

## **Manana, Manana: Trans-Cultural Perceptions of Time and the Role of Polychronism in Latin American Legal Systems**

Audrey Pumariega\*

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### I. INTRODUCTION

"Sorry I'm late; I'm on Latin time." Although Latin Americans use this expression as a lighthearted excuse for tardiness, it derives from a very real social phenomenon that persists throughout contemporary Latin America. Indeed, anthropologists acknowledge that perception of time varies sharply across cultures. In 1983, anthropologist and intercultural researcher Dr. Edward Hall coined terms describing two distinct ways in which societies organize time:<sup>1</sup>

(1) *Monochronism* refers to a linear time system in which peo-

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\* J.D. candidate, University of Miami School of Law; B.A., 2006, University of Southern California. Self-professed polychronist. ■ would like to thank Professor David Abraham of the University of Miami School of Law for his guidance and wealth of knowledge about this topic.

1. EDWARD T. HALL, *THE DANCE OF LIFE: THE OTHER DIMENSION OF TIME* (Sally

ple engage in one activity at a time.<sup>2</sup> The system originated in Northern Europe, and is characteristic of Anglo cultures.<sup>3</sup> It is task-oriented, and controlled by rigid, formal schedules.<sup>4</sup> In contrast, (2) *polychronism* stems from the Mediterranean model of simultaneous involvement in several activities.<sup>5</sup> It is characteristic of Latino and Middle Eastern cultures. Polychronic time is people-oriented,<sup>6</sup> and punctuality and deadlines are less important in polychronic societies.<sup>7</sup>

The study of monochronic and polychronic time in relation to legal practices could shed light on deficiencies in Latin American judicial processes and institutions. This article explores those deficiencies and their connection to polychronism, which is engrained in Latin American societies. This article first considers Max Weber's theory of the Protestant work ethic, in which monochronism plays a major role. It then addresses criticisms about the causes of Latin American economic and institutional failure, indicating that such criticism ignores the cultural prominence of polychronism. Thereafter, this article provides a more comprehensive discussion of the anthropological concepts of monochronic and polychronic time, principally using the observations, research, and studies of Edward Hall.

After having laid the anthropological foundation necessary to understand polychronism, this article describes the current, major challenges facing the judiciary in Latin America: corruption and inefficiency. It then describes how polychronism likely contributes to each of those challenges. Next, this article explores the concept of "rhythm," and how it, too, might play a significant role in citizen inertia and judicial inefficiency. This article concludes by contending that reforming time systems could lead to improved judicial efficacy in Latin America.

## II. THE WEBER THESIS

In 1913, inspired by Benjamin Franklin's contention that "time is money," German economist and sociologist Max Weber

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Arteseros ed., Anchor Books, Doubleday 1984). Hall is also a consultant to business and government. *Id.*

2. *Id.* at 46.

3. *Id.*

4. *See generally id.* at 44-58.

5. *Id.* at 46.

6. *Id.*

7. *Id.* For a more detailed discussion of monochrome and polychrome societies, cultural context, and group behavior in polychrome organizations, see *infra* Part III.

wrote *The Protestant Ethic and The Spirit of Capitalism*,<sup>8</sup> in which he theorized that through the Reformation, Protestantism instilled in its followers a work ethic that would influence the development of capitalism.<sup>9</sup> That work ethic, or "spirit of capitalism," led to economic prosperity and industrialization in Protestant nations, notwithstanding the decline of its religious underpinnings.<sup>10</sup>

According to Weber, Protestants believed that labor was a *spiritual* duty. "The effect of the Reformation . . . was only that, as compared with the Catholic attitude, the moral emphasis on and the religious sanction on, organized worldly labour in a *calling* was mightily increased."<sup>12</sup> Pursuant to Weber's theory, Calvinism and other Puritan sects imposed upon their followers a religious and moral duty, i.e., a "calling," to work.<sup>13</sup> That calling bred "ascetic conduct [which] meant a rational planning of the whole of one's life in accordance with God's will."<sup>14</sup>

Ascetic labor, of course, is inextricably intertwined with time. Indeed, Puritan leaders such as the seventeenth century's Richard Baxter encouraged their followers to "use every minute of [time] as a most precious thing, and spend it wholly in the way of duty."<sup>15</sup> They offered "each man his own interior moral time-piece."<sup>16</sup> Such teachings embodied the concept of monochronism, though the anthropological term for the concept would not be born until hundreds of years after the Reformation, and decades after Weber published his thesis.

### A. *The Weber Thesis as Applied to Latin America*

Relying in large part on Weber's theory, Lawrence Harrison in his book *The Pan-American Dream* attributes Latin America's

8. MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (Talcott Parsons trans., Charles Scribner's Sons 1958) (1913).

9. *See generally id.*

10. *See generally id.* In other words, although the spiritual influence of Protestantism may have declined since the Reformation, the practical effect of the Protestant work ethic is believed to persist even among non-religious individuals.

11. DIRK KASLER & MAX WEBER: *AN INTRODUCTION TO HIS LIFE AND WORK* 83 (Philippa Hurd trans., The University of Chicago Press 1988).

12. *Id.* (emphasis added).

13. *Id.* at 79.

14. *Id.* at 153.

15. E. P. Thompson, *Time, Work-Discipline, and Industrial Capitalism*, 38 *PAST AND PRESENT* 56, 87 (1967) (quoting RICHARD BAXTER, *A CHRISTIAN DIRECTORY, OR, A BODY OF PRACTICAL DIVINITY AND CASES OF CONSCIENCE* (London 1673) (1664)).

16. *Id.* at 87; *see also* Hall, *supra* note 1, at 72 (observing that "[i]nternal controls are much more binding than the external ones because you are your own tyrant").

economic and institutional failure to its Ibero-Catholic roots.<sup>17</sup> (Whereas Anglo societies embraced Protestantism, Latin America was colonized by the Spanish and Portuguese, who brought Catholicism to the New World.<sup>18</sup>) He describes the Ibero-Catholic culture—and accordingly, contemporary Latin America—as nothing short of impulsive, lazy, wasteful, improvident, and unethical.<sup>19</sup> The study of polychronic time, however, could provide a simpler (and less hasty) explanation for many of the institutional shortcomings that Harrison addresses.

To be fair, Harrison's argument is not wholly without merit, where studies show a direct correlation among Protestantism, work ethic, and economic success.<sup>20</sup> However, Hall's anthropological revelations about time suggest a route that Harrison left unexplored. Admittedly, polychronism may prove troublesome in certain institutions, such as the judiciary.<sup>21</sup> In other areas, however, it proves exceptionally beneficial.<sup>22</sup> Notably, what Harrison overlooks is "how deeply [polychronic time] affect[s] the channeling and flow of information, the shape and form of the networks connecting people, and a host of other important social and cultural features of the society."<sup>23</sup> Perhaps time plays a more pivotal role in shaping Latin America's political and institutional culture

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17. LAWRENCE HARRISON, *THE PAN-AMERICA DREAM: Do LATIN AMERICA'S CULTURAL VALUES DISCOURAGE TRUE PARTNERSHIP WITH THE UNITED STATES AND CANADA?* 24 (Basic Books 1997).

18. See generally *id.*

19. Harrison puts it this way: "That [Ibero-Catholic] culture focuses on the present and past at the expense of the future; it focuses on the individual and the family at the expense of the broader society; it nurtures authoritarianism; it propagates a flexible ethical code; it enshrines orthodoxy; and it is disdainful of work, creativity, and saving." *Id.* at 24.

20. See Emilio Willems, *Cultural Change and the Rise of the Protestantism in Brazil and Chile*, in *THE PROTESTANT ETHIC AND MODERNIZATION: A COMPARATIVE VIEW* 190, 197 (S. N. Eisenstadt ed., 1968). Willems conducted empirical studies that showed that increased growth rates of Protestantism in Brazil and Chile ran parallel to the change in the traditional social structure. "This change consists primarily of slow disintegration of the feudalistic agrarian structure, the settlement of new agricultural lands, the urbanization and industrialization of some regions, as well as the development of a new class structure." Furthermore, "field data indicate that in many communities Protestants have gained the reputation among non-Protestants of being especially reliable, conscientious, and industrious." *Id.* at 197.

21. See *infra*, Part IV-V.

22. For example, Hall conducted extensive studies revealing that polychronic individuals—particularly Hispanics and "ethnic blacks"—are disproportionately more in tune with others' rhythms, emotions, and moods. See generally Hall, *supra* note 1, at 153-76. He also observed that "friendship takes a long time to develop" in polychronic cultures. *Id.* at 65.

23. *Id.* at 45.

than contemplated by Harrison. Perhaps time is so internalized—so engrained in individuals' very being—that it permeates the region's most important institutions.

That poses a problem for economic development, because, pursuant to Weber-like theses, industrialism is invariably intertwined with monochronic time. "Mature industrial societies of all varieties are marked by time-thrift and by a clear demarcation between 'work' and 'life.'"<sup>24</sup> Indeed, "without schedules or something similar to the [monochronic]-time system, it is doubtful that our industrial civilization could have developed as it has."<sup>25</sup> Does this present a conflict? Can culturally engrained polychronic time be reconciled with economic prosperity, and moreover, an efficient judiciary?

### III. MONOCHRONIC TIME VERSUS POLYCHRONIC TIME: A COMPREHENSIVE OVERVIEW

"[Monochronic time] is . . . tangible; we speak of it as being saved, spent, wasted, lost, made up, crawling, killed, and running out."<sup>26</sup> As such, monochronic cultures are schedule-dominated in terms of both professional and personal activities. Monochronic individuals concentrate on one thing at a time, scheduling more important tasks first and allotting them more time.<sup>27</sup> They take deadlines seriously, and view failure to meet such deadlines as egocentric and rude. Moreover, in monochronic cultures, one or two people often are sealed off from a larger group.<sup>28</sup> On the other hand, polychronic individuals "interact with several people at once and are continually involved with each other. Tight scheduling is therefore difficult, if not impossible."<sup>29</sup> As a result, people are inevitably late or fail to show up. Hall directly addressed how polychronic individuals respond to their peers' tardiness:

The individual waiting is not upset because there are so many things going on that it usually doesn't matter that much. Besides, being kept waiting is not read as a slap in the face. The schedule is something that is outside and is not linked to either the ego or the superego as it is for those reared in North European cultures. Being late is not a

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24. Thompson, *supra* note 15, at 93.

25. Hall, *supra* note 1, at 48.

26. *Id.*

27. *See id.*

28. *Id.*

29. *Id.* at 49. For an analysis on how this observation influences Hall's theory on structural organization, see discussion *infra* Part III.B.

message nor is it taken personally.<sup>30</sup>

Moreover, whereas monochronic cultures are process-oriented, "polychrome individuals are oriented toward people, human relationships, and the family, which is the core of their existence. Family takes precedence over everything else. Close friends come next. In the absence of schedules, when there is a crisis, the family always comes first."<sup>31</sup>

Divergent attitudes toward time can cause monochronic and polychronic people to clash. Hall illustrated this tension with a mundane example: a monochronic client schedules an appointment with her polychronic hairdresser. Subsequently, the hairdresser's relative or friend asks to be squeezed in. The hairdresser complies because to do otherwise would betray the relative or friend, resulting in "endless repercussions within his family circle."<sup>32</sup> The monochronic client, left waiting, feels "put down, angry, and frustrated."<sup>33</sup> She expected that it was her turn.

Indeed, a North American's or North European's expectation that, by waiting in line, he has secured his spot, can lead to disappointment in Latin America. Hall poses the example of the North American bureaucrat stationed in Rio, who is instructed to get on the next plane home due to an emergency. "He has an emergency need to clear the country on three hours' notice, when Brazilian 'procedures' [cumbersome as they are] require three or more days. Brazilians, of course, simply find a friend and bypass the procedures."<sup>34</sup> Because polychronic cultures are oriented around relationships, rather than procedures, having an "insider friend" is crucial.<sup>35</sup> "A Latin American does not (cannot) simply act on the abstract assumption that the individual who has been waiting in line longest is more important than his friend."<sup>36</sup>

### A. *High and Low Context*

According to Hall, monochronic cultures tend to be "low context," while polychronic cultures tend to be "high context."<sup>37</sup> In low-context communication, a speaker must spell out each step in

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30. Hall, *supra* note 1, at 73.

31. *Id.* at 54.

32. *Id.* at 54-55.

33. *Id.* at 55.

34. *Id.* at 76-77.

35. See Hall, *supra* note 1, at 50; see also discussion *infra* Part IV.A. for how this inward orientation is directly linked to corruption in Latin America.

36. *Id.* at 77.

37. See generally *id.* at 59-77.

the inferential chain for his audience. She must give the necessary background; nothing can be taken for granted. High-context communication assumes that the listener is already familiar with the message's context. That is, it is taken for granted that the listener already knows the background, and that he himself makes necessary inferences. High-context communication often occurs between husband and wife.

When he comes through the door after a day in the office, she may not have to utter a word. He knows from the way she moves what kind of day she had; he knows from her tone of voice how she feels about the company they are entertaining that night.<sup>38</sup>

It is not surprising that polychronic cultures tend to be high-context. After all, they are based on relationships rather than processes. "[F]riendship takes a long time to develop; however, once established, it persists and is not taken lightly."<sup>39</sup> The more intimate the relationship between two people, the less they need to spell out context.

Communication in the United States tends to be very low-context. "[I]ts roots [are] in European culture which dates back to Plato, Socrates, and Aristotle [and] has built into its culture, assumptions that the only natural and effective way to present ideas is by means of a Greek invention called logic."<sup>40</sup> Logic is, by its nature, the epitome of a low context system of thought. It takes nothing for granted, carefully delineating each step necessary to arrive at a reasonable conclusion. British and United States judicial philosophy revolves around logic. Court opinions are a primary example<sup>Y</sup>

### *B. Polychronic Organizations and Group Behavior*

Polychronic time also shapes business structure and practices in Latin America. Hall observed that because polychronic people are heavily involved with one another, polychronic time systems "[t]heoretically . . . should demand a much greater centralization of control and be characterized by a rather shallow or simple structure. This is because the leader deals continually with many

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38. *Id.* at 60.

39. *Id.* at 65.

40. *Id.* at 63 (internal quotation marks omitted).

41. See discussion *infra* Part IV.B.3. for a comparison of the United States judicial philosophy and the literalist approach taken by judges in Latin America.

people, most of whom stay informed as to what is happening."<sup>42</sup> Hall noted that when something goes wrong in monochronic businesses, the automatic reaction is to look to the procedure itself.<sup>43</sup> Polychronic people immediately find out *who* was involved.<sup>44</sup>

Furthermore, polychronic organizations "are limited in size, they depend on having gifted people at the top, and are slow and cumbersome when dealing with anything that is new or different."<sup>45</sup> The result is higher transactional costs, especially in developing industries.<sup>46</sup>

Hall also asserts that because polychronic businesses allow employees to determine how and when they will perform their functions, employees are constantly reminded that they are part of the larger system. On the other hand, in function-oriented monochronic systems, employees have trouble conceptualizing their compartmentalized activities as part of the "larger whole."<sup>48</sup> The notion that polychronic individuals tend to see the larger picture appears to be at odds with Lawrence Harrison's contention that Latin American societies lack a sense of community, the absence of which nurtures corruption.<sup>49</sup>

#### IV. POLYCHRONIC TIME AND CHALLENGES FACING THE JUDICIARY

Like monochronic time systems, polychronic systems have strengths and weaknesses. Cultures with high technologies—for example, the Japanese—shift between systems depending upon context.<sup>50</sup> In the legal context, though, strict polychronism can be dangerous. The following analysis shows the hindering effect of polychronism in Latin American legal proceedings.

In *Rule of Law and Economic Efficiency*, former Colombian Minister of Law and Justice Nestor Humberto Martinez outlines the shortcomings of the judiciary in Latin America.<sup>51</sup> Each of

42. Hall, *supra* note 1, at 49.

43. *Id.* at 76.

44. *Id.*

45. *Id.* at 52.

46. This results in higher transactional costs, which presents a barrier to judicial efficiency. See discussion *infra* Part IV.B.1.

47. Hall, *supra* note 1, at 50-51.

48. *Id.*

49. Harrison, *supra* note 17, at 36. See discussion *infra* Part IV.A.

50. Hall, *supra* note 1, at 58.

51. See generally Nestor Humberto Martinez, *Rule of Law and Economic Efficiency*, in JUSTICE DELAYED: JUDICIAL REFORM IN LATIN AMERICA 3 (Edmundo Jarquin and Fernando Carrillo eds., 1998).



these shortcomings fall under two broad judicial problems-(1) corruption and (2) inefficiency-each of which can be attributed to polychronism.

### A. Corruption

The idea or proposition that "citizens will have their rights respected"<sup>52</sup> is at the core of virtually every justice system. But in Latin America, the question is: *whose* rights are protected? Studies consistently show that in Brazil, for example, "citizens believe that the justice system fundamentally exists to protect the powerful and that the police are not to be trusted."<sup>53</sup> In fact, of 1566 killings over land disputes between 1964 and 1989, only seventeen people were ever tried, and only eight were convicted.<sup>54</sup> Of those eight, "three cases involved priests, three involved lawyers, and two involved national organizations coming to the defense of indigenous peoples."<sup>55</sup>

Therein lay the difficulties of polychronic cultures' orientation toward people rather than processes and time. "In polychronic countries, one has to be an insider or have a 'friend' who can make things happen. All bureaucracies are oriented inward, but [polychronic]-type bureaucracies are especially so."<sup>56</sup> As such, citizens are patently distrustful of institutions in Latin America. Table 1.1, 1.2, and 1.3 illustrate citizens' perception of corruption, judicial independence, and rule of law, respectively, across Latin American countries.<sup>57</sup>

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52. JUAN J. LINZ & ALFRED STEPAN, PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION 175 (1996).

53. *Id.* at 175-76 (citing Rubens Figueiredo, *Verdades e mitos sobre a cultura brasileira*, in OUVRND O BRASIL 95-115 (Lamounier, 1991)). Linz and Stepan demonstrate this perception by reporting the results of a poll conducted in 1991 to a national sample of 3600 respondents. *Id.* Eighty-four percent of Brazilians either completely or partially agreed with the statement, "In Brazil the justice system only functions to help the powerful." *Id.* at 176. Seventy-eight percent agreed with the statement, "The police arrest and kill innocent people." *Id.*

54. *Id.* at 175.

55. *Id.* at 175-76.

56. Hall, *supra* note 1, at 50.

57. DataGov, <http://www.iadb.org/DataGov/index.html> (follow "Latin America & the Caribbean" hyperlink; then choose "+" hyperlink for countries listed in table 1.1, 1.2 & 1.3 *infra*; then select the countries from "My Countries," then find the corresponding indicators on the chart for "Rule of Law," "Corruption Perceptions Index," and "Judicial independence") (last visited Mar. 11, 2009).

**TABLE 1.1**  
CORRUPTION PERCEPTIONS INDEX<sup>58</sup>

Country	Value	Year	Country	Value	Year
High Income Countries	7.25	2008	Panama	3.4	2008
United States	7.3	2008	Guatemala	3.1	2008
Uruguay	6.9	2008	Dominican Republic	3	2008
Chile	6.9	2008	Bolivia	3	2008
Costa Rica	5.1	2008	Argentina	2.9	2008
Cuba	4.3	2008	Honduras	2.6	2008
El Salvador	3.9	2008	Nicaragua	2.5	2008
Colombia	3.8	2008	Paraguay	2.4	2008
Mexico	3.6	2008	Ecuador	2	2008
Peru	3.6	2008	Venezuela	1.9	2008
Brazil	3.5	2008			

**TABLE 1.2**  
JUDICIAL INDEPENDENCE (WEF)<sup>59</sup>

Country	Value	Year	Country	Value	Year
Other (High Income)	5.53	2007	Honduras	3	2007
Costa Rica	5.1	2007	Panama	2.5	2007
Uruguay	4.8	2007	Bolivia	2.4	2007
Chile	4.2	2007	Peru	2.2	2007
Colombia	3.8	2007	Argentina	2.2	2007
Mexico	3.6	2007	Ecuador	2	2007
Dominican Republic	3.3	2007	Nicaragua	1.6	2007
Guatemala	3.3	2007	Paraguay	1.5	2007
El Salvador	3.1	2007	Venezuela	1.2	2007
Brazil	3.1	2007			

58. "The (CPI) ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians." DataGov, *supra* note 57.

59. "Average responses of business executives surveyed to the following question (using a scale of 1 to 7): The judiciary in your country is independent from political influences of members of government, citizens or firms: 1=no, heavily influenced; 7=yes, entirely independent." DataGov, *supra* note 57.

TABLE 1.3  
RuLE oF LAW<sup>0</sup>

Country	Value	Year	Country	Value	Year
Other (High Income)	1.32	2007	El Salvador	-0.68	2007
Chile	1.17	2007	Peru	-0.71	2007
Uruguay	0.49	2007	Cuba	-0.79	2007
Costa Rica	0.44	2007	Nicaragua	-0.84	2007
Panama	-0.2	2007	Honduras	-0.86	2007
Brazil	-0.44	2007	Bolivia	-0.96	2007
Argentina	-0.52	2007	Paraguay	-0.97	2007
Dominican Republic	-0.55	2007	Ecuador	-1.04	2007
Colombia	-0.57	2007	Guatemala	-1.11	2007
Mexico	-0.58	2007	Venezuela	-1.47	2007

These inward-oriented bureaucracies undercut the rule of law. Consider contracts. In common law systems:

[T]he "law" is a permanent feature, one of our most important institutions. Contracts are sacred and binding because they are backed by law. Yet a contract can be drawn up overnight. In Latin America . . . only human relationships are regarded as "permanent." . . . [T]he North American businessman [by virtue of a contract] will assume quite naturally that he has done everything he should to ensure his economic survival in Latin America. Instead, he and his company are a patchwork of vulnerabilities directly traceable to failure to ensure the future by developing the proper networks of friends in the right places.<sup>61</sup>

Marta Lagos theorizes that Latin American citizens' "very low confidence in institutions" such as the judiciary stem from a general lack of interpersonal trust: "Survey data . . . confirm what novelists and poets have long sensed and suggested: there is a common regional heritage of distrust [in Latin America]."<sup>62</sup> That heritage is linked directly to Hall's observation that polychronic

60. "Combines in an aggregate index many of the available indicators of the rule of law, including those dealing with the extent of property rights protection, the enforceability of contracts, independence of the judiciary, effectiveness of the legal system etc." DataGov, *supra* note 57.

61. Hall, *supra* note 1, at 67-68.

62. Marta Lagos, *Latin America's Smiling Mask*, 8 J. DEMOCRACY 125, 129 (1997) (explaining that "no institution in any country enjoys a level of trust that is significantly higher than the level of interpersonal trust in that country").

societies place family and close friends "over everything else."<sup>63</sup> (Recall the example of the polychronic hairdresser who disregards a customer's appointment time in order to "squeeze in" her relative.<sup>64</sup>) According to Harrison, in Latin America, "trust is largely confined to the family . . . . [and] those outside the family are . . . outside a felt 'community.'"<sup>65</sup> In countries where people do not trust each other, how can they possibly trust the judiciary?

### *B. Judicial Inefficiency*

Distrust in the judiciary stems not only from the perception that the judiciary is accessible only to certain socio-economic classes, but also from the inefficiency of judicial proceedings themselves. Table 1.4 shows Latin American business executives' analysis of the efficiency of the legal framework in their respective countries.<sup>66</sup> Presumably, a survey of non-business executive citizens would yield comparable, if not lower, perceptions of efficiency.

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63. Hall, *supra* note 1, at 54.

64. See discussion *supra*, Part III.

65. Harrison, *supra* note 17, at 36.

66. DataGov, Corruption Perceptions Index, <http://www.iadb.org/DataGov/index.html> (follow "Latin America & the Caribbean" hyperlink; then choose "+" hyperlink for countries listed in table 1.4; then follow "Rule of Law" tab; then find the corresponding indicators on the chart for "Corruption Perceptions Index," "Judicial independence," and "Efficiency of the legal framework") (last visited Mar. 11, 2009).

TABLE 1.4<sup>67</sup>  
EFFICIENCY OF THE LEGAL FRAMEWORK

Name	Value	Year
Other (High Income)	5.24	2007
United States	4.9	2007
Chile	4.8	2007
Costa Rica	4.6	2007
Uruguay	4.1	2007
Colombia	3.7	2007
Honduras	3.1	2007
Mexico	3.1	2007
El Salvador	3	2007
Guatemala	3	2007
Brazil	2.9	2007
Dominican Republic	2.9	2007
Panama	2.9	2007
Peru	2.4	2007
Argentina	2.4	2007
Bolivia	2.4	2007
Nicaragua	2.2	2007
Ecuador	2.2	2007
Paraguay	2	2007
Venezuela	1.5	2007

Several factors contribute to the lack of judicial efficacy in Latin America, and are directly related to polychronic time. Each of these factors, (1) increased transaction costs due to legislative inflation, (2) slow judicial proceedings, and (3) the routine practice of legal formalism, warrants an independent analysis.

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67. "Average responses of business executives surveyed to the following question (scale of [one] to [seven]): The legal framework in your country for private businesses to settle disputes and challenge the legality of government actions and/or regulations: (1 = is inefficient and subject to manipulation; 7 = is efficient and follows a clear, neutral process)." *Id.*

## 1. Increased Transaction Costs Due to Legislative Inflation

The ability of lawyers and judges alike to gain a grip on the current law is crucial to the efficiency with which legal claims are brought, litigated, settled, and enforced. Although the law is constantly changing in any society, at least some level of continuity is necessary to maintain efficiency. After all, clients often pay for a lawyer's particularized knowledge and experience in a specific field: from labor law to tax law to probate to criminal law. That prior knowledge cuts down on "transaction time," e.g., time spent researching, determining the strength of a potential case, pleading a case, and of course, litigating or settling that case.

But in Latin America, transaction costs increase because judicial decisions are not always foreseeable.<sup>68</sup> Humberto Martinez attributes the lack of foreseeability to "legislative inflation."<sup>69</sup> Latin American governments "perceive that they need to expedite the implementation of certain statutes, codes, and reforms" and, "in the name of free market reforms, governments . . . have *rushed* to enact new legislation."<sup>70</sup> As a result, "the rules that regulate business activity are in constant flux."<sup>71</sup> In Colombia, for example, such changes accounted for up to forty-five percent of GDP variations between 1954 and 1988.<sup>72</sup>

"This sort of legal uncertainty means that the most talented entrepreneurs in society must dedicate themselves to studying and evading the laws, rather than producing."<sup>73</sup> In other words, attorneys and businessmen *lose time* in the process of adapting to a constantly changing body of law.

Increased transaction time as a result of changing law must increase more dramatically in polychronic systems. Recall that polychronic organizations are "slow and cumbersome when dealing with anything that is new or different."<sup>74</sup> This is likely so because of the polychronic tendency to focus on various tasks simultaneously.

For example, in the case of a new regulation, a monochronic

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68. Martinez, *supra* note 51, at 4.

69. *Id.* at 6 (internal quotes omitted).

70. Luz E. Nagle, *On Armed Conflict, Human Rights, and Preserving the Rule of Law in Latin America*, 27 PENN. ST. INT'L L. REV. 1, 12 (2008) (emphasis added).

71. Martinez, *supra* note 51, at 4.

72. *Id.* at 5 (citing M. Rubio, *Crimen y crecimiento en Colombia*, 25 Coyuntura económica 1 (1995)).

73. *Id.* at 6.

74. Hall, *supra* note 1, at 52.

lawyer would likely allot a specific slot of time to the "task" of learning the new law. Having learned it, she will move on to her next task-applying it to all relevant cases. A polychronic attorney, on the other hand, would not view learning the law as a single, time-sensitive task. Rather, he would attempt to learn the new regulation while simultaneously applying it to several relevant cases. He likely would work on a variety of unrelated tasks all the while, thereby spreading the time necessary to adapt to the regulation even further. In the long run, spreading the task of learning the new law across multiple other activities will "cost" the attorney time. Increased transaction time means increased costs to the client, further limiting access to justice for poor citizens.

## 2. Slow Judicial Proceedings

In addition to increasing transaction time, polychronism further delays pleadings and judicial proceedings. "If the public believes that judicial proceedings are burdensome and slow, statistics bear them out."<sup>75</sup> With the exception of Costa Rica and Uruguay,<sup>76</sup> the average duration of civil disposition is exceedingly long. In 1993, "the average times for disposition of cases in the civil courts in Argentina, Ecuador, and Venezuela were 6.5 years, 7.9 years, and 8.4 years, respectively-an increase of eighty-five percent since 1981."<sup>77</sup> Moreover, "there are long delays before obtaining judgments against those who are accused of crimes. Table 1.5 depicts the percentage of prison inmates who, between 1992 and 1995, had actually been charged with or convicted of a crime in several Latin American countries.

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75. Martinez, *supra* note 51, at 8.

76. These countries have undergone significant judicial reform. See DANIEL J. HALL ET AL., PROFESSIONAL COURT ADMINISTRATION: THE KEY TO JUDICIAL INDEPENDENCE 4, <http://contentdm.ncsconline.org/cgi/bin/showfile.exe?CISOROOT=/judicial&CISOPTR=204>; see generally Bruce M. Wilson et al., *The Best Laid Schemes ... Gang Aft A-gley: Judicial Reform in Latin America-Evidence from Costa Rica*, 36 J. LAT. AMER. STUD. 507, 507-31 (2004).

77. Edgardo Buscaglia, *Obstacles to Judicial Reform in Latin America*, in JUSTICE DELAYED: JUDICIAL REFORM IN LATIN AMERICA 15, 18-19 (Edmundo Jarquin and Fernando Carrillo ed., 1998).

TABLE 1.5<sup>78</sup>  
 PERCENTAGE OF INMATE POPULATION  
 ACCUSED OR CONVICTED

Country	Percent	Years
Argentina	82.00	1992
Chile	49.32	1993
Colombia	56.00	1995
El Salvador	> 80.00	1993
Panama	> 90.00	1993
Paraguay	92.12	1994
Uruguay	80.00	1993
Venezuela	66.10	1994

While these delays may be attributable to a multitude of factors—from lacking resources, to antiquated technology, to increased "demand for court services,"<sup>79</sup> something else must be at work. In fact, a common remedy to the backlog of cases in Latin America has been expansion of judges and judicial staff.<sup>80</sup> The number of judges per one hundred thousand people in Colombia, Uruguay, Argentina, Costa Rica, El Salvador, Bolivia, Nicaragua, Ecuador, Chile, and Guatemala, surpasses that of the United States, Spain, and the Netherlands.<sup>81</sup> Whereas there are two judges for every one hundred thousand people in the United States, that number ranges from 3.0 in Guatemala to 17.1 in Colombia. Notwithstanding the significantly higher ratio of judges to population in Latin American countries, the backlog of cases there has grown exponentially.<sup>82</sup>

Polychronism, then, must play a role in these serious delays to justice. For example, consider just some of the steps involved in a civil action in the United States: pretrial negotiations, pretrial discovery (similar to *prueba anticipada*, i.e. anticipatory proof, in Latin American countries<sup>83</sup>), pleadings, motions, and trials. Like-

78. Martinez, *supra* note 51, at 9 tbl.1.2 (reproduced).

79. *Id.* at 8.

80. *Id.* at 10.

81. *Id.* at 11 tbl.1.6.

82. *Id.* at 8.

83. See Alejandro M. Garro, *Forum Non Conveniens: Development and Issues Over the Past Seven Years*, 35 U. MIAMI INTER-AM. L. REV. 65, 91 (2003).



wise, criminal proceedings include bond hearings, arraignments, preliminary hearings or grand jury proceedings, pre-trial motions, trials, sentencing, and sometimes, appeals. In the monochronic, schedule-dominated culture of the United States, it is crucial that attorneys, judicial staff, and parties comply with deadlines at each of these stages. Indeed, the very nature of these stages is monochronic. Each stage contributes to a larger process, and is followed mechanically in every civil and criminal action. Monochronic-time people work well with compartmentalized tasks, strictly adhering to system-imposed, or even self-imposed deadlines.<sup>84</sup> In other words, monochronic time "is convenient in linear operations"<sup>85</sup> such as those involved in civil and criminal proceedings. "In the West we organize our thinking, make plans, theories, and designs for action; we calculate."<sup>86</sup>

Can polychronic systems in Latin America equally adhere to this process? In a culture in which time is abstract, punctuality is less important, deadlines are flexible, and people engage in multiple activities simultaneously,<sup>87</sup> it is unlikely that legal actors operate with the same speed and sense of urgency as their monochronic counterparts. The line separating business from personal tasks is blurred in polychronic cultures.<sup>88</sup> By contrast, employees in capitalist societies "experience a distinction between their employer's time and their 'own' time."<sup>89</sup> In polychronic societies:

Social intercourse and labour are intermingled-the working-day lengthens or contracts according to the task-and there is no great sense of conflict between labour and passing the time of day . . . . [T]o men accustomed to labour timed by the clock, this attitude to labour appears to be wasteful and lacking in urgency.<sup>90</sup>

When this "lack of urgency" causes delay at one stage of legal proceedings, it likely spills to the next, causing a domino effect that

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84. See generally Hall, *supra* note 1, at 48-51.

85. *Id.* at 49.

86. *Id.* at 97 (internal quotation marks omitted).

87. See generally *id.* at 44-77.

88. See generally *id.* ("[P]olychronic individuals are oriented toward people, human relationships, and the family, which is the core of their existence. Family takes precedent over everything else. Close friends come next. In the absence of schedules, when there is a crisis, the family always comes first."). *Id.* at 54.

89. Thompson, *supra* note 15, at 61.

90. *Id.* at 60 (internal quotes omitted).

could at least partially explain the enormous backlog of cases in Latin America.

In polychronic cultures, "[m]atters . . . seem in a constant state of flux. Nothing is solid or firm, particularly plans for the future; even important plans may be changed right up to the minute of execution."<sup>91</sup> A mutual understanding of this phenomenon on the part of attorneys, judicial staff, and perhaps even judges, could prove disastrous to expediency at the pre-litigation and litigation stage of any case. That is, because polychronic culture is accepting of last-minute changes, the lawyer who receives notice of such a change may passively acquiesce.<sup>92</sup>

Legal institutions are not immune to the polychronism apparent in Latin American culture. Signs of polychronic attitudes among legal practitioners are evident as early as during law school. David Ritchie, a professor at Mercer University School of Law and adjunct faculty member at Escola da Magistratura Regional Federal da 2a Regiao in Rio de Janeiro, Brazil, said that law students and professors alike in Rio regularly arrive to class up to an hour late.<sup>93</sup> "It is not considered rude, because there is the mutual understanding that everyone will arrive at that time."<sup>94</sup> Where this polychronic attitude is prevalent as early as law school, its penetration into legal institutions is nearly inevitable.

Indeed, a 1995 study of Argentine judges made evident their polychronic tendency to engage in multiple activities simultaneously. According to the study, approximately seventy percent of Argentine judges' time was spent on tasks unrelated to their judgeship.<sup>95</sup> Those figures stood at sixty-five percent in Brazil and sixty-nine percent in Peru.<sup>96</sup> Similar surveys in Ecuador, Venezuela, Peru, and Argentina indicated that twenty to forty percent of court staff interviewed "appear[ed] to be pleased to receive administrative assignments, such as signing checks or ordering office supplies."<sup>97</sup> Georgetown University Professor Edgardo Buscaglia has offered a possible explanation: it "may lie in the fact

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91. Hall, *supra* note 1, at 47.

92. See discussion *infra* Part V.A. (analyzing Latin American citizens' passive acquiescence to the legal status quo).

93. E-mail from David T. Ritchie, Professor, Mercer University School of Law (Aug. 27, 2009, 14:52:00 EST) (on file with author).

94. *Id.*

95. Buscaglia, *supra* note 77, at 19.

96. *Id.*

97. *Id.*

that administrative tasks give the judges a false sense of autonomy and planning capability."<sup>98</sup>

While that provides one explanation, polychronism may provide another. Given polychronic individuals' preference for engaging in more than one type of activity at once, it is only natural that Argentine judges allot significant time to tasks that are outside the apparent scope of their judgeship. While Hall does not directly address the concept of *focus*, it lays at the heart of his studies. It is possible that polychronic people's preference for engaging in multiple activities creates an antipathy toward focusing exclusively on a single task. That antipathy, like polychronism as a whole, becomes engrained in their being. Such engrained disinclination to focus on specific tasks undermines the efficiency of the judiciary.

### 3. Legal Formalism

A major obstacle to judicial efficiency in Latin America is that the "law has become overlaid with an unnecessary degree of legal formalism . . . ." <sup>99</sup> Most judge's "decisions are limited to reproducing the text of the law."<sup>100</sup> With reference to legal formalism, scholars have even said "that Latin American law is 'schizophrenic' in its doctrinaire reliance on formal legal categories."<sup>101</sup> Judges' literalist approach undoubtedly stems from Latin America's civil law roots.

However, it also may relate to the high context of polychronic culture.<sup>102</sup> Recall that low context communication in the United States assumes "that the only natural and effective way to present ideas is by means of a Greek invention called 'logic.'"<sup>103</sup> Judicial opinions delineate each logical step that judges take in order to

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98. *Id.* (citing JESSE CASSAUS, COURT ADMINISTRATION IN LATIN AMERICA, Mimeo (1994)).

99. Symposium, *Law and Economic Development in Latin America: A Comparative Approach to Legal Reform*, 83 CHI.-KENT L. REV. 293, 303 (2008); see also Luis Pasara, *Judicial Reform and Civil Society*, in JUSTICE DELAYED: JUDICIAL REFORM IN LATIN AMERICA 83, 87 (Edmundo Jarquin and Fernando Carrillo ed., 1998) (noting a prevailing legal culture in Latin America marked by "strict adherence to legal form and the letter of the law that is reflected in the actions of most of our judicial officers").

100. Pasara, *supra* note 99, at 87 (quoting M. Sanchez Palacios, *Formación y capacitación de magistrados*, in NUEVAS PERSPECTIVAS PARA LA REFORMA INTEGRAL DE LA ADMINISTRACIÓN DE JUSTICIA EN EL PERÚ (Ministry of Justice, 1994)).

101. Symposium, *supra* note 99, at 303.

102. See discussion *supra* Part III.A.

103. Hall, *supra* note 1, at 63.

arrive at their holding. Sometimes, judges utilize creative logic in order to justify the most equitable ends. But in Latin America,

[Judges] refus[e] to interpret the law, opting instead for a literalist approach. Many judges think that the law does not need to be interpreted, as it has only one possible meaning. By considering themselves as mere enforcers, judges renounce ab initio any responsibility to introduce innovations and creativity into the law in deciding cases.<sup>104</sup>

This refusal to use a system of logic as a means of arriving at equitable decisions is, at least in part, directly attributable to high context, polychronic communication, in which a speaker need not explain each step in the inferential chain. As such, failure to employ low context logic undermines judicial efficiency.

## V. RHYTHM

At first blush, it seems difficult to reconcile judicial inefficiency with Hall's observation that employees in polychronic businesses are constantly aware that they are part of the larger system.<sup>105</sup> Where an individual employee is mindful of his or her importance to the ultimate success of a company-or for the present purposes, to the success of the legal system-one would assume that the employee would work diligently and quickly so as to maximize the efficiency of his or her function. That assumption overlooks mutual human rhythm, or as Hall puts it, "the dance of life."<sup>106</sup>

It can now be said with assurance that individuals are dominated in their behavior by complex hierarchies of interlocking rhythms. Furthermore, these same interlocking rhythms are comparable to fundamental themes in a symphonic score, a keystone in the interpersonal processes between mates, *co-workers*, and organizations.... Rhythm is, of course, the very essence of *time*, since equal intervals of time define a sequence of events as rhythmic.<sup>107</sup>

People within groups are connected to each other by a rhythm that is common to that group, and to their larger society. After conducting extensive studies of homemade films, in which he recorded people in public spaces, Hall determined that rhythm locks people together in "a dance which function[s] almost totally

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104. Pasara, *supra* note 99, at 88.

105. See *supra* text accompanying note 47.

106. See generally Hall, *supra* note 1, at 153-76.

107. *Id.* at 153 (emphasis added).

outside awareness."<sup>108</sup> This was true of both polychronic and monochronic cultures.<sup>109</sup>

In one experiment, Hall's student filmed children playing in a schoolyard during recess.<sup>110</sup> "[W]atching the film several times at different speeds . . . he began to notice one very active little girl who seemed to stand out from the rest."<sup>111</sup> Whenever the girl approached a cluster of children, their movements became in sync with each other's and with hers.<sup>112</sup> "Many viewings later, he realized that this girl, with her skipping and dancing and twirling, was actually orchestrating movements of the entire playground!"<sup>113</sup>

The "beat" to which the children were moving was "part of a shared culture."<sup>114</sup> Likewise, the beat to which members of monochronic societies move is part of their culture. Imagine the fast-paced rhythm of a county courtroom in a metropolitan region of the United States. Each judicial staff member is part of a well-oiled machine. Dozens of attorneys, clerks, court reporters, and other judicial staff hustle to quickly make headway through the morning docket. One by one, each of dozens of defendants takes his turn. State attorneys furiously sift through files; public defenders scramble to speak with their clients; clerks hastily set hearing times; and judges monotonously recite to defendants their rights, signing orders all the while. It is not a coincidence that everyone moves at the same fast pace. Rather, each actor follows a core rhythm that unites them all.

It makes sense, then, that judicial staff in polychronic societies might fail to adopt a monochronic-style efficiency in completing their tasks. Although they see the larger picture,<sup>115</sup> they naturally work pursuant to the protracted rhythm of their colleagues, and to the rhythm of their society's general polychronic culture.

#### A. *Challenges to Reform: "Subject" Culture and Citizen's Lack of Political Inertia*

Rhythm also might explain why citizens lack political inertia

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108. *Id.* at 154.

109. *See generally id.* at 153-76.

110. *Id.* at 169.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* at 170.

115. *See generally id.* at 50-51.

in many Latin American countries. Judicial reform hinges on political activity by citizens from all social sects. "While politicians play a crucial role in giving impetus to the judicial reform process, political parties should not be the only social actors involved."<sup>116</sup> In many Latin American countries, the "common citizen [is] passive and disorganized with respect to the justice system."<sup>117</sup> Paradoxically, a lack of "social demand for . . . judicial reform . . . . is key in maintaining the current state of affairs."<sup>118</sup>

In *Latin America's Smiling Mask*, Marta Lagos distinguishes between "citizen" culture and "subject" culture.<sup>119</sup> Whereas the former is characterized by "active participation in the political process," the latter—which applies to most of Latin America—"is characterized by a *passive acceptance* of the political system."<sup>120</sup> According to Lagos, Latin Americans have developed a tendency "to remain silent regarding their true feelings and intentions, and to emphasize appearances . . . —the twin progeny of distrust-. . . . [Octavio] Paz describes this attitude as a 'smiling mask.'"<sup>121</sup> The passivism that Lagos describes continues because of rhythm. Perhaps, because citizens are on the same protracted rhythm as the judiciary, they do not mind the slow and cumbersome judicial process. Perhaps they "dance" with the judiciary, and one another, to a passive beat.

## VI. CONCLUSION

Hall observed that generally, neither monochronic nor polychronic time is superior to the other, each carrying strengths and weaknesses.<sup>122</sup> However, in the specific context of the justice system, monochronism is essential to developing a reliable, efficient, and independent judiciary. Hall's work, fortunately, offers hope that judicial reform is capable of surmounting the challenges that polychronism poses to the Latin American judiciary. Accord-

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116. Pasara, *supra* note 99, at 92.

117. *Id.* at 93.

118. *Id.*

119. Lagos, *supra* note 62, at 130.

120. *Id.* (emphasis added).

121. *Id.* at 126.

122. Indeed, Hall's discovery that polychronic individuals are disproportionately more in tune with others' rhythms, emotions, and moods, *see supra* note 24, could lay the grounds for a completely independent research project on polychrome jurors' ability to "read" witnesses to a proceeding. Additionally, Hall's observation that "friendship takes a long time to develop" in polychronic cultures could shed light on effective attorney-client and attorney-jury communication in Latin America and Latino-populated regions of the United States. *Id.*

ing to Hall, monochronic time is learned.<sup>123</sup> Where an attitude is learned, it can be taught, and with enough training, adopted. But adoption of monochronism in the judiciary requires more than mere training; it calls for a radical change in deeply engrained rhythms of polychronism. Radical, but not impossible. After all, if one little girl can coordinate an entirely new tempo in a schoolyard playground, a mass movement can surely orchestrate a monochronic symphony in the Latin American judiciary.

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123. Hall, *supra* note 1, at 48.

