

CHAPTER III

OUR HERITAGE, OUR FUTURE. A FEW HISTORICAL FACTS AND TENDENCIES

1. *A History of Law Avoidance*

OUR history is also the history of non-compliance with our own rules, in ever creative and varying ways. It was there during colonial times: Back in the eighteenth century, “Lima, with the Viceroy of Peru’s backing, had already quite rightly complained about the fact that Buenos Aires was not only a back door for the incoming contraband but also for illegal exports.”¹ Buenos Aires “had been born and raised in lawlessness”, and always carried at those times “its burden of poverty and lawlessness.”² This was not unofficial: “when a viceroy received royal letters patent from the King in Madrid and upon reading it he considered it nonsense, he would solemnly summon the functionaries, the city council, the *Audiencia* and the bishop and state ‘It shall be observed but not executed’ or, in other words, ‘We acknowledge the authority of the person stating this, but as it does not contribute to the common good and would do more harm than good, we will not carry it out but file it away in a drawer instead.’ This was normal procedure”³ which the historian goes on to say was based on a philosophy of putting the “common good” (in whatever version those in power decided) above the law⁴.

Unsurprisingly, the phenomenon was also there when we became independent. It is said that we then “acquired the habit of law-dodging”⁵, first with “The fact [...] that smuggling offered them a better standard of living

¹ LUNA, *op. cit.*, p. 17.

² LUNA, *op. cit.*, p. 20.

³ LUNA, *op. cit.*, p. 25.

⁴ This has become one of the usages of language by those in power, as I explain in *An Introduction to Law*, *op. cit.*

⁵ LUNA, *op. cit.*, p. 14. This is obviously a mere lapse in writing, for it is the same historian who tells us that such tradition had begun centuries before (p. 17).

than did legal channels, which were absurdly contrary to the interests of the city.”⁶ Even a respected historian, from whom we take the quote, appears to justify lawlessness in the fact that it provides a better standard of living. Of course it does, if the system does not work and you do not get caught. The same historian says that, in fact, the whole of society (including therefore the government) was like that: “Where did Buenos Aires come into the picture? *Its business was smuggling*, which meant that it became the back door for all illegal trade.”⁷ This comes under a heading which clearly states, matter-of-factly, “Dodging the Law”⁸, as being an integral part of our history.

In our nineteenth-century history even law officers “supposed that with money and fishy legal manoeuvres the criminal could get away with it”⁹. One of the great characters of modern business-cum-crime, who in the end had to kill himself, was once asked how he would define power. He quite aptly said: “Power is impunity.”

The problem is the same throughout most of Latin America¹⁰. Almost everyone is on the lookout for a way around the rules, a special license, an exception, a privilege, a new law for him or herself, or otherwise just plainly and frontally doing something that is undeniably illegal, with the hope that he or she will not be caught; or that if he or she is caught, he or she will be able to bribe the public officials, the ministers and President, or the judges, the legislators, and so on; or, if he or she cannot, that punishment will be lenient (as it indeed is). It does not serve any purpose to impose higher punishment by law, for those applying the law will not abide by the maximum and even if they do, the system of incarceration almost always provides for an early release.

2. *Some Instances of Mass Murder*

When the military took power in 1976 (until 1983), they were actually debating their future governance for many previous months.

One of their projects was that they wanted to establish the death penalty in their future regime. So they consulted with various specialists in crimi-

⁶ LUNA, *op. cit.*, p. 14.

⁷ LUNA, *op. cit.*, p. 15; emphasis added.

⁸ LUNA, *op. cit.*, p. 13.

⁹ HOSNE, *op. cit.*, p. 215.

¹⁰ THE CLUB OF ROME, *Latin America, facing contradictions and hopes*, *op. cit.*, p. 58, puts it this way: “anyone who pays his taxes is thought a fool.”

nal law. All lawyers told them that death penalty was not within our cultural tradition and was perceived to be contrary to our values; that, therefore, no judge (even no newly appointed judge) would apply it.

The result was that they then decided to go on with their project, but made a decision to apply the death penalty without court or trial. Thus they became law, judge, jury and executioner, to paraphrase MICKEY SPILLANE. And some of them added on the spur of the moment, when executing this plan, torture, rape, looting, whatever they fancied to do. The exact number of people killed is not known (accounts vary from 6,000 to 30,000) and it has been very difficult for society to admit to these facts. It is being discussed today whether they also had a systematic plan to change the identities of the babies born in captivity and whose parents were then killed. Systematic plan or not, the facts did happen. Their grandmothers continue to try to find them.

That regime did not come out of a galaxy: it came out from deep within us. And it did not happen for the first time, either. Wholesale murder was the business of at least one regime in our history as a single nation, during Rosas' period (there still are people who admire that regime).

Wholesale murder was what Europeans practiced with the Indigenous population, and what we ourselves did as a sovereign nation. Nevertheless, it should be noted that "Under the Spanish rule it was impossible to conquer the native population of patagonian territories"¹¹. While some important massacres were done under colonial rule, the real genocide begun, and was concluded with independence.

That is why we have practically no Indigenous groups at all. I do not find a collective sense of guilt, not even condemnation, for those episodes in our history. They are not even mentioned in the usual history books that we give to our children and youngsters. It seems too strong a dose of reality, one that they will be unable to absorb, comprehend, or learn. Learn it they do not, of course: they are simply not told about it. They will have to find the truth for themselves.

Are we perpetual killers and genocides? No, but some traits are there to be seen in our history. That in and of itself explains nothing, but it does seem to fit, any time that a mafia-style crime (whether it be murder or suicide) is committed and stays unresolved forever: it does discourage people from becoming whistleblowers of shady business deals. Every couple of years we have at least one such incident in our country, for all the eyes to see, and for the public mind to ponder, in silence.

¹¹ HOSNE, *op. cit.*, p. 137.

3. *Five Hundred Years of the Same Kind of Governance. A Few Bubbles of "Wealth"*

Ever since the first Europeans set foot in Latin America we have had the same kind of public governance, even if the latest example is too extreme. We like to be misrepresented as having been once rich and developed. That, unfortunately, is not true. We have had three - perhaps four - bubbles of "wealth," with simultaneous great foreign investment and great public and private indebtedness: when each one ended we found out that we had misspent the money, that we still owed it, and that development had been a temporary illusion.

That happened 1^o) in the 1890-1914 period, 2^o) after the second World War (we had a large amount of credit for exports made during the war: had we invested it in the IMF as we were then invited to, we would now be in much better shape; but we misspent it in nationalizations), and 3^o) in 1990-2000 with privatizations and the way they were executed¹².

After the bubble breaks we again are able to see misery, poverty¹³, bad governance, corruption, patronage, and so on. Those traits had not disappeared while the bubble was inflated; they were just obscured or we chose not to look at them. When the bubble breaks, everything is real again, for everybody to see.

4. *A History of Chronic Indebtedness*

Our history is the history of indebtedness folly: in 1824, "the archetype of a useless, costly loan"¹⁴. At the end of the nineteenth century, a former President called our nation "the great debtor of the South"¹⁵. And a histo-

¹² Some would add a previous bubble during the military regime 1976-1983, when of course there was a "colossal increase in the foreign debt": LUNA, *op. cit.*, p. 215.

¹³ Of course, the list continues: rural poverty, overcrowded cities, a worsening of inequality and an increase in the levels of poverty and indigence, drugs, and so on: THE CLUB OF ROME, *Latin America, facing contradictions and hopes*, *op. cit.*, pp. 29-101; the authors cite words from the World Human Development Report in the sense that "clearly, the poverty of the people of the developing world has not prevented the armies of these countries from living in plenty" (p. 60).

¹⁴ LUNA, *op. cit.*, p. 215.

¹⁵ LUNA, *op. cit.*, p. 215. Further data in SARAVIA FRÍAS, BERNARDO, "La Argentina, 'la gran deudora del Sur'. Antecedentes, evolución, jurisprudencia y propuestas para la reestructuración de la deuda pública externa argentina", *ED*, 6-IX-

rian says, almost proudly, our country “has almost constantly been in debt. It has almost become a way of life.”¹⁶ It is a long tradition: “For reasons that have never been clear [... the country ...] has always been capital-dependent and thereby beholding to loaner nations in ways that seriously compromise the country’s ability to run its own affairs.”¹⁷

That problem is not ours alone: “Of course, the external debt was not the only problem facing Latin American economies at the beginning of the 1980s, but it was the most acute and brought with it the most unfortunate consequences.”¹⁸ In the nineties, various countries had external debts bigger than their GNPs, so it is only with a rather ingenuous look that the 1991 World Economic Survey could say that “Highly indebted countries may carry their debt burden for another decade.”¹⁹ Just *one* decade?

5. *An Empty Country*

Ever since the beginning, the population was mostly situated in some of the big capitals of Latin America. In most Latin American countries, even those organized according to a federal model, the traditional tendency has been the centralization of power and concentration of population at the center: Argentina, Mexico, Venezuela, etc.²⁰

The explanation is easy: they offer better chances of employment, a more diversified entertainment for those that do not have many means. Even at its worst, the shanty towns have more promises than many places in the interior. The countryside, on the contrary, was always practically empty. In 1837 DARWIN notes that when travelling, only from time to time a single ranch could be seen, lonesome, each with a single tree²¹. That detail of the “single tree” for a lonesome solitary ranch has always struck me as pathetic. It did impress DARWIN.

2002. President SARMIENTO thus made a dubious paraphrasing of the original Argentine national hymn. He was a predecessor of a recent President that declared jubilantly and to the further joy and fervor of an applauding Parliament, the national default.

¹⁶ LUNA, *op. cit.*, p. 215.

¹⁷ SHUMWAY, *op. cit.*, p. 156, footnote 3.

¹⁸ THE CLUB OF ROME, *Latin America, facing contradictions and hopes, op. loc. cit.*

¹⁹ As cited by THE CLUB OF ROME, *op. cit.*, p. 35.

²⁰ See for instance NAVA NEGRETE, ALFONSO, *Derecho Administrativo Mexicano*, Mexico, FCE, 1995, pp. 100 et seq.

²¹ Cited by KUPCHIK, *op. cit.*, pp. 90-1.

Nowadays, when you visit the countryside you will frequently find many “centennial trees”, a distant memory of the epoch of late nineteenth century foreign investment (and plantation), but few plantations of fifty, thirty or ten years.

Of course, if you go to really deserted lands, like Patagonia, you will find “enormous empty spaces”, “the enormity of the desert”, as PAUL THÉROUX said²².

6. *Imagination and Reality*

6.1 *Written Testimony of this Fact*

One of our traits is to ignore reality and imagine instead what we think reality is. This has been said time and again by foreign visitors to the Continent, the latest and perhaps more important, Nobel laureate NAIPAUL in his book *The Return of Eva Peron. With the Killings in Trinidad*²³. But you can trace the same line of thought in many other foreign authors that cared to write about us²⁴. Naturally, all countries have myths and fictions; the problem with us is, we have just too many.

The law as well has known fictions for centuries, or millennia, in the history of humankind. The problem is, you do not have to believe them if you expect to understand them²⁵. Jurists differ a lot, from one country to

²² Cited by KUPCHIK, *op. cit.*, p. 295.

²³ We have already mentioned this book above. No Spanish translation exists that I am knowledgeable about, even if the book appeared in English in 1978, even if its author is now a Nobel laureate. We do not *want* to know what it has to say. That is also why so few among us are really willing to learn English: it provides unpleasant information.

²⁴ See COX, DAVID, *En honor a la verdad. Memorias desde el exilio de Roberto Cox*, Buenos Aires, Colihue, 2002, pp. 60-1, 65, 75, 81, 83, 84, 88, 89, 100, 103-4, 107-8, 110-1, 112, 115-6, 118, 121, and so on. These are personal letters interchanged between two Englishmen who knew Argentina well and really cared for it. The letters' recurrent theme is the national inability, or unwillingness, to see reality. An English-Argentine with an indelible compromise for this country, JAMES NEILSON, has said it repeatedly: for instance, *El fin de la quimera*, Buenos Aires, EMECE, 1991. Check any bookstore or library, you will not find these books easily.

²⁵ In a similar vein see SHUMWAY, NICOLAS, *The Invention of Argentina*, Berkeley, University of California Press, 1993, p. xii, “the country's guiding fic-

another, as to the extent of their belief in fictions. The problem with us is that our belief in fictions far surpasses others'²⁶.

6.2 *An Example*

An old example might be helpful to understand the different variations of belief in fictions. We explained elsewhere that the real difference between common law and continental law is that the former freely recognizes reality and that no lawyer pretends to ignore it. In Latin America, there is much of the European continental tradition to teach law as theory, not as practice.²⁷

It has also been said, rather bluntly, that “No intelligent lawyer would at this day pretend that the decisions of the Courts do not add to and alter the law. The Courts themselves, in the course of the reasons given for those decisions, constantly and freely use language admitting that they do. Certainly they do not claim legislative power; nor [...] do they exercise it.” [...] “Whoever denies this must deny that novel combinations of facts are brought before the Courts from time to time, which is a truth vouched by common experience and recognized in the forensic phrase describing such case as ‘of the first impression;’ or else he must refuse to accept the principle that the Court is bound to find a decision for every case, however novel. It is true that at many times the Courts have been over-anxious to avoid the appearance of novelty [...].”²⁸

tions and rhetorical paradigms were founded well before 1880, and [...] these fictions continue to shape and inform the country’s action and concept of self.”

²⁶ Of course, fabrication is as universal as literature itself. Fiction is a fine art. The problem is to use it as fact, for public governance. The same can be said of other Latin American countries. Latin American literature is rich with examples, for instance Mexico and CARLOS CASTANEDA, *Journey to Ixtlan. The lessons of Don Juan*; and *A Separate Reality (Further Conversations with Don Juan)*, etc.; the same applies to the genre known as “magic realism,” led by Nobel laureate GARCÍA MARQUEZ.

²⁷ See *An Introduction to Law, op. cit.*, and NIETO, A. / GORDILLO, A., *Los límites del conocimiento jurídico*, Madrid, Trotta, 2003, pp. 69-92.

²⁸ POLLOCK, FREDERICK, *English Law and Fiction*, in: MAINE, HENRY SUMNER, *Ancient Law. Its Connection with the Early History of Society and Its Relation to Modern Ideas*, Boston, Beacon Press, 1963 (first published in 1861), pp. 395-6.

6.3 *How Do We Manage to Avoid Reality?*

In extreme cases, it is a self-defense mechanism: if you witness too many killings and murders, or are aware of a general trend towards killing, your instinct of self-preservation may very well take you into denial. It happened to civilian populations everywhere, in such extreme conditions. It also happens to those who are able to resist torture: afterwards, they tend to deny they have been tortured. But those cases are rather self-explanatory.

Yet, as a normal reaction, how do *we* escape reality? By addressing larger and insoluble issues of existence²⁹, meaning, destiny, collective happiness, universal correction of inequities and injustice, inclusion, hope, collective welfare, national greatness, national identity. All of them are problems of titanic dimension, to which the spirit of our elites is so greatly inclined.

Or, in another version of the same attitude, we “are also models of cosmopolitanism, urbanity, and style, and conversant with opera, art, literature, Chomskian linguistics, Lacanian psychoanalysis, European cinema, and other subjects required to render one *culto*.” They “were also [...] indulgent of the ‘cultural primitivism’ educated [...] locals [...] frequently find in North Americans;”³⁰ some expatriates pretend to find it in Europe, too.

Having dedicated our efforts to that, we just do not have any interest in more mundane problems of representation, accountability, transparency³¹, efficiency³², public opinion, best practices, good governance, problem

²⁹ Indeed, SARTRE and his existentialist problems was good food for local writers. Nonetheless, the emphasis on myth which characterized BORGES was also good for us. It still is. See SEBRELLI, JUAN JOSÉ, *Borges: el nihilismo débil*, in: *Escritos sobre escritos, ciudades bajo ciudades*, Buenos Aires, Sudamericana, 1997, pp. 464-514, esp. p. 465, who confesses to having been existentialist and having strongly disliked BORGES.

³⁰ SHUMWAY, *op. cit.*, p. 297.

³¹ Our government had created, through international insistence, a record of all social payments. But when people begun criticizing the way such money was spent, and got wind that much of the money was unaccounted for, they decided to cancel the registry!: Official Bulletin, December 16, 2002, p. 11, resolution 1292/2002-ANSES, revoking Resolution 1244/2002-ANSES, which had created the Registry. The national auditing office SIGEN usually finds fault with how the Labor Ministry disposes of such social funds.

³² Which is today also a general principle of law: LEISNER, WALTER, *Effizienz als Rechtsprinzip*, Tübingen, Mohr (Siebeck), 1971.

solving, etc.³³ The only mundane problems our country cares about are soccer or football, grandstanding gestures, the culture of Gardel, Maradona, and so on.

The same happens when we compare our experience and our musings to those of Europe. Any cultured Latin American living in Vienna, for example, will go to the Opera at least once a month, and will probably be shocked at how much ignorance the common people have of MOZART, KELSEN, POPPER, FREUD, JUNG, and so on. The problem is, people have to make a trade-off: either you get so cultured about every possible detail of creativity in the history of humankind that you necessarily impress everyone you meet with your own high level of literacy and culture, or you try to get also a grip at day-to-day affairs. True, the common people of Austria may not know much about MOZART, KELSEN, FREUD and POPPER (and very many others)³⁴, but their health system provides complete coverage for just € 17 a month; and if you want to revalidate your law degree, you do have to pass some exams in a two-year period, but you also have to work for nine months in the judiciary, as an apprentice, with pay!

Do I need to go any further into that? Is it not the common knowledge of every cultured Latin American, that he or she may be (and I find that a very debatable proposition) much more cultured than any European or American, *but that they have better societies*? Does he or she not perceive that he or she is only fooling him or herself?

6.4 *The Current Way to Escape Reality*

But that was the way we traditionally acted. We have now started a new act, for which there is precedent although not on quite such a scale. This renewed course to escape reality is but a derivation of our roots in Andalusia and our arrogant tradition: either we believe as before that we are one

³³ Peronism was as durable as it was non-viable: corporatist, statist, protectionist, isolationist, inclusive, inward looking, charismatic, hallucinatory, rampant with fantasies, magical, with no democratic or republic virtues, plentiful with loyalty and political unprincipled pragmatism; populist, corrupt; ceaselessly latently irrational. Since it survives more than half a century later, it is proof enough that those are national characteristics, not of a single political party or movement. Other former leaders, quite a long time before peronism, “enjoyed the support of the poor, seduced by his carefully cultivated political persona that was at once imperial, populist, and paternalistic”: SHUMWAY, *op. cit.*, p. 119.

³⁴ This begs the question: and how much does our common citizen know about all that? Or even about ourselves as a nation, our history, etc.?

of the richest and most cultured nations on earth, just a step behind the First World; or we go to the other extreme, and practice self-denigration “on a suitably grandiose scale.”³⁵

The process is like Bin Laden’s attack on the Twin Towers: High concept, low technology. We let ourselves be convinced by our dear leaders that we are but leaves in the winds of globalization, therefore unable to do anything but grumble and protest.

If we have a truly elected democratic government, then swarms of protesters may chase it out of Government House and everybody unbelievably consider this as “anything but a failure. On the contrary, it was a truly splendid triumph.”³⁶

And afterwards, first the new transition government robs everybody of their savings, benefits debtors at the expense of creditors, paralyzes the whole economy and banking system, reimburses banks for their losses, increasing by a third the national debt, and by the way increasing the level of poverty to a previously unheard-of 60%, with a deeper recession, inflation, default, rising crime, uninvestment, capital flight, whatever. At the same time, they proclaim populist theories of having created a new economic model of production. MARX, step aside. Populism is here.

Second, the new poor get then to receive a pittance with money that comes from further foreign credit, this time by the World Bank³⁷. That way, “political bosses managed to add millions to their already swollen clientele”, with the net result that opinion polls now show people “even more willing to succumb to the sleazy charms of populism”; and many are “campaigning energetically for pitiful handouts under a blazing sun or pouring rain.”³⁸ The tactic works: they get to be received by the President and promised on the spot a further million subsidies³⁹.

³⁵ NEILSON, JAMES, “A very modest future”, *Buenos Aires Herald*, February 13, 2003, p. 16.

³⁶ NEILSON, *op. loc. cit.*

³⁷ When you increase the public debt, you also increase the amount of money you pay in interest; the more interest you pay, the less money you can invest in social aid. It is rather simple. The case of Costa Rica is clearly explained by ROMERO PÉREZ, JORGE ENRIQUE, *Deuda interna. Enfoque jurídico*, San José, EUNED, 1998, p. 69. It should be noted that the Author is quite clearly opposed to “globalization” and “neoliberalism”. Yet for him, the problem is a dead-end street: p. 84.

³⁸ NEILSON, “A very modest future”, *op. loc. cit.*

³⁹ “Thanks a Million!”, *Buenos Aires Herald*, February 14, 2003, p. 1, photo and caption; PAGE, FERNANDA, “The one-million-subsidy pledge,” p. 2, same day. The offer was later denied, although in ambiguous terms.

If the fault, then, lies with the international organizations (?), once again we have managed to collectively avoid reality (!).

7. *A Few More Words about Ourselves and Our Origins*

It might be simply funny, if were not also intriguingly and rather uncomfortably true today in their descendants, that an early eighteenth-century description of European Nations (which did not include either Portugal or Italy), describes Spaniards as “haughty” (both as “faults” and in “manners”); and “courageous.” It also states that those early eighteenth-century Spaniards worshipped “The best of everything.”⁴⁰

a) That *we* Argentines⁴¹ are haughty and arrogant is an undeniable fact, observed by everyone else and even accepted by ourselves⁴². It has deeper and older roots than the Spaniards. These traits do not come just from the Spanish and other foreign invaders: they were in the land when they arrived. Most descriptions say some of the tribes, such as the *araucanos*, had “arrogant manners”, were “very bold, daring, not knowing even the fear of death”. “All these free men consider themselves superior to the Christians, whom they despise”⁴³.

b) Courage has always been exalted by our greatest writer, BORGES, as being, in the end, “the only virtue.” Even if courage is in itself a virtue, when you add it to the rest of our characteristics, it does not produce a good result. All Latin American peoples are courageous as well, but it did not do them any good, either⁴⁴.

⁴⁰ GOODY, JACK, *The Domestication of the Savage Mind*, Cambridge, UK, Cambridge University Press, 1977, pp. 153-5.

⁴¹ I am an Argentine, and I do not claim exclusiveness for this privilege. I have found similarly arrogant brotherly souls in many countries of Latin America. Humility is just not the game of the elites. If you watch the movie “El Zorro” in its latest American version you will observe the haughtiness of the colonial elites. It has changed faces, but it has not disappeared.

⁴² The daily *La Prensa* published on January 26, 2003, two central pages, 21 and 22, with foreign jokes made at our expense on this very subject: “Así ven a los argentinos, mal que nos pese.”

⁴³ Such description belongs to ALCIDE D’ORBIGNY, cited by HOSNE, *op. cit.*, pp. 137-8.

⁴⁴ Courage confronted with development was not enough, even at the beginning. It still is not, nowadays. Besides, nobody can posit implicitly that developed countries are *not* courageous; that would be too naïve...

c) The sense of entitlement is undeniable and has always been present in our history: we believe to have a “manifest destiny” of richness, development, and so on.

d) Some journalists even admit we have always lived on illusions and now have to face reality: but the latter is not true; we have *never* faced reality: most of us *believe* the things we say about ourselves and our country⁴⁵.

e) A large majority supports the idea that we can confront the world, and win. And even though there is a large proportion of practicing licensed psychologists and psychiatrists in the country (the largest - per capita - of the world), none of them has chosen to write on that subject-matter. It cannot be so evident, therefore, if even those who specialize in the study of the mind have not found it to be a matter of interest to study and write about. The only explanation is that they do not see it as a national characteristic.

However, those same segments of the professional world say that we have the largest ratio of “borderline” mentally ill people. The latter seems to be much harsher judgment, so it is not out of courtesy or discretion that unreality is not portrayed as a national characteristic.

f) That is so, unless you consider we collectively suffer from schizophrenia and split personality, as ORTEGA Y GASSET implied in 1928. Then again, he was European, not Latin American, and he was harshly criticized by our society, as a whole, for having said that and other truths about our people in *El hombre a la defensiva*.

That is the reason, too, why I choose English and not Spanish as the first step to say all this: seeing something about ourselves published abroad, even if it is negative, still pleases the collective mind. I said much the

⁴⁵ They would not therefore adhere to the following citation of OSCAR WILDE: “To believe is very dull. To doubt is intensely engrossing. To be on the alert is to live, to be lulled into security is to die,” *Oscariana*, 1911. Many people, however, find it better not to question, disagree or debate. In developing countries those criticized do not always take kindly to criticism, and if they happen to be in power, well, that may be unwise in such an underdeveloped society. So many people consider it safer for a pacific life to abstain from criticism. When I ask for commentaries to sentences, many practicing attorneys do not want to make them, for they feel that if they do not agree with the judges, they will later be somehow “punished” when they have to argue cases before their courts.

same in a book published in 1982 in Spain⁴⁶ and in 1987 in Italy⁴⁷ and suffered no adverse consequences in my country.

However, another book, published in 1972 in Mexico *and* Buenos Aires, did not pass and got me expelled from the University of Buenos Aires in 1978. My friends told me that it had been a mistake to publish it *also* in my own country, that had it been published only abroad⁴⁸, the consequences would not have been that severe. I had to wait until the end of the military government in 1983 to gain re-entry at the University. Another solution is to publish something in a foreign language: English newspapers have a great deal of latitude whereas Spanish newspapers do not to the same extent. And a German newspaper and publishing house freely printed in Buenos Aires three editions of a scathing critique of Argentines... in German⁴⁹!

g) Still a further note on the national character is exposed by a noted local writer⁵⁰, who tells how he and other literary friends of equal level were busily criticizing every other local writer and poet, with the exception of BORGES, whom they just ignored and probably detested... until one day they found in a Review⁵¹ by SARTRE (whom they admired at the time), a translation of BORGES into French; from then on, they read BORGES in French, although "in secret, to avoid being despised by their friends."

That is, once again, part of our collective mind, with a touch of MOLIÈRE's *Tartuffe*⁵² as one of our great critical writers has said long ago⁵³.

⁴⁶ *La administración paralela. El parasistema jurídico-administrativo*, Madrid, Civitas, 1982, 4th printing, 2001.

⁴⁷ *L'amministrazione parallela. Il parasistema giuridico-amministrativo*, Giuffrè, Milan, 1987.

⁴⁸ Some authors even go as far as saying that "Even some of the most original aspects of Argentine culture - folklore, tangos, BORGES [...] - gained wide recognition in Argentina only after receiving validation in Europe": SHUMWAY, *op. cit.*, p. 166.

⁴⁹ HERZFELD, HANS, *Verhaltensformen der Argentinier*, Buenos Aires, Verlag Alemann S.R.L., 1984, 3rd edition.

⁵⁰ SEBRELLI, *op. cit.*, pp. 464-5.

⁵¹ *Les Temps Modernes*, Paris, July 1955.

⁵² "*Le scandale du monde/ est ce que fait l'offense / Et c'est ne pas pêcher/que pêcher en silence.*"

⁵³ INGENIEROS, JOSÉ, *El hombre mediocre*.

Of course we can add many virtues, but with vices like that, what virtues would be needed to make this a developed country?

8. *The Doctrines of Unreality. Can They be Overcome?*

Those centuries-old tendencies to ignore reality have taken a new twist for the past hundred and fifty years, which poses still more difficulties. Ideologies have changed, culture has not. One of those new twists of the history of ideology is the appearance of a kind of post-Marxist line of thought that is current in social sciences⁵⁴. From there it pervades into the economic thought of the *politically* ruling elites and their constituencies, which are frequently a majority in many Latin American societies⁵⁵. A viable alternative for that kind of power was in the past the lunatic right, which still wields some kind of power and is even more dangerous; they also have their own private vision of reality⁵⁶.

Each group has its own vision of local reality and also that of the surrounding world. What can be done with those elements to conform a viable society?

I suggest that one immediate school for realism is the exercise of Inter-American governance with European and American participation in the decision-making process. That has been proven successful in Inter-American organisms or entities where such cooperation exists. It is not, therefore, a conjecture without any basis of reality.

Of course, that would not mean an immediate solution to anything, just the beginning of a long process which, with any luck, might perhaps resemble the one the EU itself has travelled.

9. *Will We Get Over It by Ourselves?*

Ours is the land of wishful thinking. Some think that as France and the United States had difficult times in the past but survived them and later

⁵⁴ *The Economist*, 21-XII-02, pp. 17-9, "As a system of government, communism is dead or dying. As a system of ideas, its future looks secure."

⁵⁵ JAMES NEILSON, "Neoliberal terror strikes", *Buenos Aires Herald*, January 9, 2003, p. 16, is proof of the desperation a minority of people feel that the rest of the country will see the world for what it is, not what they imagine it is.

⁵⁶ As SHUMWAY, *op. cit.*, p. 116, puts it, "the idea that progress and enlightened government would result if the right people were killed has haunted Argentine history [...] right down to the present."

thrived, so will Latin America. However, our ruling classes have been (and will probably continue to be for the foreseeable future) for the most part clientelistic, paternalistic⁵⁷ and corrupt. Just one author, LUIGI MANZETTI, has devoted his life to studying and observing our political practices⁵⁸, and fully confirms that.

⁵⁷ An "aristocratic notion of authority and privilege that might provide for the poor out of a paternalistic impulse, but in no way would include the low-born as equal citizens in a pluralistic government": SHUMWAY, *op. cit.*, p. 120.

⁵⁸ MANZETTI, LUIGI, *The Argentine Implosion*, *North-South Center Agenda Paper* n° 58 (2002), Coral Gables, University of Miami; *Political Manipulations and Market Reforms Fiascoes*, Southern Methodist University, 2002; *Latin American Regulatory Policies: Post-Privatization Realities*, editor (North-South Center Press at the University of Miami, 2000); *Privatization South American Style* (Oxford University Press, 1999); *Political Forces in Argentina*, 3rd ed., with P. SNOW (New York, Praeger, 1993); *Privatization in Argentina: The Implications of Corruption, Crime, Law & Social Change*, (Winter 1996); *Market Reforms and Corruption in South America*, *Review of International Political Economy* 4, n° 3 (Winter) 1996; *The Politics of Privatization and Deregulation in Latin America*, *Quarterly Review of Economics and Finance*, vol. 34 (Summer 1994); *Institutional Decay and Distributional Coalitions in Developing Countries: The Argentine Riddle Reconsidered*, *Studies in Comparative International Development*, Summer 1994; *The Political Economy of MERCOSUR*, *Journal of Interamerican and World Affairs*, Winter 1993-94; *Privatization Through Divestiture in Lesser Developed Economies*, *Comparative Politics*, July 1993; *Economic Stabilization in Argentina: The Austral Plan*, with M. DELL'AQUILA, *Journal of Latin American Studies*, May 1988; *Legislative Oversight: Interests and Institutions in Argentina and the United States*, with SCOTT MORGENSTERN, in: SCOTT MAINWARING / CHRISTOPHER WELNA (eds.), *Horizontal Accountability in New Democracies* (Oxford University Press, 2002); *Market Reforms and Corruption: Argentina and Brazil in Comparative Perspective*, in: JOSEPH TULCHIN / RALPH ESPACH (eds.), *Combating Corruption in Latin America* (Baltimore: Wilson Center & Johns Hopkins University Press, 2000); *Combating Corruption*, in: RICHARD FEINBERG / ROBIN ROSENBERG (eds.), *From Miami to Santiago: Monitoring the Implementation of the Summit of the Americas* (Miami: University of Miami/North-South Center Press, 1999); *Privatization and Regulation: Lessons from Argentina and Chile*, *North-South Center Agenda Papers*, n° 24, April 1997; *Handwriting on the Wall*, *Hemisfile*, Institute of the Americas, U. of California at S. Diego, January/February 1998; *Corruption and Market Reforms*, *Hemisfile*, Institute of the Americas, U. of California at S. Diego, March/April 1997; *Democratic Consolidation in Chile: Everything in Moderation*, *North-South Focus*, III: 2, 1994; *Economic Reform and Corruption in Latin America*, *North South Issues*, III: 1, 1994; *MERCOSUR: Economic Integration in the Southern Cone*, *North-South Issues*, vol. I, n° 8, December 1992, etc.

There is really no sensible argument that can be raised, in my view, to counterpoint the pessimistic outlook in this regard.

10. *Developed Societies and Us*

Those in the upper fringes of underdeveloped societies sometimes may look or even be ethnically or culturally similar to either Europeans or North Americans. But again, that would be an oversimplification. If we dare to compare apples and oranges, we may even find that our *elites* are better off than your middle classes. The problem for you is, our *elites* are not coming to you as immigrants, they quite prefer to rule and be in power there. It is a different kind of people who wander from one country to another, as legal or illegal immigrants. Not the poorest, but the middle classes or at least those with more ambition or desperation, are abandoning their countries of origin in the quest for a better future. That is also a loss for their countries, which are thereby losing managerial or good governance capabilities and potential able government personnel.

Let us indulge for a moment in further - certainly improper - generalization about an underdeveloped society in many of our countries. The same cultural gap that we find with some members of our Indigenous groups is to be found between ourselves and the developed world. It might be said that our notion of time is different; we do not work as hard as you do⁵⁹, we do not invest or save as much, we have less of a social conscience, we do not control power as effectively, and we do not have enough social control. We have a Welfare State, just as you do, but while yours might be criticized for some failings, ours practically does not work at all. We apportion a greater part of our budgets than you in social spending, but proportionate results are nowhere to be seen. Things are not getting better, rather the opposite, as our emigration becomes patent.

If we look at your societies as a whole, you live still longer lives, have yet better medicine, the future of your children is more secure, and you

⁵⁹ Our former *gaucho*, indeed of European ancestry, was characterized by foreigners for his indolence, with a caveat: he does not need more than what he gets, and if it is too much trouble to go get milk, then he will pass without it. He is happy with his luck, he lives without needs: FRANCIS BOND HEAD, who visited in 1825 and wrote *Rough Notes Taken During Some Rapid Journeys across The Pampas and Among the Andes*, London, 1826, cited in KUPCHIK, *op. cit.*, p. 67. Or, as CHARLES DARWIN put it in 1833, the basic needs in the countryside were grass for the horses, water (even if in a dirty pond), meat and wood: cited in KUPCHIK, *op. cit.*, p. 85.

enjoy more of the comforts of modern civilization⁶⁰. Almost anyone would say that society works better in Europe than in Latin America. In a dubious parallelism, many people in Latin America think that they have better societies than existing Indigenous groups⁶¹. In my view, though comparison is tempting, it does not lead us anywhere.

11. *What About the US?*

One could write books detailing reasons why US minority participation is also necessary for Latin America, in the schema we are suggesting. Regrettably, it is the other way around: books galore have already been written and are quite known derailing *against* US “imperialism” in the region. Therefore, any mention of US greater participation or intervention certainly goes against the traditional tendency of the majorities in Latin America’s political culture. It is not a popular suggestion to make, for sure. My own correspondence from some Latin American countries tells me that. Curiously enough, the US itself does not have a policy of active participation, either: it fluctuates in recent times between benign neglect and plain lack of interest⁶².

In my view there are many different factors that have to be taken into account, that go yet deeper in history, even before either the US or Latin America became independent. There are some lessons in colonial history to be learned. These are facts that are quite established and are not the object of diatribe. They should first be described and then some preliminary conclusions of fact, from where to start our next debate, will become clearer.

A recent article adequately summarizes what has been written about colonial and post-colonial political cultures in the US and Latin America⁶³:

⁶⁰ And, yes, there is more accumulation of capital. When individuals approach retirement, they find out that no pension system can keep one’s standard of living when health and limb or capacity start to falter; that personal accumulation of capital is needed.

⁶¹ An anthropologist would, of course, take exception.

⁶² ATKINS, *op. cit.*, The Latin American Position in U.S. policy, pp. 139-167.

⁶³ NORTH, DOUGLAS C. / SUMMERHILL, WILLIAM / WEINGAST, BARRY R., Order, disorder and economic change: Latin America vs. North America. Translated into Spanish by *Joan Oriol Prats*, IIG, Instituto Internacional de Gobernabilidad, as Orden, desorden y cambio económico: Latinoamérica vs. Norte América, *Revista Instituciones y Desarrollo*, n° 12/13, 17-12-2002, available in www.iigov.org/revista

their differences, the reason for their differences, how they are still alive today, and what possibility there exists for change. I will summarize the summary, but you can check the original in Internet.⁶⁴

While in colonial times former British subjects enjoyed a great degree of political and economic freedom, which they kept after independence, former Spanish subjects had a system of privileges, rights and monopolies for those elites willing to maintain loyalty and allegiance to the Crown.

The Spanish Crown was financially uptight, always facing bankruptcy, and therefore had preference for short-term financial gains from the colonies, rather than long-term development of the empire (and the colonies); the British Crown faced the opposite situation and anyway acted in the long-term interest of the empire, including the colonies. The British system had an independent judiciary in the colonies, whereas the Spanish did not. The British colonies had some degree of independence; it was greater than that formally allowed to the Spanish colonies.

All that contributed to creating in the British colonies an expectancy of respect for political and property rights, security for investments, stability for the economy; the opposite was true for the Spanish colonies.

The monopolies that existed in the Spanish colonies acted as a disincentive for investment and new activities; there was no freedom to charter ships from any port; large extensions of land were given as a privilege to local corporations and monopolies, thus limiting economic growth, on the basis of personal allegiances and loyalty to the Crown or its local branch of government.

When people are convinced that their rights are and will be respected, they can devote their energies to competition and investment, therefore to growth; when not, they have to employ a large part of their resources to fight for their rights. The more instability there is, the more unproductive resources have to be dedicated to the defense of those menaced rights and therefore the less goes to investment and growth.

All that leads to stagnation and economic contraction, which in turn further limits the short-term financial benefits of the Crown, much less the long-term growth prospects. The vicious circle is thus installed. In order to bolster the system, immigration from Spain is encouraged during colonial times, to bolster a proposed general "hispanization" of the local population. That, of itself, brings also some cultural Arabian traits⁶⁵.

⁶⁴ See note 64 above.

⁶⁵ As observed by JULES HURET in 1913-4, cited in KUPCHICK, *op. cit.*, p. 176. As a descendant of Spaniards, I can quite clearly perceive the fact in many small details. My idea of Paradise is Granada, and I have fountains everywhere.

If insecurity reaches the person and his family, then resources have to be employed for personal security, with the same result; or a system of local protection is created, whereby the feudal boss (*caudillo*) assures protection in exchange for money or favors, or both. That happened in the Spanish colonies, not in the British ones.

Those were two different cultures, two different legal and economic systems, even two different political systems. It should come as no surprise, then, that both systems and cultures continued after independence.

Independence in Argentina was a two-step process. First we had a revolution which assumed local power in 1810, but did not formally break with the Crown. That was only done six years later, in 1816. The local loyalists to the Crown were still tied by their own interests to the system of relationships they both had established before⁶⁶. Much the same happened in all other Latin American countries: their elites were of course tied up with the interests of the Crown.

A long process starts from there, where Constitutions and laws are enacted, but not fully complied with. Those who govern all too frequently try to control elections in order to perpetuate themselves and their followers (with their privileges) in power. In Latin America many times even Constitutions have been tampered with for this purpose.

Wars of independence and fratricide wars left a further wound in Latin America: a substantial indebtedness which, united with economic stagnation, created considerable hardship for all new governments. They found themselves in the position of the Spanish Crown, facing immediate financial obligations and choosing the short-term financial gains of the monopolistic system with the *clienteles*, rather than aiming for long-term growth. The seed had been sown for the perpetuation of the system.

Other traits of that culture stayed for the future. The advice ROSAS gave in 1840 to foreign friends, was “buy land” and “just keep it.”⁶⁷ It seems an advice that might have been given today, as representative of a way of thinking that permeates our society throughout all of its history.

How do we get out of that? Please bear with me a little more. I have to describe the world context first, to get all of my facts together.

⁶⁶ On a similar subject SHUMWAY concludes “Perhaps three centuries as a colony with eyes only towards Europe made such thinking inescapable”: *op. cit.*, p. 166.

⁶⁷ As observed by JULES HURET in 1913-4, cited in KUPCHICK, *op. cit.*, p. 171.

