

## CHAPTER II

### THE FACTS OF THE CASE: FIRST, SOME CULTURAL REFLECTIONS<sup>1</sup>

#### 1. *Introduction*

“ALL ethnography is part philosophy, and a good deal of the rest is confession”<sup>2</sup> says GEERTZ. He also comments LÉVI-STRAUSS writings on *La Pensée Sauvage* and wonders: “Is he [...] in a vain attempt to revivify a primitive faith whose moral beauty is still apparent but from which both relevance and credibility have long since departed?”

I am afraid our history and present reality might prove the opposite. Except for anthropologists, probably not many people in developed countries believe that such primitive cultures have a “moral beauty still apparent;” whatever, the suspicion lingers in me that primitive cultures nevertheless

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<sup>1</sup> I must confess I have been intrigued, all of my life, with the differences between ourselves and our Indigenous groups, on one hand, and ourselves and developed societies, on the other. Too many parallels have stricken me during my life. This is a unique opportunity to give my feelings and insight a free reign. So pay attention to all the citations: they have been chosen to bolster a conjecture; that is all. In any case, “culture is defined as a set of patterned and enduring ways of acting, passed on from one generation to the next. A national culture consists of those patterned and enduring ways of acting characteristic to a society or a significant part of that society. Culture is to a group what personality is to an individual, a disposition that leads people to respond differently to the same stimuli. Though every traveller is immediately aware of how differently the British or the Japanese or the Swedes respond to meeting a stranger, addressing a clerk, or joining a group, there is no systematic, well established account of these differences. As with most important things in life, we are aware of more than we can explain”: WILSON, JAMES Q., National Differences, in: SCHUCK, PETER H., *Foundations of Administrative Law*, New York, Foundation Press, 1994, pp. 323-338, esp. p. 329.

<sup>2</sup> GEERTZ, CLIFFORD, The cerebral Savage: On the Work of Claude Lévi-Strauss, in: MANNERS, ROBERT A. / KAPLAN, DAVID (eds.), *Theory in Anthropology*, Chicago, Aldine, 1968, p. 551.

retain both relevance and credibility in our own, forever emerging, nations.

The object of this essay is not to think about ethnicity, but rather political culture and what one can reasonably expect in the field of public governance; from there, to consider institution building for the future.

I believe that a good starting point is to look at ourselves: the descendants of a mixture of Indigenous cultures and European, mostly Spanish, input<sup>3</sup>; the result being somewhere in the middle<sup>4</sup> in terms of development.

The reader will perhaps find in this text a rather pretentious “European” attitude, tinted with arrogance, the usual fault of my nationality; but I do feel that the many shortcomings that our history has proved, time and time again, would indicate that something is really not working well in our political societies; that they do not seem to change and substantially improve either by themselves, or with further immigration<sup>5</sup>, or with the existing mechanisms of the world order.

I intend to explore the issue of a different future supranational Inter-American State, with US and EU minority participation, trying first to understand the relationship that we ourselves have, both with our Indigenous forefathers and with our European ancestry of centuries ago.

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<sup>3</sup> My nation’s forefathers believed ethnicity was the cause of our problems. It was so in the generation of the “Men of 1837,” and it was still there at the end of the same century. SARMIENTO said, at the time, and has always been condemned for it, that “A homogeneous whole has resulted from the fusion of the [Spanish, African, and Indian] races. It is typified by love of idleness and incapacity for industry”. “The American aborigines live in idleness, and show themselves incapable, even under compulsion, of hard and prolonged labour. From this came the idea of introducing Negroes into America, which has produced such fatal results. But the Spanish race has not shown itself more energetic than the aborigines, when it has been left to its own instincts in the wilds of America”, cited by SHUMWAY, *op. cit.*, pp. 139-140, brackets by SHUMWAY. Nowadays anyone would frown on the assumption that this is somehow genetically encoded in our collective DNA, which it certainly is not, otherwise no exception could ever have been born to the rule. But if we consider this a cultural heritage, then all becomes clearer to explain our history.

<sup>4</sup> Of course, no one can figure exactly where that “in the middle” is. We are therefore using such an expression merely as a figure of speech.

<sup>5</sup> That was the collective dream of the so-called generation of 1837, who well understood the symptoms of our problems but thought their cause was merely racial, and that they could be solved with European immigration: SHUMWAY, *op. cit.*, p. 165. But as we shall see later, further immigration was finally assimilated to *our* culture, not ours to theirs.

I would like to be able to better understand the cultural differences that contribute to make some countries developed (US, the EU, etc.) and others underdeveloped (specifically, Latin America). Of course, all differences are not our exclusive fault; some are born out of the international order such as it is today.

But it would be wrong to assume that we have contributed *nothing at all* to this state of our own affairs.

It would also be wrong, in my view, to think that we can magically improve the way things stand since the original mixture of Indigenous civilizations and seventeenth and eighteenth centuries<sup>6</sup> (even nineteenth and twentieth centuries', even today's) European migrations, without some further outside managerial help in public governance: that is the broader scope of this work.

Immigration alone has not done the trick to change us into developed societies, as some of our forefathers expected more than a century ago<sup>7</sup>. We have formed a combined culture that is strong enough to assimilate more recent migrations, but which was formed with the input of very ancient migrations. So whatever changes new migrants might bring, are in fact ineffectual to change our society: it is they who change and adapt<sup>8</sup>.

That is why I suggest EU participation, for I have seen that the EU has the good tendency to renew its envoys and change the countries that are represented within the Union. The same happens with political parties in the US. That assures that newcomers will not be at the job long enough to be assimilated.

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<sup>6</sup> I choose those dates rather arbitrarily, to denote that this is a problem that arose in colonial times. Yet there are records to show that this started earlier, with the discovery of the Americas and continues up until today.

<sup>7</sup> The aspiration of our founding fathers during the late eighteenth century was that further European or American immigration might help us to develop. It has not. For the most part, incoming migrants have either been absorbed into mainstream culture, or been likewise unable to change it, even if they themselves have kept true to their own original culture and way of thinking. JAMES NEILSON and ANDREW GRAHAM YOOL, further cited in this book, are the most current examples of the latter category.

<sup>8</sup> Although SARMIENTO insisted until his death on a racial explanation of our collective failure, he was nevertheless able to perceive how even under the enlightened leadership of the late nineteenth century, with democracy of sorts, prosperity, and all the trappings of progress, "Argentine society in 1883, although better-dressed and more genteel than under Rosas, was still plagued by corruption, personalism, and a general disregard for institutional rule": SHUMWAY, *op. cit.*, p. 140.

There is a striking fundamental difference in results, but similar in procedure: *a)* in the way the US has always assimilated immigrants to its developed society, and *b)* in the way we have assimilated immigrants to a developing, perpetually emerging society. The difference lies in the original mixture that we both started with, and the history each new society had behind it at the time of its first steps as a new nation state. There are many aspects that need explanation here, before going into how the EU is dealing with the same problems and how all that is relevant for the purpose of my study. I beg therefore for your patience.

## 2. *The Individual in Developed and Underdeveloped Societies*

I suppose we all understand that underdevelopment may in fact be better for the able individual but worse for society as a whole. Many very able individuals prosper in an emerging milieu: a member of any developing country's elite may in some ways lead a comparable lifestyle, or even better, than his or her equivalent in developed societies.

## 3. *Our Civilization*

The object of this book is not to theorize on what civilization is or should be. I will use the converging or diverging approaches of anthropologists, sociologists or political scientists, but I am - and remain - a practicing attorney ambitious enough to think from his own perspective, that of the practical man who thinks he can deal with concrete problems and offer conjectures or approaches<sup>9</sup>.

It would seem clear that it would not be useful to go back as far as the Aztecs, the Incas, or the Mayas<sup>10</sup> in order to understand where we stand now and how we can proceed from here. I prefer to begin with the mixture

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<sup>9</sup> After all, it is widely accepted in other social sciences that law is an adequate subject study for them, even without having recourse to the legal tools, and there is much talk of retribution as a legal tool. See NADER, LAURA, *Law in Culture and Society*, University of California Press, Berkeley, 1997; "Preface" by NADER, pp. v-vi; KÖBBEN, ANDRÉ J.F., *Law at the Village Level: The Cottica Djuka of Surinam*, in: NADER, *op. cit.*, pp. 117 et seq., esp. p. 138.

<sup>10</sup> An interesting reference is provided by DIAMOND, JARED, *Guns, Germs, and Steel. The Fates of Human Societies*, New York, Norton, 1999, chapter 18, "Hemispheres Colliding," esp. pp. 354-370.

of Indigenous culture and heritage with the peoples of the Mediterranean, of which I am a descendant<sup>11</sup>.

It has been said that three different kinds of integrations took place in colonial Latin America<sup>12</sup>. Some say that southern South America (Uruguay, most of Argentina, Chile, southern Brazil) is “a great expanse of almost purely European settlement”; other parts of Latin America “an early mixture of Indians and Europeans who live in essentially European-style communities, retaining only a few discrete traits of aboriginal culture” (parts of Brazil, Argentina, Chile, Peru, Venezuela, Colombia, Central America); a higher rural population of Indian descent in the interior of Bolivia, Ecuador, Guatemala, Peru, Mexico.

But those original classifications begin to lose sense as time passes, for in my experience all urban environments of Latin America are likely to be more similar than dissimilar. So, while I am going to take into account mainly the case of Argentina<sup>13</sup>, many of its cultural traits are common to other urban environments<sup>14</sup>.

#### 4. *The Culture of Patronage*

Dependence upon the favors of the State is present at all times in our history. The descendant of a Frenchman who led a tragic life in Buenos Aires and the Patagonia thus sadly commented after his death in poverty, in the late nineteenth century: “I know people who never even attempted to colonize, who never did anything for the people - we even know some who did a lot of harm - and yet the government has recognized them what

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<sup>11</sup> In fact, I already have, in September 2002, in Spetses, Greece, when I paid my tribute to M. GUY BRAIBANT within the framework of the annual Conference of the European Public Law Center.

<sup>12</sup> SERVICE, ELMAN R., *Indian-European Relations in Colonial Latin America*, in: MANNERS, ROBERT A. / KAPLAN, DAVID (eds.), *Theory in Anthropology*, Chicago, Aldine, 1968, p. 285.

<sup>13</sup> Which is mainly urban: SNOW, PETER G. / MANZETTI, LUIGI, *Political Forces in Argentina*, Westport, Connecticut, Praeger, 1995, 3<sup>rd</sup> edition, p. 3.

<sup>14</sup> Unfortunately, I have no knowledge or experience of the rural environment and therefore will leave that issue outside of the scope of my analysis. This poses a further limitation on my capabilities; but I venture anyhow with the rest of the question of public governance in Latin America because I feel that our problem is of such a magnitude that it requires a very collective effort in which I would like to take part with this proposal.

they didn't own and what wasn't their due."<sup>15</sup> That could well have been equally said at almost any time in our five hundred-year history, and also in many other countries of Latin America.

Or, to put it in other words, that is "the kind of leadership most [...] seem to prefer", "a bland mixture of nationalism, populism, and social democracy."<sup>16</sup>

Patronage and *caudillismo* are the same thing in different contexts: "Accustomed to a patron-client relationship, they seem to have been specially willing, even eager to follow the new *caudillo*."<sup>17</sup> "The system was self-perpetuating."<sup>18</sup>

##### 5. *Power and the Culture of Patronage or Clienteles*

Language changes and develops continuously; our reality does not alter its course. In older times, it used to be said that as a society we wanted to be ruled by *caudillos*<sup>19</sup> as in chief of Indigenous tribes ("chieftains"), rather than democratic elected leaders<sup>20</sup>. Later versions said this had remote roots

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<sup>15</sup> JULIA ROUQUAUD DE MAILLÉ, as cited by HOSNE, ROBERTO, *Patagonia. History, Myths and Legends*, Buenos Aires, Duggan-Webster, 2001, p. 156.

<sup>16</sup> SNOW / MANZETTI, *op. cit.*, p. 41. The citation is slightly out of context, but not enough that the reader should feel disquiet.

<sup>17</sup> SNOW / MANZETTI, *op. cit.*, p. 13.

<sup>18</sup> SNOW / MANZETTI, *op. cit.*, p. 13.

<sup>19</sup> The Spanish word has been accepted. See e.g. LEWELLEN, TED. C., *Political Anthropology. An Introduction*, New York, Bergin & Garvey, 1983, pp. 79-81.

<sup>20</sup> The salient characteristic is that the chief "controls the whole apparatus of government and is usually himself supreme judge, military commander, economic director, and archpriest of his community." "This form of comprehensive personal rule, in which there is no 'separation of powers,' is one of the reasons [...] why conquered groups can easily be absorbed by allowing their own leaders to continue directing internal affairs": SCHAPER, I., *Government and Politics in Tribal Societies*, New York, Schocken Books, 1967, pp. 208-9. GASTÓN GORDILLO notes that "the most important leaders have also become well-paid members of the apparatus of the provincial government, a situation not free from internal tensions among the Toba": The Toba of the Argentine Chaco, in: LEE, RICHARD B. / DALY, RICHARD (eds.), *The Cambridge Encyclopedia of Hunters and Gatherers*, Cambridge, Cambridge University Press, 1999, pp. 110-3, esp. p. 113. Different versions are given of different cultures. See for instance GLUCKMAN, MAX, *Politics, Law and Ritual in Tribal Society*, Oxford, UK, Blackwell, 1984, chapter IV, pp. 123-168; LEACH, E.R., *Political Systems of Highland Burma*, London, The Athlone Press, 1986, pp. 182-195.

in feudal Spanish origins. Unjust against the Indigenous groups or Spain as that may seem to some, it has now been changed to “patronage” and “clienteles.” By whatever words, it has always been present in our history, and many distinguished authors have always favored a strong executive with a lot of accumulated power, disregarding the lessons of history<sup>21</sup>.

As JAMES NEILSON, a great British-Argentine journalist says<sup>22</sup>,

“Bad as the country’s economy plight may be, the appalling situation that can be found in many provinces has less to do with a lack of material resources than with breakdown of the machinery for distributing there. The food is there, what is lacking is the ability to put it into hungry mouths. As is the case in most poor countries, Argentina’s social system is based on patronage, with handouts being awarded to the poor in exchange for their ‘loyalty’.”<sup>23</sup> [...]

“They have also managed to prevent anything remotely resembling a professional civil service from taking shape. Having stuffed the public payroll with their own dependents and people who would otherwise be unemployed, the political bosses and their propagandists can point out that any reforms designed to upgrade the state machinery would throw millions of deserving citizens out of work. This point of view is raucously supported by the trade unions and by the ‘intelligentsia’ whose main purpose in life is to discredit all genuine alternatives to the status quo by labeling them ‘neoliberal’.” [...]

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<sup>21</sup> SHUMWAY notes that this approach has been shared throughout history by persons of the most varying political characteristics: SARMIENTO, CHE GUEVARA, SACALABRINI ORTIZ, to name just a few. The list goes on and on and does include many a modern professor of constitutional law. See SHUMWAY, *op. cit.*, pp. 151-2, note 1.

<sup>22</sup> NEILSON, JAMES, Clash of civilizations, *Buenos Aires Herald*, November 28, 2002, p. 16.

<sup>23</sup> In another article, the same Author says that “When that supreme canine virtue ‘loyalty’ is the rule, civilized politics is impossible because no conceivable difference of opinion can be considered more important than keeping the faith”. “Downhill with Perón”, *Buenos Aires Herald*, February 6, 2003, p. 16.

“Stark poverty in the midst of abundance has always been common in Argentina [...] but political bosses have been more interested in exploiting it than in taking such measures as might allow the country to bring it down to an irreducible minimum.”

“Nowadays an increasing number of people suspect that ‘clientelism’ is such a primitive and degrading system that something else should be attempted. Most, however, still prefer to concentrate on the shortcomings of the politicians as people rather than the order they represent. That is futile: were they all to go [...] their replacement would behave in much the same way with nearly identical results; all that would change would be the name of the political party entrusted with sharing out the goodies.”

“The problem, then, is ‘cultural.’ Organized patronage is a crude but on occasion effective way of facing the problems that arise when a society is too backward to cope with the bewildering demands of the contemporary society: in the Middle East and Pakistan, Islamist parties are making inroads not only because they are appealing [...] but also because they organize welfare systems that work far better than any managed by the state. Though most Argentines have little difficulty in fitting into the more impersonal societies of the developed world in which few feel obliged to attach themselves to some political boss who will then look after them, at home they are so accustomed to patronage arrangements that only a small minority are aware of just how harmful they can be. To make matters worse, the harder conditions become, the greater is the temptation to rely on patronage, so the current crisis could end up by strengthening the very system which is at the root of Argentina’s many troubles even if it does bring about the demise of many of its formal leaders.”



This diagnostic is common enough, and internationally known. As other newspapermen put it<sup>24</sup>, “Argentina’s patronage-dominated provincial system dates to the 19<sup>th</sup> century - and hasn’t changed a lot since. After Argentina formally declared independence from Spain in 1816, the new government spent decades locked in a civil war with powerful feudal landowners, or *caudillos*, who brutally resisted any challenge to their authority. That is still the case today.”<sup>25</sup> “Though the bloated bureaucracy is inefficient and indebted, efforts to cut back on it have proved fruitless.” A national deputy is cited here as saying “The feudal nature [...] is a product of its culture and history.”<sup>26</sup>

How do we solve that? My suggestion is to change the national States so willing into a new, supranational one with minority US and EU participation. This alternative has many of my fellow Latin Americans grumbling and has failed to convince any Americans or Europeans. The idea is certainly not yet ripe, although the problem (unsolved and eternal corruption, patronage, etc.) is real enough and convincingly insurmountable, for the time being, just by ourselves.

In any case a certain dose of pessimism is in line, either if we go at it alone or if we ask for outside managerial help in public governance<sup>27</sup>.

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<sup>24</sup> *Newsweek*, November 18, 2002, pp. 12-3, “Argentina’s feudal lords”, lead article by PETER HUDSON.

<sup>25</sup> In fact, it has always been the case, from colonial history: LUNA, FÉLIX, *A Short History of the Argentinians*, Buenos Aires, Planeta, 2000, pp. 19 and 25.

<sup>26</sup> Ideologically different versions come to the same conclusion: the peripheral countries are “condemned” to “the development of underdevelopment”: FRANK, ANDRE GUNDER, *Capitalism and Underdevelopment in Latin America. Historical Studies of Chile and Brazil*, New York, Monthly Review Press, 1969, pp. 55-57. It could have been said of my country that “these alliances involved an encounter or whole collection of separate, semi-independent, intensely rivalrous political figures joined at best in unstable blocks by ties of [...] clientship”: GEERTZ, CLIFFORD, *Negara. The Theatre State in Nineteenth-Century Bali*, Princeton, Princeton University Press, 1980, p. 43.

<sup>27</sup> “Effective governance is not inevitable. If it occurs, it is more likely to take place through interstate cooperation and transnational networks than through a world state. But even if national states retain many of their present functions, effective governance of a partially - and increasingly - globalized world will require more extensive international institutions”: KEOHANE, ROBERT O., Governance in a Partially Globalized World, in: DAVID HELD / ANTHONY MCGREW (eds.), *Governing Globalization*, Polity Press, Padstow, Cornwall, 2002, chapter 16, p. 325.

Since we *elect* candidates that abuse power<sup>28</sup> and use patronage and corruption to govern, we have to devise a way by which our elected officials are restrained from acting that way. Internal laws and institutions are unable to do that, even with foreign pressures to respect the rule of law and human rights, assure good governance, etc. The conditional ties of foreign aid have also been unsuccessful to surmount the most elementary problems of good public governance in my country and in most of Latin America. The change does not seem to be achieved either by means of international treaties against corruption, and even international or foreign jurisdiction, for we have tried that without success either. We need a different kind of power structure for our elected leaders.

#### 6. *Some Indigenous Groups and Us*

I will make a starting point out of reflections inspired by a reality which is quite close and yet so seemingly difficult to grasp. I will use reflections on us, and our Indigenous civilizations, as a springboard<sup>29</sup>; and their mythological interaction with foreigners. Two exquisite renditions of their perceptions of our realities were made by ULRICH SCHMIDT, a Bavarian who visited in 1534; and ANTHONY KNIVET who was there for twelve years in 1591-1602, and who (upon seeing ostriches) spoke of (human) "Giants" in Patagonia<sup>30</sup>. So do our myths start, by the mixture of our incoming foreigners and our original inhabitants.

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<sup>28</sup> This problem has been getting worse of late. Even in recent democratic times, the tendency to obscure the role of Congress and enhance that of the administration is clear for all to see: FERREIRA RUBIO, DELIA / GORETTI, MATTEO, *When the President Governs Alone: The decretazo in Argentina, 1989-93*, in: CAREY, JOHN M. / SHUGART, MATTHEW SOBERG, *Executive Decree Authority*, Cambridge University Press, Cambridge, U.K., 1998, pp. 33-61. That seems to be the case in all Latin American countries: SCHMIDT, GREGORY, *Presidential Usurpation on Congressional Preference? The Evolution of Executive Decree Authority in Peru*, in: CAREY / SHUGART, *op. cit.*, pp. 104-141; CRISP, BRIAN F., *Presidential Decree Authority in Venezuela*, in: CAREY / SHUGART, *op. cit.*, pp. 142-171; POWER, TIMOTHY J., *The Pen is Mightier than the Congress: Presidential Decree Power in Brazil*, in: CAREY / SHUGART, *op. cit.*, pp. 197-230.

<sup>29</sup> Some would say that their situation has not changed from colonial times, as THE CLUB OF ROME, *op. cit.*, p. 73: "the stratified system put in place by the colonizers - and essentially denied full citizenship to the indigenous peoples of the region - has continued up to the present."

<sup>30</sup> KUPCHIK, CHRISTIAN, *La ruta argentina. El país contado por viajeros y escritores*, Buenos Aires, Planeta, 1999, pp. 29-52.

Perhaps to the horror of many an anthropologist, I will also use examples from other Indigenous cultures, not just our own, where I think I have found a similarity with our history; or my story, to be more precise. I do not pretend to rank as an anthropologist, I merely argue as a lawyer, for effect. *Eppur...*

All of the following is far from being unambiguous; all groups are different. There is also much intermingling with the rest of society, and even some Indigenous leaders are sometimes keen on doing business, rearing cattle, acquiring and accumulating capital (which they somehow have to share with the community or else be socially objected to)<sup>31</sup>, going into government.

Taking that into account, it might be pointed out that some of them have different lifestyles and philosophies of life from the rest of us. Such persons, although not representative of the rest of the Indigenous communities, do provide an example of an alternative to the rest of the population<sup>32</sup>. Some of them are still hunter-gatherers, while some farm the land in small lots, or even shepherd a few sheep; and most of them also rely on seasonal wage labor, petty commodity production, and some forms of state assis-

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<sup>31</sup> "We're poor, but we always share. That's our custom. We get fish and we share it with our neighbors. That's the custom of the old people": NALIJE, PEDRO MARTÍNEZ, as told by GORDILLO, GASTÓN, *The Toba of the Argentine Chaco*, in: LEE / DALY (eds.), *The Cambridge Encyclopedia of Hunters and Gatherers*, *op. cit.*, p. 112; he adds that "Generalized reciprocity is the main means through which foodstuffs are socially distributed, often to meet the survival demands of those households suffering the harshest poverty."

<sup>32</sup> "The question which has been asked by most researchers, albeit implicitly, is why should the state not leave these people alone?": D.K. NDAGALA, *Free or doomed? Images of the Hadzabe hunters and gatherers of Tanzania*, in: INGOLD, TIM / RICHES, DAVID / WOODBURN, JAMES, *Hunters and Gatherers*, vol. 1, *History, Evolution and Social Change*, Worcester, UK, Berg, 1991, pp. 65 et seq., esp. p. 67. The standard answer is that "By its very nature the state..." considers that "Individuals who produce no taxable surplus are regarded as useless unless they contribute wealth in other forms, such as manual labour." (*op. loc. cit.*). The story has been the same in practically any country. There is an ongoing discussion among anthropologists: The traditional view "was that hunter-gatherers had to toil from dawn to dusk in the quest for food in order to eke out a life that was nasty, brutish, and short"; to which others confronted cases of where people "whose wants and needs were limited, like many hunter-gatherers, could achieve a comfortable life with little time and effort. Instead of working all day every day, these people spent much of their time simply lounging around": ERNEST S. BURCH, JR. / LINDA J. ELLANNA (eds.), *Key Issues in Hunter-Gatherer Research*, Oxford, Berg, 1996, "Hunter Affluence?", "Editorial," p. 147.

tance. Their culture is inherited from their ancestors, and passed on to their descendants<sup>33</sup>, but has been also formed through their interaction with settlers, missionaries and state agents<sup>34</sup>. Since they sometimes also work as migrant workers, their interaction with the rest of society is considerable.

In parts of the continent, some of the Indigenous groups do not regularly farm the land, which they frequently consider collectively theirs<sup>35</sup>, but to which they do not always have legal title<sup>36</sup>. Some normally hunt and fish only what they need to eat<sup>37</sup>. Some, but certainly not all, do not wish to earn money<sup>38</sup> and save for the distant future<sup>39</sup>; however, they trade<sup>40</sup>; quite

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<sup>33</sup> For a more detailed and complex analysis, see GORDILLO, GASTÓN, The Dialectic of Estrangement: Memory and the Production of Places of Wealth and Poverty in the Argentine Chaco, *Cultural Anthropology* 17(1): 3-31, American Anthropological Association, 2002; Remembering 'The Ancient Ones.' Memory, Hegemony, and the Shadows of State Terror in the Argentine Chaco, in: WINNIE LEN / BELINDA LEACH (eds.), *Culture, Economy, Power: Anthropology as Critique, Anthropology as Praxis*, Albany, Suny Press, 2002, pp. 177-190; Locations of Hegemony: The Making of Places in the Toba's Struggle for *La Comuna*, 1989-99, *American Anthropologist* 104(1): 262-277, American Anthropological Association, 2002; The breath of the devils: memories and places of an experience of terror, *American Ethnologist* 29 (1): 33-57, American Anthropological Association, 2002.

<sup>34</sup> THE CLUB OF ROME, *op. cit.*, p. 74, states rather bluntly that in the nineteenth-century ideology "The Indians were depicted as passive, dependent, fatalist, docile, stupid, without emotions or sensitivity, indifferent to pain and suffering, incapable of improving their miserable lives", "Those of mixed race were thought to have inherited the worst aspects of their ancestry: pig-headed, often violent, unreliable, dishonest, time serving, vicious, lazy..." "Now, people of mixed race form the majority in most of the countries of Latin American. They have developed their own culture." "The indigenous people were no longer considered to be racially inferior, but were judged to be too hide bound and not sufficiently oriented towards progress and the modern world. They could undermine the efforts to create national unity and to promote development." "In any case, it was thought that the native cultures were in decline and that in time they would disappear of their own accord. There was therefore no harm in helping this to happen." (p. 75.)

<sup>35</sup> GORDILLO, GASTÓN, The Toba of the Argentine Chaco, *op. cit.*, p. 111.

<sup>36</sup> Some have individual title to pieces of land or live in the outskirts of towns.

<sup>37</sup> It has been said that it is unhelpful for them to consider this attitude as more spiritual, more attuned to nature, or otherwise to make a myth out of it. See fn. 32 above.

<sup>38</sup> The old ones may not even know the difference between a \$10 and a \$100 bill: GORDILLO, GASTÓN, The Dialectic..., *op. cit.*, pp. 18-22: "We Didn't Understand the Money."

<sup>39</sup> They may collect fruits to be stored and dried, until the dry season.

frequently they live in extreme poverty, without medicine, and live rather short lives. Some work as hired hands only for short periods of time. The traditional education they cared for their offspring was the skills needed to hunt, forage and fish, yet they are beginning to understand the need to learn to read and write, among other skills; there are state schools in or near almost every Indigenous community. Some fight not to control tribal power, but to protect their land and way of life from the permanent encroachment of whites, creoles or the State; sometimes from other Indigenous groups. Some also resist regional integration, and much more globalization. A few fear that “rich” people from far away will buy their lands from the State and deprive them of their culture and livelihood.

The original descendants of the European colonizers were not much different. PUCHNICK says that FRANCIS BOND HEAD, who was in the country in 1825-6, felt empathy for the *gaucho*, “that man lost in the middle of Nowhere or Nothingness, who does not either do anything to change his destiny: a kind of natural indolence that completely dominates time and space.”<sup>41</sup>

According to the chronicler, the *gaucho* is determined to live without needs; he is content with his luck and needs no money. He is surrounded by cattle, but he has no milk; in a nice climate, he has no legumes or fruits; you can always find him standing in front of his ranch, which is full of holes that he does not care to mend<sup>42</sup>. FRANCIS BOND HEAD does not spare the women of the *gauchos*: according to him, “they have literally nothing

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<sup>40</sup> Marxists would point out that they do not aim to accumulate personal or private capital. I would say that not everyone in a developed society has that personal aim. If you care for this approach, then you might say that the aboriginal only accumulates as much capital as he needs for his day-to-day needs: a place to live, a roof, some hunting and some cooking tools, some clothes. Yet those very minimal requirements can be reasonably differentiated by climate (the colder the climate, the higher the basic needs) and set of personal values. How much should you save for your children? How much should you work in order to do that, thereby sacrificing the time you would otherwise spend taking personal care of their education? Also, in emerging and developed societies, there is always the problem of debt: how much social or public debt you incur, that you are in fact passing to your own or someone else’s grandchildren? If you prefer, how much personal “capital” you acquire during your own life at the cost of society’s offspring? That may be indirectly attributed to capitalism, if you insist, but to my mind it is clear that maladministration and corruption, feudalism and clientelism, patronage, etc., are the primary causes of excess.

<sup>41</sup> PUCHNICK, *op. cit.*, pp. 66-7.

<sup>42</sup> FRANCIS BOND HEAD, as cited by PUCHNICK, *op. cit.*, p. 67.

to do,” they have no reason to walk in the surrounding empty spaces, rarely mount a horse, and their lives are “indolent and inactive.” He says he asked and they said they did not know who the father of their children was<sup>43</sup>.

When you consider both these two original inhabitants of the former colonies, you begin to form a picture. Strictly speaking, those *gauchos* have disappeared; but you find some remnants of their culture in the current inhabitants of the countryside. If you want to contract something, today, you have to be patient; the local inhabitants are certainly not in a hurry to contract or provide service for money. Any small transaction, even in local stores of small towns, may take considerable amounts of time unless it is very, very simple. There is something of the *gaucho* culture still there. Frequently whatever you ask for, they do not have or will not provide<sup>44</sup>.

Those of us who nowadays do not belong to the Indigenous groups, nor descend directly from the *gauchos*, are also quite a varied lot. Even though in many countries we have a common language, history and government, it may well be questioned if there is a cohesive society sharing real common characteristics.

We have the homeless in the cities, the unemployed, those who rummage through garbage bins looking for something to sell (mostly paper) or even something to eat. Those groups are not alike the affluent local classes, they might even be closer to Indigenous groups, as some anthropologists contend<sup>45</sup>. There are pockets of extreme poverty where availability of food, health and general life expectancy may be even lower than that of some Indigenous groups<sup>46</sup>.

More than half the population is under the level of poverty, a third under the threshold of indigent condition. The latter might be said not to enjoy more of modern civilization than the Indigenous groups, measured by objective criteria of life expectancy, food and shelter, health, education, etc. Although, being in this case part of the cities' shanty towns, they may have access to electricity and therefore television. Commercial television levels down the lower middle classes, levels up the lower working class or unemployed. There is a bonding together in language, style, interest: football (soccer), boxing, racing, and other entertainment (lowbrow comedy and

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<sup>43</sup> FRANCIS BOND HEAD, as cited by PUCHNICK, *op. cit.*, p. 69.

<sup>44</sup> FRANCIS BOND HEAD, as cited by PUCHNICK, *op. cit.*, pp. 71-3.

<sup>45</sup> See the various works of GORDILLO, GASTÓN, cited above.

<sup>46</sup> That has been proven by the higher mortality rate of children due to malnutrition in the province of Tucumán, where no Indigenous groups live.

drama) provided by commercial public TV. Any taxi driver will prove that to you in the very first minutes of his imposed conversation.

The other half of the population, from the middle classes to those in the seat of economic and political power, do business, earn and save money, work either in the higher echelons of public service or farm the land, raise cattle, have industries and services, sell products or services for profit and try to invest. By varying degrees and with incremental variations they can be said, in general, to have a better education, care quantitatively<sup>47</sup> differently about their children's future, and so on.

A few common traits between ourselves and our Indigenous communities are easily seen: the myth of the ancient ones, the preference for epics, the eternal remission to the origins and the ancestors, tradition, a heroic past, sacred traditions, ceremony and ritual, and so on. No less important is the notion of time<sup>48</sup>, as circular or cyclic, in which archaic societies express fear of change and the new.

All these characteristics are described both by anthropologists as pertaining to our Indigenous groups<sup>49</sup>, and by authors who wish to characterize that way our national quirks. In NAIPAUL's view, BORGES<sup>50</sup>, - the most eminent of Argentine writers - quite obviously represents us all. NAIPAUL says he could not have been born anywhere else and write as he did. He believes that BORGES is necessarily a product of our collective unconsciousness in a Jungian sense<sup>51</sup>. I once wrote a eulogy for GARCÍA DE

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<sup>47</sup> There are probably no mature people alive whose grown offspring have not, at one time or other, raised the issue of how much personal care and attention they have received from their hard working parents. Those reared with more care and attention, on the other hand, were probably told to work hard in their future lives so as to emerge from poverty. In our society, any generation seems to get contrarian's experiences and teachings from each previous generation.

<sup>48</sup> As ALEXANDER CALDCLEUGH put it around 1821 (*Travels in South America During the Years 1819-20-21. Containing an Account of the Present States of Brazil, Buenos Ayers and Chile*, London, 1825, later translated into German and Spanish), according to KUPCHIK, *op. cit.*, p. 62, "I have observed something very general in all of America: people do not have any idea of time or space."

<sup>49</sup> See GORDILLO, GASTÓN, whose many works are cited above.

<sup>50</sup> SEBRELLI, JUAN JOSÉ, *Borges: el nihilismo débil*, in: *Escritos sobre escritos, ciudades bajo ciudades*, Buenos Aires, Sudamericana, 1997, pp. 474-6. It must be noted that SEBRELLI shows clear displeasure for BORGES.

<sup>51</sup> NAIPAUL, V.S., *The Return of Eva Peron. With The Killings in Trinidad*, London, Penguin, 1978. I now mention BORGES, but I made use of one of his techniques of invention in the four lines of "verse" I include in p. 14. This is a first building block in another argument, which I further develop in pp. 64-5.

ENTERRÍA constructed on BORGES' words and poems<sup>52</sup>, which he chose as a preface for his book *Conferencias de Argentina*, well understanding that BORGES *was* in effect us<sup>53</sup>.

But such peculiar traits are not exclusively characteristic of my country. In fact, the "magic realism" of Nobel laureate GARCÍA MÁRQUEZ and other noted Latin American writers (CARLOS CASTANEDA comes to my mind most clearly with his books about "Another reality") are in the same vein. Some critics wonder whether this is a genre - in the sense of fad or literary circle - or just a common spontaneous outbreak of astoundingly parallel literary work of excellent quality, arising from the same conditions of different people in different countries. The second version is clearly the right one<sup>54</sup>.

### 7. *Is There More than a Casual Connection?*

These common traits cannot be dismissed as casual. There are many more. We shall see in this book that there are other economic, political and cultural connections between our Indigenous groups and us. Anyhow, the common link that strikes me most is the reliance on myth and unreality. Of course, the Indigenous myths seem quite unreal to us, even quaint and almost lovable. But we are not free of making our own myths, which may or may not seem lovable to others. Our ancestors, after all, did kill most of the Indians. That did not show much empathy towards them, did it<sup>55</sup>?

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<sup>52</sup> I was acknowledging the fact that GARCÍA DE ENTERRÍA, EDUARDO, besides his well known books on administrative law and literature, also wrote a book on BORGES' poetry, *Fervor de Borges*. (As in *Fervor de Buenos Aires*, one of BORGES' works.)

<sup>53</sup> Homenaje al Profesor Eduardo García de Enterría, *RAP*, 178: 5-13 (Buenos Aires, 2001), preface to GARCÍA DE ENTERRÍA, EDUARDO, *Conferencias de Argentina*, Madrid, Civitas, 2002. The phrase that "Borges *was* in effect us" may give pause to psychologists. When I partially quote, in page 39, GALILEO GALILEI's words "*Eppur si muove*", I try to mix GEERTZ's reference in Chapter II, § 1, page 29 to this being a confession, with GALILEO's muttered contradiction or retraction of his confession that the Earth did not move. This is another building block to the argument I develop in Chapter III, § 6.3, pp. 64-5, *quod vide*.

<sup>54</sup> See LEVINE, *op. loc. cit.*

<sup>55</sup> We have already mentioned THE CLUB OF ROME, *op. cit.*, p. 74, to the extent that in the nineteenth-century ideology of our ancestors the "Indians" and those "of mixed race" had "developed their own culture" and since "the native cultures were in decline and that in time they would disappear of their own accord... There was therefore no harm in helping this to happen" (p. 75).



An anthropologist says “I will use the expression ‘*pensée sauvage*’<sup>56</sup> technically in preference to the so-called mythical thinking, the so-called totemism, the so-called primitive mentality, and other designations of that ilk”; he compares it to different ways of thinking, different rationalities, different logics<sup>57</sup>, and so on.

And then he adds “But now we have sunk into a common average Western form of epistemic murk.”<sup>58</sup> In reference to an author who tries to counter the European version of Captain Cook as a “fantasy”<sup>59</sup>, by advancing a “plausible” counter-theory of events, “as an alternative to what is explicitly described in the historical texts. Selectively ignoring or misrepresenting the primary documents, he constructs an implausible history out of a habitual combination of commonsense realism and pop anthropology. *Suggestio falsi* rushes in to fill the void left by *suppressio veri*.”<sup>60</sup>

This is a quite common phenomenon. As I see it, most foreigners who are not in the ideological academia of some social sciences in the developed world<sup>61</sup> have a clear view of us, which begs to differ with the one we have of ourselves, or that of other non-Europeans with a favorable preconception towards our native origins<sup>62</sup>. Just as our Indigenous groups also have their own (possibly distorted) versions of history, their own myths, their own beliefs, so do we. I will not pretend that I am the first Latin American to have seen it, of course. The problem is that those Latin

<sup>56</sup> DURKHEIM, ÉMILE, *The elementary forms of the religious life*, Glencoe, Ill, The Free Press, 1947; LÉVI-STRAUSS, CLAUDE, *The savage mind*, Chicago, Chicago University Press, 1996.

<sup>57</sup> One of those exponents of this construction is TIMSIT, GÉRARD, *Les noms de la loi*, Paris, PUF, 1991, pp. 183-196. I greatly admire and respect this very dear friend of mine, who has greatly influenced my work, although I must here respectfully disagree with him: my anthropologist son would instead agree.

<sup>58</sup> SAHLINS, MARSHALL, *How ‘Natives’ Think About Captain Cook, For Example*, Chicago, The Chicago University Press, 1995, pp. 149-50.

<sup>59</sup> OBEYESEKERE, GANANATH, *The Apotheosis of Captain Cook. European Myth-making in the Pacific*, Princeton, New Jersey, Princeton University Press, 1992, p. 3. The author admits to not being a Hawaiian but a Shri Lankan and to have worked from Cook’s voyages logs and journals; he further asserts he did not go to Hawaii for the making of the book, p. xiii.

<sup>60</sup> SAHLINS, *op. cit.*, p. 117.

<sup>61</sup> There is a majority trend to demonize all others but the Indigenous groups, who are in turn idealized. See, for instance, JAMESON, FREDRIC, *The Political Unconscious*, Ithaca, New York, Cornell University Press, 1981, chapter 6, “Conclusion: The Dialectic of Utopia and Ideology”, pp. 281-299.

<sup>62</sup> For instance OBEYESEKERE, *op. loc. cit.*

Americans who observe it have always been and continue to be a minority, while those who practice it are always in power<sup>63</sup>.

Ours is simply another set of beliefs, myths and traditions: our land is rich<sup>64</sup>, we are condemned to success, we are almost a first world country, we have no racial problems<sup>65</sup>, our level of literacy is far superior to others', our culture is even better; we have great individuals who have succeeded in the world and therefore (quite a leap of logic!) the whole of our society surely can achieve equal success within our borders, and so on and so forth, *ad nauseam*.

We are a great country. We are rich. We have no problems, really. We are as strong (or even stronger) as any developed country.

We can wage war against a developed country, and win. (Very unfortunately, we did think that we would win, at the time we invaded what we consider our islands, and the British theirs. And we did delude ourselves into thinking that we lost the war only because the US helped the UK.)

As SAHLINS says of a native author, to him "The European chroniclers are prisoners of their own myths, and however they may refer these myths to Hawaiians, the words are theirs"<sup>66</sup>; "The inverted ethnocentrism has to end in an anti-anthropology."<sup>67</sup>

All that is fine food for anthropologists to discuss, but the issue in public governance is, does the world accept our vision of our own reality? If not, do we need the world? (The latter question often finds a negative answer in our society.) There we part ways. Unless we are prepared to accept that indeed we need the world, that we have to interact in world trade and culture, we cannot rationally think that we can somehow make the world

<sup>63</sup> A recent newspaper article says that our current government is dedicated full time "to refute facts with words": OBSERVADOR, "Un gobierno dedicado 'full time' a refutar hechos con palabras", *La Prensa*, 02-II-03, p. 15.

<sup>64</sup> We should instead say, *potentially* rich, for all foreigners always posit the same observation: nobody does seem to work on it. SAINT EXUPÉRY said in 1929 that all he could see from the plane were infinites land, with no trees, only a barrack in the middle of the countryside and a windmill. "For hundreds of kilometres you see nothing but that." Cited by KUPCHIK, *op. cit.*, pp. 22-3. LAWRENCE DURRELL, who visited us in 1947-8, observed the spectacle of "unexploited richness" being savagely disputed by local chieftains: KUPCHIK, *op. cit.*, p. 23. No matter what century or which foreigner you pick, the observations are always the same.

<sup>65</sup> Of course, the very first colonizers saw to that, no matter what their nationality.

<sup>66</sup> SAHLINS, *op. cit.*, p. 116.

<sup>67</sup> SAHLINS, *op. cit.*, p. 151.

think like we do. If everyone who has observed our reality for the last five hundred years has come to the same conclusion, then it is our version that may be uninformed, mythical, idealistic, and unreal.

## *8. The Notion of Time*

### *8.1 In General*

Americans, Europeans, Latin Americans and Indigenous groups, all have watches and can understand and tell the time. The use of this knowledge is however strikingly different in different cultures. Need we go into that? Indigenous people do not *need* to know the exact hour of the day in their daily communal life: morning, noon, afternoon, evening, night, might seem to be all that is needed to grasp and use<sup>68</sup>; even if they do have watches, which they do, and even if they understand what the watch shows, which they also do.

Some of us, mostly those who live in urban communities or big cities in Latin America, do have more use for the watch. But we do not view time with the same precision with which Americans or Europeans do.

So, if we agree to meet at, say, eight o'clock, that does not mean eight o'clock sharp, it means a bit later. How much later? No one can give a definite answer. It might be fifteen minutes, thirty minutes, or even more; it depends of the kind of relationship that exists between those meeting. It depends on each individual how late he or she will be. But it depends on society to establish the principle that being on time does not always mean being exactly on time, just "about" on time, "around" a certain time, always a little more; sometimes a lot more.

### *8.2 Work Meetings. Lectures*

If it is a work meeting, maybe thirty minutes is the limit of lateness you can get by and not be frowned upon. If you have to give a lecture, people will expect you to be on time, but the lecture will never start on time: half an hour later is usually the approximate norm, and many people will arrive

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<sup>68</sup> Even I share those characteristics. Since I work at home, and work mostly all the time, I only need the watch when I have to go to meetings or to classes. I eat when I get hungry, I rest when I get tired. And my office sends me a fax and gives me a ring to remind me of my appointments.

even later than that, while some will leave earlier<sup>69</sup>. Probably nobody means ill. It is just the way our social rules have been established from time immemorial.

### 8.3 *University Classes*

If it is a class at the University, almost no pupil will be there exactly on time. The professor is supposed to come around ten or fifteen minutes later<sup>70</sup>; after half an hour most pupils will assume that he or she is not coming at all and will leave the classroom. But even when he or she arrives ten or fifteen minutes later, some pupils will come in still later and will claim for their “right” to be counted as present. That is one of the reasons why I do not give notes for attendance or punctuality, just for results. I usually arrive on time and begin on time; but I do not end on time, rather a little later, to accommodate the latecomers. Of course I also announce that anyone can leave when the allotted time ends, even if I do stay for the latecomers or those still willing to ask something.

Notwithstanding this peculiarity, I try to be very demanding with results, so that anyone who has chosen not to come most of the days, nor on time and not to work mostly hard and fruitfully, will simply fail, unless he or she is very, very bright indeed. Once and again I am privileged to have exceptionally bright students who do not come much but really excel at what they do at my courses. I put them outstanding notes even if they choose not to attend with sufficient punctuality or regularity. Yet, most students abandon my courses for they feel I am too demanding. I would agree I am demanding, but not more than what the professional life will demand of them in their future practice. This is my personal way to adjust myself to the various perceived rules about the use and misuse of the watch.

### 8.4 *Social Meetings*

If you invite friends for dinner, or are invited for dinner, you will not give or be given a precise hour. You will tell, or be told, to come home

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<sup>69</sup> Quite probably, they will be those that arrived on time and made their calculus of their own time accordingly. The only way they can convey their dissatisfaction is with their leaving the auditorium before the others, who managed time differently, do. That surely is not a well functioning system.

<sup>70</sup> I have received at least one emphatic refutation: the one sending the message claims to be always two or three minutes before class time. I have to believe it.

“sometime around such an hour, or half an hour later”; people most probably will start arriving *more* than a half hour later, even an hour and a half or two hours later. To me, such behavior (which is also my own, when I am in my country, dealing with my own countrymen and women) resembles more closely the Indigenous notion of time, than the American or European use of the watch.

### 8.5 “One Minute”

This is quite a common expression, and nobody would dream to take it as being “sixty seconds.” “One minute” means “promptly”, “in a few minutes”, “shortly”, and so on.

If you are told “in ten minutes”, it means more. How much more? Nobody knows, not even the person who is saying “ten minutes”. It is more like “in a while” or perhaps more rightly “please wait”.

### 8.6 “Tomorrow”

When you say “tomorrow,” it does not always mean *exactly* tomorrow, it means “in the future,” “some other day.” Everyone knows that<sup>71</sup>. In the US the English language has a derogatory word that is spoken in Spanglish: “manana”, meaning “tomorrow” as it is supposedly understood and practiced by their very important Latino community. This version of “tomorrow” is still not as strong in the US as the prevailing one in the rest of Latin American countries south of the border. There, when one says “I’ll call you” or “I’ll phone you”, all it means is “*Maybe* I will do that.” Or, “I would perhaps *like* to do that, but I am not at all certain that I *will* do it. Nor should you expect me to call just because I *said* I would call.”

### 8.7 *The Notion of Time at Home and Abroad*

When I travel abroad, which I do quite frequently, the most difficult change for me to adapt to in a foreign environment, is to be on time

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<sup>71</sup> This is a well known example of all Latin American cultures, not just Argentina. It has also been depicted by anyone who has cared to write about us. One such view is clearly explained by HERZFELD, HANS, *Verhaltensformen der Argentinier*, Buenos Aires, Verlag Alemann S.R.L., 1984, 3<sup>rd</sup> edition, explains not only this but also many more Argentine characteristics that differ from European culture and may be closer to Indigenous culture.

(American or European style). I have to resort to the old advice that “The only way to be on time is to be ahead of time”. To me, that requires an effort to which I am not accustomed. That is why I always happily return to my own environment.

Phew! No more rigid rules, no more exacting social demands. Of course, it is not just the time and the clock, there is more. That is why WITOLD GOMBROWICZ, who lost everything from his native Poland during the war, felt that in that southern part of the world he “became light and empty”; “I was being absorbed by [...a country which was...] *absolving*<sup>72</sup>, *indifferent* and abandoned to its own daily conformity.”<sup>73</sup>

Let us now move to another distinctiveness of at least part of our culture, as seen by foreigners and not many Latin Americans.

### 9. *The Notion of Contract*

Although I have criticized elsewhere legal thinking based upon “notions” or “concepts”<sup>74</sup>, I keep using and will continue to use it here, in the context of a cultural description, because it seems to adequately reflect our reliance on generalizations.

There is a cruel joke that we ourselves tell. I have not heard it outside our borders. I have always seen this joke to be very close to reality in many business dealings, above all public business, Government contracts, etc. It applies to both parties of the contract.

The joke goes like this: In foreign developed countries people first discuss to see if they can arrive at an understanding on future mutual obligations. If so, they then sign a contract and later fulfill it.

In our reality, the joke continues, it is the other way around: people first sign a contract defining their mutual obligations; then, they discuss whether that is what they really agree on. Lastly, they decide whether they fulfill their obligations or not.

As in all national jokes, it has too much of a generalization, too much emphasis, and is partly wrong. The problem is, it is comfortably close to

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<sup>72</sup> KUPCHICK, *op. cit.*, p. 235. The emphasis is mine; a couple of pages earlier GOMBROWICZ says the country does not have a “hierarchy of values, European style,” and that is perhaps what attracts him more: “They do not feel repugnance..., they do not get indignant..., they do not condemn... nor are they ashamed ... as much as we are.” (KUPCHICK, *op. cit.*, p. 230).

<sup>73</sup> KUPCHICK, *op. cit.*, p. 235; the emphasis is mine.

<sup>74</sup> *An Introduction to Law, op. cit.*

real practices. We sign contracts too easily, only then to start, rather sooner than later, arguing about them.

That is not a new thing in our history. It seems to have started from the very beginning, with all the treaties and agreements our predecessors undertook with the various Indigenous populations, only then to break them, once and again, all the time, until we finally chose the path of genocide and there were no Indigenous populations holding arable lands anymore<sup>75</sup>.

Of course contemporary developed nations sometimes also belatedly try to renegotiate international obligations, as the US is currently doing on various fronts. The point is, however, that we do the same to a greater extent and quite more frequently, as shown by our continuous fidgeting under repetitive commitments we undertake with the IMF and then ask for, and obtain, waivers for unfulfillment of those obligations. Of course, national default and other delicacies further prove this point.

## 10. *The Exemplary Center*

### 10.1 *The Balinese Story*

Former Kings used to set their main castle in what was then going to be the center of power. In our colonies, the main capitals were also the centers of power, and the colonial political divisions were centered around such capitals. Not only do those cities survive today, but are frequently bigger and stronger, and surrounded by the largest concentration of population in each country. Exceptionally, in Brazil the capital (Brasilia) is the main source of political power but not the source of industrial and economic power. Such power is situated in Sao Paulo. The economic center will then round up the largest urban site of population. In most other cases, though, both the seats of political and economic power are in the same city, and this is also the most populated of the country, with a 30% to 40% of the whole population of the country: Caracas, Buenos Aires, Lima, Mexico City, etc.<sup>76</sup>

Most developed countries have various centers and do not concentrate such a high percentage of the population in their capitals.

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<sup>75</sup> It is in all history books. Just one among them: HOSNE, ROBERTO, *Patagonia. History, Myths and Legends*, Buenos Aires, Duggan-Webster, 2001, chapter 12, "Warfare against the Indians", pp. 127-149.

<sup>76</sup> Then again, some say, half in jest, that Miami is the "Capital" for Latin America: *infra*, Chapter V, fn. 1, p. 95.

### 10.2 *The Typical Latin American Capital Story*<sup>77</sup>

There must be an explanation for that phenomenon. I think the Balinese history may provide an answer. It was in the eighteenth century that historians found what is now called the doctrine of the exemplary center: it is a court-and-capital, meant for spectacle and public dramatization. In those times it was temple dedications, blood sacrifices, cremations, pilgrimages, etc. Probably any country with a capital too big for its own good can tell the same story: it is a magnet for mass rallying or convocation of the masses by the government; more or less spontaneous and ritual cutting transit from roads, avenues, bridges, etc.; tire burning, abuse shouting, (US) flag burning, etc., by the discontented masses and University students plus a few graduates of the social sciences. Sometimes anger or repression flare up and the net result is a number of people killed (La Paz, 2003). Dictatorships do both kinds of celebrations. Elected officials in emerging countries as well. Does pomp serve power, or does power serve pomp, as GEERTZ<sup>78</sup> asserts? In any case, “the sort of polity it designates is one in which the interplay of status, pomp, and governance not only remains visible but is, in fact, blazoned.”<sup>79</sup> The court-and-capital is also a mythical center, a place where people from all over the country come to mass rallies, to protest, to show allegiance, and maybe also to have a good time, or defy authority; they may either “present a picture of the forging of national unity out of an original diversity”, or “the dissolution of an original unity into a growing diversity.”<sup>80</sup> That is a link to the past, not to the present. “Impressed with command, we see little else.”<sup>81</sup>

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<sup>77</sup> No reference to Buenos Aires, if told by an Argentine, would be complete if it missed that “Buenos Aires has long been regarded as the Paris of the Southern Hemisphere”: SNOW / MANZETTI, *op. cit.*, p. 1. However, if we “are Italians who speak Spanish and believe ourselves to be English,” how come we live “in Paris”?

<sup>78</sup> GEERTZ, *Negara. The Theatre State in Nineteenth-Century Bali*, *op. cit.*, p. 15.

<sup>79</sup> GEERTZ, *op. cit.*, p. 121.

<sup>80</sup> GEERTZ, *op. cit.*, p. 15.

<sup>81</sup> GEERTZ, *op. cit.*, p. 121: “The throngs of lookers-on and joiners-in that turned even a minor state ceremony into a kind of choreographed mob scene gave to the Negara an expressive power that neither palaces as copies of the cosmos, nor kings as icons of divine authority, could themselves produce”: p. 116. I have witnessed so many of these mass celebrations in my country, that I cannot fail to find a tenuous resemblance to the Negara in our Buenos Aires, “the most European of Latin American cities”, as we would like to believe. Caracas is another clear example during recent years.



### 10.3 *A Touch of Evil*

Such concentration of power has never been observed without mixed feelings, if not outright rancor. Some describe the relation of the capital to the interior as one of metropolis and colony, and signal that it means that two different countries coexist<sup>82</sup>.

However, continuous growth has added a different touch. Even if the strict federal district in some cases has not been growing since some time, the surrounding localities, physically a continuum, correspond to different jurisdictions; which means a different seat of power. Some of these jurisdictions are not only impoverished, but also very big: 2,500,000 in La Matanza alone, vs. 3,000,000 in the federal district and about 9,000,000 in the whole area, in the case of Greater Buenos Aires. That figure corresponds to 36,000,000 for the whole nation. Similar proportions can be observed elsewhere in Latin America: Caracas, Bogota, Sao Paulo, Mexico City, etc.

The impoverished inhabitants of greater Buenos Aires do use the capital as a staging center for populous gatherings, picket lines, road blocking, etc. They have not yet staged this kind of frontal challenge to the gated communities, but the most isolated ones are beginning to feel the pressure of constant harassment, invasions, and kidnappings.

Such strong disparities in income and subsequent fears for personal security lead in different directions. One is to organize public kitchens with daily free food to the poor and the indigent. Another, which is not totally incompatible with the next, is to organize a myriad of social activities of the affluent classes for the neighboring lower classes: charities, benefit prizes, church donations, raffles; or, farther down the scale of fear, rather serious investment in personal security measures, and so on. When people start to arm themselves, clashes and deaths become a more likely probability. It is already happening.

The urban reality in the capitals has more elements of similarity than disparity in Latin America. Brazil has a greater variety of urban centers, but they would seem to be equally surrounded by poorer neighborhoods. The problem security poses is clear in the bigger cities such as Sao Paulo. Street vendors in some inner northern cities even sell shirts saying: "It's no use kidnapping me, I'm a professor". It is a joke, of course, but we very well know that all jokes are merely a distortion and an exaggeration of something that has at least some basis in reality.

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<sup>82</sup> See the references in SHUMWAY, *op. cit.*, p. 221.

### 11. *The Notion of Authority*

The notion of authority is very much imbedded in our culture. Not only in the most obvious tendency to grant our presidents almost unlimited power, claiming that this is the “presidential model” of the US, which shows how much we ignore about the US, where power is greatly fragmented between various bodies<sup>83</sup>. The notion of authority is also present in our civil culture.

SHUMWAY pointedly says that one of our former Presidents, SARMIENTO, even though he criticized the system, he was also a good example of it. The criticism to our tendency to honor our leaders and bestow on them great authority goes like this: “In contrast to this rational view of the world, the *caudillo* is the voice of non-reason. He may reflect the unarticulated popular will, but all authority is centered in his person”.<sup>84</sup>

However, “Rather than using carefully constructed arguments based on verifiable evidence”, SARMIENTO often resorts to passionate declamation based on no evidence beyond his personal authority. In short, he writes by decree, a fact that prompted ALBERDI to call him “a *caudillo* of the pen.”<sup>85</sup>

Most of our literary authors are indeed *caudillos* of the pen: they write many books about our idiosyncrasy and our history but do not even use footnotes, and their greatest act of condescension, if at all, is to make an all-encompassing bibliography at the end. Let the reader be damned. *Qu'ils mangent brioches*.

With such a guiding example of leadership and *caudillismo* by the pen, who can be surprised that the government resorts to the same style?

### 12. *The Emphasis on “Our” Presidential Style*

“Like SARMIENTO, ALBERDI recognized that the *caudillo* was somehow indigenous to Argentina.”<sup>86</sup> He believed “that the recurring figure of the

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<sup>83</sup> It is “a government that speaks with many voices”: ATKINS, G. POPE, *Latin America and the Caribbean in the International System*, 4<sup>th</sup> ed., Westview Press, Colorado, 1999, p. 145.

<sup>84</sup> SHUMWAY, *op. cit.*, p. 152.

<sup>85</sup> SHUMWAY, *op. cit.*, p. 153.

<sup>86</sup> A few years ago I heard in Mexico that the President always seemed to act “majestically, like an Aztec King”. In those times all laws were passed by Congress as submitted by the Executive Power, with no modification in the legislative process. See NAVA NEGRETE, ALFONSO, *Derecho Administrativo Mexicano*, Mexico, FCE, 1995, pp. 64-6, Presidente legislador, and pp. 67-9.

*caudillo* was a visible evidence of a peculiarly [local] fact of life: the need for a strong executive<sup>87</sup>. This viewpoint was shared by all of our forefathers and is still present today<sup>88</sup>. Almost all leaders are the voice of non-reason, intervene in almost any aspect of public life, rule by decree, incur in continuous debt and maladministration, etc. For a Latin American, it is difficult to understand the exact role the US President has in that country. We cannot imagine that he has great power in about half a dozen decisions<sup>89</sup>. "The U.S. President lacks most of the explicit decree authority available to chief executives discussed elsewhere in this volume;"<sup>90</sup> "although the U.S. Congress often delegates *foreign affairs* responsibilities to the President, it rarely delegates substantive policy-making authority directly to the President in *domestic* policy. Instead, it typically delegates to cabinet secretaries and agency heads."<sup>91</sup>

Even when the President has explicit power to decide something, such power is subject to a system of internal constraints: the people who work at the White House and a long list of national public officers whose views have to be taken into account<sup>92</sup>. It has been said that the "hardest job facing a President" is "to persuade the pertinent bureau or agency - even when headed by persons of his own choosing - to follow his direction."<sup>93</sup> Plus, the culture of the rule of law, constitutionalism and judicial review are ca-

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<sup>87</sup> SHUMWAY, *op. cit.*, p. 153.

<sup>88</sup> "The government machinery revolved around the person of the president"; "legislatures were usually subservient to the governors": SNOW / MANZETTI, *op. cit.*, p. 13.

<sup>89</sup> We heard this notion directly from PETER STRAUSS. However, a more nuanced view is expressed by him in *Presidential and Congressional Review. The Place of Agencies in Government: Separation of Powers and the Fourth Branch*, in: SHUCK, PETER H., *Foundations of Administrative Law*, New York, Oxford University Press, 1994, pp. 231-241.

<sup>90</sup> SALA, BRIAN R., *In Search of the Administrative President. Presidential "Decree" Powers and Policy Implementation in the United States*, in: CAREY / SHUGART, *op. cit.*, p. 254.

<sup>91</sup> SALA, *op. cit.*, pp. 254-5.

<sup>92</sup> In Latin America, we generally have nothing really comparable to the White House Chief of Staff, National Security Advisor, Chief of the Central Intelligence Agency, Senate Commissions, Secretary of Defense, Secretary of State, etc. The President cannot really act against the will of all these people, nor can he easily dismiss them when they disagree with him. Not to mention the restraints that a free and independent press also impose, public opinion, opposition party, etc.

<sup>93</sup> SALA, *op. cit.*, p. 255 and his references.

pable of actually putting a limit to presidential powers, even in cases of emergency<sup>94</sup>. That does not happen in Latin America.

I cannot perhaps explain the US presidency to my countrymen and women, but I can try to explain the Latin American presidency to foreigners. When the US was facing the problem of the boy who came from Cuba and was ultimately returned there, the US President never for a moment thought that he had any role at all to play in the matter. It was upon the competent administrative and judicial authorities, the President could do nothing about it even if he had wanted to.

One of our democratically elected Presidents, and not a populist one, who lasted just a couple of years in power, received instead in the Government House soccer player Maradona to help him obtain passports for his two daughters who were in Cuba at the time, without any national or private crisis involved. If you need a passport and are a soccer star, what can you most naturally do, but ask the President of your country to give it to you? The extraordinary thing is, it really works like that.

To sum things up, even constitutional reforms meant to reduce presidential power by the creation of a Prime Minister or Cabinet Chief of Staff with Ministerial level and a higher authority than other Ministries, have been insufficient to thwart the *caudillo* style of our presidency: the President may be actually strong or actually weak, but the institution is inevitably too strong and the Ministerial Chief of Staff or Prime Minister is not enough to counterbalance the system<sup>95</sup>. When the President falls, almost everything else falls with him.

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<sup>94</sup> SUNSTEIN, CASS, An eighteenth century president in a twenty-first century world, 48 *Arkansas Law Review* 1, 1995, p. 21.

<sup>95</sup> See NINO, CARLOS SANTIAGO, Transition to Democracy. Corporatism and Constitutional Reform in Latin America, 44 *University of Miami Law Review* 129, 1989, p. 161.