

A Tragedy of the Privates: Private Security Services in Latin America

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Introduction

After experiencing a steep rise in crime rates in the 1990s, Latin America is currently one of the most violent regions in the world.¹ The causes of these high levels of violence are complex and controversial, and will not be addressed here. Instead, this paper will discuss a perverse consequence of this persistent violence: the expansion of private security mechanisms for middle and upper classes.

Faced with unrelenting crime, Latin American citizens have been increasingly relying on private security services. Wealthy citizens are hiring body guards, moving to gated communities and even buying bullet proof cars. While this could be merely described as a survival strategy to bypass ineffective state protection against crimes, I argue that this is in fact generating a “tragedy of the privates”. The fact that upper classes are hiring private security services is draining resources that could potentially be employed to enhance public security. At the same time, by making security services almost exclusive to those who can afford them, this trend is concentrating crimes and violence in poor neighborhoods, “segregating” the ever increasing crime rates. This further increases inequality, which in turn generates more criminality, reinforcing a vicious cycle.

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¹ Rodrigo R. Soares & Joana Naritomi, “Understanding High Crime Rates in Latin America: The Role of Social and Policy factors” (Paper presented to the 9th annual Conference of the Global Development Network at Harvard University, January 27 to February 3, 2008). Julio Jacobo Waiselfisz, *Mapa da Violencia: Os Jovens da America Latina* [Map of Violence: Latin America Youth] (2008).

Is there a solution to this problem? Many have suggested different types of police reform, whereas others have focused on regulation and accountability of private provision of security services. Without dismissing the importance of these two strategies, in this paper I focus on a largely unexplored strategy: public-private partnerships (PPPs). PPPs seem to be particularly well suited to the ills that plague both public and private provision of security services in Latin America by offering an arrangement that could potentially improve both systems simultaneously.

The paper will proceed as follows. Section 1 provides an overview of the problem of violence and crime rates in Latin America, which has been consistently growing in the last decades. Section 2 associates this problem with the growth of private security services in the region. Acknowledging that this is a global trend (the increase of private security services has happened in most countries around the world in the last decades), I show that in Latin America this growth is significantly higher than in other countries largely because it is associated with increasing crime rates. Section 3 discusses the specific characteristics of these services in Latin America. More specifically, I argue that in order to overcome the difficulties of privatizing a public good Latin American citizens are adopting a series of strategies to avoid free riding problems, such as making these services as excludable as they can be. Section 4 suggests that there is a “tragedy of the privates” as a consequence of this growing trend in Latin America. Section 5 discusses whether PPPs could offer a potential solution to this problem.

1. The Problem: High Crime Rates and Failed Police Reforms

Although data on crime and violence in Latin America are often incomplete and sometimes unreliable, no one doubts the fact that there was a steep rise in crime rates and violence in Latin American countries during the 1980s and 1990s.² These high levels of violence have had a significant impact on economic and social development. Violence has not only taken a toll on economic growth, negatively impacting on several countries' GDPs,³ but the high homicide rates have also affected life expectancy at birth, an important human development indicator.⁴

Latin American citizens have not been oblivious to these problems. A 2008 survey showed that Latin Americans consider criminality as the main problem in their countries (17%), with unemployment coming second (15%).⁵ This concern has been translated into significant social pressure on political representatives for increased public security and police reforms.⁶ And there have indeed been various attempts to implement

² United Nations Office on Drugs and Crime (UNODC), *International Homicide Statistics (IHS)*, 2004. Kurt Weyland, "Political Repercussions of Crime and Violence in Latin America" (*Essay presented to the Conference on Culture and Peace: Violence, Politics and Representations in the Americas at University of Texas at Austin, Law School, March 24-25, 2003*), at 1. Mark A. Cohen & Mauricio Rubio, "Solutions Paper: Violence and Crime in Latin America" (*Paper presented for Consulta de San Jose [San Jose Consultation] of the Inter-American Development Bank, San Jose, Costa Rica, October 22-26, 2007*), at 2.

³ See, e.g. Pablo Fajnzylber, Daniel Lederman and Norman Loayza, "Crime and Victimization: An Economic Perspective" (October 2000) 1:1. *Economia*. 219. See also Juan Luis Londono and Rodrigo Guerrero, "Violencia en America Latina: Epidemiologia y Costos" [Violence in Latin America: Epidemiology and Costs], Interamerican Bank of Development, Work Document R-375, August 1999, online (Spanish) <<http://www.bvsde.paho.org/bvsacd/cd47/londono.pdf>>. United Nations Office on Drugs and Crime and the Latin America and the Caribbean Region of the World Bank, *Crime, Violence and Development: Trends, Costs, and Policy Options in the Caribbean*, Report No. 37820, UNDOC, March 2007, online <<http://www.unodc.org/documents/data-and-analysis/Caribbean-study-en.pdf>>.

⁴ Eduardo E. Arriaga, "Measuring and Explaining the Change in Life Expectancies" (1984) 21:1 *Demography*, 83, at 84.

⁵ Corporacion Latinobarometro, *Informe 2008* [2008 Report] (Santiago de Chile: Corporacion Latinobarometro, 2008) at 24.

⁶ Saima Husain, "On the Long Road to Demilitarization and Professionalization of the Police" in Niels A. Uildriks, ed., *Policing Insecurity: Police Reform, Security, and Human Rights in Latin America* (Lanham, MD: Lexington books, 2009) at 53.

police reform throughout the region.⁷ Nevertheless, most studies show that success of these reforms has been either limited or nonexistent.⁸

Social and institutional realities affecting violence levels and obstructing police reform in Latin America vary a great deal, depending on the country and sector of society. Yet there seems to be some common trends that can help explain the disappointing track record of reforms throughout the region. One constraint is lack of resources. Police in the region are “often underpaid, under-qualified and under-trained”, lacking overall capacity to effectively investigate crimes and support communities.⁹ This constraint also fuels police corruption, further undermining the ability of police institutions to provide a professional and effective service.¹⁰

Another reform constraint is derived from socio/cultural/historical practice. As Trebilcock and Daniels explain, “the predominant role of the military and the implementation of National Security Doctrines to combat civil unrest and guerrilla movements blurred the distinctions between the police and the military and between common criminals and threats to the state”.¹¹ As a result, Latin American police forces have generally been better prepared to secure social order and defend ruling interests than to prevent and address violence in democratic societies.¹² In addition, most people favour

⁷ Hugo Fruhling, “Research on Latin American Police: Where Do We Go From Here?” (2009) 10: 5,6 Police Practice and Research 465 at 465.

⁸ Lucia Dammert, “Dilemas da Reforma Policial na America Latina [Dilemmas of Police Reform in Latin America]” in Haydee Caruso, Jacqueline Muniz & Antonio Carlos Carballo Blanco, eds., *Policia, Estado e Sociedade: Pratica e Saberes Latino Americanos [Police, State and Society: Latin American Experiences and Knowledge]* (Rio de Janeiro: Viva Rio, 2007) 145.

⁹ Michael J. Trebilcock & Ronald J. Daniels. *Rule of Law Reform and Development: Charting the Fragile Path of Progress*. 1st ed. (Massachusetts, USA: Edward Elgar Publishing Limited, 2008) at 108.

¹⁰ Niels Uildriks, “Police Reform, Security, and Human Rights in Latin America: An Introduction” in Uildriks, *supra* note 6 at 10.

¹¹ Trebilcock & Daniels, *supra* note 9, at 108.

¹² *Ibid.* at 109.

short-term reforms, in the line of *mano-dura* repressive policies that do not address the real causes of violence.¹³

Another consequence of this historical legacy is the fierce resistance of some police officials to any kind of reform that will make police more accountable to society.¹⁴ This third obstacle is a political economy problem. For example, “many studies show that lower-ranking officers are not supportive of community policing or similar programs that have potential for improving officers’ adherence to the law”.¹⁵ This is not to mention corrupt police officers who are likely to resist any type of reforms that could reduce their rents. This is of special concern in Latin America because the rates of police corruption in the regions are deemed to be particularly high.¹⁶

Ever increasing crime rates and failed reforms are creating a latent demand for enhanced security, which is fuelling a significant expansion of the private security sector.¹⁷

2. A Peculiar Solution: Replacing Public with Private Security Forces

Expansion of private security services is not restricted to Latin America or other developing countries with record crime rates. On the contrary, it has also happened in the United States, Canada, Western and Eastern Europe.¹⁸ While private security has grown

¹³ Mark Ungar, “The Privatization of Citizen Security in Latin America” (2007-2008) 34: 3-4 Social Justice. 20 at 25.

¹⁴ See e.g. Trebilcock & Daniels, *supra* note 9, at 119.

¹⁵ Hugo Fruhling, “Recent Police Reform in Latin America” in Uildriks, *supra* note 6, at 29.

¹⁶ Corporacion Latinobarometro, *supra* note 14. See also Uildriks, *supra* note 6 at 8-10; Trebilcock and Daniels, *supra* note 9 at 123.

¹⁷ Ungar, *supra* note 13, at 20.

¹⁸ Vera Institute of Justice, *The Public Accountability of Private Police: Lessons from New York, Johannesburg and Mexico City* (August, 2000) at 1. Geoffrey Li, *Private Security and Public Policing in Canada* (December 2008) , Statistics Canada homepage, online: <http://www.statcan.gc.ca/pub/85-002-x/2008010/article/10730-eng.htm#a3>. Nigel South, “Privatizing Policing in the European Market: Some

exponentially worldwide since the 1980s, this growth has been slightly more marked in developing countries (11% on average) than in developed ones (7 to 9%). Among developing nations, Latin American countries have been at the high end of this spectrum. Indeed, 10% is the rate of growth in the safest countries in the region: Chile and Costa Rica.¹⁹ As a result, the ratio between private security guards and police officers in Latin America has been in general much higher than in developed countries. While developed countries have generally 2:1 ratios, some Latin American countries have 11:1 ratios.²⁰

Why does Latin America have these inflated ratios and has experienced a particularly acute expansion of its private security industry? A possible answer is that the region has at least one motivation for privatization of security forces that is generally absent in the cases of developed industrialized nations: privatization is strongly associated with increasing violence rates, lack of public security, and failed police reforms.²¹ In contrast, the growth of private security in Europe, for example, is often associated with factors such as the dominance of neoliberal thinking and the proliferation of quasi-public spaces (such as shopping malls).²²

In addition to the inflated rates of growth, there is something else that is unique about privatization of security forces in Latin America: private parties are trying to *replace* -- not *complement* -- public security. This contrasts with the situation in

Issues for Theory, Policy and Research" (1994) 10 European Sociological Review 219 at 221. Mark Button. "Assessing the Regulation of Private Security Across Europe" (2007) 4:1 European Journal of Criminology 109 at 111.

¹⁹ Ungar, *supra* note 13 at 20.

²⁰ Patricia Arias, *Seguridad Privada en America Latina: el Lucro y los Dilemas de Una Regulacion Deficitaria* [Private Security in Latin America: Profits and Dilemmas of an Inadequate Regulation] (Santiago Chile: 2009), Facultad Latinoamericana de Ciencias Sociales, at 25-27. Andre Zanetic, *A Questao da Seguranca Privada: Estudo do Marco Regulatorio dos Servicos Particulares de Seguranca* [The Private Security Question: Study on the Regulatory Framework of Private Security Services] (Masters in Political Science, Dissertation, University of Sao Paulo, 2005), at 43- 44.

²¹ Patricia Arias, *supra* note 20 at 13. Ungar, *supra* note 13 at 24-25.

²² Button, *supra* note 18.

developed countries, where either *private parties* are using privatization to *complement* public security services, or *the state* is using privatization to *replace* public security services. In the first case, a private party with very specific security needs may want to hire private security services to address these needs, as opposed to imposing this cost on public security forces. An example is private security for banks and companies. In the second case, the state (not a private party) may decide to hire a private company to provide public security. The rise of the neoliberal state has pushed outsourcing and privatization, in which private security companies are hired and paid by the state to provide public security, or military services.²³

<i>Agent / Purpose</i>	Complement	Replace
Private parties	Security guards for companies (e.g. Banks)	Latin American security services
Government	Special protection to government officials, witness protection programs	Private military services, outsourcing of prisons and police forces

Both these privatization arrangements are conceivably beneficial, as long as the provision of the services is adequately regulated.²⁴ In contrast, in Latin America private parties are hiring security forces to replace public provision of these services. Thus, it has the same agent as in the first hypothesis described above (private parties), whereas it has the purpose of the second hypothesis described above (replacing public provision). This unique characteristic affects the way in which these services are provided, and generates perverse social consequences, as discussed below.

²³ Ibid. For a discussion of the specific reasons that could motivate this type of privatization, see Mariana Mota Prado, "Regulatory Choices in the Privatization of Infrastructure". In Simon Chesterman and Angelina Fisher (eds), *Private Security, Public Order* (New York: Oxford University Press, 2009), pp. 107-132, at 110.

²⁴ Ibid.

3. The Characteristics of Private Security Services in Latin America

If the state is failing to provide a certain good or service, any citizen who is able to afford it can choose to bypass the public system by hiring private providers. However, microeconomic theory predicts that there are certain goods -- known as public goods -- that cannot be easily provided by a private market. Public and national security are two examples. Due to a series of characteristics that will be discussed below, it makes more sense for these goods (or services) to be provided by the state. Therefore, the fact that Latin American citizens have been choosing to replace public provision of security services by private provision raises a series of questions regarding whether and how they have overcome the obstacles for the private provision of these services. To better understand that, it is necessary to discuss first what economic theory says about public goods.

3.1 The Microeconomics of Public Goods and Services

According to economic theory, a public good has two fundamental characteristics: non-rival consumption and non-exclusion. Both characteristics need to be present simultaneously for the good or service to be characterized as a public good. A good's consumption is said to be nonrival if "with a given level of production, consumption by one person need not diminish the quantity consumed by others".²⁵ In contrast, consumption is said to be rival if consumers compete for it. For instance, if one person buys a shirt, the amount of shirts available diminishes by one unit. Examples of goods with nonrival consumption are national defense and flood control projects. The

²⁵ Edgar Browning & Mark Zupan, *Microeconomic Theory and Applications*. 8th ed. (New York: John Wiley & Sons, 2004) at 544. Walter Nicholson & Christopher Snyder, *Microeconomic Theory: Basic Principles and Extensions*. (Thompson and South-Western, Sydney, 2005) at 595.

second characteristic of public goods is nonexclusion, which means that once a good is produced, it is either impossible or prohibitively costly to restrict its benefits to a defined group of people. For instance, clean air cannot be restricted to societies that commit to reducing carbon emissions. Although these two characteristics often go together, they are distinct from each other, as illustrated in the table below.²⁶

		Exclusive	
		Yes	No
Rival	Yes	Shirts, cars, hot dogs	Fishing grounds, clean air
	No	Bridges, swimming pools*	national defense, dam

* non-rival, unless there is an overload.

For public goods, the fact that the benefits produced are available to all (nonexclusive) and that consumption is nonrival generates a problem for the market system. This is called the free-rider problem. Given that people will automatically benefit from the production of the good or service and exclusion is impossible or infeasible, there is an incentive for not paying.²⁷ The severity of the free-rider problem is generally connected to the number of people involved in the negotiation.²⁸ The more people involved, the greater the probability that the good/service will not be provided due to the increase in transaction costs.

3.2 Making Private Security Feasible: There is no Microeconomic Magic...

Given the microeconomic characteristic of public goods and services, it is puzzling that there is an increasing demand for private security services in Latin America.

²⁶ Browning & Zupan, *supra* note 25 at 544 . Nicholson & Snyder, *supra* note 25 at 596.

²⁷ Browning & Zupan, *supra* note 25, at 545.

²⁸ Ibid, at 545, 558. But see Raymond Batina & Toshihiro Ihuri, *Public Goods: Theories and Evidence* (New York: Springer, 2005) at Chapter 11 (showing some empirical evidence that challenges the idea that the size of the group increases the risk of free-riding, because other aspects of human behaviour such as altruism, sense of social fairness or confusion might play a significant role in determining results in real-life circumstances).

How is there demand for private provision of these services despite their non-rival and non-exclusive nature? The answer is: the market for private security in Latin America has designed mechanisms to overcome these obstacles and to deal with the free-rider problem.

a) Gated Communities, Bullet Proof Cars, and Body Guards

While security allows for non-rival consumption, it is relatively easy to make security exclusive by limiting access to the secured area. And this is what middle and upper classes in Latin America are doing: they are creating gated communities where all the neighbours can benefit from increased security, but those outside the gates cannot. And the proliferation of these communities seems to be directly connected with increases in crime rates and failed police reforms.²⁹ Most gated communities offer advanced security measures, while others also offer a full range of services such as playground, beauty salons and small grocery shopping.³⁰ These “new islands of wealth” allow middle and upper class families to spend most of their days in secured and protected areas without facing any of the risks that they would be exposed to in the streets.³¹ And these spaces prevent outsiders from enjoying the increased security inside their walls.

²⁹ See e.g. Martin Coy, & Martin Pöhler, “Gated Communities in Latin American Megacities: Case Studies in Brazil and Argentina” (2002) 29 Environment and Planning B: Planning and Design 355; Michelle Mycoo, “The Retreat of the Upper and Middle Classes to Gated Communities in the Poststructural Adjustment Era: the Case of Trinidad” (2006) 38:1 Environment and Planning A 131 at 131.

³⁰ Coy & Pöhler, supra note 29 at 360.

³¹ Anne-Marie Seguin (ed.) with the collaboration of Paula Negron. *La Segregacion Socio-espacial Urbana: Una Mirada sobre Puebla, Puerto Espana, San Jose y San Salvador [Socio-espacial Urban Segregation: an Overview on Puebla, Puerto Espana, San Jose and San Salvador]*. (San Jose: Flacso, 2006), <http://www.flacso.or.cr/fileadmin/documentos/FLACSO/apartiragosto2006/segregacion.pdf>; Michelle Mycoo, “The Retreat of the Upper and Middle Classes to Gated Communities in the Poststructural Adjustment Era: the Case of Trinidad” (2006) 38:1 Environment and Planning 131 at 131.

It is not possible, however, to live enclosed all the time. Children need to go to school and adults need to go to work, at the very least. This has created a market for secured transportation services as well. For instance, more than 7,000 vehicles were armored for civilian use in Brazil in 2008, up from 1,765 a decade earlier.³² And Brazil is not alone. In 2007, it was estimated that in the previous 8 years the market for armoured vehicles in Latin America had grown a staggering 850%.³³ In sum, gated communities and bullet proof cars have been two examples of mechanisms used to make all the private security hired by upper classes exclusive.

b) Avoiding Regulatory Costs and Offering Services in the Informal Economy

There are significant costs incurred both in financing these private security services and in keeping them exclusive. While gated communities and bullet proof cars keep it exclusive, private security companies have adopted two strategies to cut costs. First, they provide services in the informal economy. Indeed, a significant number of private security companies in Latin America operate in the informal sector.³⁴ Current estimates suggest that in some countries the number of private security guards and agents in the informal sector could be double the number of private guards and agents in the formal sector while others estimate that there is an informal company for each formal one.³⁵ These informal agents and companies do not seem to be counted in the ratio of private guards and police officers in Latin America. Thus, if accurate, these numbers

³² “Fearful Brazilians Keep Armored Car Sales Booming”, *New York Times*, (3 May 2009).

³³ “Latin America's Security Sector: Where Crimes Pushes Growth”, *Gerson Lehrman Group*, (12 September 2007). “Un Negocio Blindado que Florece con la Inseguridad [An Armored Business that Blossoms due to Insecurity]”. *El Periodico*, Guatemala, (3 August 2009).

³⁴ Patricia Arias, *supra* note 20 at 26 .

³⁵ *Ibid* at 27-28. The lack of reliable statistics for both formal and informal private security firms makes it hard to assess the size of the sector in the region with precision.

would suggest that, in reality, the disparity is much higher than suggested earlier in this paper.

Why do companies operate in the informal sector? Operating illegally seems to be a way of avoiding regulatory costs, which greatly increase the amount of capital required to start up a private security firm. It also reduces operational costs that would be incurred by paying taxes, renewing licenses, and spending a significant time dealing with a very inefficient and corrupt bureaucracy. By reducing start-up and operational costs, these clandestine companies, operating without licenses or any type of registration, are able to offer services for lower prices than companies in the formal sector.

There is yet a second strategy that private security companies adopt to save costs: hiring security guards that were trained somewhere else. Often these companies hire police officers to work as private security guards in their free time. This saves training costs. Officers who are still in the police force and work for private firms in their spare time (a practice known as “moonlighting”) sell their services to complement their income.³⁶ There are countries in which this practice is allowed, as legislatures have not imposed any prohibition on active members of the police force working for private companies. This is the case in Bolivia, Ecuador, El Salvador, México, Panamá, Perú, República Dominicana and Uruguay.³⁷ Other countries prohibit active police officers from working for private companies. Examples include Argentina, Brazil, Chile, Colombia, Costa Rica, Guatemala, Honduras and Nicaragua.³⁸ However, in some of these countries, like Brazil, despite a statutory prohibition the practice exists due to lack

³⁶ Patricia Arias, *supra* note 20 at 23-24 and Zanetic, *supra* note 20 at 92.

³⁷ Patricia Arias, *supra* note 20 at 24.

³⁸ *Ibid.*

of enforcement.³⁹ Imposing sanctions and monitoring these activities is especially difficult in the case of companies that are not formally registered.⁴⁰

All this suggests that the informality of the sector allows for a great deal of these companies to tap into state resources, such as public investments in training police officers, without paying for them (and sometimes without being authorized to do so). Moreover, these companies are imposing two major costs on public security services. First, police officers working double shifts are more tired and less effective in their daily performance.⁴¹ Second, these officers are exposed to high levels of risks in their private jobs because they normally work alone, and without proper equipment.⁴²

4. The Consequence: A Tragedy of the Privates

Privatization of security forces in Latin America creates what I call a *Tragedy of the Privates*. Tragedy of the privates is an inverted tragedy of the commons: resources that could be allocated to the common good are being diverted to private goods, and to mechanisms that make them excludable.

This practice has two important consequences. First, it reduces the resources available for the common good and has pervasive distributive consequences. While the wealthy portion of the population is protected, the poorest portion is not. This reinforces the existing inequality by concentrating most of the existing crime in a limited segment of the population, which happens to be also the most vulnerable segment. Second, as the lowest strata of the population may bear the most of the potential negative consequences

³⁹ Zanetic, *supra* note 20 at 93.

⁴⁰ Ungar, *supra* note 13 at 28.

⁴¹ Interview with a Brazilian Police Officer, in Adriana Czelusniak, "PM Nao Pode Prestar Servico de Seguranca Privada [Military Police Cannot Work to Private Security]" *Gazeta do Povo* (5 August 2008).

⁴² Interview with researcher Viviane de Oliveira Cubas, *Ibid*.

of this practice, this becomes a self-reinforcing cycle. More inequality fosters more crime. Crime will be concentrated in poor neighborhoods and lower classes will be the primary victims. This will further reinforce inequality. Each of these consequences will be analyzed in turn.

4.1 Inefficient Allocation of Resources: How Private Security Impair Public Security

Private security in Latin America is a very costly affair. Middle and upper classes are willing to pay for this because the benefits are clear, visible and immediate: a gated community is a guarantee of a high and secure standard of living. But what are the consequences of these investments for public security? Some scholars support the idea that an increase in the number of private police officers substantially adds to the physical presence of law enforcement and frees up the public police from more mundane patrol duties, allowing them to focus on the business of fighting crime.⁴³ In contrast, other scholars rely on case studies to argue that although the cost of private security may appear to be less than that of the public sector in the short term, this is not necessarily true in the long term.⁴⁴ In countries where the private security sector is larger than the public sector, such as Colombia, the United States or South Africa, there has been a marked increase in crime and a growth of prison populations. The assumption here is

⁴³ Button, *supra* note 18; Mark Button, "Private Security and the Policing of Quasi-Public Space", (2003) 31:3 International Journal of the Sociology of Law; Mark Button, *Security Officers and Policing: powers, culture and control in governance of private space*. (Aldershot, England; Burlington, VT: Ashgate Publishing Limited, 2007); Jenny Irish, "Policing for Profit: The Future of South Africa's private Security Industry", (ISS-Institute for Security Studies Monograph series, No 39, August 1999).

⁴⁴ Franz Vandershueren, "The Prevention of Urban Crime", (*Excerpt from paper presented at the Africities 2000 Summit, Windhoek, Namibia, May 2000*), <http://ww2.unhabitat.org/programmes/safercities/facts.asp>.

that this has happened because the private security sectors outspent the public security sector.⁴⁵

To reconcile these conflicting claims, Viviane Cubas argues that private security may not represent a problem in societies where this service functions as a *complement* to the activity of public security, because in these cases the State has strong control over and fiscalizes private security activities.⁴⁶ This, however, is not the case in Latin America where private security is actually *replacing* public security and there is very little fiscalization and control over these services (see section 2 *supra*).

However, even if we can prove that diverting resources from private to public security would increase the overall level of security in the long run, there would still be obstacles to convincing middle and upper classes to support this. Ever increasing crime rates, corruption, lack of transparency/accountability and failed reforms has quashed most of the hopes for effective change in the public sphere.⁴⁷ Thus, middle and upper classes are prone to believe that, unlike public security, investments in private security are more likely to yield results. Thus, it is a safer investment.

The problem with this rationale is that it does not consider the potential negative impact of investments in private security for society as a whole. As discussed above, in countries where private services are *replacing* instead of complementing public security, there is not necessarily a reduction in crime rates. Instead, crimes are simply displaced

⁴⁵ This was suggested in the United States in 1985 when Rand Corporation updated a 1972 study commissioned by the National Institute of Justice. They concluded that private security had outspent public law enforcement by 73 per cent and employed two-and-a-half times as many people.

⁴⁶ Viviane de Oliveira Cubas, *Seguranca Privada e Exploracao dos Servicos de Protecao e Vigilancia em Sao Paulo [Private Security and Exploitation of Protection and Vigilant Services in Sao Paulo]* (Sao Paulo: Associacao Editorial Humanitas, 2005).

⁴⁷ Uildriks, *supra* note 10, at 6.

onto the poorer sections of the population unable to afford similar protection.⁴⁸ As a result, the risk of becoming a victim of crime is determined by income and/or place of residence.⁴⁹

In sum, one of the most perverse consequences of private security services in Latin America is the fact that it enhances protection of upper classes, while concentrating in lower classes the exposure to high rates of crime and violence. This happens for two reasons. First, in a very unequal society private security is only an option for those that can pay for their safety.⁵⁰ Second, those who can afford to pay for these services have designed mechanisms to make the benefits exclusive, i.e. not allowing others who are not paying for it to free-ride on the services (see section 3 above).⁵¹

4.2 Reinforcing Economic Inequality: How Private Security creates a Vicious Cycle

The concern with the perverse distributive consequences of private security services is not unique to Latin America or to developing countries. Since the 1980s, American and European scholars have argued that private policing will further divide a nation into two camps: the wealthy who can afford to insulate themselves from crime by hiring private police and the poor who must rely on the more limited services of the public police.⁵² This resonates with the situation in Latin America, but due to the

⁴⁸ South, *supra* note 18 at 230.

⁴⁹ United Nations Office on Drugs and Crime (UNODC), *International Homicide Statistics (IHS)*, 2004. Ignacio Cano & Eduardo Ribeiro, "Homicidios no Rio de Janeiro e no Brasil" [Homicides in Rio de Janeiro and Brazil] in Marcus Vinicius Goncalves da Cruz & Eduardo Cerqueira Batitucci, eds., *Homicidios no Brasil [Homicides in Brazil]*, (Rio de Janeiro: Editora FGV, 2007) 51, at 59.

⁵⁰ Cubas, *supra* note 46.

⁵¹ See e.g. Seguin, *supra* note 31.

⁵² Marcia Chaiken and Jan Chaiken. Public Policing – Privately Provided. (Washington DC: US Dept. of Justice, National Institute of Justice, Office of Communication and Research Utilization, 1988). Paul Wilson, Donna Keogh & Robyn Lincoln, "Private Policing: the major issues" in Paul Moyle (ed.) *Private Prisons and Police: Recent Australian Trends* (Leichhard, NSW: Pluto Press Australia., 1994) at 289.

extremely high inequality rates in the region the consequences are much starker.⁵³ High levels of inequality mean that there is a small group of the population who can spend a lot of resources to protect themselves, whereas there is a large group that has no resources to do that. In this scenario, one may assume that private security is going to be even more effective in insulating the upper classes from high rates of crime, given that they can spend a significant amount of resources on this, and a very large portion of the population will be even more exposed to risks.

Once criminality has been displaced to poor neighborhoods, there are two possible consequences that may follow. If crimes are displaced to a region in which the public police force is present, private security services may expose lower classes to higher levels of police brutality.⁵⁴ On the other hand, if crimes are displaced to a region in which there is no public security, the problems with vigilantism and militias may ensue.⁵⁵ In either case, investment in private security will impose significant costs on lower classes.

In any of these scenarios, lower classes will be worse off as a consequence of investments in private security. This may happen because they will be exposed to higher levels of property crimes and violence. In addition to material and human losses, violence can reduce the income of families by reducing the number of people able to be gainfully employed, therefore reducing their overall welfare. Similarly, police abuse and

⁵³ World Bank, David de Ferranti et al, *Inequality in Latin America and the Caribbean: Breaking with History?*, 2003 Report from Latin American and Caribbean Office.

⁵⁴ See *supra* note 14, and accompanying text.

⁵⁵ Ungar, *supra* note 21 at 28. Desmond Arias, "Dispatches from The Field: Militias and Police Corruption in Rio's Favelas" (2009) 3 *Americas Quarterly* 90 at 90. Michael Webster, "Civil War and Vigilantism gripping Mexico". *American Chronicle* (18 January 2009).

vigilantism can consume income (bribes) or reduce wealth by reducing the earning capacity of a family.

As the “haves” protect their wealth and the “have nots” get poorer, the income inequality gap further increases. And many studies have shown that higher levels of inequality are connected with increases in crime rates.⁵⁶ This, again, will further reinforce the cycle by increasing incentives for further investment in private security, generating more costs to lower classes. If this hypothesis is correct, the problem of inequality is possibly made worse from investments in private security, if we consider the broader context.

5. A Possible Solution: Public-Private Partnerships

Over the last decade, scholars have raised concerns about the lack of public accountability for private security forces.⁵⁷ The recent scandals involving U.S.'s military contractor Blackwater in Iraq are the best example of the dire consequences of this problem. Thus, a great deal of the academic discussion on this topic has been focused on regulation and oversight of private security forces.⁵⁸ I acknowledge the importance of this discussion, and I have contributed to it in an earlier paper.⁵⁹ However, this discussion

⁵⁶ Pablo Fajnzylber, Daniel Lederman and Norman Loayza, “Inequality and Violent Crime” (2002) 45 *The Journal of Law and Economics* 1. Francois Bourguignon, “Crime, Violence and Inequitable Development” (*Paper presented at the Annual World Bank Conference on Development Economics, Washington, D.C., April 28-30, 1999*), online <http://riverbrugge.net/development/bourguignonCrimeViolenceInequality.pdf>

⁵⁷ Phillip E. Fixler Jr. & Robert W. Pool Jr, “Can Police Services be Privatized?” in Gary W. Bowman et al, eds, *Privatizing the United States Justice System* (Jefferson, N.C: McFarland & Co, 1992). South, *supra* note 18. Rick Sarre, “Accountability and the Private Sector: Putting Accountability of the Private Security Under the Spotlight.” (1998) 10 *Security Journal* 97.

⁵⁸ Martha Minow, “Outsourcing power: privatizing military efforts and the risks to accountability, professionalism, and democracy”, in Jody Freeman and Martha Minow (eds.), *Government by contract : outsourcing and American democracy*, (Cambridge, Mass. : Harvard University Press, 2009); Simon Chesterman & Angelina Fisher (eds), *Private Security, Public Order*, (Oxford: Oxford University Press, 2009).

⁵⁹ Prado, *Regulatory Choices*, *supra* note 23 at 107.

is only applicable to cases in which privatization of security services is done by the state, or by private parties in a way that *complements* public security. This is not the case in Latin America. As I suggested earlier, privatization of security forces in Latin America has very unique characteristics: private parties are hiring services to *substitute* for public security services. Thus, while developed countries are debating whether there should be more accountability and regulation of these services, Latin American needs to first address the question of whether there should be privatization of security services at all.

The tragedy of the privates seems to suggest that overall (and in the long term) privatization of security forces in Latin America may generate more costs than benefits. If that is true, one could argue for a strict prohibition of private security. However, spending resources to forbid private security does not seem to be the first order of priority in countries with such high levels of crime and other pressing public policy concerns, such as education and health. Under these constraining circumstances, instead of forbidding private security services, one could think of investing in the police force, to improve public security and render redundant private security. Police forces in Latin America are often understaffed, underequipped and undertrained.⁶⁰ A better police force could potentially help improve public order, reducing levels of criminality. This, in turn, could generate incentives for people to invest less in private security, and the industry would naturally shrink.

The problem is: where are these resources coming from? It is unlikely that middle and upper classes will agree to divert the resources currently employed in private security services to an uncertain investment in public security by paying higher taxes. To divert fiscal resources from other areas will engender political resistance, and there would still

⁶⁰ See *supra* note 9 and accompanying text.

be no guarantee that there would be improvements in performance. Police corruption and inefficiency could just siphon the money away, leaving the state with reduced fiscal resources and leaving society with no improvement in public security. Thus, in addition to making resources available to public security there would be a need for a promising reform proposal to allow for effective improvement in the delivery of public security services. But entrenched interests could impose obstacles to any reform along these lines.⁶¹

Is there a way out of this conundrum? There may be many, but I will focus on something that does not seem to have been much explored in the literature: public-private partnerships (PPPs). My proposal is that through a cooperative agreement between public and private security forces we divert resources going to private security services to public security. PPPs allows for an ever increasing market for private security services to be used strategically by Latin American states to improve their public police forces.

5.1 A Public-Private Partnership for Security Services

PPPs are largely used in infrastructure sectors. The OECD defines a public-private partnership as an “agreement between the government and one or more private partners (which may include the operators and the financiers) according to which the private partners deliver the service in such a manner that the service delivery objectives of the government are aligned with the profit objectives of the private partners and where the effectiveness of the alignment depends on a sufficient transfer of risk to the private partners.”⁶² An important component in the OECD definition is the ‘transfer of risk to

⁶¹ See *supra* note 14 and accompanying text.

⁶² OECD, “Public-Private Partnership: In Pursuit of Risk Sharing and Value for Money,” (2008) 17.

the private partners,' where risk is formally defined as "the measurable probability that the actual outcome will deviate from the expected outcome."⁶³

How can we transfer this concept to security services? Public security forces are providing a significant amount of labour to private security firms. My proposal is to make this provision remit benefits to public security forces. For these benefits to be generated, two mechanisms can be identified. First, Latin American states should authorize police officers to do moonlighting, under certain conditions. More specifically, police officers would only be authorized to sell services to private security firms if they had an impeccable track record of services, with no accusations of corruption, violation of human rights, etc. Second, for private security firms to hire police officers legally, they need to pay a fee to the police force. These conditions will generate strong incentives for officers to change their behaviour so as to be able to complement their salaries by selling services to private security firms. Also, the more the police force keeps officials with good track records the more it will be able to obtain resources from the private sector.

My proposal is not completely novel: it has been created and implemented in at least two Latin American countries, Panamá and El Salvador.⁶⁴ I believe these programs could benefit other Latin American countries as well, because the way the program is designed offers two important advantages over other options. First, individual police officers will not be forced to opt into the reform (unlike other police reforms). This is likely to reduce resistance to reforms due to entrenched interests. Second, the private parties hiring these security services will not be forced to reduce their investments in

⁶³ Ibid at 48.; IMF, *Public-Private Partnerships*, (2004) Fiscal Affairs Department, International Monetary Fund, Washington DC. 18.

⁶⁴ Flacso, *Report on Security Sector in Latin America*, (FLACSO-Chile, 2007), online: http://issuu.com/flacso.chile/docs/ssr_lac at 96.

private security. While there are not necessarily strong benefits for private security firms to enter into this scheme, they are likely to be forced into it if officers decide to sell their services under these conditions, and private parties decide to hire services only from companies that participate in the partnership. Maybe it could be possible for the police or the state to offer a seal of approval (based on a credible certification system) to the companies participating in PPPs, which would allow them to attract more clients or charge more for their services.

5.2. The inner workings of a PPP for security services: streamlining incentives

To be effective, PPPs depend on a credible system to assess the track record of these officers. The details of this system should be designed on a case-by-case basis. One option is to have whistle blowers within the institution: if officers are competing for the limited spots available to participate in the PPP, they would have a strong incentive to monitor their colleagues so as to denounce those who are misbehaving to eliminate competition for the spots. However, if the collegiality and corporativism in the police force is very strong, officers may conceal each others' behaviour so as to allow all of them to apply for the program. In this case, external assessments, such as public complaints could be used to measure the track record of these officials. Alternatively, one could think of a dedicated phone line where people could call to report officers that were particularly helpful and conducted themselves appropriately while on duty. Such a system was implemented in Bogota for taxi drivers, and seem to have yielded promising results in creating incentives for drivers not to mislead or steal from their customers.⁶⁵

⁶⁵ A. Dundjerovic and I. Bateman, "Antanas Mockus's *Cultura Ciudadana*: Theatrical Acts for Cultural Change in Bogotá, Colombia", *Contemporary Theatre Review*, Vol. 16(4), 2006, 457 – 467.

In addition, there should be some system to guarantee that resources remitted to the public police force are being put to a good use. Without it, PPPs may just feed corruption and inefficiency. There is no blueprint as this system should take into consideration the characteristics of each institution. In general terms, however, it is possible to consider a few arrangements. One option would be to earmark the money for training. This could be easily justified: private companies are benefiting from training offered at the police academy and therefore should help cover some of its costs. Private companies would have incentives to monitor this, because better police training means a more qualified labour force for them. There are also some other options. For a centralized system, where payments go to the national police force, one option is to give discretion to the institution on how to spend it. These expenditures, in turn, would be monitored by private security companies, who would have incentives to publicize that their payments are generating benefits to the public system (this could be a form of Corporate Social Responsibility, CSR). For a decentralized system, where these resources are allocated to specific police stations or units, one option would be to require units to publicize how the resources are being used and the results of these investments in order to participate in the program. This would create incentives for companies to hire units that make the best use of their money (CSR), which in turn would create incentives for officers within each unit to monitor their own units so as to increase their personal chances of participating in the program (conditional upon individual track records).

Finally, there needs to be an effective way of calculating the optimal price for the fee to be charged by the police force for its services. If the fee is too high, private security

companies will not have incentives to enter into PPPs. On the other hand, if the fees are too low, PPPs will not generate significant resources to improve the police force.

5.3 Potential Benefits of a PPP for Security Services

The PPPs are not a panacea for the tragedy of the privates. The main limitation of this proposal is that it is unlikely to generate direct benefits to poor communities and lower classes in the short term. I acknowledge this limitation, and I believe other measures should be taken to address this problem. For instance, the most recent attempt of the government of the state of Rio de Janeiro to introduce community policing in the slums of Rio has been perceived as a promising initiative. Maybe PPPs could earmark the fee paid by private companies to fund these initiatives. This could be an effective way of reducing rates of crime in these neighborhoods, but would still be rather limited in tackling one of the sources of the problem: inequality. As mentioned earlier, there seems to be a correlation between inequality and violence (crime and illegal activity).⁶⁶ Thus, the PPPs proposed here will have to be accompanied by other policies to increase security in poor neighborhoods and reduce overall levels of inequality in the country.

Despite these limitations, there are some concrete benefits deriving from the proposed PPPs. First, they are a first step in breaking the self-reinforcing cycle of increasing investments in private security at the cost of potential improvements in public security forces. In other words, they can be considered a feasible transition from heavy investments in private security to a situation in which some of the investments in private security revert to the public police force.

⁶⁶ See footnote 56 *supra*, and accompanying text.

It is hard to predict what will follow from this transition period in which resources will start to be remitted to the police force as PPPs are implemented. In the best case scenario, PPPs will generate a virtuous cycle, where the investments in the public police force will improve public security, which will in turn reduce the demand for private security. This would naturally reduce the amount of firms providing these services in the region. The end result would be an equilibrium where the ratio of private and public security officers in Latin America would become similar to the ratio in developed countries. Private security would then *complement* (instead of replace) public security.

What are the possible obstacles that may preclude this optimal outcome? There are many, but two are worth mentioning. First, improvements in public security may not be so noticeable as to significantly reduce the demand for private security services. Second, the police force may not have enough personnel to attend to the needs of private security firms. “For example, in Honduras, estimates vary that PMSCs [Private Military and Security Companies], whether legally registered or illegal, effectively employ between 12,500 and 70,000 security guards, compared to the national police which has an estimated 8,000 police officers.”⁶⁷ This would potentially create a two-track system, where there would be elite security firms working under PPPs, and other firms operating formally and informally outside this system. These are not negligible obstacles, and they may cast raise a legitimate doubt as to the effectiveness of the solution proposed here.

⁶⁷ United Nations Human Rights Council, *Report of the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impending the Exercise of the Right of Peoples to Self-determination*, UN HRC, 4th session, 7 February 2007, UN Doc. A/HRC/4/42, at 52.

Conclusion

Increasing crime rates and failed police reforms have fostered the growth of a market for private security services in Latin America. Given that only those who can afford these services are protected from these ever increasing crime rates, most of the costs associated with a growing market for private security services falls upon poor people. This further enhances the already high levels of inequality in the region, creating a self-reinforcing cycle. This is what I called a “tragedy of the privates.”

Diverting investments in private security to public security could break this vicious cycle and lead to a better outcome in the long term. However, there are significant obstacles to convincing middle and upper classes to divert the resources currently employed to private security to the public sector. This would basically amount to asking them to exchange current guaranteed security for future and uncertain security. Thus, they are likely to resist.

Is there a way out of this conundrum? My suggestion is that PPPs could be a feasible way out of this vicious self-reinforcing cycle, as it would allow these classes to continue to hire private services, while at the same time remitting some of these resources to the public sector. PPPs are not a panacea for public security problems in Latin America, but maybe a useful first step out of this crime/security trap in which the regions seems to be currently caught.

The general conclusion of the paper is that privatization of public goods may cause harm, under certain circumstances. In the case discussed in this paper, the unique characteristics of privatization of security services in Latin America give rise to this

“tragedy of the privates”, whereas other forms of privatization of security forces do not necessarily lead to the same result. At the same time, the paper also suggests that a cooperative arrangement between the public and the private sector may be an intermediate solution between dysfunctional privatization and ineffective public provision of services.
