



# Delegitimizing, corruptive crises

CRISES DE LEGITIMIDADE E CORRUPÇÃO

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## Abstract

Without doubt, pervasive corruption may undermine a government's legitimacy. Citizens may lose faith in political and legal institutions and become cynical or rebel. Ultimately, the very survival of the polity may be at stake. This paper deals with these issues, but at a rather specific conceptual level. In particular, it explores the notion of a legitimation crisis and its implications for the issue of corruption in Latin America. This exercise will make it possible to appreciate how corrupt practices debilitate the state's claim to justification.

Indeed, the notion of a legitimation crisis helps to illuminate the problem of governmental dishonesty in Latin America. If properly reinterpreted, it enables one to grasp corruption as an endemic threat to the normative identity of the national communities. The concept may describe a situation in which these collectivities must, at the outset, transition from an instrumental to a reflexive construction of legitimacy norms, such as autonomy, legality, and equality, in order effectively to regenerate a corrupt bureaucracy and, thereafter, struggle to recognize themselves after the changeover.

Accordingly, one should not respond to the challenge exclusively in a technical manner, such as with the enactment of tougher laws or with the implementation of more drastic enforcement mechanisms. Nor should one take a merely motivational approach, in the sense of U.S. psychologist David McClelland, rather than that of Habermas. In other words, one should not solely seek to change the attitude or the prevailing professional culture in civil service. Instead, Latin American societies must embark upon an unlikely radical crusade to transform the way in which they understand themselves, particularly the premises of their social integration. Against all odds, they must genuinely commit to and identify with democracy, the rule of law, and solidarity.

## Keywords

Corruption; legitimacy; Latin America; delegitimizing crisis.

## Resumo

*A legitimidade de um governo pode ser afetada pela corrupção generalizada. Os cidadãos perdem a fé nas instituições do Estado, tornando-se descrentes ou rebeldes. Em última análise, a própria sobrevivência do sistema político pode estar em jogo. Este artigo tem por objeto estas questões, sob uma perspectiva conceitual específica, explorando, a noção de crise de legitimidade e as suas implicações para a questão da corrupção na América Latina, bem como o modo pelo qual as práticas corruptas debilitam a legitimidade pretendida pelo Estado.*

*Na verdade, a noção de crise de legitimidade auxilia na compreensão do problema da desonestidade governamental na América Latina. Se devidamente interpretada, possibilita a compreensão da corrupção como uma ameaça endêmica à identidade normativa das comunidades nacionais. Esse conceito pode descrever uma situação na qual essas sociedades podem realizar a transição de uma construção instrumental para uma reflexiva das normas referentes à legitimidade, como a autonomia, legalidade e igualdade, com o intuito de efetivamente regenerar a burocracia que está corrompida e, a partir daí, a lutar pelo próprio reconhecimento após a transição.*

*Ademais, não se deve responder a esse desafio exclusivamente de forma técnica; por exemplo, com a promulgação de leis mais duras ou com a implementação de*

*mecanismos de coação mais drásticos. Também não se deve adotar uma abordagem meramente motivacional, no sentido abordado pelo psicólogo americano, David McClelland, em vez de uma abordagem no mesmo sentido daquela de Habermas. Em outras palavras, não se deve apenas buscar mudar a atitude ou a cultura predominante do serviço público. Em vez disso, as sociedades latino-americanas devem entrar em uma radical cruzada para transformar a maneira pela qual elas se compreendem, especialmente no tocante as premissas de sua integração social. Contra todas as probabilidades, elas realmente devem se comprometer e identificar com a democracia, o Estado de Direito, e a solidariedade.*

**Palavras-chave**

*Corrupção; legitimidade; América Latina; crise de legitimidade.*

## I. INTRODUCTION\*

Without doubt, pervasive corruption may undermine a government's legitimacy. Citizens may lose faith in political and legal institutions and become cynical or rebel. Ultimately, the very survival of the polity may be at stake. This paper deals with these issues, but at a rather specific conceptual level. In particular, it explores the notion of a legitimation crisis and its implications for the issue of corruption in Latin America. This exercise will make it possible to appreciate how corrupt practices debilitate the state's claim to justification.

The initial research started as a contribution to the Connecticut Journal of International Law's conference entitled "Political Corruption in Market Democracies."<sup>1</sup> It proceeded slowly, almost as a hopeless endeavor. After all, German philosopher Jürgen Habermas originally applied the concept of a legitimation crisis to developed or, actually, over-developed countries.

Habermas, in fact, called the book that introduces the terminology *Legitimation Problems in Late Capitalism*.<sup>2</sup> It was Thomas McCarthy's translation into English that rendered the

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\* The author himself has translated the quoted non-English texts and vouches for the accuracy of the translation. He would like to thank Peter Goldstone and Ernesto Garzón Valdés for their helpful insights.

<sup>1</sup> The event took place on November 12-14, 1998, at the University of Connecticut School of Law in Hartford, Connecticut. See *Symposium: Political Corruption in Market Democracies* (Contributions), 14 CONN. J. INT'L L. 363-562 (1999).

<sup>2</sup> JÜRGEN HABERMAS, LEGITIMATIONSPROBLEME IM SPÄTKAPITALISMUS (1973). See Leslie Holmes, THE END OF COMMUNIST POWER: ANTI-CORRUPTION CAMPAIGNS AND LEGITIMATION CRISIS 28 (1993) ("As the German title suggests, Habermas' book is explicitly and primarily concerned with advanced industrial society organized along predominantly capitalist lines.").

title simply *Legitimation Crisis*.<sup>3</sup> How could this main notion apply to Latin America, which represents the quintessence of an economically underdeveloped—or, more euphemistically, “developing” or “emerging”—zone?

The deployment of this concept, with heavy Marxist overtones,<sup>4</sup> in an underdevelopment context that has yet to meet the conditions of application seems to constitute a Leninist illusion—of course, Leninism with a human face. Upon deeper reflection, however, the notion of a legitimation crisis does indeed appear to have the capacity to illuminate the problem of governmental dishonesty in Latin America. If properly reinterpreted, the concept enables one to grasp corruption as an endemic threat to the normative identity of the national communities. It may describe a situation in which these collectivities must, at the outset, transition from an instrumental to a reflexive construction of legitimacy norms, such as autonomy, legality, and equality, in order effectively to regenerate a corrupt bureaucracy and, thereafter, struggle to recognize themselves after the changeover.

Accordingly, one should not respond to the challenge exclusively in a technical manner, such as with the enactment of tougher laws or with the implementation of more drastic enforcement mechanisms. Nor should one take a merely motivational approach, in the sense of U.S. psychologist David McClelland, rather than that of Habermas.<sup>5</sup> In other words, one should not solely seek to change the attitude or the prevailing professional culture in civil service. Instead, Latin American societies must embark upon an unlikely radical crusade to transform the way in which they understand themselves, particularly the premises of their social integration. Against all odds, they must genuinely commit to and identify with democracy, the rule of law, and solidarity.

## II. CRISIS

The expression “legitimation crisis” appears in conjunction with the issue of corruption in a book edited by Leslie Holmes and entitled *The End of Communist Power: Anti-Corruption Campaigns and Legitimation Crisis*.<sup>6</sup> The work explores the battle against corruption in the former Soviet bloc.

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<sup>3</sup> JÜRGEN HABERMAS, *LEGITIMATION CRISIS* (1975).

<sup>4</sup> See HABERMAS, *supra* note 2, at 10-11.

<sup>5</sup> Compare DAVID C. MCCLELLAND, *HUMAN MOTIVATION* (1988); *ACHIEVEMENT MOTIVE* (1980); *HUMAN MOTIVATION: A BOOK OF READINGS* (1973); *MOTIVATING ECONOMIC ACHIEVEMENT* (1971) with HABERMAS, *supra* note 2, at 106-128 (“Motivation Crisis”).

<sup>6</sup> HOLMES, *supra* note 2.

In any event, the reasons Holmes invokes for deploying the concept of legitimation crisis beyond the iron curtain do not apply in Latin America. She asserts, essentially, that by loosening their grip on the economy, Eastern European socialist governments were effectively contradicting their own ideology, and thus losing their credibility.<sup>7</sup> This contention may bear upon the situation in Cuba, but not much on the rest of the Latin American region. Moreover, Holmes does not see corruption as the cause of a critical predicament but, instead, as a concomitant development.<sup>8</sup>

The paper will therefore start from scratch. It will be loading on many—certainly too many—tentative and undeveloped thoughts, which will ineluctably render the presentation somewhat convoluted. By way of compensation, the piece will close with some reflections on the direction the discussion should take in the future. Hopefully this contribution will constitute the beginning rather than the conclusion of a debate.

Jürgen Habermas launches his reflection with an exploration of the medical interpretation of the notion of a crisis.<sup>9</sup> From this standpoint, an organism enters a critical phase when it faces an attack by a disease—a virus or bacteria—in a way that endangers its very subsistence. Habermas insists that when a crisis involves human beings, a subjective dimension inevitably arises.<sup>10</sup> In particular, he maintains that in determining whether and to what extent survival is at stake, one must assume the outlook of the individual herself—her notion of well-being, of life, of who she is. At this stage, Habermas acknowledges his debt to the dramaturgical usage of the term. In this sense, “a crisis means the turning point of a fateful process, which neither breaks in from the outside nor remains external to the identity of the affected person.”<sup>11</sup>

One can clearly see where Habermas is coming from. A true son of the Frankfurt school, he is moving toward an application of the concept from the inside. He is striving to follow Karl Marx and Sigmund Freud in formulating a critical theory, which collaborates with its subject in discovering the problem and devising a solution.

According this reading, Marx does not offer his critique from the perspective of a theorist who has stepped outside, decided how society should function, identified current deficiencies, and recommended prospective improvements. On the contrary, he formulates his assessment of and his response to the troubles of capitalism internally, *i.e.*, from the proletariat’s viewpoint. Similarly, Freud supposedly does not set out merely to gather

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7 *Id.* at 32.

8 *Id.* at 34.

9 HABERMAS, *supra* note 2, at 9.

10 *Id.*

11 *Id.* at 10.

evidence on someone's disorders and thereafter figure out what the cure should be. Rather, he purports to team up with his patients so that they can themselves diagnose the ailment, design a remedy, and ultimately determine whether the treatment has worked.<sup>12</sup>

Habermas generally embarks upon his own theoretical ventures in the same spirit. In his earlier *oeuvre*, he postulates an ideal speech situation through which individuals themselves agree upon how to transform their collective existence, guided exclusively by the force of the better argument.<sup>13</sup> In more recent publications, he advocates discursive and deliberative democracy as a process through which people manage to deal reasonably and autonomously with modern life's fundamental challenges.<sup>14</sup>

Not surprisingly, Habermas finds the internal notion of a crisis appealing and readily incorporates it into his societal analysis. For him, a society arrives at a critical juncture when it confronts an onslaught on its identity and a clear prospect of extinction. It will have to undertake a radical transformation to survive. In order to overcome, however, the collectivity must go beyond changing its essence. It must also succeed in recognizing itself in its new form, a truly daunting feat.<sup>15</sup>

At this moment, one could invoke the *cliché* of crises involving both a crossroad and an opportunity. One could then assert that a critical threat both imperils a community and allows it to grow. Nonetheless, one should resist the temptation of descending down this path.

Instead, one should simply state that crises compel the target not only to draw on its self-preservation instincts. It must also engage in a most demanding self-examination exercise. It must reflect profoundly on who it is, as well as on the limits of its self-definition.

### III. LEGITIMATION CRISIS

Enough about crisis. . . . What about legitimation? At this point, one should probably keep in mind the notions of modernity, rationalization, and disenchantment, which Jürgen Habermas borrows from German sociologist Max Weber. One may bring them sequentially.

Legitimation, generally, refers to the generation of norms that drive people to support societal institutions. Society can, accordingly, move its members to comply with its

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12 See generally, JÜRGEN HABERMAS, *ERKENNTNIS UND INTERESSE* (1973); RAYMOND GEUSS, *THE IDEA OF CRITICAL THEORY* (1981).

13 See, e.g., HABERMAS, *supra* note 12; JÜRGEN HABERMAS, *THEORIE DES KOMMUNIKATIVEN HANDELNS* (1981).

14 See JÜRGEN HABERMAS, *FAKTIZITÄT UND GELTUNG: BEITRÄGE ZUR DISKURSTHEORIE DES RECHTS UND DES DEMOKRATISCHEN RECHTSSTAATS* (1992).

15 See generally HABERMAS, *supra* note 2, at 9-19.



strictures through force or through legitimacy. It usually relies, of course, on both. Nonetheless, the more the collectivity can persuasively present itself as legitimate, the less it will have to use repression and (presumably) the more stability it will enjoy.

Following Weber, Habermas explains that in pre-modern cultures, legitimacy feeds off broadly accepted philosophical or theological worldviews. If anybody demanded a justification for the power wielded by institutional structures, the establishment would most likely appeal to the widely shared beliefs. It would perhaps maintain that the existing order finds a *raison d'être* in the teachings or commandments of the community's deity or deities.<sup>16</sup>

In modernity, however, the phenomenon described by Weber as disenchantment occurs.<sup>17</sup> As societies become increasingly complex and pluralistic, an all-encompassing and monolithic *Weltanschauung* will no longer do. It cannot justify in one swoop the multiplicity of components that make up the social fabric, nor, in light of the diversity of convictions, gain the approval of the entire population.

As a result, modern legitimacy rests not on metaphysical or mythical tales, but, instead, on independently persuasive reasons.<sup>18</sup> This conception overlaps globally with that of “basic legitimacy” postulated by British philosopher Bernard Williams. The latter notion does not exhaust political virtue and, in Williams' words, “implies a sense in which the state has to offer a justification of its power *to each subject*.”<sup>19</sup> Along parallel lines, U.S. philosopher John Rawls affirms “that the exercise of political power is legitimate only when it is exercised in fundamental cases in accordance with a constitution, the essentials of which all reasonable citizens as free and equal might reasonably be expected to endorse.”<sup>20</sup>

Habermas takes over Weber's idea that social structure ends up breaking down into specialized institutions, which call for their own justificatory resources and which must secure the allegiance of a plurality of individuals who do not share a particular creed. Habermas adds, to this Weberian account, the contention that legitimating norms possess a

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16 See generally HABERMAS, *supra* note 13, at 181. See also MAX WEBER, *WIRTSCHAFT UND GESELLSCHAFT* 16-20, 122-140, 822 (1976).

17 See, e.g., WEBER, *supra* note 16, at 308.

18 See HABERMAS, *supra* note 13, at 262-298; HABERMAS, *supra* note 14, at 42.

19 Bernard Williams, *Realism and Moralism in Political Theory* 7 (Apr. 24, 1997) (manuscript presented at the Yale Legal Theory Workshop) (subsequently published as Chapter 1 in Bernard Williams, *IN THE BEGINNING WAS THE DEED: REALISM AND MORALISM IN POLITICAL ARGUMENT* (Geoffrey Hawthorn ed.) (2005)).

20 John Rawls, “Reply to Habermas”, 92 *J. PHIL.* 132, 148 (1995). See also John Rawls, *POLITICAL LIBERALISM* 137 (1993).

cognitive content, which goes beyond their mere factual acceptance and which makes full sense only internally.<sup>21</sup>

This Part will now put the two concepts together: legitimation and crisis. As already intimated, Habermas believes that dysfunctions of the type once identified by Marx plague advanced capitalism and necessitate heavy governmental intervention in the economic sphere. Inasmuch as state-controlled activity in the economy does not enjoy the degree of naturalness and ready-acceptability of the marketplace, a legitimacy gap emerges. Habermas describes the ensuing legitimation crisis as follows: “The legitimating system is not able to sustain the necessary level of mass loyalty in carrying out the steering imperatives taken over from the economic system.”<sup>22</sup>

At the outset, the capitalist state presents and justifies itself as a guarantor of the free market. Its mission basically consists in preserving a framework within which production and exchange can flourish. As business cycles crop up ever more commonly and intensely, however, the government must intervene to contain the resulting instability. It has to perform investment and re-distribution functions in order to keep the economy going and to extend a safety net for people pauperized by the workings of industrial capital.

The state thereby transgresses the *laissez faire* dogma, which until then served as the main source of legitimacy. Consequently, a critical impasse arises and persists until the authorities secure an additional justification for their unprecedented role. To that end, they must manage to produce some kind of welfare-state ideology.

In this context, Habermas speaks of an “identity crisis” and thus suggests that the polity’s self-understanding—*viz.*, the set of principles through which the collectivity interprets itself and attains social integration—degenerates. The community has to deliver new norms, which ultimately might either fail to provide the needed legitimacy or come across as foreign and alienating. It must, more concretely, replace the tenets of libertarianism with those of social interventionism and hope that the latter not only adequately justify the ever-expanding official incursions in the economy but also cohere with the communal self-interpretation.

This critical predicament deviates from the original one precisely in its endogenous form and focus on identity. It also differs in that it entails difficulties in social integration, as opposed to system integration, to draw on the terminology that Habermas appropriates from David Lockwood.<sup>23</sup> Hence, the impending danger concerns societies’ capacity

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21 See HABERMAS, *supra* note 13 (Band I), at 255-266.

22 HABERMAS, *supra* note 2, at 68.

23 David Lockwood, *Social Integration and System Integration*, EXPLORATIONS IN SOCIAL CHANGE 244 (Zollschand & Hirsch eds., 1964), *quoted in* HABERMAS, *supra* note 2, at 17. The notions of social and system integration

to operate and understand themselves as fully unified communities, rather than as economically coherent units.

#### IV. CORRUPTION AND LEGITIMATION CRISIS

At this point, one might as well pull in the issue of corruption. One might start by acknowledging that sometimes it appears to touch upon system integration, *i.e.*, upon the capacity of states to play their compensation or coordination role in the economy. If corrupt, they might, for example, effectively fail to perform their re-distributive function or to guarantee judicial certainty. On the one hand, state officials might constantly embezzle the funds that the legislature appropriates for welfare programs. On the other hand, judicial decisions might end up resting not on pre-established rules, but, rather, on the extent to which the parties have bribed the decision maker.

Nonetheless, chronic corruption seems to impinge primarily upon social integration. The citizenry may lose faith in the principles behind, as well as the individuals in front of, the leading institutions. The societal cohesion built on those norms may wane. In particular, notions such as democracy, the rule of law, or solidarity may gradually dwindle in appeal.

Eventually, a crisis of sorts might unfold. The polity's subsistence as a normatively consolidated unit and its very identity might be in peril. The convictions through which people perceive themselves as belonging together might start to collapse. The government might lack the creativity to produce a new set of norms to justify its employees' abuses and to unify its constituents. It might end up having no option other than repression to stay in power and to keep the society from disintegrating. Of course, this course of action might lead to instability and might not work in the long term.

All the same, this situation does not constitute a classic legitimation crisis. Surely, political and legal authorities engage in action for which they lack normative backing. However, they do *not*, as in the paradigm, undertake a necessary or at least justifiable systemic task that overextends existing legitimacy resources. Instead, the regime carries out superfluous, aberrant, and intrinsically illegitimate activities.

In reality, a legitimation crisis emerges only when, in order to safeguard system integration, the state implements indispensable or sensible anti-corruption measures that call for additional normative cover. For instance, a serious campaign to combat graft among public servants may entail a restriction of traditional privacy rights or the elimination of some of the well-established privileges of power. Accordingly, political and legal institutions

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have continued to pervade even Habermas' later work. See HABERMAS, *supra* note 14, at 46-47, 50, 51-52, 54-55, 56, 57, 58-59, 61, 65, 66, 70-71, 78, 110-111, 172-173, 217, 363, 450, 524, 643-644.



may have to modify their ground principles so as to authorize the operation against governmental sleaze.

The extent of the critical bind will depend on how difficult it is for the people to embrace the new norms. In any event, an anti-corruption effort along these lines will normally generate, at most, a mini-crisis. Usually, the requisite normative readjustment will not seriously menace the community's self-definition.

Under certain conditions, however, dealing with widespread official dishonesty may demand an approach that dramatically shakes up the polity. For example, it may require not simply fine-tuning, but actually radically revamping the integrative principles in place. The effectiveness of the response will ride not only on the state's ability to overhaul the norms that structure the nation's politics but also on the people's ability to identify with the novel normative framework.

One may articulate the contention in plain language thus: Confronted with severe corruption, a society may have to do more than pass an ethics code or deploy reliable enforcement mechanisms. It may even have to go beyond altering some isolated legitimacy norms. The collectivity may additionally have to embark upon a profound reflection on the principles of government. It may need to reconfigure the premises of its social integration and self-understanding. The whole undertaking may be extremely arduous and even traumatic.

In fact, one begins to imagine a setting in which a society at first approaches politics mostly instrumentally. Political actors generally regard the principles before them as instruments through which to achieve certain ends. They treat their engagement as a game.

In this universe, politicians form tactical alliances and, if successful, divide up the spoils of battle with their allies. They thus fancy politics as a continuation of war by other means, to flip over Clausewitz's famous aphorism.<sup>24</sup> These political operators certainly realize that they ought to follow the rules; yet they ultimately privilege their own agenda. They therefore decide whether to comply in a given case based on whether doing so coheres with their goals.

Within this picture, private citizens play a rather passive role. They get involved intermittently, when elections or referenda come up. At most other times, the population hibernates politically.

As a key part of their strategy, political leaders try to obtain the support of voters during the electoral season. They pursue votes with any means available. In this pursuit, partisan chiefs inevitably face certain strictures with which they must comport in order to avoid penalties for noncompliance. Nonetheless, they strive to maintain their overall *modus operandi* despite any restriction.

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<sup>24</sup> See generally, CARL VON CLAUSEWITZ, *VOM KRIEGE*, bk. 1, ch. 1, § 24 (1832) (“...war is a mere continuation of politics by other means.”).

Naturally, this state of affairs concerns, in first instance, the status of democracy. Yet it will also affect that of the rule of law and solidarity. Political actors will display a similar attitude to the principles of legality and equality as to the democratic principle of autonomy. Once in office, they will consistently uphold laws and seek to integrate any socio-economically excluded class only to the extent that doing so meshes with their own objectives.

If an epidemic of rampant corruption erupts under these circumstances, a regular anti-corruption plan may not help much. The top players may view the ethical prohibitions as merely an additional set of precepts around which they must act. They may find ways of violating the spirit while honoring the letter of the law or ways of avoiding detection. Accordingly, the society may hopelessly fail to stop the erosion in legitimacy caused by the uncontrolled abuse of power.

Against this backdrop, the collectivity must struggle to overhaul the instrumental in favor of a rather reflexive understanding of politics. In other words, it must attempt to move individuals to visualize their political engagement as an end in itself. People must come to see politics as an ongoing process through which they exist as a community that gives itself the law by which it lives.

This collective quest for autonomy must then take a multiplicity of forms: dialogue, argument, self-definition, deliberation, negotiation, emotional outburst, bonding, inner rivalry, as well as gamesmanship. This last element must play a part but not dominate the political realm. Hence, politics must cease to amount to strategizing and political norms must map out not an obstacle course, but an intrinsically meaningful existential space, within which the citizenry becomes its own master.

Moreover, the political world must encompass all, not just the bosses. The public sphere must actively participate in political life. Citizens must go beyond solely providing electoral support. They must, through their civic organizations, turn into an immanent force within the political process.

Indeed, the electors must advance initiatives, ideas, and criticisms. They may, depending on the issue, work along with, against, or independently of their representatives. In any event, the electorate must integrally contribute to communal self-legislation.

This political utopia, like the mild antecedent dystopia, impinges upon not only democracy but also the rule of law and solidarity. It motivates the polity to produce norms democratically, to apply them faithfully, and to construe them inclusively.

The reflexive approach to government corresponds to what Ernesto Garzón Valdés, following H.L.A. Hart, denominates “the internal point of view.”<sup>25</sup> Garzón Valdés contends

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25 Ernesto Garzón Valdés, *Acerca del concepto de la corrupción* 10 (unpublished manuscript).

that to confront political corruption head on, one has to “make sure that decision makers adopt an internal point of view with respect to the basic rules of the relevant normative system.”<sup>26</sup> He notes that taking this perspective implies moving to a deeper understanding of democracy.

Corrupt acts and activities are just the tip of the iceberg. They suggest the existence of a more profound problem: the tendency to substitute the ideal of democratic cooperation with forms of competition and with the exercise of influence, which radically contradict the democratic ideal. . . . As a result, the recuperation of modernity’s democratic faith and the implementation of proposals to make coexistence possible in conditions of equality constitute the best means to avoid the disintegrating effects of corruption in democratic society.<sup>27</sup>

Garzón Valdés would probably agree that, in order to come to grips with corruption, government officials, alongside the rest of society, must sometimes rise to a reflexive conception of politics. The underlying norms must ultimately represent not externally imposed constraints, but, rather, internally chosen principles of self-assertion.

This political vision will go a long way toward creating a propitious atmosphere to control corruption. People in positions of power will tend to regard the parameters that regulate their endeavors, including ethical precepts, as crucial components of a shared communal existence and, as such, worthy of respect. Corrupt government officials and citizens will risk losing not only points but also crucial credibility. They will be cheating not just the system, but themselves in a very fundamental manner. Ordinary citizens will have the tools and incentives to discover and expose the violations. This environment will considerably facilitate building a transparent and accountable governance regime. Once again, the shift will have consequences not only for democracy but also for the rule of law and solidarity.

Transitioning toward this construal of politics may very well bring about a critical impasse. After all, the polity must revamp the way in which it interprets itself. On the one hand, it may not have the resources to undergo such a radical transformation. On the other hand, even if it does, it may not possess the capability to recognize itself in its altered state. In either case, its survival will be on the line.

All the same, this whole configuration entails a legitimation crisis that differs from the one analyzed by Jürgen Habermas in more than details. First, the governmental action

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<sup>26</sup> *Id.* at 18.

<sup>27</sup> *Id.* at 26.

that generates the whole predicament, namely, the war against corruption, amounts not only to a reaction to external economic imperatives but also to a legitimacy problem. Though dishonesty in government may systematically bog down the economy, it typically draws ample attention when it impairs the regime's trustworthiness and unleashes public outcry.

Figure 1, which depicts the stages of the two legitimation crises, illustrates this divergence. The opening dysfunction, which prototypically assumes the form of an economic emergency, is now a dramatic surge in corrupt practices. As such, it entails legitimacy difficulties from the outset. The authorities do not counter with compensatory intervention in the economy, but, rather, with a crusade against graft.

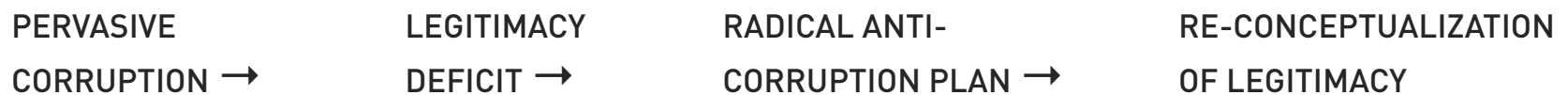
FIGURE 1 – **LEGITIMATION CRISIS: (I) CLASSICAL AND (II) CORRUPTION SCENARIOS**

<b>ORIGINAL DYSFUNCTION</b> →	<b>STATE RESPONSE</b> →	<b>LEGITIMACY GAP</b> →	<b>NORMATIVE ADJUSTMENT</b>
(I) ECONOMIC CRISIS	OFFICIAL SOCIAL INTERVENTION	INSUFFICIENCY OF <i>LAISSEZ FAIRE</i>	WELFARE STATE IDEOLOGY
(II) CORRUPTION	ANTI-CORRUPTION PLAN	INSUFFICIENCY OF INSTRUMENTALISM	REFLEXIVE POLITICS

Furthermore, the state's actions address the paradigmatic threat and, incidentally, create a need for normative readjustment. In contrast, they respond to the current peril by readjusting the norms directly (not as a side effect). Hence, the eradication of systematic corruption necessitates immediately transcending instrumentalism and moving to reflexivity in politics.

Therefore, the phenomenon of acute corruption points to a reconstructed model. As represented in Figure 2, it engenders a legitimacy deficit and anomie from the get-go, even under an instrumental interpretation of politics. The solution is a radical anti-corruption plan, along with a re-conceptualization of legitimacy. In order to justify their actions, political actors will have to show not that they generally abide by the rules in pursuing their strategy, but, rather, that they normally treat politics as an end in itself.

FIGURE 2 – CORRUPTION’S LEGITIMACY CHALLENGE



## V. LATIN AMERICAN CORRUPTION

So much for corruption generally. . . . What about Latin American corruption? Well, this section will take a shot.

Turning one’s attention to the region compels one, first, to illustrate these abstract pronouncements. Consequently, the theory will descend to a more concrete plane. Secondly, the theoretical categories will have a chance to show their explanatory capability in Latin America. Specifically, they will expound the current problem of Latin American corruption while distinguishing it from its prior incarnations. Finally, the application of the conceptual framework in this territory will suggest some helpful modifications to the model.

Political corruption, in fact, partakes in a larger phenomenon that both Mexican Jorge Witker and Argentine Ernesto Garzón Valdés have posited as characteristic of the Latin American legal order, to wit, the dichotomy between valid and effective law.<sup>28</sup> In other words, the law on the streets supposedly deviates from the law on the books. Constitutions, for instance, guarantee a wide array of rights, which citizens appear not to enjoy in actuality.<sup>29</sup> Similarly, the law commands government officials to act in a certain manner, yet they may do the opposite when appropriately bribed.

The paper will identify a crucial difference between the past and the present experience of corruption. In particular, it will maintain that the latter differs from the former precisely in that it evidently involves a crisis of sorts. However, the piece will first address the contention that corrupt practices not only have remained exactly the same throughout but also that they should not give rise to any serious concern. To that end, it will unpack the notion of a legitimacy deficit and explain how it bears on the issue of official dishonesty.

Since corruption appears to be a way of life in Latin America, some might recommend not getting too worked up about it. Perhaps “corrupt” practices simply play a different role

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<sup>28</sup> See Jorge Witker Velásquez, *Derecho, desarrollo y formación jurídica*, 2 ANUARIO JURÍDICO, INSTITUTO DE INVESTIGACIONES JURÍDICAS 295, 299-300 (1975); Ernesto Garzón Valdés, *Eine kritische Analyse der Funktionen des Rechts in Lateinamerika*, 23 IBEROAMERIKANISCHES ARCHIV. ZEITSCHRIFT FÜR SOZIALWISSENSCHAFTEN UND GESCHICHTE, (Neue Folge) 321, 323-24 (1997).

<sup>29</sup> See Luis A. Ortiz-Álvarez & Jacqueline Lejarza, *Estudio preliminar: constituciones latinoamericanas. Nuevas tendencias, carácter normativo e interpretación constitucional*, CONSTITUCIONES LATINOAMERICANAS 9, 11-12 (1997).



in Latin America than they might in North Atlantic economies. Maybe they basically function as an informal tax or consulting fee.

Don't underpaid police officers frequently take bribes in order to raise their meager salaries when the society fails to do so due to inefficiency or insensitivity? Does a graft payment demanded by a well-placed government official significantly diverge from a consultant's remuneration? After all, both seem to perform essentially the same function, namely, to secure for the paying corporation a necessary authorization from high up. Might the anti-corruption clamor against Latin American regimes, perchance, just amount to excessive moralizing, or to a misguided attempt to apply Western concepts in a remote context?

To be sure, a sanctimonious posture may preclude a clearheaded analysis of the causes, workings, and consequences of governmental turpitude. The discussion should therefore not end with the vital observation that under conditions of persistent corruption those with access to power benefit at the expense of everybody else. Furthermore, corruption indeed operates differently in Latin America than it does in the developed world. Realizing how Latin American corrupt conduct parallels what the North deems perfectly legal behavior may undeniably help gain a sensible perspective on the former, as well as the latter.

Nonetheless, one should keep in mind that corruption, when epidemic rather than episodic, impairs both the state's functionality and legitimacy. First, political and legal institutions may, on account of the deceitfulness of their personnel, fail to achieve their objectives and may thereby harm the community. For example, a transportation agency charged with expanding underground transportation may be unable to complete some of the projected subway lines because officials embezzle available funds. Secondly, corrupt practices may eventually impinge upon the rule of law and democracy. They may accordingly prevent the polity from honoring the notions of legality and autonomy.

A society acts legally, in a comprehensive sense, when it applies its legal precepts in a consistent and principled manner. It carries itself autonomously, when it gives itself the law by which it lives. Corruption leads to not only an arbitrary implementation of some norms but also the adoption of others that do not faithfully reflect the popular will. Under extreme circumstances, the legalistic and democratic state may gradually collapse.

When the applicable legislation prescribes, for instance, that government contracts should go to the best bid, the rule of law requires equal and impartial treatment of all bidders. The winner should prevail simply by submitting the least expensive proposal, while meeting the previously specified quality criteria. If the decision makers instead choose an undeserving (or a deserving) contractor in exchange for a kickback, they are acting capriciously and against the principle of legality.

In the same example, a legal norm should express the general will. If the state officials conduct themselves as expected, they serve as vehicles through which the community governs itself. The community has decided that it will do business with those who offer

it the most advantageous deal and, through its public servants, achieves its goal. In contrast, when its agents ignore the pre-established parameters and let money distort the process, it ends up under the coercion of precepts that someone else has foisted upon it.

To be sure, Latin American governments are already functionally and legitimately handicapped to some degree. All too often, they discharge their responsibilities inefficiently and unethically. Still, a corrupt bureaucracy renders these regimes additionally dysfunctional and illegitimate. Insofar as they are even minimally functional and legitimate, political corruption represents a net loss. Once again, one should not view governmental dishonesty merely as a curious feature of societies in Latin America.

As noted before, corruption is not really a constant in recent Latin American history. The manifestations of this phenomenon have changed over time. They were different twenty years ago than they are today. One must appreciate this progression in order to understand the problem and find a solution.

Earlier, this article identified the perceived crisis as what is new. Nevertheless, why does one have this perception now when corruption has plagued Latin America for so long? Of course, governmental fraud and the broader disjunction between valid and effective law certainly caused substantial trouble two decades ago. Still, the difficulties appear to assume a different form nowadays. They presently have the feel of a legitimation crisis. Corruption in politics threatens not only system integration but also social integration. It hampers, simultaneously, the government's functionality and legitimacy.

Where does the change come from? In all likelihood, the key factor is the relatively recent and widespread move toward democracy. With the exception of Cuba and Puerto Rico, the nations of the region have all espoused democratic decision making. Needless to say, how far each country has gone down this path varies immensely. All the same, Latin American regimes across the board must at present attain legitimacy. They may no longer resort to force as readily as they did in the past.

Now, official dishonesty in Latin America engenders the legitimacy deficits that set the critical scenario in motion. Twenty years ago, when dictatorships predominated, it produced mostly a shortage of functionality. The ruling classes were ordinarily willing to accept this deficiency.

Naturally, the authoritarian states of yesteryear also became less legitimate by distancing themselves from the principle of legality. Nonetheless, they did not depend on their asserted legitimacy to stay in power. The regimes could comport themselves arbitrarily and coerce their subjects into compliance when necessary. Furthermore, because they never purported to serve the community's autonomy, they did not worry too much about showing themselves as undemocratic.

In this day and age, however, with the advent of Latin American democracy, rampant official graft generates legitimacy insufficiencies that can be lethal. When democratic societies fall prey to intense arbitrariness, their precious claim to legality erodes. Their

concomitant drift into heteronomy implies a partial abdication of their status as democracies. At the same time, present-day authorities may not easily use violence to close the justification gap.

An elucidation exclusively along these lines would remain incomplete, though. While the revival of democracy means that governments must rely on rational legitimation rather than on shared tradition or on coercion to obtain the people's loyalty, it does not in itself bring about a critical impasse. Actually, as anticipated by the paradigm delineated in the previous section, the crisis derives from the need for an identity-threatening radical transformation, not from minor adjustments, to come to terms with unbridled political corruption. Latin American nations face such a predicament because they start, by and large, from an inadequate conception of government in the first place.

In reality, democratization in Latin America has been highly deficient for the most part. It rests on an overly instrumental understanding of politics. Political actors participate in democracy strategically and not at all by engaging in genuine democratic interaction. The oligarchies realize that they must win elections in order to subsist. So they undertake grand advertising blitzes, usually devoid of real content, to capture votes. The end product is not an enhancement, but, rather, a trivialization of the democracy. On this point, the United States seems to have perniciously influenced its southern neighbors.

Against this backdrop, the state can hardly acquire the legitimacy it so vitally needs. It perpetuates itself not on the basis of publicly defended and defensible reasons, but, on the contrary, through propagandistic manipulation and sometimes through intimidation. Granted, this depiction constitutes a bit of an exaggeration and a caricature, but not entirely.

Latin America confronts an overall shortage of legitimacy due to the perversion of the democracy, the fragility of the rule of law, and the scarcity of solidarity. Corrupt practices aggravate the normative deficiency by pushing Latin American societies farther away from the principles not only of autonomy and legality but also, as observed below, of equality. Within this atmosphere, anti-corruption efforts seem to be useless. State officials find ways of dodging the proscriptions and sanctions. Sometimes, those in charge of enforcement end up themselves contributing to the institutional sleaze.

Thus conceived, corruption in Latin America does fit the legitimation crisis model sketched in the preceding section. When systematic, it chips away at legitimacy by undermining the rule of law and authentic democracy. Because an instrumental interpretation of politics reigns supreme, ordinary anti-corruption mechanisms prove insufficient.

Within this strategic outlook on government, the state can barely present itself as legitimate from the outset. Public servants already carry themselves somewhat arbitrarily and without enough regard for the general will. Nevertheless, pervasive corruption further undercuts the authorities' legitimacy. The upshot may be not just an alternative set of effective norms, but a wholly different kind of game. Honest public and, more importantly, private citizens may finally refuse to play altogether.

As a result, the survival of these communities is at risk. If they do nothing, they could very well perish as such. Ultimately, these collectivities must alter the premises of their social unity in order to survive. That is, they must transition from an instrumental to a reflexive approach to their political culture. These polities must thoroughly commit to legality and autonomy.

Consequently, these societies must re-conceptualize their legitimacy. If they succeed in transforming themselves in this manner, however, they might not be able to recognize themselves. While the current situation may be unsustainable, the future prospect may turn out to be alienating. These communities must simultaneously re-construct and re-imagine themselves.

By envisaging how this large-scale metamorphosis might begin to germinate in Latin America, one appreciates that the concept of legitimacy will have to extend beyond the principles of legality and autonomy to incorporate that of solidarity. Latin American countries have neglected to build not only a law state and a democratic state but also a social state. The political and economic reforms of the last decade and a half have not sufficed to eliminate arbitrariness or heteronomy and have, in some ways, increased income disparity.

Corrupt practices, for their part, introduce arbitrariness and heteronomy directly, while entrenching inequality indirectly. They have this indirect impact because they typically work as regressive taxation. Official dishonesty normally benefits relatively affluent individuals with contacts within the spheres of influence, to the detriment of everybody else, particularly the poor. As Latin American nations evolve toward a reflexive conception of politics and an alternative reading of legitimacy, they will come closer to the rule of law, democracy, and solidarity. This very evolution will formidably prepare them to combat governmental graft.

FIGURE 3 – **DIMENSIONS OF LEGITIMACY**

<b>STATE CONCEPTION</b>	<b>GUIDING PRINCIPLE</b>	<b>CONTRARY PRINCIPLE</b>	<b>OVERARCHING IDEAL</b>
(I) DEMOCRATIC STATE	AUTONOMY	HETERONOMY	DEMOCRACY
(II) SOCIAL STATE	EQUALITY	INEQUALITY	SOLIDARITY
(III) LEGALISTIC STATE	LEGALITY	ARBITRARINESS	RULE OF LAW



The antecedent commentary on legitimacy had been loosely referring to these three dimensions. Each of them comes with an assortment of related visions of the state, principles, and ideals. For the sake of clarity and completeness, Figure 3 spells out the conceptual apparatus. To be legitimate a state must, first of all, be democratic. It has to act pursuant to the principle of autonomy, *i.e.*, it must serve as the means through which the community self-legislates. The state must, on the other side of the coin, avoid placing its citizens in a position of heteronomy. Obviously, it must envision democracy as its overarching aspiration. The state needs, moreover, to function as a social state. It has to promote equality, guided by the ideal of solidarity. Finally, the state must be a law state, which follows the principle of legality and avoids arbitrariness. Accordingly, it has to embrace the rule of law.

How might Latin America reach the reflexive standpoint on politics, as well as this novel picture of legitimacy, and thus create a better environment within which to combat corruption? Well, it must manage to embed notions such as democracy, the rule of law, and solidarity in its constitutional texts and praxes. The devil, as usual, lies in the details. The next paragraphs will only proffer a few suggestions, while acknowledging that the trajectory will ineluctably be arduous, uncertain, and nonlinear.

The democratic process should concentrate on allowing the population to govern itself. Candidates for office should prevail in virtue of the objective appeal of their programmatic offer—*viz.*, of whether the community can freely make their aims its own—not of how well they perform in the sport of politics. Therefore, money should affect the outcome only marginally, if at all, which would probably require limiting campaign spending to a pre-determined amount paid by the state. There should be strict restrictions on the extent to which successful electoral contestants may reward their supporters with jobs in the public service.

These last two recommendations would undoubtedly also advance the principle of legality. To progress further in the same direction, government employees should earn a decent wage, so that they are better able to fulfill their duties in a principled and honest fashion. They should, at any rate, operate more transparently in all respects. Besides, civil society should grow stronger, through governmental funding of private groups and initiatives. The citizenry could then engage itself more immediately in the struggle for self-determination and monitor the doings of its representatives and public servants.

Education should improve in order to empower all individuals, not only politically but also socially. Hence, they would become capable of enlightened political and civic engagement, as well as of economic and existential flourishing. The commitment to solidarity inevitably would also demand income redistribution and a welfare safety net. Latin American societies should especially take pains not to leave behind the needy or minority groups. They should equip the traditionally disadvantaged communities to contribute meaningfully to social, political, and economic development.



Alongside these national policies, international institutions devoted to the notions of legality, autonomy, and equality should emerge. In the same vein, existing Latin American integration movements should focus not only on economic but also on legitimacy norms. Transnational structures should have the authority and the capacity to enforce these principles effectively.

Needless to say, severe penalties and anti-corruption laws should continue in force, nationally and internationally. Nevertheless, they will succeed only to the degree that Latin America shifts to an unprecedented conception of politics and legitimacy through broad measures of the type just outlined. Inasmuch as Latin American corruption has brought about a legitimation crisis, the only way out consists precisely in radically transforming the foundation of collective existence.

## VI. CONCLUSION

The circle has now come to a close. The discussion set off from the idea of a crisis and then focused on the more specific notion of a legitimation crisis. Next, it explained how political corruption might entail this kind of a predicament. Finally, the paper construed Latin American corruption in terms of a legitimacy crisis. It thus completed the Leninist reconstruction of the original concept.

Much more work remains. The theoretical constructs need further elaboration and specification. This piece has, moreover, only scratched the surface in terms of analyzing the practical consequences. The central task at this point should be the development of a program that creatively breathes life into abstract ideals such as the rule of law, democracy, and solidarity.

Most of Latin America has, of course, constitutionally committed to the relevant principles. Nevertheless, it has barely started abiding by them. Valid law and effective law diverge immensely at a time in which the subsistence of the concerned communities calls for convergence. Political actors have not sufficiently understood the guiding norms, let alone the kind of metamorphosis that their full realization demands.

The Latin American corruption crisis explodes with the legitimacy deficit produced by rampant governmental dishonesty. Latin American societies seem, more importantly, incapable of stopping their own decline into arbitrariness, heteronomy, and inequality without undergoing a vertiginous transmutation process. Ordinary measures and the usual anti-corruption tactics are hopeless.

Furthermore, naked state violence as a means of securing the allegiance or at least the obedience of the citizenry has ceased to be a real alternative. Therefore, in order to survive, these communities will have to gather the courage to reinvent themselves. They must regenerate their democratic potential, move toward a more substantive and less instrumental model of democracy, and come up with appropriate legislation and enforcement

mechanisms. More broadly, these polities must build a political and legal structure capable of sustaining not only a genuinely democratic state but also a legalistic and social state.

As already admitted, this project defies easy implementation. Still, democracy—even when highly defective—will hopefully remain true to its own nature. It is naturally reflexive and therefore can hardly bracket out meta-questions about its premises or about the framework within which it unfolds. Nor can it shut off reflection on its connections to the principles of legality and equality. Consequently, Latin Americans must simply persevere, with honesty and courage, in their effort to open up politically. If they do so, they will eventually come to visualize a new democratic horizon and to see themselves reflected in it.

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