control

The second mechanism of criminal governance that has become increasingly prevalent in Latin America and the Caribbean is 'territorial power': the domination of specific spaces by criminal or extra-legal armed actors, most often urban gangs (in many cities) and territorial vigilante, paramilitary, or drug trafficking groups (mostly in urban and rural areas of Colombia, Central America, and Mexico). In this section we will focus on urban ganglands.

Conventional armed conflicts are inscribed in space, making territorial control, the establishment of frontlines, rear-guard areas, and no-man's lands of key importance. However, Latin American hybrid urban violence recasts this spatial dimension. On the one hand, territoriality matters to drug trafficking organizations, urban gangs, and vigilantes. Likewise, state responses of securitization are played out in specific areas (and not in others). Co-governance between criminal actors, violence brokers, and politicians is often connected to specific territories. As a result the impact of violence, insecurity, and fear on urban societies and spaces of the drugs economy in Latin America has been particularly profound. Many cities in the region can be seen as 'fractured'. In many of these areas we see the emergence of so-called micro-sovereignties in which non-state armed actors seek to establish governance over urban areas and populations that is not only based on coercion and fear but also on legitimation and consent (Arias & Davis Rodríguez, 2006; Jaffe, 2013). The socio-spatial impact of violence extends beyond the urban margins affecting sociality, lived experience as well as public and political mobilization at the level of entire cities and even countries (Glebbee & Koonings, 2016: 6).

On the other hand, Latin American violence is not only circumscribed in terms of space. The notion of 'margins' is useful to understand that there are institutional and socio-cultural dimensions to hybrid violence that are not (only) defined in a territorial sense (Auyero, Bourgois, & Scheper-Hughes, 2015). There is little doubt that urban violence predominantly affects 'marginal' – or more appropriately 'peripheral' and 'subaltern' (see Roy, 2011) – populations and areas in these cities. Although this is often related to geographical peripheries it also refers to the deep entanglements of violence and insecurity with the urban assemblage in all its dimensions: well-to-do areas in the 'formal city' and its residents, the articulations of legal, semi-legal and illicit domains of the urban economy, the institutions of the state and public interventions, resident and grass roots agency to build resilience and anti-violence, and last but not least the arenas of political power and contestation.

If we accept the notion of violent (urban) margins it is possible to see that the logic of sovereignty dispute in the sense discussed above (Blom Hansen & Stepputat, 2006) is based on localized access to key resources by controlling relevant spaces and populations. This enables violent actors such as gangs, drug traffickers and self-defence groups to be part

of the local and *trans*-local trade in illicit commodities, like drugs or arms, but also facilitates them providing licit goods and services, jobs, or even public investments. Imposing local regimes of ordering and rule, backed by repertoires of violent enforcement and normative legitimization, is at the core of the constitution of territorial criminal governance.

Urban territorial control by gangs and vigilantes relies on violence and coercion towards resident populations. These must abide to the imposed order but the stability and legitimacy of gang power also rests of various forms of non-violent collaboration with and support from residents and grass roots organizations. Support and legitimacy are therefore the outcome of varying combinations of coercion, protection and consent (Arias, 2017). Still, the essence of this type of criminal governance is that, at the local level, criminal actors claim to impose their specific normative order while monopolizing the means of violence (Koonings, 2012). Small-scale gangs or gangs in early stages of development often claim a role as protector of their *barrio* given that their members originate in the neighbourhood and nurture close family and peer ties there. In addition, the material and social rewards that come with joining a gang are hard to resist. In the gangs of Rio de Janeiro's *favelas* even the most menial occupation held by an adolescent yield considerably more than the legal minimum wage. For Colombian youngsters, a job in one of the many urban armed groups is as good a career option as anything in the informal economy. Being a gang member also brings important non-material benefits such as power, enhanced status and sometimes a certain degree of prestige and popularity. Gangs thus offer alternative or perverse spaces for social inclusion in the fractured cities of Latin America (see also Lemaitre Ripoll & Restrepo Saldarriaga, 2019).

Maras (youth gangs) in Central America and Mexico are relatively local initiatives. At the local level they extort smallholders, taxi drivers, bus chauffeurs, and commercial entrepreneurs. But in the national capitals of Guatemala City, San Salvador and Tegucigalpa they levy 'war taxes' and confront the metropolitan police (Van der Borgh & Savenije, 2019). Direct political infiltration by such youth gangs is, as far as we know, not existent. Still, gangs in, for instance, Rio de Janeiro and San Salvador have occasionally tried to put pressure on politicians and citizens by making threats during elections. Larger and more powerful gangs rather operate as employers towards local youngsters and furthermore use their coercive capacity to influence or control local associational life and to build clientelist relationships with outside actors such as politicians. This has been thoroughly studied for the case of Rio de Janeiro where gang control of *bairro* politics developed since the late 1980s (Arias, 2006; McCann, 2014).

São Paulo's criminal faction Primeiro Comando da Capital (PCC) arguably offers the most notable example of territorial consolidation of criminal governance in the sense that the PCC appears as a quasi-state including rules and structures for the administration of 'legitimate violence' and justice (Feltran, 2018). Similarly, the gangs of Rio de Janeiro and many other Latin American cities uphold informal and unwritten rules for controlling petty crime in the *favela*, disciplining residents (discouraging them to become a 'X9' or snitch) or settling civil and domestic disputes (Arias & Davis Rodríguez, 2006). The case of the PCC is particularly instructive because the 'Brotherhood' as they call themselves has developed and put into practise an elaborate repertoire of normative directions and rulings (called *salves*), regulations (including written ones) and procedures for arbitration and penal justice in São Paulo's urban margins (Biondi, 2018). Rather than seeing the PCC as a parallel power we can understand this arrangement, called by Denyer Willis (2015) the 'killing consensus' between police and PCC, as a form of implicit co-governance, sometimes interrupted by violent confrontations between the PCC and the state.

State-gang interaction, mediated by civil society, may be seen as criminal co-governance aimed at urban pacification. The youth gangs (*maras*) in Central America may not have wielded enough power to carve out systematic connections with formal politics. Yet, in specific

instances, they did mobilise a certain measure of respect, as in the case of San Salvador where, although in prison, the gang leaders were invited to the negotiating table to obtain a truce (Van der Borgh & Savenije, 2019). Truces were also and repeatedly organised by successive mayors of Medellín, often brokered by the Roman Catholic Church, NGOs, or international monitoring missions (Gutiérrez Sanín & Jaramillo, 2004). Also organised crime is inclined to settlements and informal, unspoken pacts. In the case of Ciudad Juárez, a brokered truce between two rivaling cartels contributed to a relative calm in this border city that for a decade was known as one of the Mexican killing fields (Wolff, 2018). However, pacification based on gang truces proved to be a politically controversial and fragile arrangement. Jamaica's capital, Kingston, is home to a particular arrangement of territorialized state-crime co-governance. Crime lords, called 'dons' operate at the same time as legal entrepreneurs and employers, charismatic neighbourhood leaders, and as vote-bank mobilizers in uneasy arrangements with party politicians. This arrangement did not, however, prevent the violent arrest and extradition of 'star don' Christopher "Dudus" Coke in 2010 (Jaffe, 2013).

All these manifestations of violent fracturing of Latin American cityscapes work as a powerful amplifications of 'cultural geographies of fear' alluded to above. The perception of violence and danger translate into omnipresent aspects of everyday urban life that transcend social classes and status groups and travels across the boundaries of the urban landscape (Borde & Hernández-Ávila, 2022). As such it moves beyond territoriality to become a key ingredient for what Holston (2008) calls differentiated citizenship: exclusion from the substance of citizenship suffered by the residents of the urban margins versus protective and other privileges for the well-to-do beyond the law. This resonates with broader debates on the political economy and political geography of cities in which inequality, rights, and citizenship are emerging through struggles for the reproduction of urban space (Lefebvre, 1991). In this sense, violence in Latin American cities stigmatizes urban space through penalizing the poor and deepening urban relegation (Wacquant, 2003, 2008).

The consequences for order making of these layered sovereignty and co-governance schemes are not to be found in engaging directly with the rules and laws of the state. Rather, these violent and criminal groups enact a criminal customary law (like the *lei da favela* in Rio or the *salves* in São Paulo). In most cases gang and cartel rules echo the tropes of the legal state, both in substance and performativity. Often, these rules are pragmatically tolerated by the legal state in the urban margins. For this reason, we suggest that this mechanism of criminal governance generates territorialized forms of fractured order and layered rulemaking.

6. State transgression

The third mechanism we highlight here, state transgression, refers to state agents ignoring, breaking, or subverting the rule of law. We include here (1) counterinsurgency and violent law enforcement, often using extra-legal violence brokers like vigilantes, militias, or other non-state extensions; (2) state agents involved in illicit ventures through connections with organized crime; and (3) the use of systematic political violence to ensure regime survival. Let's briefly look at each of these three modalities.

The continuation of armed conflict under formal democratic rule proved conducive to criminal governance within counterinsurgency strategies. The armed conflicts in democratic or democratizing Colombia (1964-present) set the stage for the involvement of state security forces (including police) in the widespread victimization of non-combatant populations and violation of human rights. The involvement of the military in 'extra-legal victimization' has been documented for the Trujillo massacre, between 1988 and 1994, Operation Orion in Medellín in 2002, and in the infamous case of the *falsos positivos*, the deceitful presentation of civilians killed by the military as FARC combatants (NCHM, 2016). In a similar vein, repressive policing is a form of

criminal governance that transforms cities in zones of counterinsurgency warfare. After the progressive crumbling of pacification policing in Rio de Janeiro and the federal military intervention in this federal state's public security sector in 2018, both paramilitary *milícias* and drug trafficking factions are retaking control of the city's margins (Hirata et al., 2021: 12 ff.; Dutta, 2022; Israel de Souza, 2018). In fact, with the rise to power of the radical right wing politician Jair Bolsonaro in 2018, punitive populism and transgressive notions of law enforcement have acquired increased electoral momentum and popular legitimacy (Salem & Bertelsen, 2020). Bolsonaro's political clan has subsequently faced legal investigation for, among other things, ties with Rio de Janeiro's *milícias*.

The transgression of state agents into the realm of crime is without doubt a worldwide phenomenon (see, for instance, on Russia, Galeotti, 2018; Belton, 2020). In the case of Latin America, recent manifestations cover a wide spectrum, from police engaging in petty urban crime, smuggling, kidnapping, or extortion (Dewey, 2012; Penglase, 2009), and politicians of all ranks and stripes being involved in money laundering and corruption, to state agents facilitating or even coordinating large scale organized crime. Mexico's protracted drugs-related violence has offered many examples, from the federal state assuming de facto coordination of the cartels during the pre-2000 rule of the PRI to regional or local authorities and public security forces doubling as criminal operators (Astorga, 2004; Nagle, 2010; Pansters, 2018). In Guatemala, politicians and public authorities routinely sustain relations of corruption and complicity with drug trafficking organization (Brockett, 2019). Military involvement in criminal ventures in Guatemala also extends to other areas such as fraud and theft in the ports and custom service (Schwartz, 2021).

Maduro's Venezuela (next to Ortega's Nicaragua) is the textbook case where a deepening crisis brings state transgression to the level of regime survival. Chávez' reform programme had largely been financed by extremely high oil revenues. But around his death in 2013 the oil prices plummeted and by the end of 2013 Venezuela's economic growth became negative and inflation became rampant to morph by the end of 2017 in hyperinflation. Crime proliferated. Already under Chávez but even more under Maduro crime and victimization deteriorated (Briceño-León, Camardiel, & Perdomo, 2019). In response the Venezuelan state militarized law enforcement and mobilized informal extensions in the violent urban peripheries in the form of hybrid political brigades-cum-localized gangs. According to Gan Galavís, 2020, these brigades and *colectivos* are subordinated to the military and play a role in the transformation of law enforcement into the repression of social and political opponents. The influence of the army, already important during the government of Chávez, significantly increased under Maduro. In 2018 there were more than 700 generals and flag officers according to military spokespersons. They function as the extended right arm (defence) and left arm (public administration and repression) of the president. Military commanders directly control 50 percent of the budget and oversee all spending and supervisory offices, from the Court of Auditors and Customs to entire chains of food distribution and imported articles. The higher echelons are strongly represented in the cabinet, the public sector and all strategic companies (Kruijt, 2020). Oil giant PDVSA (providing 90 to 95 percent of foreign currency) and other state-owned enterprises that are essential for food distribution among the poor - the hard core of the presidential electorate - are managed by corruption (Tablante & Tarre, M., 2015: 260-278). Beyond administrative corruption, it is commonly understood that various state agents are directly involved in the illicit trafficking of drugs and gold.

State transgression as mechanism of criminal governance converges in all three fields of violent law enforcement, illicit endeavors, and regime survival in a general climate of what Gan Galavís (2020) sees as a rule of law crisis that includes the informal outsourcing of law enforcement to non-state, extralegal and private actors, a crisis that Corrales (2015) labels "autocratic legalism". The implications of state transgression for rules and laws more generally are twofold: state

agencies stretch or transgress the boundaries of the rule of law and citizenship rights formally upheld by the legal state and the body of law, leading to official unprotection of citizens through the necropolitics of the War on Crime; and state agencies or public individuals criminalize by venturing into criminal activities. Convergence of these transgressive strategies of 'state criminal governance' into an agenda for regime survival through autocratic legalism and hybrid violence seems only a matter of time, as is suggested by the cases of Venezuela and Nicaragua, and (at the time of writing, November 2022) explored by Bolsonaro's ambivalent flirtations with on the one hand Rio de Janeiro's *milícias* and on the other hand political violence and military intervention. This flirtation erupted, in a deeply polarized Brazil after Lula's electoral victory, in the assault on the federal institutions in Brasília on 8 January 2023..

7. Conclusions

It is tempting to sum up our conclusions in one sentence: *informal low intensity conflict in violent democracies breeds hybrid order and hybrid rules and laws*. In this paper we argued that this is not only the result of the recent wave of criminal, social, and political violence paradoxically emerging from the region's 'third wave' (Yashar, 2018) transitory democracies, but also the reflection of a longer history of state-making that has been entangled with particularism, hybridity, and violence. Criminal governance, in this perspective, is the twenty-first century iteration of violent politics that straddles the uncertain ridge between constitutional legal states and democracy on the one hand and the permanent exceptionalities of power, privilege, and coercion on the other.

We argued that contemporary violence in Latin America can be considered as protracted conflict despite the differences from more explicit scenarios of political armed conflict in other parts of the world or, for that matter, the region's own (recent) past. Latin American violence after 1990 has many of the trappings of protracted conflict in its morphology, agency, and impact 'on the ground'. The singular difference, we suggested, is that this variety of protracted conflict is reproduced in an 'uneasy', unpeaceful coexistence with formal rule of law and formal democracy, in a region that is formally 'at peace' and has been building a century-old affinity with principles such as the rule of law, constitutionalism, and national citizenship. This is the bedrock of the hybridization of order making evident in the three mechanisms of criminal governance that we explored in this paper. The implications for rules and laws are the transmutation of public legality through its continuous intersection with criminal rules which emanate from a combined logic of coercion and legitimation.

This reflection in turn inspires thinking about solutions. Rules and laws are as important, or maybe even more important, for order making than open violence and coercion to back up the interests and agendas of armed actors. But in Latin America there is hardly any role for autonomous rulemaking by non- or pseudo-states armed groups based on specific doctrinal (ideological, ethnic, religious) principles. Rather, there is a kind of *dance macabre* in which the rules, norms, and performances of the legal state are captured, amended, complemented, or transgressed, by various intersections of extra-legal and criminal power. These intersections permeate the edifice of public law and public institutions but do not fundamentally challenge or replace it. In public consciousness and discourse, law is still law, and crime is still crime in Latin America. But it is less evident who is the politician, the criminal, the judge, or the police officer.

We think this is one of the reasons why public distrust of public institutions, such as governments, parliaments, political parties, the police, or the judiciary, is consistently quite low; only the armed forces and, especially, the churches inspire high levels of trust (Latinobarómetro. Informe, 2018). Therefore, a way out of the labyrinths of criminal governance is hard to find and do not emerge simply from a 'good governance' recipe book. In conventional armed conflict scenarios of the past few decades, the way out has often been seen as a negotiated

and externally sponsored peace agreement and an agenda for transitional justice. This, then, was expected to be the starting point for reconstruction in terms of liberal democracy. Arguably this paradigm has met its final limitations, as exemplified by the survival of the Assad regime in the Syrian armed conflict and the recapturing of the Afghan state by the Taliban twenty years after their 'defeat' by Western military intervention.

In present-day Latin America, this recipe is not available for the specific forms of protracted conflict discussed in our contribution. Even in Colombia, a series of peace agreements and transitional justice interventions, walking hand in hand with enhancing liberal democracy and neoliberal development since the early 1980s, did not fundamentally alter the violence of criminal governance but produced new entanglements of hybrid order making, even after the much-applauded peace accords between the government and the FARC in 2016 (Lemaitre Ripoll & Restrepo Saldarriaga, 2019). Instead, the politics of peace building in Latin America must rather be endogenous, institutional, social, and civil. No doubt, out of the box ideas are necessary (such as negotiating and striking deals with 'criminals' in combination with strengthening strategies for citizen security) but the political and moral formats for such approaches are risky and success is uncertain. Still, given the real power of criminal violent actors and its hybrid legitimization, a slow but determined, hence sustained approach beyond the short term of electoral politics and moral panics, is needed to signal a way out.

CRedit authorship contribution statement

Kees Koonings: Conceptualization, Investigation, Writing – original draft, Writing – review & editing. **Dirk Kruijt:** Conceptualization, Investigation, Writing – original draft, Writing – review & editing.

Declaration of competing interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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