

## SUMMARY<sup>1</sup>

### “Rule of Law in Unequal Societies”

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#### Speakers

- Dr José Gregory, Former Minister of Justice and former National Human Rights Secretary of the Federative Republic of Brazil (**Chair**).
- Helena Alvear García, Founding member of the Center for Law, Justice and Society (*Dejusticia*, Colombia); Director, Master’s Degree in Law, Universidad de Los Andes.
- Dr Octavio Ferraz, Reader in Transnational Law, King’s College London.
- Oscar Vilhena Vieira, FGV São Paulo School of Law.

#### Overview

Inspired by Ronald Dworkin’s *Is Democracy Possible Here* (2006), Dr Octavio Ferraz sought to demonstrate that the rule of law is not feasible in polarized societies. Helena Alvear García discussed solutions that have been taken to tackle economic inequality in Latin America such as conditional cash transfers, quotas and legal enforcement of economic and social rights. Lastly, Oscar Vilhena Vieira explored the relationship between rule of law and inequality.

#### Details

##### 1. *Is Rule of Law viable in unequal societies?*

Broad inequality gaps lead to a situation of both inequality before the law and unequal opportunities in practice. Members of the richest groups have competitive advantages in relation to the poorest ones in the exercise of freedoms. In addition, elite groups enjoy greater access in terms of influencing law-makers and have greater knowledge of protective standards and rules. Therefore, Dr Ferraz asserted that inequality not only goes against the very principle of the rule of law, but it is in fact created by the rule of law, producing a vicious cycle. The challenge is therefore to ‘transform a vicious circle in a virtuous one’, he remarked.

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<sup>1</sup> This Summary was prepared for the Bingham Centre by Patricia Regules and does not reflect the views of the Bingham Centre for the Rule of Law.

Dr Ferraz contended that the Rule of Law is deficient in unequal societies such as Brazil. For the speaker, when levels of economic inequality are high, polarization leads to war. In such polarized societies, people do not view themselves as equals but rather as enemies. In turn, economic inequality creates a disconnect between rich and poor, who do not share any mutual interests governed by the rule of law.

## **2. *Equality before the law is not sufficient in unequal societies***

According to Helena Alvear García, 'the paradox in Latin America is that despite having very progressive laws, these have not resulted in significant changes and to an improvement of inequality levels in the region'. Progressive reforms have stalled, and legislative quotas as well as equal pay provisions have not been respected. The question is why that is the case.

Conditional cash transfers on the one hand and the enforcement of social and economic rights on the other have not been helpful in tackling inequality. In regards to the former, the speaker stressed that the distribution of public resources as a means of tackling inequality should not be entrusted to a sole individual (i.e. a judge). If this is ultimately the case, access to justice becomes a vital element to keep into account, said Ms Alvear García. When addressing the latter, she noted that policies to address inequality should not solely be focused on individual conditional cash transfers, but rather, should take into account broader conditions that surround poverty such as education and health.

Alvear concluded that equality before the law is not sufficient to ensure the rule of law is realized in unequal societies. 'We cannot understand equality if we do not have a discussion on inequality, both income inequality as well as inequality resulting from gender and racial differences'. According to Alvear, the solution is not to enact more laws, or to rely solely on the mechanisms described above, but to discuss the problem of inequality from an interdisciplinary approach.

## **3. *Impact of social inequality on the Rule of Law***

According to Mr Vilhena Vieira, a central question in Latin America is the impact of social inequality on the rule of law, and the relationship between inequality and the rule of law in the region. 'Although we have founded liberal institution and fought to construct a society based on the rule of law, we live in a region where the rule of law has encountered numerous difficulties', said the speaker.

Moreover, inequality is not a conjunctural problem but a structural one. This is due to the fact that in Latin America, inequality has been persistent, forging generations of citizens. Mr Vilhena Vieira concluded that the construction of the rule of law needs to begin by the social inclusion of those groups of individuals who are marginalized from

social life, and who may therefore threaten power, or threaten the status quo. Where there is low reciprocity between the state and the citizen, the rule of law has enormous difficulty in being realized.

## Questions & Answers

One member of the audience asked whether the panel believed that the Rule of Law could be used as an instrument to overcome inequalities, that is, as a key element of empowerment in order to assert rights. The consensus among the speakers was that the rule of law alone is not sufficient to overcome inequality. The rule of law's capacity to provoke change is limited, commented Mr Vilhena Vieira. It may well have a strategic role in destabilizing exclusionary practices; for example it can destabilize discriminatory practices committed by a state's police force by way of a court decision, but in order to reconstruct your police force, you will need more than a judicial decision, you will need social pressure'.

Lastly, another person questioned whether social change could be accelerated in order to tackle inequality but without compromising democracy and the rule of law as recent experience had shown in several Latin American countries. Speakers agreed that freedom of expression and other forms of liberty, such as public protests, are key elements in the fight against inequality. If governments repress freedom, they risk undermining the fight against inequality. Democracy serves as a mediator between the rule of law and the fight against inequality. When democracy is removed from the equation, both are sacrificed.