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Public Administration and Institutions in Latin America

Susan Rose-Ackerman*

Contents

Introduction	2
I. The Challenge	3
I.A. Public Administration	7
I. B. The Judiciary and Law Enforcement	10
II. Solutions	13
II. A. Public Administration	14
II.A.1. Revenue Collection	14
II.A.2. Procurement and Business Regulation	16
II.A.3. Privatization and Contracting-Out	17
II.A.4. Civil Service Reform	19
II.B. Oversight and Public Accountability	22
II.B.1. Public Information and Auditing	23
II.B.2. The Media and Public Opinion	25
II.B.3. Private Associations and Nonprofit Organizations	26
II.B.4. Grassroots Participation in Government Decisionmaking	26
II.B.5. National Policymaking	28
II.C. The Judicial System	30
III. Costs and Benefits of Alternative Policies	37
References	40

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Introduction

Most Latin American countries have democratic constitutions, functioning bureaucracies, and professional judiciaries. The institutions are in place, but their operation varies widely across the region. Some institutions function well in some countries, sometimes surpassing the performance of those in comparable, wealthier countries. Others, however, are plagued with waste and corruption, impose needless costs on the population, and do not accomplish their missions well. I highlight the most pressing problems in the region and discuss potential solutions drawing on existing experiments and reform initiatives. Reform priorities ought to differ across countries. Although most occupy the middle range on cross-country measures of corruption and government effectiveness and in terms of economic well-being and growth, the key pressure points vary. I highlight good and bad performers on a number of dimensions and argue that broad regional similarities imply that successes in one country can provide lessons for reformers elsewhere.

I concentrate on public administration and the judiciary, but improvements in these areas can complement other types of reform. For example, Latin American democracies have traditionally had weak legislatures.¹ If legislative capacity is strengthened, it can play a stronger oversight role with respect to the executive. Similarly, if violence and organized crime make ordinary state functioning problematic, then improved law enforcement is a necessary condition for other types of reform to succeed.²

Political realities determine whether a country enacts reforms in the first place and affects the quality and sustainability of their implementation. Studies of state reform in Latin America from the colonial period to the present highlight the way the loci of political power influence which reforms are feasible and which can survive over time.³ I deal with this issue only indirectly in discussing the design of reforms and the value of improving routes for citizen access and monitoring. My primary focus is on isolating reforms that appear to have been successes with the aim of providing guidance to those willing to push for change.

Reform of the public administration can take three routes: (1) reform of the state in its interaction with private citizens and businesses, (2) internal reform of the civil service system to improve its professionalism and honesty, and (3) reforms that open up the operation of government to oversight by those both inside and outside the government. In discussing reform of the legal system, I concentrate on: (a) reform in the selection and performance of judges and their staff, and (b) reform of the legal system as a whole. If the judiciary can be reformed, then it not only will more effectively resolve private law disputes but can also play an oversight role *vis-à-vis* government—monitoring the performance of the public administration to be sure that public officials obey both substantive and procedural law (Rose-Ackerman 2004a).

Unfortunately, few reform options have been subjected to rigorous testing in the Latin American region. I highlight the studies that exist but stress the importance of

¹ Spink (1999), Mainwaring and Shugart (1997), Moreno, Crisp, and Shugart (2003).

² Other challenge papers prepared for Consulta de San José de Costa Rica deal with strengthening democracy and with combating crime and violence.

³ See Spink (1999) for an overview and critique of past efforts. Geddes (1994) shows how reform occurred in Latin American countries under grand coalitions of the major political parties. For the particular case of revenue authorities see Taliervo (2001).

setting priorities on a country-by-country basis and of considering reforms that have not yet been tested in practice. As Dani Rodrik argues, the search for uniform “blueprints” or “best practices” is an elusive quest. Rather, in each country, reformers need to isolate its most serious problems and design policies that fit that country’s situation (Rodrik 2006). There is much room for creative experimentation, but experiments should be carried out with an evaluation component that produces quantitative measures of success or failure. Successes cannot be automatically reproduced elsewhere, but they will, at least, suggest options for reformers to consider.

This paper begins by outlining the significant weaknesses of Latin American states while highlighting cross-country differences. Obviously, many of the problems I isolate will sound familiar to readers from other regions including wealthier societies, but I concentrate here on this one region in the hope that highlighting the variety of experience there can help understanding. The second section proposes responses to these challenging problems. Finally, the last section collects existing information on the costs and benefits of alternative policies.

I. The Challenge

Global cross-country research supports the claim that institutions matter for growth and demonstrates that poorly functioning government institutions are associated with harmful outcomes.⁴ However, the consequences of weak institutions are difficult to distinguish from the causes. Take the controversy over corruption, for example. Corruption limits growth, but low growth encourages corruption and makes it difficult to improve government effectiveness.⁵ There are feedback mechanisms from low growth to high corruption and, conversely, from high growth to low corruption; the growth process cannot begin unless reasonably well-functioning institutions are in place. Other empirical regularities raise similar problems of causation. High levels of corruption are associated with greater inequality and poverty, a larger shadow economy, a smaller and less productive capital stock, and distorted allocations of public and private resources.⁶ These factors are consequences of corruption, but they could also be causes. In any case, corruption standing alone is not the essential problem. Rather, corruption symbolizes and highlights underlying weaknesses in the operation of the state and its interactions with citizens and businesses. I concentrate here on an important class of government institutions that can produce either a competent and fair state if they function well or a corrupt, unfair, and ineffective state, if they operate poorly. My focus is the operation of both the public administration and the judiciary, leaving to another challenge paper discussion of electoral politics and the interactions between elected presidents and legislatures.

The Latin American countries are mostly in the broad middle range both in per capita income and well-being and in measures of government effectiveness and

⁴ Lambsdorff (2006); Kaufmann, Kraay, and Mastruzzi, (2006); Feld and Voight (2003); Rivera-Batiz (2002).

⁵ For a debate on the issue of causation and other questions raised by the cross country research see the interchange in the *Journal of Politics* in 2007: Kurtz and Schrank, (2007a, b), Kaufmann, Kraay, and Mastruzzi (2007a, 2007b).

⁶ See Rose-Ackerman (2004b) for citations to the relevant literature.

institutional quality. Figure 1 shows a generally positive relationship in the region between high government effectiveness, on the one hand, and high levels of the UN Human Development Index (HDI), on the other.⁷ A similar pattern holds for corruption. However, there are countries that do not fit the pattern. For example, measured by the HDI, Chile is getting little marginal benefit from its low corruption and high government effectiveness compared to other relatively high-performing countries.⁸ Conversely, Argentina reports high corruption and low confidence in the bureaucracy but is in relatively good shape economically. Figure 2 relates the Transparency International Corruption Perceptions Index to the ten-year growth rate of real GDP. Here the pattern is mixed. Those with the worst corruption are among those with the lowest growth rates, but some countries, such as Uruguay (a relatively wealthy country), have low growth and low corruption. Conversely, some high-growth countries are quite corrupt. For countries in the middle range, there is no clear pattern in the raw data. Thus, although bearing out the general claim that institutions matter for economic and social well-being, the figures suggest the need to disaggregate country-level summary indices to see what is happening in particular sectors and to analyze the underlying causes of economic growth.

[Figures 1, 2]

Beyond simple measures of well-being such as the HDI, government competence and fairness affect people's daily lives in other ways. Of particular importance is the basic level of security and the effectiveness and fairness of law enforcement. The cross-country data, summarized by Edgardo Buscaglia, suggest that countries with high levels of corruption, a signal of a weak and ineffective state, also have high levels of organized crime and of public insecurity, and this pattern applies to the Latin American countries in his data (Figure 3). However, within the region there is considerable variation. Although organized crime and corruption generally go together, Columbia's levels of organized crime is especially high relative to its level of corruption. In other work, Buscaglia shows that public insecurity is generally related to low-level corruption, but that some countries—Costa Rica, Paraguay, Brazil, Bolivia and Argentina—report similar levels of public insecurity but widely different levels of low-level corruption.⁹

[Figure 3]

Another negative effect of corrupt and ineffective government is the lack of political legitimacy that they produce (Anderson and Tverdova 2003). High levels of administrative corruption are linked with negative perceptions of bureaucratic quality (Buscaglia and van Dijk 2003:18). This effect may be over and above the impact on economic well-being and personal security. Surveys carried out in four Latin American

⁷ Corruption is measured using Transparency International's Corruption Perceptions Index (TI-CPI) that ranges from zero to 10 with high numbers representing lower levels of corruption. Government effectiveness is an index compiled by the World Bank Institute from various sources. The Human Development Index (HDI) is a weighted average of GDP per capita and measures of education and health.

⁸ It is, however, important to recognize that that result is partly a function of the way the HDI is calculated. Income enters logarithmically so that its marginal impact on the index falls at higher incomes.

⁹ The corruption levels are defined as follows and refer in particular to organized crime corruption of state institutions: Primer Nivel: Corrupcion aislada; Segundo Nivel: Frecuente corrupcion en la misma agencia; Tercer Nivel: Penetracion de la estructura a niveles operativos e intermedios; Cuarto Nivel; Infiltracion de la estructura a nivel de mandos; Quinto Nivel; Infiltracion en el espacio politico. Detailed definitions are provided in Buscaglia and Gonzalez Ruiz (2006).

countries (El Salvador, Nicaragua, Bolivia and Paraguay) in 1998 and 1999 showed that those exposed to corruption had both lower levels of belief in the political system and lower interpersonal trust (Seligman 2002). In Nicaragua, respondents were asked if the payment of bribes “facilitates getting things done in the bureaucracy.” Interestingly, those who agreed that corruption gets things done were *less* likely to believe in the legitimacy of the political system (ibid. 429).

To get a better sense for government functioning, we need to consider more focused measures that go beyond perceptions of “corruption” and government effectiveness. To begin, Table 1 collects several indices of the quality of government, two of which are included in the figures above. Chile, Uruguay and Costa Rica top the governance rankings, and Paraguay and Venezuela are near the bottom.¹⁰ Some countries’ rankings, however, suggest the need for in-depth country-level analyses. For example, El Salvador is reputedly less corrupt than most others in the region, but it ranks low in government effectiveness and the rule of law. In contrast, Guatemala, one of the least developed countries, is thought to be very corrupt and to have a poor property regime, but it ranks quite well in one measure of government effectiveness and in the rule of law.¹¹ Four major countries in the region—Columbia, Brazil, Mexico, and Argentina—are at or above the regional median on all measures. Peru, although comparable to Mexico on the corruption index, appears to have an especially ineffective government.

[Table 1]

A second way to compare countries is through the “Doing Business” measures compiled by the World Bank and the International Finance Corporation (2006). These concentrate on the legal costs imposed on business, not the entire operation of the state. Thus, they provide no direct evidence on, for example, the quality of education, welfare, or health care. Furthermore, some measures that are costly for business may be beneficial for other actors, such as workers or ordinary citizens. Nevertheless, these data highlight areas of concern in individual countries. If a country is an outlier, then its government has the burden of proof to demonstrate that the high costs provide corresponding benefits. Overall the Latin American countries are not at the top or the bottom of the 155 countries in the basic study, but, as Table 2 illustrates, some countries do stand out as especially strong or weak along some dimensions.¹² The measures only reflect the views of a small number of country experts on the formal law. They do not take account of the ways in which businesses cope, and they ignore other aspects of the business environment such as

¹⁰ See also the regional and country reports at <http://www.govindicators.org>. That website contains the background material for World Bank (2007). For Latin America the same three countries are in the top rank. Countries that rank below the 50th percentile for the global survey on all six of their indices include Nicaragua, Honduras, Ecuador, and Bolivia, besides Paraguay and Venezuela.

¹¹ For a comparison of these countries see Dodson and Jackson (2003) who highlight accountability problems in both countries.

¹² Table 2 includes each country’s overall rank and the details for most of the components that are related to the operation of the state. It omits information on minimum capital requirements for formally registering a business, labor and credit regulations, investors’ protections and the costs of closing a business. The data on all the sections listed in the table also include information on the number of transactions. I omit these because they are closely associated with the time and money costs of compliance. For the complete data set see World Bank and International Finance Corporation (2006).

threats of crime and violence, the level of domestic demand, the costs of inputs, and transportation costs of exports or imports.

Table 2 compares the continental Latin American countries that have a French legal heritage with each other and with France, Spain, Portugal, and the United States. Overall, the lowest ranked countries beginning with the worst first are: Venezuela, Brazil, Honduras, Bolivia, Guatemala, and Ecuador. There is a large gap between those countries and the next group. Only Chile is superior to the European benchmarks overall. The table includes those components of the index most closely linked to the operation of the public administration or the courts. In each column, the three worst Latin American countries are highlighted. If any of the benchmark countries is in the range of the three bottom Latin American countries, they are also highlighted. This table can be used as a diagnostic tool at the country level. Presumably, if a country ranks poorly on these measures, one should expect both that economic activity is hampered and that businesses try to get around the formal rules through bribes, family or political connections, or avoidance—using such techniques as operating off the books, underpaying taxes, smuggling across borders, or enlisting organized crime as contract enforcers.

Legal processes that are costly in terms of *either* time *or* money are pressure points. If both are high, as with taxation in Brazil or licensing in Guatemala, the problem is especially serious. Some sectors in some countries seem to be in crisis. Thus the courts in Guatemala appears to be very dysfunctional for contract disputes, and starting a formal business in Bolivia, El Salvador, and Paraguay looks very expensive relative to each country's wealth. A similar result obtains for licensing, and the large time cost, at least relative to the United States, suggests that many Latin American counties have excessive requirements.

The Doing Business project calculates set-up and licensing costs as a fraction of each country's GDP per capita, but businesses with international options might also be interested in the absolute costs, not normalized by per capita income. Thus, table 2 also reports the absolute costs in US dollars. On that measure, Brazil is the cheapest place to establish a business in monetary terms although it imposes large time costs. Colombia and Chile are close behind, and out of pocket costs are lower in most of Latin America than in Spain and Portugal. El Salvador and Paraguay, however, continue to stand out as especially costly along with Uruguay, a relatively prosperous country. Licensing costs remain highest in Colombia and Guatemala but they are now joined by relatively prosperous Venezuela. Notice, however, that France and Portugal impose licensing costs that exceed all but those in Venezuela.

[Table 2]

Tables 1 and 2 do not always paint a consistent picture. For example, in Table 2 Guatemala appears to have a dysfunctional business licensing system and a judiciary with long delays, but it ranks quite well on some measures in Table 1 (for example, rule of law). Nevertheless, its high level of corruption may be related to efforts to circumvent the difficulties highlighted in Table 2.

The tables indicate that policy responses need to be tied to the details of each country's situation. At the extremes, the situation is clear. In very weak polities, state failure is so pronounced that the government cannot carry out pro-growth policies. When the state is competent, macroeconomic policies can be effective, and citizens support high taxes because their funds are used effectively to provide public services. But most

countries in Latin America fall in the middle range, and here the connection is complex. Countries with similar rankings on the most widely used governance and corruption indices may have quite different business climates because costly legal requirements and corruption are concentrated in different sectors. In addition, indices based on the perceptions of business investors and legal professionals may miss the problems experienced by ordinary people. Furthermore, if growth rates vary widely across a country's sub-regions or across sectors, some may benefit from reform while others lose or, at least, receive a smaller share of the gains. Given the already high levels of inequality in most countries in the region, this is a particularly important consideration.¹³

Within individual countries some institutions function well while others are deeply dysfunctional. Table 2 provides some evidence on this for government actions that affect business, but the point is more general. Within an individual country, health care may be effectively provided to the poor, but primary education may be of low quality. Judicial processes may be speedy and effective, but the police may be corrupt. Even for countries in the bottom half in terms of overall government functioning, there are pockets of high performance (Kaufmann, Mastruzzi and Zaveleta 2003), and it is important for reformers to identify and strengthen the good performers, as well as to use these examples to provide models for other less well functioning institutions.

The remainder of this section distinguishes between problems that arise in administering public programs in the executive branch and problems in the operation of the judiciary and law enforcement. These two aspects of government complement each other. Although some court disputes involve purely private controversies under contract and tort law, many arise from governments' efforts to hold the private sector to account or from efforts by private individuals and organizations to hold government to account. If the public administration functions poorly, especially in areas of law enforcement or inspections, the public can break the law in ways that never reach court. If both program administration and the courts are ineffective or corrupt, those who complain about maladministration will have no recourse.

I.A. Public Administration

A strong and competent public sector is the backbone of programmatic reform. Cross-country research supports the view that a well-functioning bureaucracy contributes to economic growth (Evans and Rauch 1999, 750-753). Furthermore, few of the proposed solutions to the other Copenhagen Consensus challenges will be possible unless the state is capable of administering complex public programs. Figure 4 is a measure of the quality of the public administration compiled by researchers at the Inter-American Development Bank (IDB) (Lora 2007a, based on Echabarría and Cortázar 2007). The chart reflects recent reform efforts in Brazil and Chile as well as Costa Rica's tradition of competent public administration.¹⁴ It also indicates that several countries, particularly in Central America, have very poorly operating public sectors, at least as measured by the IDB.

¹³ De Ferranti et al. (2004) document the high levels of inequality in the region and discuss its historical roots and political consequences. You and Khagram (2005) show how inequality and corruption can reinforce each other as wealthy elites use corrupt inducements to hold back redistributive pressures in unequal societies.

¹⁴ Earlier work by Evan and Rauch (1999), based on data from 1970-1990 and using a different methodology, showed that Brazil and Chile were in the middle of the countries they studied in terms of merit-based recruitment and the quality of public sector careers.

[Figure 4]

In discussing the public administration, I take as given a political process that generates a set of policy goals and translates them into laws. Although many statutes and rules can be criticized on substantive grounds, I leave such critiques to the other challenge papers and, instead, concentrate on government failures that can undermine even the most socially beneficial programs. A scholar seeking to explain why certain programs exist and why they operate poorly would need to analyze the underlying political coalitions and their ways of wielding power. I assume this political context as background and assess the way ineffective institutions impose costs. This means, of course, that some of the reforms I will later propose will not be politically feasible in some countries. My goal is not to suggest ways to reform politics but, instead, to illustrate that failure to reform the state is costly for ordinary people and for economic progress.¹⁵ Recognizing that states must impose costs on citizens and businesses in order to provide valuable goods and services, the problem for reformers is not to dismantle government but to locate waste and inefficiency and to limit their impact without undermining state functioning.

There are several interlocking ways in which the public administration can perform poorly. The sources of failure are: the lack of professionalism in the civil service; vague, complex and confusing legal rules; poor management of government finances; poor distribution of tasks across levels of government; a lack of transparency in government processes, and the difficulty of holding officials to account for their actions. Weaknesses in any or all of these dimensions create incentives for corruption and other forms of self-dealing and capture and for simple laziness and incompetence.¹⁶

One key to the functioning of the modern bureaucratic state is the separation of roles. Government officials do not own their offices and must distinguish between actions appropriate to their roles as public agents and their roles as family members and friends. One way to facilitate such role division is specialized training that separates decision-making procedures inside government from one's day-to-day life outside it. Thus, officials may use cost-benefit analysis to make choices or refer to an agency manual for guidance but use quite other criteria in their free time. Internal bureaucratic rules forbid favoring friends and family or taking gifts in return for favors, but such practices are common outside government. The indoctrination of professional norms and technical expertise are not sufficient.

Separation of roles will be impossible if official salaries are below private sector equivalents. Low pay is an inducement to moonlighting and corruption. Adequate pay is a necessary condition for competent bureaucratic performance, and rules must constrain conflicts of interest with other sources of wealth in the official's family. However, adequate pay is clearly not sufficient as documented by evidence of corrupt and self-serving officials at the highest government levels.

Second, even if the civil service is exemplary, the underlying legal structure may be either vaguely defined or overly complex. Resources of money, time, or expertise may be scarce relative to the tasks assigned to officials. Then temptations to corruption, capture, and shirking will be high. Bribes are a short-cut around such laws; capture favors those with political influence, and shirking reflects officials' hopelessness in the face of a

¹⁵ On the connection between democracy, governance and economic growth see Rivera-Batiz (2002)

¹⁶ On corruption see Rose-Ackerman 1999, 2004b.

chaotic legal reality. Accepting bribes or favoring the powerful may even be seen as a reasonable way to carry out an otherwise impossible set of tasks. If a weak civil service combines with a poor legal framework, officials face the temptation to create additional arbitrary rules and regulations and use them to extort payoffs or justify inaction.

Third, if the government has no unified budget and does not audit and track spending either inside the bureaucracy or through an independent controller, room is opened up for inefficiency caused by self-dealing or laziness. If officials need not account well for their spending, some will be tempted to keep a portion of their budgets for themselves or to spend it on useless official perks. Of course, a professional civil service can help ameliorate this problem, but when the temptation is high, a government should not rely on prior training and moral norms as the only defense. A self-selection mechanism may filter those likely to succumb to temptation into the civil service. Further, key positions in the bureaucracy may be filled mostly by those with close links to powerful private interests—be they legitimate economic interests, or, in truly pathological cases, organized crime groups.

Fourth, tasks need to be allocated to levels of government or to levels of the hierarchy within a unified government. Too much decentralization risks capture by local elites who benefit themselves and impose costs both on neighboring governments and on those higher up. Too much centralization can lead to a frozen, rigid hierarchy that poorly reflects diverse local conditions. Cross-country work is inconclusive on the issue of decentralization although several studies conclude that federalism is associated with corruption. I do not take on the complexities of this issue here, but instead, concentrate on one aspect: grassroots, directly democratic participation in policymaking.

Fifth and sixth, government operation needs to facilitate monitoring by citizens, watchdog groups, the media, and opposition political parties. If government does not inform the public about what it is doing and does not provide a way for people to lodge complaints, officials can operate with impunity subject only to oversight by their superiors who may collude in their malfeasance, shirking, or capture by narrow groups. People need to be able to find out what government is doing through both published documents and freedom-of-information requests for unpublished material. However, information is of no value if it cannot be used to hold governments to account. This implies both that private groups such as nongovernmental organizations or independent media can organize and that the state has a means for taking and responding to complaints. An active political opposition with real electoral prospects is valuable but is not sufficient. In addition, other routes for intervention are needed, such as an Ombudsman, public hearings for the making of rules, and so forth. These provisions for public input and oversight can constrain even a weak civil service charged with enforcing vague and complex laws, but they will have only a limited impact in such cases. Oversight can be most effective when the other elements of a well-working administrative system are in place. They cannot be expected to cure systemic problems but can help prevent an adequate system from collapsing into corruption, capture, and sleeping on the job.

Finally, one needs to acknowledge the particularly serious problems that arise when corruption or capture reaches the top of the bureaucratic hierarchy to include senior civil servants or political appointees—bringing the state to the edge of outright failure and undermining the economy. In some cases, a branch of the public sector may be organized

as a bribe-generating machine. For example, top police officials may organize large scale corrupt systems in collaboration with organized crime groups, who are given a de facto monopoly on illicit activities. Policing is probably the most dramatic example, but tax collection agencies and regulatory inspectorates can also degenerate into corrupt systems where high-level officials manage and share in the gains of their inferiors. In other situations, governments engage in projects that have a significant effect on the wealth of domestic and foreign businesses. High-level politicians can then use their influence to collect kickbacks from private firms. The relative power of government officials and private interests may, in practice, be difficult to sort out. The extremes are kleptocracy, on the one hand, and state capture by powerful private interests, on the other (Johnston 2006).

Public administration reform needs to link the corruption, waste, and inefficiency observed in practice with the underlying economic and political incentives that make them possible. Criminal prosecutions and exhortations to observe high moral standards in both the public and private sector are all very well, but they cannot be the only responses to problems that are fundamentally structural.

1.B The Judiciary and Law Enforcement

If a state operates under “the rule of law”, statutory and constitutional provisions constrain both private actors and public officials. There are two linked issues here. First, given any set of legal rules, how do they affect the behavior of public and private actors? No one expects one hundred percent compliance with any legal rule, but in well-functioning systems laws have marginal effects on behavior. Second, are the substantive laws themselves appropriate to further reform goals? Here, of course, there will be debate about what the laws ought to require. A system with honest and competent courts and police forces that enforce repressive laws is operating under “the rule of law” as defined by that country’s rules but may be deeply dysfunctional with respect to goals such as the promotion of individual freedom, the encouragement of economic growth, or the alleviation of poverty.¹⁷ Recognizing the importance of this second issue, this section, nevertheless, concentrates on the first question.

A necessary condition for the establishment of the “rule of law” is an independent and competent judicial system. In cross-country statistical work the independence of the judiciary is associated with higher levels of political and economic freedom, stronger economic growth, and more developed credit markets.¹⁸ Other work shows that organized crime levels are lower in countries with independent judiciaries, holding other factors constant.¹⁹ Some complementary evidence comes from country-level studies. Thus, in Ecuador a survey found that judicial uncertainty and delays in contract enforcement deterred investment (Messick 1999: 121). Another study based on in-depth interviews of Ecuadorian entrepreneurs suggested that investment would go up 10 percent if the

¹⁷ On Chile under Pinochet see Barros (2002). Venezuela’s low rank on the “rule of law” column in table 1 is determined by Freedom House and presumably represents that group’s view of the substantive law. It seems unlikely that the score represents especially severe problems with street crime.

¹⁸ La Porta, Lopez-de-Silanes, Pop-Eleches and Shleifer (2004); Dam (2006), pp. 93-94 and sources cited therein.

¹⁹ Buscaglia and van Dijk (2003), p. 13

judiciary were on a par with those in advanced economies (Messick 1999: 121 citing Castelar Pinheiro 1998). The judiciary can both constrain the state and structure private interactions; hence, corrupt and incompetent courts may be especially damaging both to the consolidation of democratic regimes and to the promotion of the free market economy.

Unfortunately, in most of Latin America between 20 and 40 percent of those surveyed by Latinobarometer expressed “no confidence” in the judiciary (Figure 5). These responses are suspect, however, because they include many people with no experience with the courts. To deal with this problem, a recent household survey in Peru distinguished between those who had and who had not interacted with particular types of officials. It revealed that the judiciary was the most corrupt institution. The incidence of bribery was high, and forty-two percent of reported bribe revenues were paid to the judiciary, even though it represented only two percent of citizen interactions (Hunt 2006).

[Figure 5]

Another subjective measure of judicial independence from the World Economic Forum (WEF) shown in figure 6 provides a different ranking (Sousa 2007). The judiciaries of Uruguay, Costa Rica and Chile, which rank highly according to the WEF, are low on public confidence in the Latinobarometer. The disjunction may represent higher expectations in those countries, indicate that independence is not all that matters, or represent attitudes not informed by experience with the system. In any case, outside of those ranked at the top by the IDB, most of the region appears to need judicial reform of some sort.

[Figure 6]

Even if the judiciary functions well, corrupt police forces and prosecutors can cement patterns of illegality. The police can impose costs and coerce payoffs more effectively than other public officials, so it is not surprising that payoffs are frequent. In Peru it was the second most corrupt institution. Although the individual payoffs were not large, 37 percent of those who had an interaction reported paying a bribe, compared with 17 percent for the judiciary and under five percent for most other agencies (Hunt 2006). Public sector reform should not ignore the police, prosecutors, and other aspects of law enforcement, but I leave those issues to the challenge paper on the control of crime and violence recognizing, of course, that the police play multiple roles.

Overall the judicial system includes not just the trial but also preliminary stages of both the civil and the criminal process and the enforcement of judgments. In the private law the service of process starts a legal challenge, and if one wins at trial, the judgment must be enforced. In cases brought by the state against private parties or by private individuals against the state, there are investigations *ex ante* and enforcement *ex post*.

To help one understand the operation of the private litigation process, the Lex Mundi project, supported by the World Bank, chose two routine legal problems facing business: evicting a tenant for nonpayment of rent and collecting on a bounced check (Djankov, et al. 2003). Unfortunately, the project did not deal with judicial processes where a state agency was a party. Law firms in each country provided data on the exact procedures used by litigants and courts. The researchers then constructed an index of legal formalism and showed that it was associated with higher expectations of judicial delay, less consistency, honesty and fairness in the courts; and more corruption. Because higher levels of formalism are correlated with legal systems based on European civil law

models, the authors conclude that the transplanted system is partly to blame. One need not accept that controversial conclusion,²⁰ however, to extract some valuable lessons from this research.

All of the countries in continental Latin America, with the exception of Belize and Guyana, have private law systems derived from French models, and neither of these former British colonies stands out as a model of the rule of law. Furthermore, legal origin is not a policy variable in Latin America in the twenty-first century. Thus, it seems more fruitful to concentrate on cross-country variations in the operation of the legal system.

One symptom of problems in the litigation system is delay. For example, the household survey in Peru revealed extensive delays in the court system due, in part, to the poor training of judges.²¹ Other research shows that the percent of filed cases adjudicated in one year was 58 percent in Brazil and 42 percent in Bolivia in the mid-nineties. Some countries had hundreds of thousands of pending cases (Dakolias 1996, xi-xiii). The Lex Mundi project provides data on the expected duration of legal processes derived from surveys of lawyers. There are estimates of time for service of process, duration of trials, and the time it takes to enforce a judgment. One should expect that in the countries with long delays in the formal processes businesses will find other ways to solve problems. These might be modifications in business practices, such as requiring payment before delivery of goods and only doing business with friends and family; corruption of the judicial system, or resort to informal methods of dispute resolution, perhaps in the extreme calling on organized crime as an enforcer.

Table 3 shows the wide variation in expected delays across the region using the Lex Mundi data and compares the delays to the estimates for France, Portugal and Spain because those represent the European countries that are the source of most private law. Cells marked in light gray are the three worst cases for Latin America in each category plus any of the European countries comparable to these worst cases. Cells marked in dark gray are those that perform at least as well as the best of the European countries. We can see that a number of countries reach that level, at least along some dimensions. Of course, describing speedy processes as better than slow processes implies a value judgment. Clearly, procedures, especially trials, can be too fast. However, the model cases were constructed to leave little room for judgment. The courts are simply enforcement mechanisms. Hence, one should be careful about generalizing to more complex legal disputes. To see this, compare the columns on contract enforcement in Table 2 with the data on the judicial process in Table 3. For example, Guatemala where contract disputes take over three years to resolve seems to rank less poorly for the routine legal problems in Table 3. Obviously, businesses are finding ways to get around the delays of the formal system.

[Table 3]

Those interested in the reform of legal processes in a particular country might consult Table 3 as a starting point. Columbia and Uruguay appear to need to improve the

²⁰ Thus, with respect to the bounced check hypothetical, paper checks are much less common in civil law countries than in the United States. Rather bank drafts are the most familiar ways of paying bills including automatic debiting of accounts. As the Internet spreads into more households and postage rates increase, such methods of payment are becoming more common in the US. For a critique of work comparing civil and common law systems in the aggregate see Dam (2006) and Rose-Ackerman (2007).

²¹ Hunt, 2006.

service of process. Delays in scheduling and completing trials seem a problem in Argentina, Bolivia, Colombia, Ecuador, and Venezuela. The enforcement of judgments is much delayed in Argentina, Colombia, Costa Rica, Paraguay, Peru, and Venezuela. The table also contains some regional role models that do well, at least for one of the hypothetical disputes included in the study. Overall, El Salvador seems a model of speed especially for the check collection case; it ranks better than the US on speed. However, a recent case study highlights problems with the courts in El Salvador in spite of an influx of resources and international technical assistance (Dodson and Jackson 2003). The difficulties concern the persistence of political influence, an issue that is unlikely to affect the routine use of the courts to resolve private disputes.²²

The limits of the Lex Mundi data suggest the value of gathering more direct experience on the operation of courts. A World Bank project headed by Lynn Hammergren attempted to do just that in Argentina and Mexico. The group studied a random sample of cases in first instance courts obtaining a detailed view of the operation of this part of the legal system. Consistent with Table 3, they confirmed that enforcement of judgments needs attention. Judges appeared unbiased and delays were not as long as reported in the Doing Business data for contracts cases but were comparable to those in Table 3 (223 days for debt collection in Mexico and 300 for a broader mixture of cases in Argentina). Many cases were never resolved in court, however, so it is unclear if they were settled informally or whether they should be counted into time-to-resolution data. In Mexico 81 percent were abandoned (World Bank 2002). This figure suggests that going to court can be a thankless exercise and that many disputes probably never reach court.

Problems with the judiciary mean that people and businesses in Latin America try to avoid using the courts to resolve disputes.²³ Non-judicial alternative dispute resolution (ADR) processes, such as arbitration and mediation, will in some cases be a viable or even superior alternative, but they cannot entirely substitute for weak or venal courts.²⁴ Even the best of such systems, however, needs the courts as a backstop in case they misfire. Thus, judicial reform ought to have priority in most countries in the region. At the very least, there is a crisis of confidence, and, at worst, that lack of confidence is well deserved.

II. Solutions

This section outlines possible solutions. It begins in part A with reform of the public administration to increase its competence and efficiency. However, structural reforms of the bureaucracy are unlikely to be sufficient. Without oversight, the bureaucracy may simply act to enrich itself at the expense of the state.²⁵ Thus, part B discusses oversight and accountability inside and outside the government. Next part C separately considers reform of the justice system with its dual roles as an institution to resolve private disputes

²² Figure 5 indicates that over 25% had “no confidence” in the judiciary, and Dodson and Jackson’s (2003) own survey found that 47.1 percent described the judiciary as “corrupt.” Most survey respondents, however, had no direct experience with the judicial system.

²³ Buscaglia (1995: 8–13), Dakolias (1996).

²⁴ Buscaglia and Stephen (2005) demonstrate the value of alternative dispute resolution mechanisms especially for the resolution of land disputes involving low income people.

²⁵ Tommasi and Spiller (2007) claim that this is the case in Argentina, which has experienced high presidential turnover. Nane (2007) has made a similar argument with respect to Nigeria.

and as a check on the rest of the state. Based on the material in this section, section III, which concludes the paper, isolates some specific reforms from the broad menu outlined here and sketches their costs and benefits.

II.A Public Administration

Cross-country research suggests the value of reforms that streamline and simplify regulations and that encourage competition.²⁶ Unfortunately, however, such reforms may be difficult to implement if a country is caught in a vicious cycle. Thus, Mariano Tommasi and Pablo Spiller (2007, chapter 6) worry that in Argentina the country's "poor bureaucracy worsens the policymaking environment, and [its] poor policymaking environment is unlikely to create a quality bureaucracy." Increases in civil service salaries are not a sufficient policy response; structural reforms are also needed. Countries, with more independent and professional civil servants tend to have higher quality bureaucracies and less corruption. High level corruption is worse if the civil service is not insulated from political pressure and interference.²⁷

One way to improve the administration of public programs is to go to the root and change the way goods and services are provided and programs managed. This is a large topic, but I discuss five important options for Latin America: the reform of customs and tax collection, procurement reform, reform of the interface between business and government, privatization, and contracting out. This part concludes with a more generic issue: reform of the civil service.

II.A.1 Revenue Collection

Latin American governments vary in the level of taxes they collect from their citizens. For some this reflects the importance of natural resource rents in revenues, but in most cases it also signals the importance of tax evasion. The countries fall into three groups according to data collected by Gómez Sabaini (2006). At the top are those that collected over 20% of GDP in taxes during the period 1995-2004—Brazil, Uruguay, and Argentina. At the bottom, collecting under 13% are, in ascending order, Haiti, Guatemala, Venezuela, Ecuador, Mexico and Paraguay—a mixture of resource rich and weak states. Furthermore, even when governments do collect taxes, they may be imposed in ways that are either highly distortionary or so full of exemptions that most taxpayers can avoid high tax bills.²⁸ A government that has difficulty collecting taxes will be severely crippled. If tax evasion, achieved through underreporting or payoffs, is high, other proposals to reform the public administration are likely to founder.

Since 1990, every country in the region has implemented reforms in the area of taxation (Stein et al. 2005, 186). Most of these reforms consist of a mixture of simplified tax schedules that are affordable to taxpayers and importers, automation of operations, better auditing, and improvements in the training, oversight and incentives of officials. These reforms can have a real impact but are not always easy to implement successfully.

²⁶ For example, one study of the business environment in Asia estimated that if Calcutta had the investment climate of Shanghai, the share of firms exporting would nearly double from 24 percent to 47 percent and the share of foreign-invested firms would increase from 2.5 percent to 3.9 percent (Dollar, Hallward-Driemeier and Mengistae 2006).

²⁷ Buscaglia and van Dijk, 2003, p. 18.

²⁸ Stein et al.(205, 186) single out Colombia as a case of highly inefficient and distortionary taxes and Costa Rica and Paraguay as examples of tax systems that are full of exemption.

In Bolivia, where these reforms were combined with overall civil service reforms, corruption and smuggling declined in the customs service, and the proportion of the VAT lost went from 42% in 2001 to 29% in 2004 after reforms. Unfortunately, however, smuggling appears to be on the rise (Zuleta, Leyton and Ivanovic 2007; Escobar 2004). Gómez Sabaini (2006) reports that tax collections as a share of GDP in Bolivia rose from 8.2% in 1990 to 20.5% in 2000 to 23.0% in 2004.²⁹

When Peru reformed customs collection, tariff revenues went from 23% of revenues in 1990 to 35% in 1996 and increased four-fold in dollar terms despite reductions in duties (OECD 2003: 9). Peru also reduced total staff from 4700 in 1990 to 2540 in 2002 and increased the share of professionals from 2.5 percent to 60 percent (Goorman 2004). An additional benefit from streamlined customs procedures is the time saved by importers and exporters. The average clearance times fell from 2 days to 2 hours, and in Costa Rica, under a similar reform, times fell from 6 days to 12 minutes (OECD 2003, 22). Overall tax collections as a share of GDP in Peru were 11.6% in 1990 rising to 15.4% in 1995 before falling back to 14.9% in 2004 (Gómez Sabaini 2006).

A comparison of reforms in Chile and Argentina designed to increase compliance with the VAT shows how similar policies can have different results (Bergman 2003). The average VAT compliance coefficient is 77.6% in Chile and 54.3% in Argentina. After examining and rejecting other explanations, the author concludes that the difference can be explained by the greater credibility of Chile's reform because the tax agency was stable and had broad autonomy. Hence it was better able to induce voluntary compliance because of its more credible deterrence capacity. However, Chile, with considerable revenue from the copper industry, may simply find tax administration easier because it does not have to tax its citizens as highly. Taxes as a share of GDP were 26.3% in 2004 in Argentina and only 17.3% in Chile (Gómez-Sabaini 2006).

These results are consistent with one specific reform that has received detailed study: the creation of a semi-autonomous revenue authority. Although these come in several variants, Robert Taliencio Jr.'s (2004) study of such authorities in three African and three Latin American countries is broadly favorable. He studied Peru, Venezuela and Mexico (although Mexico's revenue authority was too new at the time of his study in 1998-1999 to permit much evaluation).³⁰ Table 4 summarizes the main features of each country's authority. The reforms appear to be very cost-effective. Though some countries had better experiences than others, revenue collection improved. In Peru total tax revenues increased from 8.4% of GDP in 1991 to 12.3% in 1998 at the same time as many tax rates were reduced.³¹ The number of registered taxpayers increased from 895,000 in 1993 to 1,766,000 in 1999. Revenue also increased in Venezuela although this was partly due to new taxes.³² Mexico had little increase between 1996 and 1997, but its reform was the least far reaching. Another measure of the effectiveness of revenue authorities is the ratio between GDP generated by the VAT to the VAT rate. Here Peru is the most productive at 0.32 followed by Mexico 0.26 but the accuracy of this data for

²⁹ See also Lora 2007b.

³⁰ For a complementary study of the politics of fiscal reform in Ecuador see Mejía et al. (2006).

³¹ Including Social Security contributions, the tax share increased from 11.6% in 1990 to 14.0% in 2000. However, the share fell between 1995 and 2000 from a high of 15.4% (Gómez Sabaini 2006).

³² In Venezuela taxes as a share of GDP went from 4.4% in 1990 to 8.9% in 1995 and 11.0% in 2004. The low shares obviously reflect the importance of oil revenues to the state.

cross-country comparisons depends on the nature of the tax base which is much narrower in Mexico than in Peru.

[Table 4]

Peru's reform was the most far reaching and involved an up-front cost of retrenchment in the form of severance payments and the cost of hiring new employees on the basis of merit. Mexico, as noted above, did not have a civil service when the reforms were introduced and did not create a special career tract for the revenue authority. The same was true for Venezuela. Survey evidence confirmed that the public in Peru found tax officials better qualified relative than other officials compared to Venezuela or Mexico (85% versus 75% and 52% respectively). In Peru 81% said that agency employees were substantially or much more qualified than before the reform compared with 61% in Venezuela and 16% in Mexico. They were also perceived as less corrupt than before the reform by 85% of Peruvians and only 26% and 21% of those in Venezuela and Mexico. Talierco points to a range of factors that contributed to increased revenue collection for a modest administrative cost. It is not possible to measure the marginal costs of the reform, but they appear low or even negative. Overall, the cost of revenue collection as a share of revenues collected ranges from 1.7% to 2% for the Latin American cases. He concludes that the best performer was Peru whose agency was the most independent from the executive and whose leaders were most able to motivate employees by creating a professional organizational culture. Talierco does, however, recognize the need for accountability and recommends the Mexican model under which the authority reports to the legislature.

Unfortunately, when Talierco checked to see if the reforms had been sustained over time, he found a disappointing pattern of backsliding in all the cases he studied (Talierco 2001, see also Geddes 1994).³³ He argues that the political coalition in favor of independent revenue authorities is likely to be fragile, and demonstrates that this is so. Officials in the Ministry of Finance oppose revenue authorities especially if the authorities seem competent and professional and, as a consequence, seek to be involved in tax policy, not just tax collection. Furthermore, taxpayers may also object. However, at the time of his study, the one bright spot was Peru where the organized business community supported the independent revenue authority because it was able to collect taxes more evenly from all business and because it promised certainty and limited official extortion.

II.A.2 Procurement and Business Regulation

Outside of the revenue authorities, private businesses interact with the government in two main ways: by selling it goods and services and by complying with or evading its regulations. Each can be a source of waste and corruption or reflect the simple incompetence of public officials and the lack of public regardness in the business world.

Table 2 summarized cross country differences in the costs of government regulations and practices for business, but it ignores the possible social benefits of the rules and regulations. If one supposes that those benefits are fairly constant across the

³³ Stein et al (2005, 186, 192) also found that countries, such as Colombia, are forced to pass reform after reform because each gets watered down in the approval process.

hemisphere, there appears to be room for improvement in most of Latin America. Jansson and Chalmers (2001) argue the case for reform. They claim that costly regulations drive firms off the books into the informal sector thus losing the benefits of formal legal status. These benefits include better access to financing, access to government support programs, ability to sign legally enforceable contracts, and lack of fear of being caught and punished for one's informal status. Reducing the costs of operating on the books will, they argue, stimulate economic growth. Their goal is not to eliminate informality but to shift the tradeoff so more firms choose to register.

Even if sufficient funds are collected, government will be ineffective if procurement expenses are padded with corruption and waste. In that regard, internet procurement systems that limit corrupt opportunities appear promising. This is being tried in Latin American countries such as Colombia and Mexico. In Mexico the government estimated that every dollar invested in an internet procurement system earned a social return of 4 dollars.³⁴ Of course, not all government purchases are so standardized that they can be reduced to an impersonal form, but the benefits of such systems suggest that governments should also reexamine what they purchase to see if off-the-shelf products used in the private sector can substitute for some specially made goods and services. The government would go "shopping" rather than have to use specially designed procurement systems (Rose-Ackerman 1999, 59-68).

II.A.3 Privatization and Contracting-Out

Difficulties with tax collection and procurement can be limited if the state simply reduces its reach. Although the government obviously cannot stop collecting taxes,³⁵ other problems with the public administration can be resolved by ending state involvement in the provision of one or another service. In particular, Latin American countries were active in the nineties in privatizing public utilities such as water, electricity and telecoms with some going further to contract for private toll roads and other services (Chong and Benavides 2007).

A recent study documents the overall favorable impact of privatization in economic terms (Chong and López-de-Silanes 2003), but the Latin American experience with the privatization of public utilities has been mixed. For example, in telecommunications privatization has eliminated unmet demand by raising prices so that many households still lack service.³⁶ Barrera-Osorio and Olivera (2007) find that privatization of water supply in Columbia was beneficial overall especially for town and city dwellers; however, the price rises that accompanied higher quality had a strongly negative effect on poor rural households' access to water. Some transfers to private ownership were marred by corruption and patronage and imposed costs on ordinary

³⁴ Robert Kossick, "Best Practice Profile: CompraNet," May 10, 2004 http://www.undp.org/surf-panama/egov/docs/programme_activities/bpractices/e-procurement_in_mexico-compranet.pdf. (accessed September 13, 2006).

³⁵ Some have recommended the revival of "tax farming" systems such as those practiced by European monarchs in the past. Under such a system the state sells the right to collect revenues to private individuals. The state receives a guaranteed payment and the "tax farmer" has an incentive to collect as much as possible from the taxpayers. The system creates obvious opportunities for abuse but has occasionally worked well when effective complaint and monitoring systems are in place and tax liabilities are relatively clear. See Rose-Ackerman (1999, 86) and sources cited therein.

³⁶ Hoffmann (2007, 10) quoting a study by the International Telecommunications Union (2000, 3).

citizens. The familiar tradeoff between maximizing the revenue earned by the government from the sale versus creating a competitive markets without monopoly profits was evident in many programs and was often resolved in favor giving private firms monopoly power (Hoffmann 2007, Manzetti 1999). The privatization of electric power in Brazil was designed to clean up the central government's core budget in a way that ultimately transferred liabilities to an off-budget state development bank (Prado 2007). The most successful cases involved transparent and homogeneous procedures, speed, and limited restructuring prior to privatization (Chong and Lopez-de-Silenes 2003).

At present, Latin America is experiencing something of a backlash against privatization to for-profit firms (Bonnet et al. 2006, Chong and Benavides 2007, 265-267), a trend that highlights the importance of public sector reform. Privatization efforts are often highly politically salient and unpopular. For example, in Costa Rica efforts to privatize telecommunications and electricity beginning in the late 1980's generated widespread opposition and were never carried out.³⁷ Furthermore, once privatized as monopoly providers, the industry needs to be regulated, and Latin American experience there has also been mixed (see, e.g. Levy and Spiller 1996 on telecommunications, and Chong and López-de Silenes 2003). The mixed experience with privatization suggests that it should not be priority going forward. Rather efforts should be made to consolidate the benefits of past efforts by improving regulatory quality and increasing the benefits flowing to the poor.

Privatization is also having an impact on public service delivery as Latin American governments sign contracts with private firms. Here the government still funds the program and sets eligibility criteria, but does not provide the service itself. A promising option is to use not-for-profit firms (NGOs) as service providers. Benjamin Loevinsohn and April Harding (2005) review ten evaluations of contracting out in the delivery of primary health and nutrition services in developing countries. Two cases were from Latin American—Bolivia and Guatemala. Compared with government provision, both showed positive results from management contracts as measured by coverage of the program and in rural Guatemala benefits flowed from service delivery contracts as well. Even in Guatemala, where the researchers faulted the government's management of the contract, implementation still succeeded and over time the program expanded to cover more than one quarter of the country. No cost data were available for Bolivia but in Guatemala the cost averaged \$6.25 per head with 3.4 million covered. The authors do point to factors that limit the generality of the results. Of particular importance is the nature of the services provided—primary care and nutrition services. These are services where outputs are quite easy to monitor so that the contractors can be held to account not only by public officials but by the beneficiaries themselves. The authors conclude that contracting out should be considered but that rigorous evaluation should go along with experiments. The results also suggest the value of combining contracting out with some type of bottom up public accountability as discussed below.

³⁷ Hoffmann (2007). Actually, a law did pass in 2000 but was withdrawn a few months later in the face of massive popular opposition and intervention by the courts. Ratification of DR-CAFTA, however, will put the issue back on the political agenda.

If privatization is not a quick fix and leads to organized political opposition, state ownership is likely to continue.³⁸ This political reality gives even more urgency to programs of internal state reform. Although the public corporations that operate state enterprises are frequently not formally part of the civil service system, the issues of personal training, motivation, and pay arise there as well. Vested interests will seek to block internal reform, but it may be more feasible than additional large scale privatizations in the current political environment in much of Latin America. Perhaps a combination of contracting out some activities to nonprofit/nongovernmental organizations, civil service reforms, and improved external monitoring can combine to produce favorable results.

II.A.4 Civil Service Reform

Most Latin American democracies need to strengthen the overall capacities of the civil service. According to Stein et al. (2005, 67), the region has traditionally had large but weak institutions, with little capacity to respond to the needs of citizens. Thus, it is crucial that these countries train the new generation in tools of policy analysis and program design and to set favorable civil service employment conditions so as to attract high quality applicants. Figure 4, based on IDB research carried out between 2002 and 2005, indicates the extent of the problems in the region in general terms. It combines three sub-indices that measure: (1) the strategic consistency of public administration with government priorities (2) the extent to which merit is a criterion for selection promotion and discharge, and (3) the functional capacity of the bureaucracy with respect to management systems.³⁹ The IDB data-gathering exercise was influenced by the New Public Management (NPM) literature with its emphasis on managing for results, but the sub-indices do not provide much additional nuance compared to the averages in figure 4 and have not been reproduced here (Echabarría and Cortázar 2007, 138-141). The top six performers are identical with some variation in order. These top performers (Brazil, Chile, Costa Rica, Uruguay, Argentina and Colombia) are followed by Mexico, Jamaica, Trinidad and Tobago, and Venezuela, with the rest clustered at low scores. A comparison with the earlier work by Evans and Rauch (1999; Rauch and Evans 2000) suggests that some countries, such as Brazil and Chile, have made important gains, but clearly, there is much room for improvement in the region, with some countries in a particularly weak condition on all three measures.

Rauch and Evans (2000) found that merit recruitment and promotion was the key to good performance.⁴⁰ In the 35 countries they studied salary levels played little role in performance, but presumably that was partly because merit recruitment can hardly succeed unless salaries are adequate. In a study using data from the 1990's, Panizza (2000) concluded that pay levels were not the primary weakness of the public administration in Latin America.⁴¹ Table 5 shows that most countries pay public sector workers more than private sector workers, in part, because of strong unions and the

³⁸ For a general discussion of corrupt opportunities in privatization processes and some suggestions for limiting them see Rose-Ackerman 1999, 35-38, 42-44.

³⁹ In addition, Stein et al. (2005, 67) stress the value of a stable professional bureaucracy. However, stability is not itself desirable if the existing system performs poorly/

⁴⁰ See also Stein et al.(2005, 68) who express a similar view.

⁴¹ Echebarría and Cortázar (2007, 134) citing Panizza (1999, 2000). His data are from the 1980s and 1990s.

difficulty of firing officials. Women especially benefited from government jobs because their options in the formal private sector were poor. This suggests that women face more discrimination in the private than in the public sectors and also reflects the large number of public sector jobs in teaching and health care. Both Uruguay and Mexico have recently promulgated civil service reform laws that seek to professionalize the civil service through more merit recruitment and promotion and a reduction in purely political appointments. The Mexican law was passed in 2003 and so is not reflected in the table. Uruguay's law dates from 1996, and the survey data are from 1981 to 1997 so its reforms are also not included (Panizza and Philip 2005). If the data in table 5 reflect current realities in the other countries, they suggest that most countries provide employment opportunities for women that dominate those available in the private sector and that men also do well. Panizza's data for formal sector workers confirm this pattern; although the differences are smaller, they remain significant in many of the countries surveyed. For men, the only countries where low pay seems to be a problem are Bolivia and the Dominican Republic. For women low pay is only a significant problem in Brazil, and that finding reverse when the sample is restricted to formal sector only---there the pay premium in the public sector was 0.24 (Panizza 2000, table A2).

[Table 5]

Thus, it seems that except for a few pockets of low pay, reform should concentrate on motivating and reorganizing the public administration not providing across the board pay raises. Brazil has been the most active reformers in the region. Although the data in figures 1, 2, and 3 and in tables 1 and 2 suggest continuing problems, studies of the reform suggest that they have had real benefits some of which have been sustained to the present. Although some public sector employees were recruited on a merit basis as early as 1937, it took the 1988 constitution to mandate a comprehensive federal civil service system and the Cardoso administration to obtain a further amendment and to implement the new program (Echebarría and Cortázar 2007, 127-128; Gaetani and Heredia 2002). The reform "tried to avoid the pitfalls of the Weberian civil service model and promoted greater flexibility, greater managerial autonomy, decentralization and results-based forms of administration and control" (Gaetani and Heredia 2002, 2). It also promoted: "(1) an alignment between public and private sector wages; (2) bonuses based on performance; (3) more flexible allocation of public personnel; and (4) the National School of Public Administration for training all types of public employees in all areas" (id., 15). Beginning in 1996 the share of new civil servants with a university degree jumped dramatically from 39.2% in 1995 to 63.6% in 1996, rising to 94.1% in 2001 (Gaetani and Heredia 2002, table 5, p. 6). However, there were few short-term benefits from the reform during Cardoso's first term. Rather the gains were in an improved system of human resource management and the strengthening of career paths that helped pave the way for more effective reforms during Cardoso's second term.

Chile has also implemented reforms based on management agreements and evaluation by results plus a system, established only in 2003, that created a merit-based system of selection for senior civil servants and a professional career path. The gradual introduction of reforms gave them staying power (Echebarría and Cortázar 2007, 128,

131-132).⁴² There is an ongoing debate about the appropriate model that should guide civil service reform—a Weberian model or the New Public Management. I do not attempt to adjudicate this debate here, partly because many of the mostly urgently needed reforms do not turn on this difference.⁴³ A more professional, merit-based civil service that is paid and trained well and rewarded for competence is the bedrock on which other reforms must be built and needs to be introduced more broadly in many Latin American countries.

Even before one considers which reforms are best, however, one must ask how such reforms can obtain political support, given the vested interests that benefit from the status quo. A study of successful legal change in other countries can help one identify when a window of opportunity exists (Rose-Ackerman 1999, 198-224). Echebarría and Cortázar (2007, 132) outline the conditions that made reform possible in Chile and to some extent in Brazil, while it failed in Peru. They stress the value of gradual reform as a way to avoid politicizing the process and to permit lessons to be learned from any initial missteps. Linking public administration reform to other issues such as economic policy can increase support. Panizza and Philip (2005)'s study of Uruguay and Mexico, in contrast, stress the importance of seizing, the perhaps fleeting, moment when conditions are favorable and of recognizing political constraints that will limit the range of reform. On the one hand, they point to the key role of ideas and of people willing to advocate for reform policies. For example, in Mexico a coalition of public policy intellectuals pushed for reform with support from international agencies and outside experts (id. 684-685). On the other hand, the authors emphasize the need for an alliance between policy entrepreneurs and economic interests that limits or obscures the costs imposed on potential losers (id. 671). In Mexico an opportunity was presented by the election of the first president from outside the traditional ruling party. Even though he, himself, was not a strong advocate for reform, reformers formed a broad coalition that included legislators from the old ruling party who had lost their base of patronage in the bureaucracy. In a bow to political realities, the reform was limited to the top of the federal bureaucracy and did not challenge either the powerful public sector unions or the newly important state and local governments (id.: 685). Similarly, in Uruguay many of the most important patronage jobs, such as appointments to the boards of public utilities, were not covered by the reform (id.: 678-683).

These compromises with political reality, however, should not obscure the impact of the reforms. In Uruguay, the number of public employees fell as did the number of operational units in the central government. The state established an evaluation system although its implementation may lack consistency (id., 676-677). Reform in Mexico is too new for evaluation, but it has sharply reduced the number of patronage positions in the central government from tens of thousands to a few hundred. The aim is to develop a career civil service although incumbents are given some priority if they receive training and favorable job evaluations (id.: 677).

⁴² Peru also attempted reform of a somewhat different sort in 1995-1997, but it was not implemented (Echebarría and Cortázar 2007, 128, 131-132)

⁴³ Compare Evans and Rauch (1999) who follow a Weberian model and study merit recruitment and professional career paths with Echebarría and Cortázar (2007) who stress these factors but also include a broader range of measures. Evans and Rauch (1999), however, mention other factors related to NPM, but they have not developed ways to measure them in their expert surveys (id. 752, note 9).

One way to convince doubters is to provide data on the value of reform. Unfortunately, the success of the New Public Management in improving service delivery and citizen satisfaction relative to more conventional bureaucratic models has not been rigorously tested in Latin America. The theory behind the NPM model is plausible, and it has apparently been successful in New Zealand where it has been most intensively implemented, but there is a need for research to study its benefits and costs as actually applied in middle income countries. In Brazil, hints that all is not well in practice come from the data in table 2 that suggest, at least for the business community, that the state continues to impose costly obstacles relative to its neighbors. Nevertheless, a few studies point the way in showing positive relations between the pay and the presumed status of government jobs and between measures of state performance and favorable economic outcomes.

II.B Oversight and Public Accountability

Internal reforms are not sufficient; oversight is also necessary. Accountable executive branch policymaking requires participation and oversight by a range of interested actors, but it also requires that the resulting policy be effective, transparent, and capable of assessment by the voters. The establishment of an accountable government, then, is a tricky balancing act. Public bodies must be responsive to the concerns of citizens and yet remain insulated from improper influence. They must be both competent experts and democratically responsible policymakers. There are two broad responses—government institutions charged with oversight and empowerment of citizens. Sometimes the two go together as when an ombudsman attempts to resolve citizen complaints and uses them as a guide to more wide-ranging inquiries.

Many Latin American governments have state-financed institutions of accountability that operate with various degrees of independence of the rest of government. Some report to the legislature; others can bring court cases. Appointments are more or less independent of the government in power. These are what Guillermo O'Donnell (1999) calls institutions of “horizontal accountability.” They perform important checking roles although as Erika Moreno, Brian F. Crisp and Matthew Soberg Shugart (2003) point out, their impact varies depending not only on their independence from those they monitor but also on whether or not they can impose sanctions.⁴⁴ The authors’ useful compilation categorizes each country’s high courts, attorneys general and prosecutors, human rights ombudsmen, and controllers general in terms of their methods of appointment and the ratio of their terms to the terms of the body that appoints them (Figure 7). Although they are unable to measure how effectiveness varies with independence, they argue, quite plausibly, that monitoring agencies cannot do their jobs well if they are dependent on the body that they must oversee. Independence is a necessary but not sufficient condition.

[Figure 7]

As Moreno, Crisp and Soberg point out, these ostensibly independent institutions are often dependent on other parts of the government and have a mixed record. This suggests the importance of providing more direct routes for citizens to act as a check on government. However, they can do this only if the government provides information on

⁴⁴ In fact, Moreno, Crisp, and Shugart (2003) argue that the term “horizontal accountability” is an oxymoron. To them accountability implies a degree of vertical authority to impose sanctions.

its actions and gives citizens a convenient means of lodging complaints that protects them against possible reprisals. Collective action problems limit the impact of aggrieved citizens, but if the costs are low enough, they may nevertheless band together to protest government action. The state should facilitate such organization, but in a way that avoids creating groups that are merely captives or puppets of powerful political forces. Furthermore, government officials must find it in their interest to respond to complaints from both individuals and groups. To assure accountable policymaking, the executive must make its policy processes open to outside scrutiny, and officials must be required to listen to the opinions and expert views of those outside the government.

The World Bank's surveys of public officials in Bolivia provide some statistical backing for the view that low corruption and high levels of transparency and "voice" are beneficial to the actual performance of government and help the poor (Kaufmann, Mastruzzi, and Zaveleta 2003). A study based on 1,200 interviews with public officials in many different national agencies and local governments demonstrated wide inter-agency and inter-government variation. The study found that the quality of public service delivery is negatively associated with corruption and positively with the external voice of users and with transparency. Bribery and corruption are higher in more politicized units of government and in those with lower transparency and less meritocracy. Transparency is affected positively by voice and negatively by corruption and politicization. Municipal governments perform worse than central government agencies on average but do sometimes provide better access for the poor. Measures of civil service management and individual ethical commitments had no independent impact although they may obviously be associated with some of the other data (*ibid.*: 383). Figure 8 illustrates one result. Higher levels of voice and accountability are associated with greater accessibility of the poor to public services (Kaufmann 2003: 24).

[Figure 8]

The judiciary and its relationship to prosecutors are, of course, one source of oversight. I defer discuss those institutions to II.C. Here I discuss public information and auditing, the media and public opinion, grassroots participation, and administrative law.

II.B.1 Public Information and Auditing

A precondition for citizen influence is information. Open government includes telling citizens what their government is doing by publishing consolidated budgets, data on tax collections, statutes and rules, and the proceedings of legislative bodies (Premchand 1993). Financial data should be audited and published by independent authorities such as the Government Accountability Office (GAO) in the United States or the Supreme Audit Offices in many Latin American countries.⁴⁵ These institutions are independent of the government agencies that they audit—a necessary condition for credibility. Latin American audit agencies vary in professionalism and independence. Carlos Santiso (2007) has evaluated the audit agencies in ten Latin American countries (Table 6). He

⁴⁵ The GAO recently changed its name from the General Accounting Office to the General Accountability Office to signal its broader mission. It monitors the federal executive branch and reports directly to Congress. It resolves contracting disputes, settles the accounts of the United States government, resolves claims of or against the United States, gathers information for Congress, and makes recommendations to it (Abikoff 1987: 1539–1562).

finds that all have weaknesses but that overall Brazil, Chile, and Colombia are best and Argentina and Ecuador are the worst.⁴⁶ He ranks them in terms of independence, credibility, timeliness, and enforcement. Although most agencies rank fairly well in terms of formal independence and enforcement powers, they do less well in measures related to actual performance—credibility and timeliness. Although the number of data points is too small to draw firm conclusions, there is a positive relationship between the effectiveness of external audit agencies in Latin America and the quality of fiscal governance defined by the efficiency of the bureaucracy, the control of corruption, and the strength of public institutions. They are less important as checks on the executive. Of course, these results may just show that some good things go together. One would have to do more detailed case study research to make any causal inferences. This has been done for Argentina, Brazil, Chile and Mexico in a way that provides much more nuance [Santiso (2007), for the first three and Ackerman (2007) for Mexico]. Even for audit institutions that rank relatively well in the Latin American region, the authors locate serious problems. Perhaps most interesting is Santiso's conclusion that Chile's *Contraloría General de la República* is *too* independent so that it is insulated from political accountability. Santiso claims that its oversight is excessively legalistic and procedural.

[Table 6]

Ferraz and Finan (2007) have carried out an interesting effort to measure the impact of audits on political success in Brazil. They benefited from a natural experiment under which the federal government randomly audited the accounts of municipal governments and revealed the results to citizens before elections. In an encouraging result for democrats, voters lowered their electoral support for mayors of municipalities with problematic accounts, especially if local radio stations exist to publicize the results. The study shows how the state can use technical expertise in auditing to enhance democratic accountability. Information that no citizen could uncover alone was, with the help of an independent audit and media exposure, decisive in determining electoral outcomes.

In general, however, audit agencies are not so independent of the governments they audit, and they report to the legislature. Although they may help citizens evaluate state functioning, they are part of the government structure. Thus, in addition, many countries facilitate direct citizen oversight through freedom of information acts (FOIAs) that permit citizens and organizations to access government information without having to give a reason for their interest in the material (Ackerman and Sandoval-Ballesteros 2006, Neuman and Calland 2007). This is the essence of FOIAs insofar as they are a tool for government accountability. The United States Freedom of Information Act (5 U.S.C. §§ 552) sets out the basic principles including a range of exceptions, time limits on bureaucrats, and provisions to help agencies manage the process including guidelines on fees and recordkeeping requirements. However, the US law has one weakness. There is no government agency charged with overseeing its administration and resolving disputes. Instead, those with complaints must go to court—a costly and time consuming process. In contrast, some countries have independent agencies that monitor and manage the implementation of the law. Examples are Mexico, Jamaica, Canada, and Hungary (Neuman and Calland 2007: 204-205, Rose-Ackerman 2005: 149-153).

⁴⁶ Notice the divergence between Santiso's ranking of audit agencies and their position in Figure 7. This appears to result from the fact that most are appointed by the legislature, a fact that seems less problematic for audit agencies than for the other institutions they categorize.

FOIAs are only effective if the government actually collects data that citizens find useful. Some FOIAs mandate the collection and dissemination of particular types of information including requirements for open web access to certain materials.⁴⁷ Furthermore, the cost of complying with information requests encourages agencies to take steps ex ante to organize their files and to make more of them available on line. As of 2005 only six Latin American countries had enacted FOIAs (Ackerman and Sandoval-Ballesteros 2006), but in countries with strong laws, such as Mexico, it will be important to study their impact on the overall management of information throughout the government not just on formal compliance with requests. Neuman and Calland (2007) outline the implementation challenges. A strong civil society can help keep pressure on the state to perform, and such groups should concentrate on the procedures for information management and disclosure. Successful implementation is quite expensive both in startup costs and in the ongoing response to requests. Poorer countries will need to find ways to keep costs down without undermining the law's purposes. To get a sense of the costs the authors take the example of Mexico, one of the few countries where budgetary figures are available. In its first year the Mexican Federal Institute for Access to Information (IFAI) had a budget of US\$25 million, a new building, a staff of over 150, and an advanced Internet-based system "that would make major corporations jealous" (id. 193). The budget of IFAI was 0.033 percent of GDP compared to 0.0007 percent in the US and 0.004 in Canada (id.). The benefits of a FOIA have never been systematically studied although a few studies do show how the provision of information can be a cost effective way to limit corruption (Di Tella and Schargrotsky 2003; Reinikka and Svensson 2005).

II.B.2 The Media and Public Opinion

Even a government that keeps good records and makes them available to the public may operate with impunity if no one bothers to analyze the available information—or if analysts are afraid to raise their voices. If the aim is to pressure government to act in the public interest, both the media and organized groups are important.

The media can facilitate public discussion if it is privately owned and free to criticize the government without fear of reprisal. Nominal press freedom will be insufficient if most of the media is associated with political parties. Governments can also keep the press in line through advertising, printing contracts, and payments to journalists. Another subtle form of control is to overlook underpayment of taxes by editors and media companies, retaining the possibility of prosecution as a threat.⁴⁸ The media in Latin America is mostly ranked as free or partly free by Freedom House (Table 2). Some of the poorest countries with the weakest institutional quality are also those where the press is only partly free.

The forms of political control are usually more subtle than outright censorship. But, in the extreme, a sitting government may simply buy off the media with regular

⁴⁷ See the amendment to the US FOIA calling for improved e-government.

⁴⁸ "It Happened in Monterrey," *The Times*, 29 November 1991, discusses the resignation of a newspaper editor after pressure was put on his paper through the cancellation of government advertising and printing contracts. When a leading editor was arrested in Mexico City in 1996 for tax evasion, the editor claimed that the arrest occurred in response to the paper's newly asserted independence. The tax authorities claimed that the editor adopted a more outspoken line only after the investigation had begun (*Mexico Business Monthly*, 1 October 1996).

payments conditional on their subservient behavior. A recent study of the Fujimori/Montesinos regime in Peru demonstrates the importance of a free media in maintaining democracy. McMillan and Zoido (2004) studied the tapes made by Vladimer Montesinos, President Fujimori's top advisor. The videos recorded his payoffs to legislators, judges, and the media. The relatively large size of the payoffs to television stations suggests their importance. McMillan and Zoido show how a state with exemplary formal constitutional rules, providing for elections and checks and balances, can be undermined by corrupt high level officials. However, it was not sufficient to pay off public officials, Montesinos recognized that the information available to the public must be manipulated at will. In fact, the one independent cable station, which was not corrupted, ultimately brought the system to light and led to the downfall of the government. This article gives one a rough measure of the value of press freedom in maintaining democratic accountability. Another data point is the Ferraz and Finan (2007) study mentioned above where radio broadcasts were a critical part of a strategy that helped punish corrupt incumbents at the polls.

II.B.3 Private Associations and Nonprofit Organizations

Laws that make it easy to establish private associations and nonprofit corporations can help improve accountability. Political economic analysis stresses the free rider problems that plague the organization of advocacy organizations. In reality, however, in all societies some altruistic individuals bear the costs of organizing although economic interests are generally better organized and financed. This fact suggests that more groups will organize if the costs of organization are low. Yet, some governments, worried that nongovernmental organizations (NGOs) will be used by political opponents, limit such groups or make it very costly for them to organize. Formal legal constraints may be high, and members may be subject to surveillance and harassment. Once registered, nonprofits may face onerous formal reporting requirements and require state approval before undertaking new projects.

Another problem is co-optation. Some nonprofits organize and administer development programs for the poor. Their financing may be provided by the state or by aid funds administered by the state. Thus, their very existence depends upon cooperation with public authorities. As a consequence, they may be reluctant to criticize officials openly. To avoid such tensions, an NGO that takes on a mandate to work for law reform should avoid participation in service delivery. Latin American nonprofits sometimes have an adversarial relationship with their governments (Bratton 1989: 567–587). Thus, these existing groups may be able to perform a monitoring role.

However, in emerging democracies with moderate income levels it is difficult to create a group of strong nongovernmental organizations capable of participating in national policymaking. In Latin America, the role of civil society is limited partly by the low incomes of citizens and partly by the structures of political power that limit their role. A key issue is to find ways to strengthen such groups without turning them into mere extensions of the state. A first step is to remove obstacles to the formation of groups while improving checks on the use of the NGO form as a fraudulent effort to avoid taxes or otherwise disguise profit-making activities. Secondly, positive incentives can be created actively to encourage the formation of groups.

II.B.4 Grassroots Participation in Government Decisionmaking

A framework with good access to information, a free media, and a collection of organized groups and concerned citizens constitutes one side of efforts to make government more accountable. On the other side is the government itself. The state needs to design structures that permit people and organizations to participate in a meaningful way. Otherwise participation will be limited to organized elites with inside connections who can shape the law in their interest. The goal is not to have the state abdicate its responsibilities but instead to find ways to use bureaucratic and executive expertise to complement political empowerment (Ackerman 2004). Government ought to open up its processes at all levels. To take the extremes, this section discusses grassroots participation; the next concerns participation in national policymaking.

Sometimes the problem of public participation is deep-seated and is limited by fear of intimidation. This needs to be a high priority although it is, of course, more difficult to remedy than a policy of more open public records.⁴⁹ If the problem is acute at the local level, higher levels of government need to prevent local officials from operating with impunity so that local people are intimidated and afraid. The democracies in Latin America need to be sure that the routes for public participation are open to those at the bottom of the income ladder and that fears of intimidation are addressed in an open and straightforward fashion. Long-standing patron-client relationships between politicians and local elites, on the one hand, and ordinary citizens, on the other, operate in some areas to make independent participation difficult.

Much of the research on the role of grassroots participation draws on cases in South Asia and Africa but the general findings are relevant for Latin America as well (Rose-Ackerman 2004b, 316-322). As Deininger and Mpuga (2005, 172) conclude, “both governments and donors might be well advised to focus on ways by which ordinary citizens can hold (elected and appointed) bureaucrats to account as a means to improve outcomes in the public sector.”

In Latin America numerous attempts have been made both to involve rural people in the design and monitoring of agricultural development programs and to increase the participation of city dwellers in government decision making. The rural development programs were designed to improve the targeting of programs to the needs of the farmers and to increase accountability to beneficiaries (Das Gupta, Grandvoinnet, Romani 2000; Parker 1995). The urban cases, of which the most famous is Participatory Budgeting (PB) in Porto Alegre, Brazil, had the explicitly political goal of increasing democratic participation in opposition to existing clientelistic structures (Abers 1998, Ackerman 2004: 451-452, Sousa Santos 1998, Torres Ribeiro and Grazia 2003). Of course, an implication is that the process affected the relative strength of various political parties and groups, and that fact will determine which politicians will support or oppose PB (Goldfrank and Schneider 2006). The successful cases in both settings gave citizens better information about what to expect from government and developed their capacity to hold public officials to account. Evaluations of the Porto Alegre case found that it

⁴⁹ For example, in Mexico in 2000 farmers in Guerrero complained about illegal logging that they claimed involved corrupt deals involving local political bosses and the army. The ensuing dispute, which led to the arrests of some farmers, raised claims that the army and local politicians were acting outside the law. Unfortunately, many of these allegations could not be proven. “A Farmer Learns about Mexico’s Lack of the Rule of Law,” *New York Times*, 27 October 2000.

reduced clientelism and reduced corruption (Gret and Sintomer 2005). A World Bank study of Porto Alegre (Shah and Wagle 2003) showed that services improved and tax collections increased although, of courses, one cannot attribute those benefits entirely to public participation. PB expanded to over 300 Brazilian municipalities between 1998 and 2004 so there will be an opportunity to evaluate its impact in a more diverse set of environments (Avritzer and Wampler 2005). As Goldfrank and Schneider (2006) show in their study of PB at the state level in Brazil, one can expect mixed results that do not support either the extremely positive or the sharply negative position.

The World Bank is studying the links between empowerment, participation and development worldwide (Empowerment Project and Participation and Civic Engagement Project, <http://www.worldbank.org>). In addition, the World Bank Group's International Finance Corporation (IFC) is beginning to incorporate local participation and assistance to local governments into mining investment projects in which they participate. A report to the World Bank Board provides some background in connection with the Yanacocha gold mine in Peru and the Marlin gold mining project in Guatemala. The project in Peru is designed to increase the capacity of local governments near the mine so that they can make effective use of the funds they are receiving from the project. In Guatemala, unrest and protests in some surrounding communities spurred efforts to improve dialogue with neighboring communities and to create a community environmental monitoring committee.⁵⁰ Although the process cannot always be applied successfully (Wampler 2007), it seems a promising innovation worth further study. At present, however, outside of individual case studies, only two studies consider a wide range of cases, and they lack any consideration of the economic and social effects.⁵¹

The case studies of the performance of participatory programs suggest that they require a long term commitment from established governments along with technical and organizational help. They also work better if governments are not too sharply resource constrained so many participants can see an upside to the process (Goldfrank and Schneider 2006). Furthermore, people who are not used to political power need time to learn how to exercise it responsibly. The variety of experience at both the rural and urban level suggests the factors that need to be considered but can hardly produce the "blueprints" or "best practices" preferred by the international lending organizations. These examples suggest that a number of factors must come together before productive partnerships between government reformers and low-income people can succeed. The successes have proved difficult to replicate elsewhere, but this experience teaches us something about how to facilitate grass roots participation. Increases in local control do not necessarily increase transparency and accountability (Das Gupta, Grandvoinet, and Romani 2000). In a worst case scenario, such policies enhance the power of local patrons and entrenched interests. The interest of the cases outlined above is that they were designed explicitly to deal with this problem and have sometimes had quite marked success.

⁵⁰ *Implementation of the Management Response to the Extractive Industries Review*, report to the World Bank board, December 9, 2005, boxes 1, 3.

⁵¹ In connection with his research on participatory democracy, Paolo Spada, a doctoral student in Political Science at Yale provided many of the sources cited here. Torres Ribeiro and Grazia (2003) is a descriptive comparative report; Wampler (2007) only studies the diffusion process in Brazil.

II.B.5 National Policymaking

Grassroots participation only concerns local problems, but many government policies are national in scope. Central government policymaking needs to be managed through a transparent and accountable system of administrative law. This involves not just the application of the law in individual cases but also rulemaking in the executive branch where broadly drafted statutes are implemented through the promulgation of general rules. Rulemaking should be structured to assure adequate participation and transparency. The public also needs avenues for appeal to the judiciary if the government has not followed its own procedures or has acted lawlessly. One goal is to make corruption and self-dealing harder to hide by forcing review both of the process and of the substantive outcome. Furthermore, administrative law should help in the creation of good substantive policies that are both competent and reflect democratic values.

One model is the United States administrative process as reflected in the Administrative Procedure Act (APA).⁵² Although these procedures were developed in light of the United States constitutional and government structures, they, nevertheless, respond to general problems related to the accountable operation of the public sector. I focus on the “notice and comment rulemaking,” provisions of the APA where an agency makes policy free of the strictures of a judicialized process. The APA requires that draft rules be publicly announced, and the agency must have a hearing open to anyone with an interest in the subject at hand. Final rules must be accompanied by a statement that explains the statutory basis of the rule and justifies the outcome. Rules can be reviewed in court for conformity with the underlying statute and with the Constitution and for conformity with APA procedures. Frequently, rules are found wanting, but the courts seldom correct the problems themselves; rather, the agency is required to reconsider its decision or follow improved procedures. There are many practical problems in the American rulemaking process but, in principle, it tries to cope with the challenge of balancing expertise and bureaucratic rationality against popular concerns for openness and accountability.

Of course, a major caveat may be the limited transferability of the US model. In using US practice as a guide to reform in Latin American countries, one must recognize the differences in political structure and in the organization of society. Furthermore, partial reforms may not have the expected consequences. For example, the introduction of greater participation rights without effective judicial review can lead to policy distortions. Adding notice and an ability to comment may have little effect if agencies are not required to give reasons and are not subject to judicial oversight.⁵³

The introduction of notice and comment rulemaking may be politically difficult to achieve. Both career bureaucrats and political officials may resist increased participation and transparency on the grounds that they threaten to delay action and to distort choices. Critics argue that the problems with participation are delay, bias, irrelevance, displacement to other methods, and curbs on agency implementation. However, most appear to be the result of poorly designed and biased procedures, not participation per se.

Of course, some delay is an inevitable counterpart of expanded participation. Agencies must take the time and trouble to consult. However, the extremely long time

⁵² The APA passed in 1946 is at 5 U.S.C. §§ 551-559, 701-706.

⁵³ The Taiwanese APA has notice and comment rulemaking with no requirement for reason giving and limited judicial review. The Act provides only limited public accountability (Cheng 2005).

between proposed and final rules in the US experience seems to be driven more by strategic considerations than by cost of the process per se.⁵⁴ Some rulemakings only attract the interest of a few groups that submit comments. Examination of a random sample of forty-two rulemakings found that the median number of comments was about thirty (West 2004). Furthermore, advances in communication and information technology can speed up the comment process. Most US agencies have developed comprehensive and user-friendly web sites, and many permit comments on draft rules to be submitted via email. Of course, the agencies still need to be able to process comments in an effective manner, but information technology can make the processing of comments more cost effective.

Displacement of agency activity to non-binding guidelines and to implementation through the adjudication of individual cases occurs. However, neither seems to be a general problem given the large number of rules that US agencies continue to issue.⁵⁵ In any case, the problem of displacement can be overcome if the legislature includes rulemaking requirements in statutes and if the courts resist adding incremental procedural requirements. The proponents of participatory processes need to consider the actual workings of procedural innovations. Rigid, cumbersome, and biased processes are obviously not an improvement.

The costs of the rulemaking process ought to be balanced against the benefits. In the well-functioning cases the benefits were of several kinds. The most important benefit is that officials draft proposed rules in the light of the forthcoming public participation processes. Even if they consult with a biased selection of interest groups before the public hearing process, officials must consider how their proposals will be greeted by the public and the media when they are publicly posted, and later, when they are subject to judicial review.⁵⁶

Public hearing processes can raise the salience of an issue with the public and increase public knowledge about a regulatory issue. Furthermore, studies of the hearing process suggest that in the US bureaucrats are not the captives of well-funded groups.⁵⁷ Successful efforts at public involvement can lead to choices that better reflect public values and are substantively strong although, of course, fair and open procedures can not entirely overcome partisan biases.

Open procedures cost time and money; Latin American democracies will need to make some compromises to avoid gridlock and to assure that processes are not just for show. Practical implementation requires a realistic understanding of the tradeoffs involved.

⁵⁴ Kerwin and Furlong (1992). A major rulemaking at the Environmental Protection Agency (EPA) averages almost three years and requires many hours of input from both bureaucrats and outside interests from industry and the environmental community. Many rules are challenged in court before they go into effect introducing further delay (Coglianese 1997).

⁵⁵ Between 1992 and 2001 the number of final rules issued each year ranged from 4,132 in 2001 to a high of 4,937 in 1996. Of the 4,509 rules in the pipeline in October 2001, 149 were major rules, defined as those with at least a \$100 million economic cost. Clyde Wayne Crews Jr., *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State* (Washington DC: The Cato Institute, 2002: 11-16).

⁵⁶ West (2004) found that a common reason for delay was agency lawyers' efforts to withstand court challenges. In one rule that was substantially changed after notice and comment he quotes an official who claimed that the agency staff had "failed to do their homework on this one" by neglecting to consider the interests of some of the producers affected by the rule.

⁵⁷ See, for example, Magat, Krupnick, and Harrington (1986); Mendelson (2003).

II. C. The Judicial System

An effective system of law enforcement and dispute resolution provides a crucial background condition for state reform and for the operation of the market economy. The professionalism and honesty of the judiciary is a central concern, but other aspects of the system matter as well. Judges depend on litigants and prosecutors to bring cases before them and do not enforce their judgments on their own. Furthermore, many legal disputes are resolved outside of the formal adjudicatory system. The quality of alternative dispute resolution (ADR) institutions for both ordinary people and businesses and their relationship to the courts are important aspects of private dispute settlement under law. If it works well, ADR provides speedy and well-accepted services; if it does not, informal dispute resolution may be captured by local elites or dominated by organized criminals who “enforce” judgments.

Judicial independence is commonly believed to be a necessary hallmark of a modern legal system. Jennifer Widner provides a serviceable definition. Independence is “the insulation of judges and the judicial process from partisan pressure to influence the outcomes of individual cases” (Widner 1999: 177-178). However, independence is not inherently valuable. Taken alone, it carries the risk of impunity. Because judicial decisions help to determine the distribution of wealth and power, independent judges can exploit their positions for private gain. An honest government administration will be difficult to establish if the judiciary is venal. A corrupt judiciary can undermine reforms and override legal norms. When dealing with such courts, the wealthy and the corrupt operate with the confidence that a well-placed payoff will resolve any legal challenges they face. However, even honest judges can cause concern if they overturn or fail to enforce legislative and executive branch decisions. Because of these worries, no country has an entirely independent judiciary. Some form of broad-based accountability to the government and the citizens is consistent with a well-functioning judiciary, and it is needed as a check on corruption and other forms of self-dealing.

Given the importance of a fair judiciary, judicial reform is a crucial part of the state-building process in emerging democracies. States need to create a judicial system that is convenient and fair and that gives judges and litigants incentives to behave responsibly and not to exploit the system for private gain. Unfortunately, assessments of past judicial reform efforts in Latin America suggest that success is difficult to achieve. Stein et al. (2005, 81) claim that: “Historically, in much of the region the judicial branch has been characterized by dependence on the executive and a lack of activism in interpreting the law, in challenging the legality of executive actions, or in reviewing the constitutionality of laws.” Lynn Hammergren (2002) claims that, in Latin America: “Judiciaries are never the leaders in adopting modern management techniques or new technologies, and it is not uncommon for them to be decades behind the rest of the public sector in this regard. Arcane personnel practices, procedural requirements, and even equipment are the norm not the exception.”

The IDB has attempted to rank countries on the basis of the quality of their judicial systems using criteria that stress independence and the professionalism and resource base of the courts. Table 7 presents their finding using a scale of -5 to +5 for

each component and adding up the scores. Obviously, one can quarrel with the particular scores and with the decision to give each factor the same weight, but the table is a helpful way of locating pressure points especially when combined with table 3, which measures delays in routine cases including judicial involvement in trials. Thus, Argentina, ranked quite well by the IDB, has long court delays, much longer than in Honduras which is at the bottom, both overall and in terms of “efficiency.” Viewing these tables together suggests the need to study the way nominal measures of institutional quality play out in practice when citizens or business contemplate bringing a dispute to court or are forced into court by private plaintiffs or public agencies.

[Table 7]

In addition to adequate budget and salaries, a fundamental issue is the method of selection of judges and prosecutors. For ordinary courts, judicial careers in most civil law countries, such as those in Latin America, are influenced by bureaucratic review processes and affected by budgetary appropriations. In the best cases, they are independent professionals; in the worst, they are captured by powerful private interests and may be organized into a corrupt hierarchy.

As Figure 7 shows, constitutional and supreme courts are nominally among the most independent institutions of accountability in Latin America. However, in practice, the selection of judges in most countries is not independent of the other branches of government, and political considerations are generally relevant in the selection of justices on constitutional courts and other high courts with a role in the oversight of the government. The selection of high court judges has been politicized at the same time as lower court judges mostly operate like civil servants with lifetime career paths as judges. Even with nominal independence and terms that overlap presidential terms, chief executives have frequently determined Supreme Court composition upon taking office and also may be able to appoint prosecutors. This has led to fairly short average tenure for Supreme Court justices as Table 8 shows. Even so, justices are not simply rubber stamps, at least in Argentina (Tommasi and Spiller 2007), although they do tend to defer on sensitive political issues (Dix 2004).

Table 8
Supreme Court Justices’ Average Tenure in Selected Countries,
1960–1990 (number of years)

Country	Judicial Term
Brazil	7.2
Nicaragua	7.1
Chile	5.7
Argentina	4.4
Peru	4.0
Dominican Republic	3.6
Mexico	3.3
Honduras	2.8
Colombia	1.9
Ecuador	1.9
Guatemala	1.8
Paraguay	1.1

Source: Henisz 2000 in Tommasi & Spiller 2007

One response is the creation of judicial councils (*consejos de la magistratura*) charged with the task of selecting judges on the basis of merit. However, Latin American experience with this institution has been largely negative (Popkin 2005, 25). One study pointed to El Salvador as the only positive case, in part, because the Council is broadly representative (Dakolias 1996, 12). However, a case study casts some doubt on the positive view of El Salvador (Dodson and Jackson 2003: 236-237). The authors show that the Council was quite dependent on the Supreme Court until 1999 reforms that excluded the judiciary from membership, and that it did not actively police judicial corruption. Nevertheless, its experience since 1999 ought to be worth studying. One commentator suggests that such councils might work better if required to operate more transparently and to develop participatory processes that consult with concerned citizens (Popkin 2005).

The organization and independence of prosecutors is another dimension for reform. Some, as in the United States, are part of the executive branch. In other countries they are part of the judiciary. Either option can create problems with independence and professionalism. One interesting experiment is the Brazilian public prosecutor (*Ministerio Público*) system that is largely independent of the rest of government and has been able to achieve a level of prestige and professionalism unknown under the previous system (Sadek and Batista Cavalcanti 2003). In addition to its criminal law responsibilities it is also charged with defending diffuse and minority rights and with providing oversight of the state. Nevertheless, it needs resources to function well and cannot achieve reform on its own. According to Sadek and Batista Cavalcanti, the offices lack staff and technical support (id. 210). Some prosecutors express frustration with the police, on the one hand, and with the judiciary, on the other—either or both of which may be under-resourced, corrupt or incompetent.⁵⁸ Hence the prosecutors' performance varies from state to state (id. 211-213). Furthermore, its very independence risks the sort of impunity that can also be a problem with an overly insulated judiciary (id. 217-222). In spite of the difficulties outlined in this study, the Brazilian case seems worth careful study to see if its positive traits might be copied elsewhere.

Considerable research has been done on the Latin American judiciary, mostly by Edgardo Buscaglia and his associates. Their focus is on the use of the courts to resolve private disputes similar to the focus of the Lex Mundi project summarized in Table 3 and the Doing Business finding on contract enforcement in Table 2.

As Table 3 indicates, delay seems to be a problem in the operation of the legal system throughout Latin America. Within the courts one explanation is the amount of time judges must spend on non-adjudicative tasks. One study found that Argentine judges spent 70 percent of their time on such tasks (Buscaglia and Ulen 1997). No wonder it takes an estimated 520 days to resolve a contract dispute and 200-300 to get a trial verdict on a routine business matter (Tables 2 and 3). Buscaglia and Ulen's (1997) study of Argentina and Venezuela shows how improving judicial efficiency stimulates demand for judicial resolution so that delays reappear. They conclude that, in addition to relieving judges of many non-adjudicative tasks, reforms should focus on streamlining procedures,

⁵⁸ "In order to conduct an investigation Brazilian prosecutors not only need support from the police, but also authorization from a judge to obtain access to classified information" (Sadek and Batista Cavalcanti 2003: 220).

improving the professionalism of court personnel, and introducing computer technology to speed up case processing and limit the discretion of clerks.⁵⁹

With a focus on corruption, Buscaglia (2001) studied a sample of 450 commercial cases in Argentina, Ecuador, and Venezuela courts and conducted an annual survey between 1991 and 1999 of judges, lawyers, and business people. None of these countries is among the worst three in Table 2, but all have substantial trial delays for at least one of the items in Table 3. Buscaglia distinguished between administrative corruption that violated formal procedures (for example, to speed up processing) and operational corruption where the judge benefited personally from making a ruling. The former was apparently more common. Similar reforms in the mid-nineties in all three countries appear to have had beneficial results. The reforms simplified processes and made them more transparent and eliminated some of the clerks' discretion. The reforms that seemed most effective were: (1) use of computer systems for information provision and the reporting of corruption, (2) reducing the time to disposition and the number of administrative or procedural steps, and (3) increasing options for alternative public and private methods of dispute resolution. Unfortunately, however, the results are dependent upon the trustworthiness of those surveyed and do not include any quantitative measures of either costs or benefits.

Lynn Hammergren (2002, 2003, World Bank 2002) has a somewhat different take on the best way to reform the courts. Delay is a problem in the first instance courts in Ecuador and Peru, but some courts operate quite well, such as justice of the peace courts in Peru and Mexico's civil and justice of the peace courts (Hammergren 2003). However, she is less concerned about overall delay and more concerned about the large number of abandoned cases. For example, in Mexico 80 percent of the cases did not reach final disposition and in Ecuador only 39 percent of controversies had been closed in a three to four year period. This suggests that the best dilatory tactic may be simply not to show up in court (Hammergren 2003). Thus, Hammergren would focus on creating institutions to facilitate out-of-court settlements and on improving the execution of court judgments. Table 3 suggests that service of process is a key bottleneck in some countries. Hammergren argues that the judiciary does a poor job of setting priorities so that backlogs develop and cases are considered with little attention to the relative importance of a speedy resolution.

Consistent with Hammergren's critique, some look to ADR as a way around the problems with courts. However, because such systems are generally less transparent than courts and harder for the state to control, they carry their own risks. One study, based on survey work in Colombia, shows the promise of ADR for poor rural households facing land title disputes (Buscaglia and Stephen 2005). In the survey areas, few households used the courts, and few obtained a final resolution to the cases they brought.⁶⁰ The obstacles most mentioned were lack of information, costs in money and time, and corruption (id. 98). A system of Complaint Boards or Panels, composed of respected

⁵⁹ Dakolias (1996) comes to similar conclusions. She also emphasizes the importance of strengthening bar associations and argues that they should play a more active role in monitoring the legal profession.

⁶⁰ Of those interviewed, 3.75% had attempted to use the courts and only 0.2% (9 of 4,500) households had resolved a land dispute through the courts. Thus only 5% of cases filed had been resolved at the time of the interview. In the district with no ADR system the average case took 3.5 years, and the courts were reputedly corrupt and dysfunctional. In addition, the formal court system seemed particularly to disadvantage women (Buscaglia and Stephen 2005: 97, 99, 101).

local volunteers, was introduced into parts of rural Colombia in about 2000. The study shows that they operated much more effectively to resolve land disputes. Even though their decisions are only advisory, the local governments accepted Board rulings in recording ownership. As a result, land values rose for those using that system compared to those using the courts with the relative gains for the poorest being especially high. These gains went along with much lower costs as a percent of the stakes (Table 9). However, comparing the results in Table 9 with the Doing Business data in Table 2, one sees that urban businesses fare even better with costs estimated at only 3.5 percent of the stakes, a number that may reflect economies of scale in dispute resolution. Nevertheless, so long as the litigants accept the outcome, the Complaint Boards seem a clearly beneficial innovation. They apparently both raise property values and cost less. One assumes that there must be some losers, but the costs of uncertain land titling are sharply reduced and the system itself is cheaper. Nevertheless, as Buscaglia and Stephen point out, these results should not lead one to abandon court reform in favor of a wholesale shift to ADR. Such processes cannot be used for cases where “the public interest is at stake and where, consequently *ex ante guidance* is required (i.e. civil and political liberties cases) ...” (id. 103). The problem of court reform cannot be abandoned but can perhaps be integrated with the creation of bottom up informal institutions of the kind studied here.

Table 9. Comparative analysis of total costs of access to dispute resolution mechanisms for resolving land disputes (as percent of stakes)

	Civil Courts	Complaint Board	Socha* (courts only)
Lowest 1-5 percent	27.6	9.0	30.4
Lowest 5-10 percent	25.7	7.0	26.2
Lowest 10-15 percent	16.1	9.1	18.1
Lowest 15-20 percent	11.9	10.7	13.7

* Socha is a jurisdiction with no complaint board and dysfunctional courts.
Source: Colombia Survey 2000 in Buscaglia and Stephen 2005, Chart 5.

III. Costs and Benefits of Alternative Policies

The challenge faced by the weakness of public institutions in Latin America is not one that has a “solution” in any simple and straightforward way. There are three fundamental reasons for this.

First, the problem itself is multifaceted and can hardly be reduced to a single quantifiable metric expressed in monetary terms. Part of the problem is the inefficient provision of public services and the wasteful administration of regulatory, law enforcement, and revenue generating activities. This waste can, in principle, be measured. However, the consequences of institutional weakness go beyond inefficiency and include challenges to the legitimacy of the democratic state in its dealing with the public. These costs may create risks to the survival of democracy in some countries, but even if they do not, they can lead to a lack of engagement with the democratic project and open the way for both the dominance of narrow economic interests and a growth in the influence of organized crime.

Second, as with any policy reforms that affect the organization of the state, the main problems of implementation may not be the economic costs but rather the strength of political interests that benefit from the status quo. Everyone may agree that the judiciary is ineffective or that the customs service is corrupt, and no one may justify that state of affairs, but reform may, nevertheless, be difficult.

Finally, although most countries in the region are in middle range in terms of income and of state functioning, there is a wide variety once one focuses on particular pressure points. Tables 1, 2 and 3 highlight the differences, and this divergence must be part of any regional reform strategy. Not all countries need the same degree of customs or tax reform. Not all need the same reforms in the civil service or the judiciary. Nevertheless, from the broad agenda laid out above, I have selected five promising areas for reform.

Although hard data are difficult to come by, some public sector reforms are free in cost/benefit terms. They involve cost savings for the government in reduced personnel and limits on paperwork that can provide benefits both to the government and to the bulk of the private sector. True, some officials lose because they are not receiving transfer payments in the form of bribes, but these are just funds that go from one pocket to another and in the process distort public priorities. Such officials will oppose reform, but under cost/benefit criteria, the reform is justified.

The five options that I have isolated from the range of possibilities are: (1) reform of revenue collection, procurement systems, and business regulation; (2) civil service reform and selective contracting out with NGOs; (3) improving oversight of the public sector by independent public organizations; (4) improving grassroots participation in government decision making, and (5) improvements in judicial professionalism and enhanced ADR possibilities. Box 1 summarizes the options drawing on the detail in the rest of the paper.

An alternative way to think about policy reform is to examine information, like that in tables 2 and 3, that provides measures of weak government performance on a country-by-country basis. One would then work back from these pressure points to predict where reforms could make a difference. For example, the tables suggest that Brazil has a problem with bureaucratic delays and time consuming tax and regulatory laws, but that its court system works rather well at least for routine matters. Columbia seems to have a particularly dysfunctional court system. Mexico has trouble enforcing court judgments and is a relatively costly place to do business honestly. However, it is not at the crisis level and compares quite well on some dimensions with legally similar European countries. One needs to interpret the data in these tables with caution, but they do suggest a place to start as officials in individual countries set reform priorities. Benchmarking, however, should go beyond state actions that affect the business climate to include the effectiveness of spending on social benefits and infrastructure; the regulation of everyday life through the police and health, safety, and environmental inspectors; and the regulation of the labor market. How is education quality related to spending levels? How far does regulatory performance depart from statutory mandates? How easy is it for employers to ignore labor and environmental standards? In many of these areas reasonable cross-country estimates could be developed that would help governments see where they are falling short in regional terms and where they are

approaching the levels achieved by wealthier countries with similar political and legal systems.

Box 1. Options to Improve the Operation of Government: Each option should include funds for impact evaluation to develop benchmarks

<p>OPTION 1:</p> <ul style="list-style-type: none"> • <i>Improve performance and limit corruption in regulation and in revenue raising and in procurement.</i> • <i>Special emphasis on automated, computer-based systems for procurement and revenue collection.</i> • <i>Examination of regulatory climate for business to eliminate or streamline the rules.</i>
<p>Benefits: Encourages formation of new businesses and increases economic value of existing businesses. Improves the operation of government and provision of services. End result is more robust and productive economic growth. For government, better service delivery to those at all income levels.</p> <p>Costs: Out-of-pocket costs for technical consultancies and program evaluation. Other costs are close to zero for pure ‘red tape’, but one needs to include benefits forgone from ending programs with social value. Costs of monitoring and reforming bureaucracies may include improvements in salaries and working conditions for oversight officials. Concern for political sustainability if independent revenue authorities used.</p> <p>Cost/Benefit Ratios: Of course, not all programs are successful, but existing cases of procurement and revenue reform have C/B ratios as high as 100 to 1 with others in the 3 to 1 or 10 to 1 range.</p> <p>Positive cases of tax and customs reform: In Bolivia the proportion of the VAT lost went from 42% in 2001 to 29% in 2004 after reforms. In Peru total tax revenues increased from 8.4% of GDP in 1991 to 12.3% in 1998 at the same time as many tax rates were reduced. Taxpayers increased from 895,000 in 1993 to 1,766,000 in 1999. Tariff revenues went from 23% of revenues in 1990 to 35% in 1996 and increased four-fold in dollar terms despite reductions in duties. Peru reduced total staff from 4700 in 1990 to 2540 in 2002 and increased the share of professionals from 2.5 percent to 60 percent. The average clearance times fell from 2 days to 2 hours. In Costa Rica times fell from 6 days to 12 minutes. It is not possible to measure the marginal costs of reforms, but they appear low or even negative. Overall, the cost of revenue collection as a share of revenues collected ranges from 1.7% to 2% for the Latin American cases.</p>
<p>OPTION 2:</p> <ul style="list-style-type: none"> • <i>Merit recruitment and promotion in the civil service and increased contracting out to NGOs for service delivery.</i>
<p>Costs: Costs of testing for recruitment and better monitoring of performance of civil servants. Costs of organizing the contracting process with NGOs and monitoring ex post. Modification of program design to make it feasible for contracting out. Program evaluation costs.</p> <p>Benefits: Higher efficiency and better service delivery from civil service. Performance incentives for contractors who desire repeat business.</p> <p>Positive cases: Civil service: Costa Rica, Brazil, Chile with, at least, marginal improvement. NGO provision: Bolivia and Guatemala: primary care and nutrition services. Cost in Guatemala \$6.25 per head with 3.4 million people covered. Studies showed net benefits.</p>

OPTION 3:

- *Government Monitoring—Audit agencies, Ombudsmen, etc.*

Costs: Costs of setting up and staffing new organizations and on-going budgetary support for new and reformed agencies.

Benefits: More transparency with respect to government activities leading to cost saving, less corruption, better priority setting.

Positive cases:

Audit agencies in Brazil, Chile, Colombia (although all are weak on timeliness). Brazilian audits of municipalities. Costs are probably similar across all Latin American cases so these cases may have lessons for the others.

OPTION 4:

- *Grassroots monitoring with technical assistance and information provision provided centrally by government or nongovernmental organizations.*

Costs: Opportunity cost of people's time; costs of consultants and central government officials to help design programs and provide information. Demoralization costs if government does not respond to citizen complaints

Benefits: Cost savings on existing programs that have ranged as high as 400% in pilot projects outside Latin America. Better overall economic performance and access of the poor to public services.

Positive cases:

Brazilian urban participatory democracy. Community monitoring in gold mining areas of Peru and Guatemala.

OPTION 5:

- *Improvements in judicial and prosecutorial independence and performance; enhanced ADR possibilities.*

Costs: Judiciary: higher salaries for judges and clerks, better computer systems and other equipment, automation of some functions may reduce numbers of personnel. Eliminating pure red tape is costless. Prosecutors: Costs of setting up and staffing a new, independent system. ADR: May be staffed with volunteers in rural areas. One cost is lack of transparency and variation in decisions in similar cases.

Benefits: Judiciary: Less wasted time and more clarity for litigants. More widely accepted outcomes and less corruption. Better judicial oversight of rest of government. Independent prosecutors: better oversight of rest of government if complemented by police and court reform. ADR: quicker and more acceptable resolution of routine local disputes in areas such as land titling.

Positive cases:

Judiciary: Chile and El Salvador stand out as having court system that function with low levels of delay although others are superior on some dimensions. El Salvador's relative poverty and high donor involvement make it an especially interesting case. ADR: Land title disputes resolved with Community Board in rural Colombia.

References

- Abers, Rebecca. 1998. "From Clientalism to Cooperation: Local Government, Participatory Policy, and Civic Organizing in Port Alegre, Brazil," *Politics and Society* 26: 511- 537 (1998).
- Abikoff, Kevin T. 1987. "The Role of the Comptroller General in Light of Bowsher v. Synar," *Columbia Law Review* 87: 1539-1562.
- Ackerman, John M. 2007. *Organismos Autónomos y Democracia: El Caso de México*, Mexico City MX: Siglio Vientiumo Editores.
- Ackerman, John M. 2004. "Co-Governance for Accountability: Beyond 'Exit' and 'Voice,'" *World Development* 32: 447-463.
- Ackerman, John M., and Irma E. Sandoval-Balesteros. 2006. "The Global Explosion of Freedom of Information Laws," *Administrative Law Review* 58: 85-130.
- Anderson, Christopher J., and Yuliya V. Tverdova. 2003. "Corruption, Political Allegiances, and Attitudes Toward Government in Contemporary Democracies," *American Journal of Political Science* 47: 91-109.
- Avritzer, L. and Brian Wampler. 2005. "The Spread of Participatory Democracy in Brazil: From Radical Democracy to Good Government," *Journal of Latin American Urban Studies* 7: 37-52.
- Barrera-Osorio, Felipe, and Mauricio Olivera. 2007. *Does Society Win or Lose as a Result of Privatization? Provision of Public Services and Welfare of the Poor: The Case of Water Sector Privatization in Colombia*. Research Network Working Paper #R-525. Washington: Inter-American Development Bank.
<<http://www.iadb.org/topics/Home.cfm?topicID=RM&parid=2&language=English>>
- Barros, Robert. 2002. *Constitutionalism and Dictatorship: Pinochet, the Junta, and the 1980 Constitution*. Cambridge UK: Cambridge University Press.
- Bergman, Marcelo S. 2003. "Tax Reforms and Tax Compliance: The Divergent Paths of Chile and Argentina." *Journal of Latin American Studies* 35: 3-28.
- Bonnet, Céline, Pierre Dubois, David Martimort, and Stéphane Straub. 2006. *Empirical Evidence on Satisfaction with Privatization in Latin America: Welfare Effects and Beliefs*. University of Toulouse, draft paper for Inter-American Development Bank\World Bank project on the Political Economy of Private Participation, Social Discontent and Regulatory Governance.
- Bratton, Michael 1989. "The Politics of Government-NGO Relations in Africa," *World Development* 17:567-587.
- Buscaglia, Jr., Edgardo. 2001. "An Analysis of Judicial Corruption and Its Causes: An Objective Governance-Based Approach," *International Review of Law and Economics* 21(2): 233-249.
- Buscaglia, Jr. Edgardo. 1995. "Judicial Reform in Latin America: The Obstacles Ahead," *Journal of Latin American Affairs* 3:8-13.
- Buscaglia, Jr., Edgardo, and Samuel Gonzalez Ruiz. 2006. "The Factor of Trust and the Importance of Inter-agency Cooperation in the Fight against Transnational Organised Crime: the US-Mexican Example," in Marina Caparini and Otwin Marenin (eds.), *Borders and Security Governance: Managing Borders in a Globalised World*, Geneva: LIT Verlag, pp. 269-280. On line at:
<http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=22189&nav1=4>.

- Buscaglia, Jr., Edgardo, and Paul B. Stephen. 2005. "An Empirical Assessment of the Impact of Formal Versus Informal Dispute Resolution on Poverty: A Governance-based Approach," *International Review of Law and Economics* 25: 89-106.
- Buscaglia, Jr., Edgardo, and Jan van Dijk. 2003. "Controlling Organized Crime and Corruption in the Public Sector," *Forum on Crime and Society* 3(1 and 2): 3-34.
- Buscaglia, Jr., Edgardo, and Thomas Ulen. 1997. "A Quantitative Assessment of the Efficiency of the Judicial Sector in Latin America." *International Review of Law and Economics* 17: 275-91.
- Cheng, Wen-Chen. 2005. "Alternative Agenda[s] in Constitutional Reengineering: Ensuring the Rule of Law and Political Trust in Taiwan," in the *Proceedings of the International Conference on Constitutional Reengineering in New Democracies: Taiwan and the World*, October 28-29, 2005, Taipei, Taiwan, 397-400.
- Chong, Alberto, and Juan Benavides. 2007. "Privatization and Regulation in Latin America" in Eduardo Lora (ed.), *The State of State Reforms in Latin America*. Washington, DC: The Inter-American Development Bank, 2007.
- Chong, Alberto, and López-de-Silanes. 2003. "The Truth about Privatization in Latin America." *Research Network Working Paper*, Washington DC: Inter-American Development Bank.
- Coglianesi, Cary 1997. "Assessing Consensus: The Promise and Performance of Negotiated Rulemaking," *Duke Law Journal* 46:1255-1349.
- Dakolias, Maria. 1996. *The Judicial Sector in Latin America and the Caribbean: Elements of Reform*. Technical Paper 319. Washington: World Bank.
- Dam, Kenneth. 2006. *The Law-Growth Nexus: The Rule of Law and Economic Development* Washington DC: The Brookings Institution.
- Das Gupta, Monica, Helene Grandvoinet, and Mattia Romani. 2000. *State-Community Synergies in Development: Laying the Basis for Collective Action*, Policy Research Working Papers 2439, Washington DC: The World Bank.
- Deininger, Klaus, and Paul Mpuga. 2005. "Does Greater Accountability Improve the Quality of Public Service Delivery? Evidence from Uganda," *World Development* 33 (1): 171-191.
- De Ferranti, David, et al. *Inequality in Latin America: Breaking with History?* Washington, DC: The World Bank, 2004.
- De Wulf, Luc, and José B. Sokol. 2004. *Customs Modernization Initiatives: Case Studies*, Washington DC: The World Bank.
- Di Tella, Rafael, and Ernesto Schargrotsky. 2003. "The Role of Wages and Auditing During a Crackdown on Corruption in the City of Buenos Aires," *Journal of Law and Economics* 46: 269-292.
- Dix, Sarah. 2004. *Judicial Politics in Argentina*. Ph. D. dissertation, Department of Political Science, Yale University, New Haven CT.
- Djankov, Simon, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer. 2003. "Courts." *Quarterly Journal of Economics* 118: 453-517.
- Dodson, Michael, and Donald W. Jackson. 2003. "Horizontal Accountability and the Rule of Law in Central America," in Scott Mainwaring and Christopher Welna (eds.), *Democratic Accountability in Latin America*, Oxford: Oxford University Press, pp. 228-265.
- Dollar, David, Mary Hallward-Driemeier, and Taye Mengistae. 2006. "Investment Climate and International Integration," *World Development* 34: 1498-1516.

- Echabarría, Koldo, and Juan Carlos Cortázar. "Public Administration and Public Employment Reform in Latin America," in Eduardo Lora (ed.), *The State of State Reform in Latin America*. Washington, DC: The Inter-American Development Bank, 2007, pp. 123-55.
- Escobar, Flavio. 2004. "Bolivia," in De Wulf and Sokol, pp. 7-18.
- Evans, Peter, and James E. Rauch, 1999. "Bureaucracy and Growth: A Cross-National Analysis of the Effects of 'Weberian' State Structures on Economic Growth," *American Sociological Review* 64: 748-765.
- Feld, Lars P., and Stefan Voight. 2003. "Economic Growth and Judicial Independence: Cross-Country Evidence Using a New Set of Indicators," *European Journal of Political Economy* 19(3): 497-527.
- Ferraz, Claudio, and Frederico Finan. 2007. *Exposing Corrupt Politicians: The Effects of Brazil's Publicly Released Audits on Electoral Outcomes*, Institute for the Study of Labor (IZA) Discussion Paper No. 2836, Bonn, Germany, June. Available at: <http://www.iza.org/publications/dps/>
- Gaetani, Francisco, and Blanca Heredia. 2002. "The Political Economy of Civil Service Reform in Brazil: The Cardoso Years," *Red de Gestión y Transparencia del Diálogo Regional de Política del Banco Interamericano de Desarrollo*. Washington DC: Inter-American Development Bank.
- Geddes, Barbara. 1994. *Politicians' Dilemma: Building State Capacity in Latin America*, Berkeley: University of California Press.
- Goldfrank, Benjamin, and Aaron Schneider. 2006. "Competitive Institution Building: The PT and Participatory Budgeting in Rio Grande do Sul," *Latin American Politics & Society* 48.3: 1-31.
- Gómez Sabaini, Juan. 2006. "Evolución y Situación Tributaria Actual en América Latina: Una Serie de Temas para la Discusión," in Comisión Económica para América Latina y el Caribe (ed.), *Tributación en América Latina: En Busca de Una Nueva Agenda de Reformas*. Santiago, Chile: Santiago de Chile Naciones Unidas: Comisión Económica para América Latina y el Caribe, 160.
- Goorman, Adrien. 2004. "Peru," in De Wulf and Sokol, pp. 65-84.
- Gret, Marion, and Yves Sintomer. 2005. *The Porto Alegre Experiment: Learning Lessons for Better Democracy*, translated by Stephen Wright. London : New York : Zed ; New York : Palgrave Macmillan.
- Hammergren, Linn. 2003. *Uses of Empirical Research in Refocusing Judicial Reforms: Lessons from Five Countries*, Washington DC: World Bank. <http://www1.worldbank.org/publicsector/legal/UsesOfER.pdf>.
- Hammergren, Linn. 2002. *Fifteen Years of Judicial Reform in Latin America: Where We Are and Why We Haven't Made Much Progress*, New York: United Nations Development Program.
- Hoffmann, Bert. 2007. *Why Reform Fails: The 'Politics of Policies' in Costa Rican Telecommunications Liberalization*, GIGA Research Unit, Institute of Latin American Studies, Working Paper No. 47, Hamburg FRG.
- Hunt, Jennifer. 2006. "Why Are Some Public Officials More Corrupt Than Others?" in Rose-Ackerman, ed. (2006), pp. 323-351.
- Jansson, Tor, and Geoffrey Chalmers. 2001. "The Case for Business Registration Reform in Latin America," *Sustainable Development Department Best Practice Series*, number 25, Washington DC: Inter-American Development Bank.

- Johnston, Michael. 2005. *Syndromes of Corruption: Wealth, Power, and Democracy*, Cambridge UK: Cambridge University Press.
- Kaufmann, Daniel 2003. "Rethinking Governance: Empirical Lessons Challenge Orthodoxy," World Bank, Washington DC.
- Kaufmann, Daniel, Aart Kraay, and Massimo Mastruzzi. 2006. "Measuring Governance Using Cross-Country Perceptions Data," in Rose-Ackerman, ed., pp. 52-104.
- Kaufmann, Daniel, Aart Kraay, and Massimo Mastruzzi. 2007a. "Growth and Governance: A Reply," *Journal of Politics* 69 (2): 555-562.
- Kaufmann, Daniel, Aart Kraay, and Massimo Mastruzzi. 2007b. "Growth and Governance: A Rejoinder," *Journal of Politics* 69 (2): 570-572.
- Kaufmann, Daniel, Massimo Mastruzzi, and Diego Zaveleta 2003. "Sustained Macroeconomic Reforms, Tepid Growth: A Governance Puzzle in Bolivia," in Dani Rodrik (ed.), *In Search of Prosperity: Analytic Narratives on Economic Growth*, Princeton NJ: Princeton University Press.
- Kerwin, Cornelius M. and Scott R. Furlong. 1992. "Time and Rulemaking: An Empirical Test of Theory," *Journal of Public Administration Research and Theory* 2:125-131.
- Kurtz and Schrank. 2007a "Growth and Governance: Models, Measures, and Mechanisms," *Journal of Politics* 69 (2): 538-554.
- Kurtz and Schrank. 2007b. "Growth and Governance: A Defense," *Journal of Politics* 69 (2): 563-569.
- Lambsdorff, Johann Graf . 2006. "Causes and Consequences of Corruption: What Do We Know from a Cross-Section of Countries," in Rose-Ackerman, ed., pp.3-51.
- La Porta, Rafael, Florencio Lopez-de-Silanes, Christian Pop-Eleches and Andrei Shleifer. 2004. "Judicial Checks and Balances," *Journal of Political Economy* 112 (2): 445-470.
- Levy, Brian, and Pablo Spiller, eds. *Regulations, Institutions and Commitment*, Cambridge UK: Cambridge University Press.
- Loevinsohn, Benjamin, and April Harding. 2005. "Buying Results? Contracting for Health Service Delivery in Developing Countries," *The Lancet* 366: 676-681.
- Lora, Eduardo. 2007a. "State Reform in Latin America: A Silent Revolution," in Eduardo Lora, (ed.), *State of State Reform in Latin America*. Washington, DC: Inter-American Development Bank.
- Lora, Eduardo. 2007b. "Trends and Outcomes of Tax Reform.," in Eduardo Lora (ed.), *The State of State Reform in Latin America*. Washington, DC: The Inter-American Development Bank, 2007. 185-212.
- Magat, Wesley A., Alan, J. Krupnick, and Winston Harrington. 1986. *Rules in the Making: A Statistical Analysis of Regulatory Agency Behavior*, Washington DC: RFF Press.
- Mainwaring, Scott, and Matthew S. Shugart, eds., 1997. *Presidentialism and Democracy in Latin America*, Cambridge UK: Cambridge University Press.
- Manzetti, Luigi. 1999. *Privatization South American Style*, Oxford: Oxford University Press.
- McMillan, John, and Pablo Zoido. 2004. "How to Subvert Democracy: Montesinos in Peru," *Journal of Economic Perspectives* 18:69-92.
- Mejía Acosta, Andrés, María Caridad Araujo, Anibal Pérez-Liñán, and Sebastián Saiegh. 2006. *Veto Players, Fickle Institutions and Low-Quality Policies: The Policymaking Process in Ecuador (1979-2005)*. Research Department, Inter-American Development Bank, Washington DC.

- Mendelson, Nina A. 2003. "Agency Burrowing: Entrenching Policies and Personnel Before a New President Arrives," *New York University Law Review* 78: 557-666.
- Messick, Richard E. 1999. "Judicial Reform and Economic Development: A Survey of the Issues." *The World Bank Research Observer* 14 (1): 117-36.
- Moreno, Erika, Brian F. Crisp, and Matthew Soberg Shugart. 2003. "The Accountability Deficit in Latin America," in Scott Mainwaring and Christopher Welna (eds.), *Democratic Accountability in Latin America*, Oxford: Oxford University Press, pp. 79-131.
- Nane, Grimo. 2007. "New Rules of the Game for Rent Seeking: The Civil Service in Nigeria," paper presented at the World Meeting of the Public Choice Society, Amsterdam, March 29-April 1.
- Neuman, Laura, and Richard Calland. 2007. "Making the Law Work: The Challenges of Implementation," in Ann Florini (ed.) *The Right to Know: Transparency for an Open World*, New York: Columbia University Press.
- O'Donnell, Guillermo. 1999. "Horizontal Accountability in New Democracies," in Andreas Schedler, Larry Diamond, and Marc R. Plattner (eds.), *The Self-Restraining State: Power and Accountability in New Democracies*, Boulder CO: Lynner Rienner Publishers, pp. 29-51.
- Organization for Economic Cooperation and Development (OECD), 2003: *Trade Facilitation Reforms in the Service of Development*, Trade Committee Working Paper TD/TC/WP(2003)11/FINAL, Paris: OECD.
- Panizza, Francisco. 2000. *The Public Sector Premium and the Gender Gap in Latin America: Evidence for the 1980s and 1990s*, IDB Research Department Working Paper #431, Washington DC: Inter-American Development Bank, August.
- Panizza, Francisco, and George Philip. 2005. "Second Generation Reform in Latin America: Reforming the Public Sector in Uruguay and Mexico," *Journal of Latin American Studies* 37: 667-691.
- Parker, Andrew N. 1995. *Decentralization: The Way Forward for Rural Development?* Policy Research Paper 1475, World Bank, Agriculture and Natural Resources Department, Washington DC: The World Bank.
- Popkin, Margaret. 2005. "Participación Ciudadana en la Reforma de la Justicia" in Centro Nacional para Tribunales Estatales: Fundación para el Debido Proceso Legal (ed.), *Sociedad Civil y Reforma Judicial en América Latina*. Washington DC: Due Process of Law Foundation, 2005. pp. 23-32.
- Prado, Mariana Mota. 2007. *The Challenges and Risks of Creating Independent Regulatory Agencies: A Cautionary Tale from Brazil*, University of Toronto, Legal Studies Research Paper No. 983907, Toronto, Ontario, Canada.
- Premchand, A. 1993. *Public Expenditure Management*, Washington DC: International Monetary Fund.
- Rauch, James, and Peter Evans. 2000. "Bureaucratic Structure and Bureaucratic Performance in Less Developed Countries," *Journal of Public Economics* 75:49-71.
- Reinikka, Ritva, and Jakob Svensson. 2005. "Fighting Corruption to Improve Schooling: Evidence from a Newspaper Campaign in Uganda," *Journal of the European Economic Association* 2(2-3): 259-67.
- Rivera-Batiz, Francisco L. 2002. "Democracy, Governance, and Economic Growth," *Review of Development Economics* 6: 225-247.
- Rivera-Batiz, Francisco L. 2002. "Democracy, Governance, and Economic Growth: Theory and Evidence," *Review of Development Economics* 6: 225-247.

- Rodrik, Dani. 2006. "Goodbye Washington Consensus, Hello Washington Confusion? A Review of the *World Bank's Economic Growth in the 1990s: Learning from a Decade of Reform*," *Journal of Economic Literature* 45(4): 973-987.
- Rose-Ackerman, Susan. 1999. *Corruption and Government: Causes, Consequences, and Reform*, Cambridge UK: Cambridge University Press.
- Rose-Ackerman, Susan. 2004a. "Establishing the Rule of Law" in Robert I. Rotberg, ed., *When States Fail: Causes and Consequences*, Princeton NJ: Princeton University Press, pp. 182-222.
- Rose-Ackerman, Susan. 2004b. "Governance and Corruption," in Bjørn Lomborg, ed., *Global Crises, Global Solutions*, Cambridge UK: Cambridge University Press, pp. 301-362.
- Rose-Ackerman, Susan. 2005. *From Elections to Democracy: Building Accountable Government in Hungary and Poland*, Cambridge UK: Cambridge University Press.
- Rose-Ackerman, Susan, ed. 2006. *International Handbook on the Economics of Corruption*, Cheltenham UK: Edward Elgar.
- Rose-Ackerman, Susan. 2007. "Judicial Independence and Corruption," in Transparency International, *Global Corruption Report 2007*, Cambridge UK: Cambridge University Press, pp. 15-24.
- Sadek, Maria Theresa, and Rosângela Batista Cavalcanti. 2003. "The New Brazilian Public Prosecution: An Agent of Accountability," in Scott Mainwaring and Christopher Welna (eds.), *Democratic Accountability in Latin America*, Oxford: Oxford University Press, pp. 201-227.
- Santiso, Carlos. 2007. *Eyes Wide Shut? The Politics of Autonomous Audit Agencies in Emerging Economies*, Draft April 24, 2007, based on Ph. D. Johns Hopkins, Baltimore MD.
- Seligman, Mitchell. 2002. "The Impact of Corruption on Regime Legitimacy: A Comparative Study of Four Latin American Countries," *Journal of Politics* 64: 408-433.
- Shah, P., and S. Wagle. 2003. "Case Study 2 – Porto Alegre, Brazil: Participatory Approaches in Budgeting and Public Expenditure Management," *World Bank Social Development Notes*, Note No. 71, March 2003, pp. 1-5.
- Sousa, Mariana. 2007. "A Brief Overview of Judicial Reform in Latin America: Objectives, Challenges, and Accomplishments," in Eduardo Lora (ed.), *The State of State Reform in Latin America*. Washington, DC: The Inter-American Development Bank, 2007, pp. 87-121.
- Sousa Santos, Boaventura de. 1998. "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy," *Politics & Society*, 26:461-510.
- Spink, Peter. 1999. "Possibilities and Political Imperatives: Seventy Years of Administrative Reform in Latin America," in Luiz Carlos Bresser Pereira and Peter Spink (eds.), *Reforming the State: Managerial Public Administration in Latin America*, Boulder: Lynne Rienner Publishers.
- Stein, Ernesto, Mariano Tommasi, Koldo Echebarría, Eduardo Lora, and Mark Payne. 2005. *The Politics of Policies: Economic and Social Progress in Latin America*. Washington DC: Inter-American Development Bank & the David Rockefeller Center for Latin American Studies at Harvard University.
- Taliercio, Jr., Robert. 2004. *Designing Performance: The Semi-Autonomous Revenue Authority Model in Africa and Latin America*, World Bank Policy Research Working Paper 3423, Washington DC: The World Bank.

- Taliercio, Jr., Robert. 2001. *Unsustainably Autonomous?: Challenges to the Revenue Authority Model in Latin America Tax Agencies in Developing Countries*, Washington DC: World Bank, unprocessed.
- Tommasi, Mariano, and Pablo T. Spiller. 2007. *The Institutional Foundations of Public Policy in Argentina: A Transactions Cost Approach*. Cambridge UK: Cambridge University Press.
- Torres Ribeiro, Ana Clara, and Grazia de Grazia. 2003. *Experiências de orçamento participativo no Brasil : período de 1997 a 2000*. Petrópolis: Fórum Nacional de Participação Popular and Vozes.
- You, Jong-Sung, and Sanjeev Khagram. 2005. "A Comparative Study of Inequality and Corruption," *American Sociological Review* 70: 136-157.
- Wampler, Brian, 2007, *Participatory Budgeting in Brazil: Contestation, Cooperation, and Accountability*, State College PA: Penn State University Press.
- West, William F. 2004. "Formal Procedures, Informal Processes, Accountability, and Responsiveness in Bureaucratic Policy Making: An Institutional Analysis," *Public Administration Review* 64:66-80.
- Widner, Jennifer. 1999. "Building Judicial Independence in Common Law Africa," in Andreas Schedler, Larry Diamond, and Marc F. Plattner (eds.), *The Self-Restraining State: Power and Accountability in New Democracies*, Boulder CO: Lynne Rienner.
- World Bank. 2002. *Reforming Courts: The Role of Empirical Research*, PREM notes number 65, Washington DC: The World Bank, March.
- World Bank. 2007. *A Decade of Measuring the Quality of Governance: Governance Matters 2007, Worldwide Governance Indicator 1996-2006*, Washington DC: The World Bank.
- World Bank and International Finance Corporation. 2006. *Doing Business in 2006*, Washington DC: World Bank.
- Zuleta, J.C., A. Leyton and E. F. Ivanovic. 2007. Combating Corruption in Revenue Administration: The Case of VAT Refunds in Bolivia, in Campos, J. E., and S. Pradhan (eds.). 2006. *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*, Washington DC: The World Bank, pp. 339-366.

Table 1. Governance Indicators

	Corruption CPI Rank 2005*	Corruption CPI Score 2005*	Functioning of government (Freedom House) [‡]	Gov. Effectiveness Percentile Rank 2005 [†]	Rule of Law Percentile Rank 2005	Property Rights 2007 [◇]
Chile	21	7.3	12	86.1	87.4	90
Uruguay	32	5.9	11	68.9	61.8	70
Costa Rica	51	4.2	11	64.1	65.7	50
El Salvador	51	4.2	7	13.9	22.7	50
Colombia	55	4.0	7	53.1	32.4	30
Brazil	62	3.7	7	55.9	43.0	50
Mexico	65	3.5	9	57.4	39.6	50
Panama	65	3.5	9	58.9	51.2	30
Peru	65	3.5	7	33.0	28.5	40
Argentina	97	2.8	8	47.8	36.2	30
Honduras	107	2.6	6	31.6	27.5	30
Nicaragua	107	2.6	5	24.9	32.9	30
Bolivia	117	2.5	5	23.9	27.1	30
Ecuador	117	2.5	4	41.1	33.3	30
Guatemala	117	2.5	5	45.9	44.0	30
Guyana	117	2.5	7	29.7	14.5	40
Venezuela	130	2.3	5	23.0	9.2	30
Paraguay	144	2.1	3	23.4	16.4	30

* CPI Rank and CPI Score were obtained from Transparency International's 2005 report with data on 159 countries. The CPI Score, in particular, measures perceptions of corruption as seen by business people and country analysts and ranges between 10 (highly clean) & 0 (highly corrupt).

‡ Functioning government data was obtained from Freedom House's 2005 comparative assessment of political rights and civil liberties, which covers more than 180 countries and some 14 related and disputed territories. Note: a higher number is associated with a better functioning government.

† The governance indicators presented here reflect the statistical aggregation of responses on the quality of governance given by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries, as reported by a number of survey institutes, think tanks, non-governmental organizations, and international organizations.

◇ Property rights is an assessment of the ability of individuals to accumulate private property, secured by clear laws that are

fully enforced by the state. *The Grading Scale*: Property rights are graded using a scale from 0 to 100, where 100 represents the maximum freedom. A score of 100 signifies an economic environment or set of policies that is most conducive to economic freedom. The grading scale is continuous, meaning that scores with decimals are possible.

Sources: Transparency International http://www1.transparency.org/cpi/2005/cpi2005_infocus.html; Freedom House <http://www.freedomhouse.org/template.cfm?page=276>; Kaufmann D., A. Kraay, and M. Mastruzzi 2006: Governance Matters V: Governance Indicators for 1996-2005; The Heritage Foundation <www.heritagefoundation.org>.

Table 2: Doing Business 2006

Country	Rank	Starting a Business			Licenses			Property		Taxes		X/M		Contracts		GNI (per capita US\$)
		Time (days)	Cost (% income per capita)	Cost (US\$)	Time (days)	Cost (% income per capita)	Cost (US\$)	Time (days)	Cost (% prprty. value)	Time (hours per year)	Payable (as % of gross profit)	X Time (days)	M: Time (days)	Days	Cost (% of debt)	
LatAm:																
Argentina	77	32	13.4	498	288	47.9	1782	44	8.3	580	97.9	23	30	520	15.0	3720
Bolivia	111	50	154.8	1486	187	268.2	2575	92	5.0	1080	64.0	43	49	591	10.6	960
Brazil	119	152	10.1	312	460	184.4	5698	47	4.0	2600	147.9	39	43	546	15.5	3090
Chile	25	27	10.3	506	191	125.2	6147	31	1.3	432	46.7	23	24	305	10.4	4910
Colombia	66	43	25.3	506	150	697.3	13946	23	3.5	432	75.1	34	48	363	18.6	2000
Costa Rica	89	77	23.8	1111	120	150.3	7019	21	3.6	402	54.3	36	42	550	41.2	4670
Ecuador	107	69	38.1	831	149	100.0	2180	21	6.7	600	33.9	20	42	388	15.3	2180
El Salvador	76	40	118.0	2773	144	204.2	4799	52	3.6	224	32.7	43	54	275	12.5	2350
Guatemala	109	39	58.4	1244	294	667.8	14224	69	4.7	260	53.4	20	36	1459	14.5	2130
Honduras	112	62	64.1	666	199	759.6	7824	36	5.8	424	43.2	34	46	545	33.1	1030
Mexico	73	58	15.6	1056	222	159.0	10764	74	5.3	536	31.3	18	26	421	20.0	6770
Panama	57	19	24.8	1104	128	114.3	5086	44	2.4	424	32.9	30	32	355	37.0	4450
Paraguay	88	74	147.8	1729	273	544.5	6371	48	2.0	328	37.9	34	31	285	30.4	1170
Peru	71	102	38.0	897	201	366.3	8645	33	3.2	424	50.7	24	31	381	34.7	2360
Uruguay	85	45	43.9	1734	146	95.0	3752	66	7.1	300	80.2	22	25	620	25.8	3950
Venezuela	120	116	15.7	631	276	547.2	21977	33	2.1	864	48.9	34	42	445	28.7	4020
Europe & USA																
France	44	8	1.2	361	185	78.0	23470	183	6.5	72	42.8	22	23	75	11.7	30,090
Portugal	42	54	13.4	1789	327	57.7	7703	83	7.4	328	45.4	18	18	320	17.5	13,350
Spain	30	47	16.5	350	277	77.1	16353	25	7.2	56	48.4	9	10	169	14.1	21,210
USA	3	5	0.5	207	70	16.9	6997	12	0.5	325	21.5	9	9	250	7.5	41,400

Source: World Bank and International Finance Corporation, *Doing Business 2006* (2006)

Shading: Rank: 6 worst ranked. Other columns: 3 worst Latin American countries plus any of the other countries that fall in the range of those countries.

Table 3. Days Elapsed for Completion of Each Stage in Process

	Eviction of Tenant				Check Collection			
	Service of process	Trial	Enforcement	Total	Service of process	Trial	Enforcement	Total
LatAm:								
Argentina	60	300	80	440	20	200	80	300
Bolivia	14	60	20	94	14	360	90	464
Brazil	30	60	30	120	30	90	60	180
Chile	15	200	25	240	15	140	45	200
Colombia	139	279	82	500	165	216	146	527
Costa Rica	20	90	30	140	10	180	180	370
Ecuador	38	40	30	108	38	235	60	333
El Salvador	45	60	45	150	25	15	20	60
Guatemala	10	180	90	280	10	120	90	220
Honduras	15	30	30	75	30	90	105	225
Mexico	20	60	100	180	33	99	151	283
Panama	36	50	48	134	76	86	35	197
Paraguay	12	50	140	202	25	32	165	222
Peru	41	135	70	246	81	135	165	441
Uruguay	120	120	90	330	150	120	90	360
Venezuela	30	300	30	360	30	300	30	360
Europe:								
France	16	75	135	226	16	75	90	181
Portugal	20	280	30	330	20	280	120	420
Spain	60	55	68	183	49	69	29	147

Source: Derived from Table V in Djankov et al. 2003.

Shading: Dark: Best in European group plus Latin American countries that meet or exceed that level. Light: 3 worst Latin American performers in each column plus an of the European countries in the range of the these 3 worst.

Table 4. Revenue Authorities in Latin America

	Input Indicators		Output and Outcome Indicators			
	Personnel Management	Collection Costs	Collections	Registration	Compliance	Taxpayer Services
<u>MEXICO</u>						
SAT	<ul style="list-style-type: none"> ◇ No retrenchment ◇ No pay increase policy 	<ul style="list-style-type: none"> ◇ Low collection costs 	<ul style="list-style-type: none"> ◇ No major change 	<ul style="list-style-type: none"> ◇ No major progress 	<ul style="list-style-type: none"> ◇ No major change 	<ul style="list-style-type: none"> ◇ Some improvement
<u>VENEZUELA</u>						
SENIAT	<ul style="list-style-type: none"> ◇ Voluntary retrenchment ◇ Initial reduction in staff complement ◇ Salary increases 	<ul style="list-style-type: none"> ◇ Low collection costs 	<ul style="list-style-type: none"> ◇ Moderate increase in tax/GDP ratio 	<ul style="list-style-type: none"> ◇ Focus on large taxpayers with mixed results 	<ul style="list-style-type: none"> ◇ Low audit coverage of large taxpayers 	<ul style="list-style-type: none"> ◇ Some improvement
<u>PERU</u>						
SUNAT	<ul style="list-style-type: none"> ◇ Quasi-voluntary radical retrenchment ◇ Substantial salary increase ◇ Overall staff reduction ◇ In-house training program 	<ul style="list-style-type: none"> ◇ Low collection costs 	<ul style="list-style-type: none"> ◇ Substantial increase in tax/GDP ratio (trend) 	<ul style="list-style-type: none"> ◇ Focus on large taxpayers very successful ◇ Expansion of tax base 	<ul style="list-style-type: none"> ◇ Improvement in audit coverage since reform ◇ Improved audit procedures ◇ Moderate rate of audit coverage of large taxpayers 	<ul style="list-style-type: none"> ◇ Some improvement, especially for large taxpayers

Source: Derived from Table 4 in Taliercio 2004, p. 41-42.

Table 5. Public Sector Wages Relative to Private Sector Wages, 1990's

	Men	Women
Bolivia	-0.17*	0.01*
Brazil	0.02	-0.08*
Chile	-0.025	0.17*
Colombia	0.16*	0.27*
Costa Rica	0.17*	0.47*
Ecuador	0.30*	0.26*
El Salv.	0.27*	0.67*
Guatemala	-0.045	0.40*
Honduras	0.01	0.60*
Mexico	0.11*	0.23*
Nicaragua	-0.02	0.02
Panama	0.11*	0.49*
Paraguay	0.11	0.28
Peru	0.05	0.11*
Dom. Rep.	-0.37*	0.23
Uruguay	-0.015	-0.04
Venezuela	-.001*	0.27

Source: Panizza (200), table A2, surveys from various dates in the 1990's, *=significant at 1%.

Table 6. Index of Effectiveness of AAAs in Latin America

Country	Index of institutional effectiveness	Independence	Credibility	Timeliness	Enforcement
ARG	0.28	0.46	0.22	0.13	0.33
BRA	0.63	0.88	0.42	0.24	1.00
CHI	0.60	0.81	0.40	0.18	1.00
COL	0.61	0.78	0.46	0.21	1.00
CRI	0.50	0.69	0.48	0.16	0.67
ECU	0.28	0.67	0.14	0.00	0.33
SLV	0.41	0.58	0.08	0.00	1.00
MEX	0.36	0.61	0.38	0.12	0.33
NIC	0.43	0.82	0.20	0.03	0.67
PER	0.33	0.82	0.12	0.04	0.33
LAC10	0.44	0.71	0.29	0.11	0.67

Note: Indicators are in a scale from 0 to 1, with lower scores meaning lower performance.

Sub index of independence of audit agencies: Author compilation based the constitutions, organic budget laws, financial administration laws and organic laws of fiscal control and government auditing along 12 key variables. Sources include the AAAs' websites; America's Accountability and Anticorruption Project (AAA) (2005) *Banco de Datos Administración Financiera y Auditoría Gubernamental América Latina y el Caribe* (www.respondanet.com; 8 March 2005); Political Database of the Americas (1998) *Comparative Analysis of Audit Institutions* (www.georgetown.edu/pdba; 20 March 2005); as well as Santiso (2006a, 2004c), UNDP (2004), Moreno et al. (2003:126 – 127), Payne et al. (2002:228-231), and Petrei (1998). The normalized value for the sub-index ranges from 0, reflecting limited independence, to 1, signifying strong independence.

Sub-index of credibility of audit findings: Author compilation based on the IBP's indicator of the credibility of external auditing, which is itself a sub-index of the Index of Budget Transparency (Lavielle et al. 2003). Four statements were taken into consideration to quantify this variable: (i) the external comptroller is trustworthy; (ii) the recommendations of the external comptroller have contributed to combat corruption; (iii) the external comptroller verifies that the executive complies with the physical goals of the budget programs; (iv) the external comptroller has the capacity to effectively oversee federal spending. The normalized value for the sub-index ranges from 0, reflecting low credibility, to 1, signifying high credibility.

Sub-index of timeliness of audit reports: Author compilation based on the IBP's indicator of the quality and timeliness of fiscal information, which is itself a sub-index of the Index of Budget Transparency (Lavielle et al. 2003). The sub-index of timeliness of audit reports measures the perception of timeliness of fiscal and audit information during the control stage of the budget process. This variable measures 'with what degree of timeliness is budget information made public during the control and oversight phase of the budget' (Lavielle et al. 2003:21). Its normalized value ranges from 0, reflecting low perception of timeliness, to 1, signifying high timeliness.

Sub-index of enforcement powers of audit agencies: Author compilation derived from a proxy indicator measuring their formal enforcement powers of the AAAs, provided by the UNDP (2004, Table 16). It reflects the binding nature of audit decisions and AAAs' capacity to enforce sanctions. It nevertheless measures whether external audit agencies are legally capable to enforce their decisions, not necessarily whether they do so consistently. As a result, the construction of this dummy variable is not particularly robust. The normalized value for the sub-index of enforcement ranges, from 0, indicating low enforcement capabilities, to 1, reflecting high enforcement capabilities.

Source: Table 5 in Santiso 2007, p. 66.

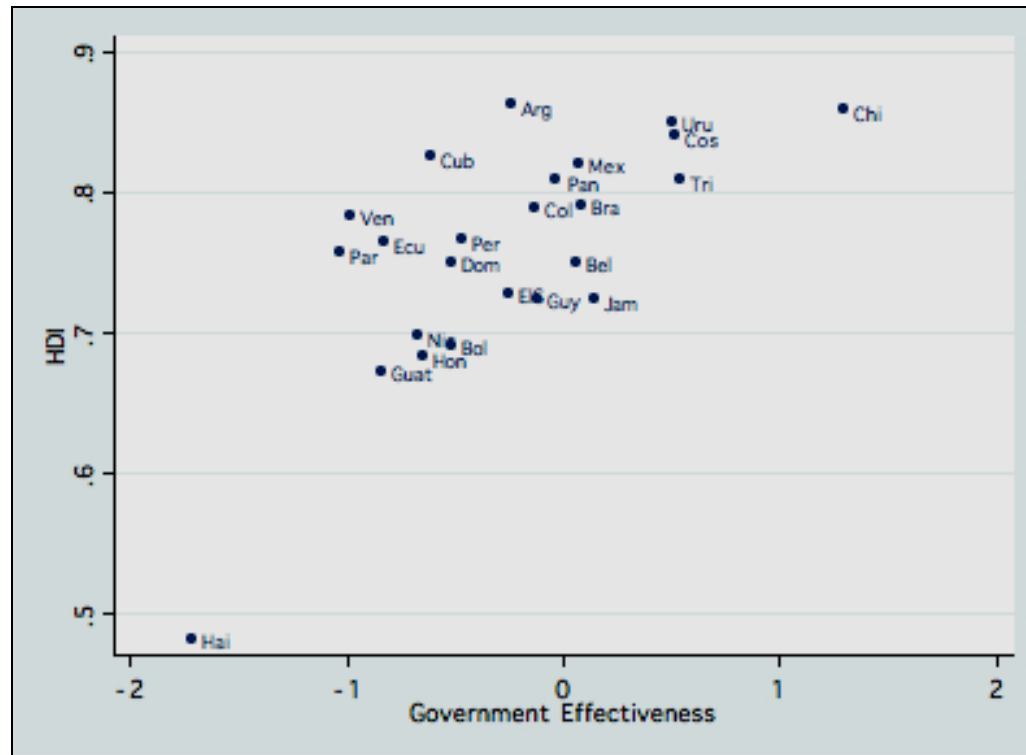
Table 7. Judicial Quality Indicators

<i>Indicators</i>	<i>Costa Rica</i>	<i>Chile</i>	<i>Argentina</i>	<i>Panama</i>	<i>Paraguay</i>	<i>Bolivia</i>	<i>Dominican Republic</i>	<i>El Salvador</i>	<i>Guatemala</i>	<i>Honduras</i>
Total	18	15	8	3	-1	-2	-3	-3	-10	-16
Judicial powers	5	5	4	5	3	3	2	3	1	1
Operating guarantees	4	3	5	2	2	0	0	-1	-3	-4
Financing resources	2	1	1	-1	-2	-1	0	2	2	-1
Judges rating and selection	1	3	-1	-3	-1	0	0	-2	-2	-3
Transparency and responsibility	5	2	-1	1	1	-3	-2	-3	-3	-4
Efficiency	1	1	0	-1	-4	-1	-3	-2	-5	-5

Source: Chapter 3.
Note: Larger numbers indicate better quality reforms.

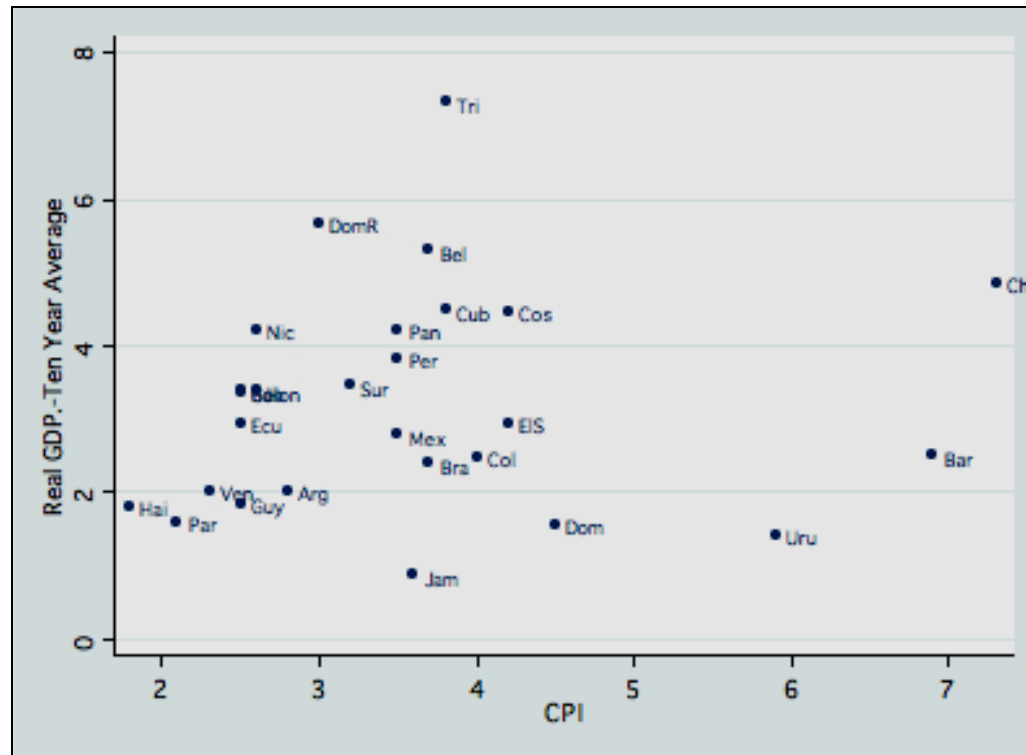
Source: Sousa 2007.

Figure 1



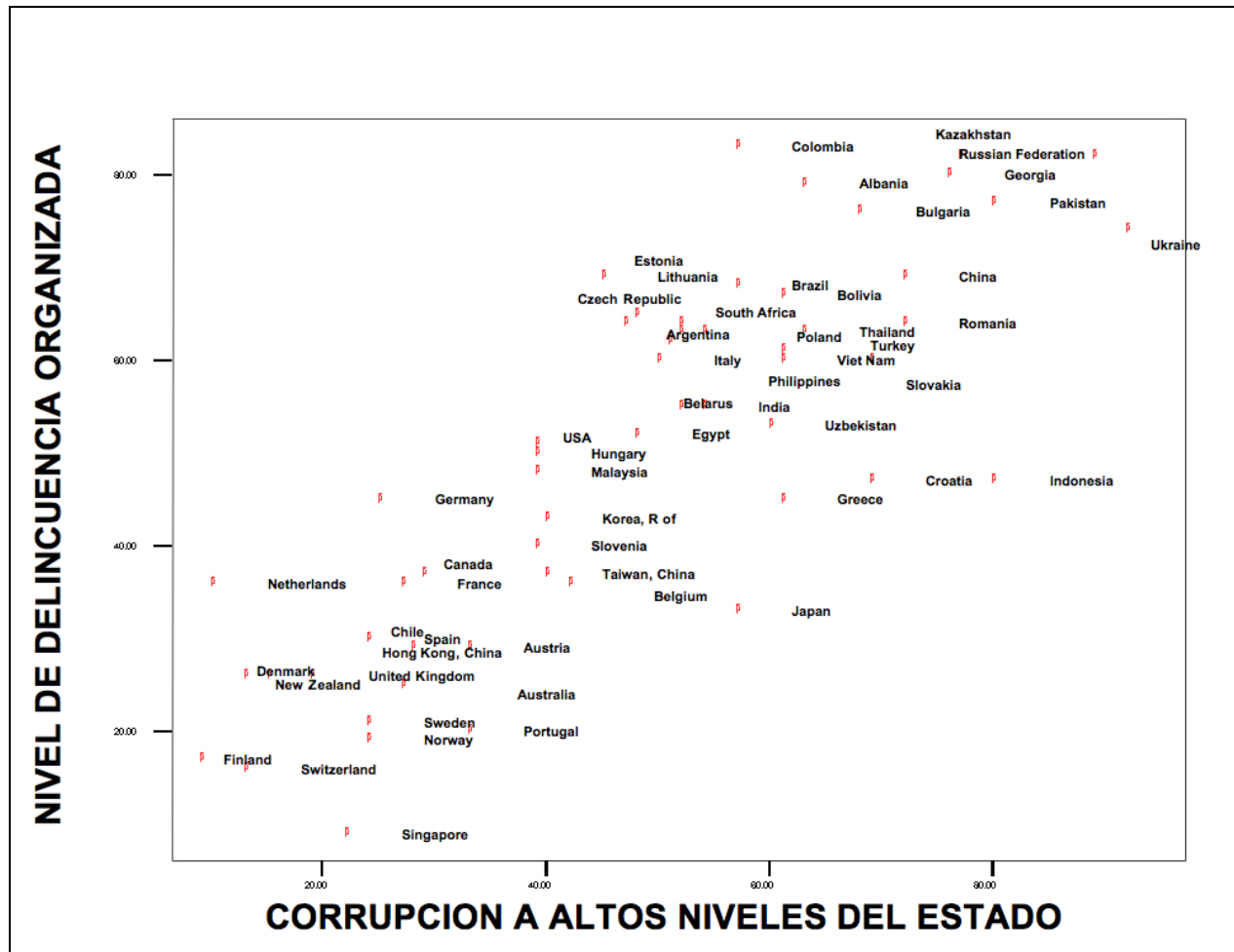
Source: Government Effectiveness: see Table 1; HDI: UNDP

Figure 2



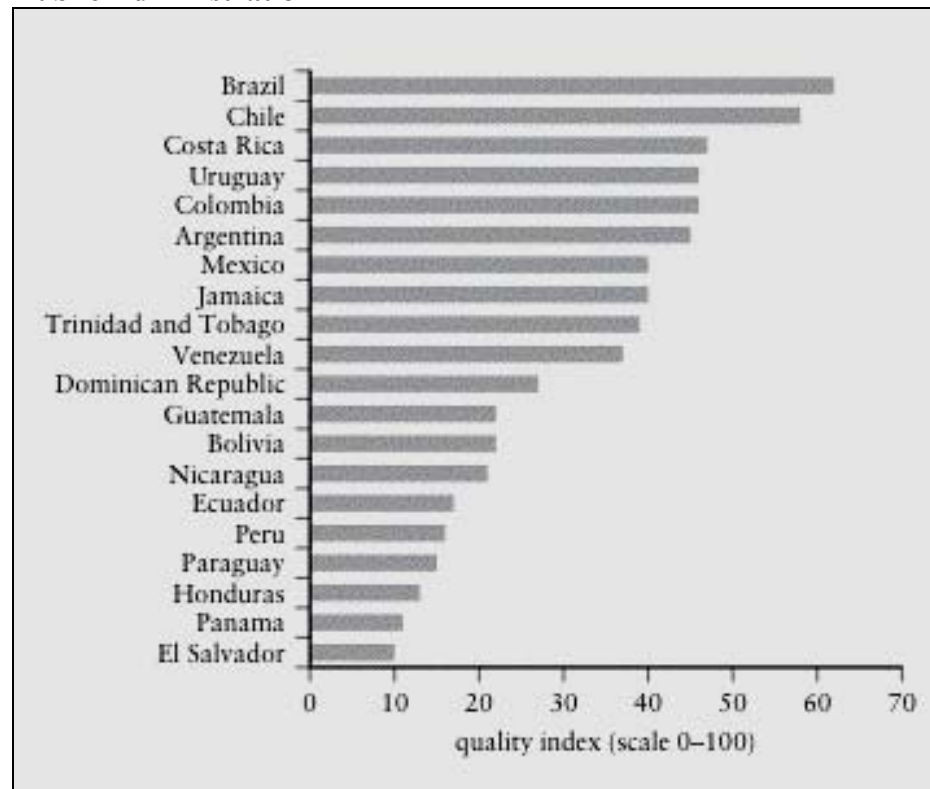
Source: CPI: Transparency Internacional, see table 1, HDI: UNDP

Figure 3



Source: Edgardo Buscaglia, Análisis Económico de la Corrupción y de la delincuencia Organizada, Power Point presentation, 2004-2005.

Figure 4 Quality of Public Administration



Source: Lora (2007a), figure 1.2, page 17, calculated from data compiled by IDB staff; see Echebarría and Cortázer (2007)

Figure 5

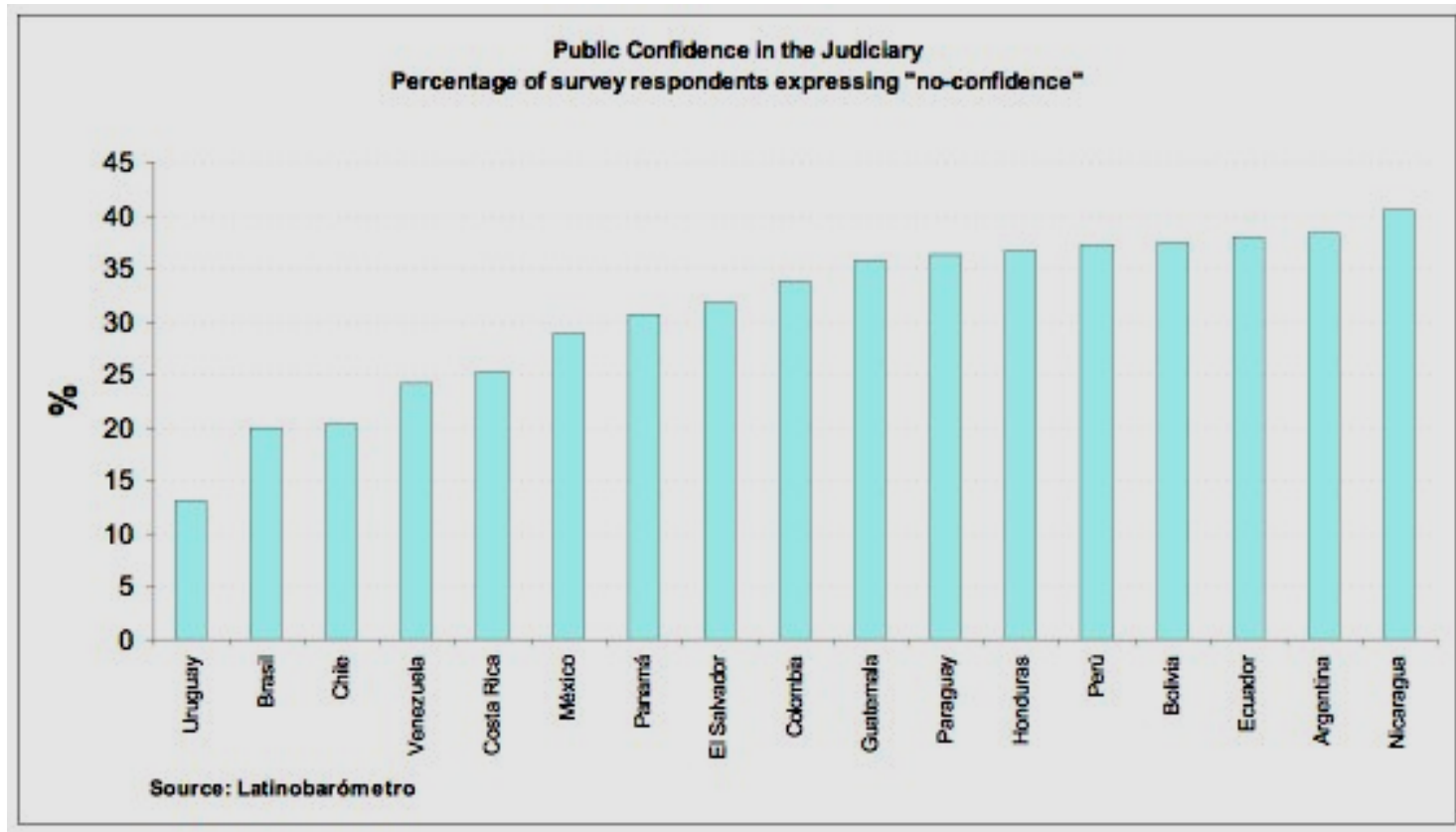
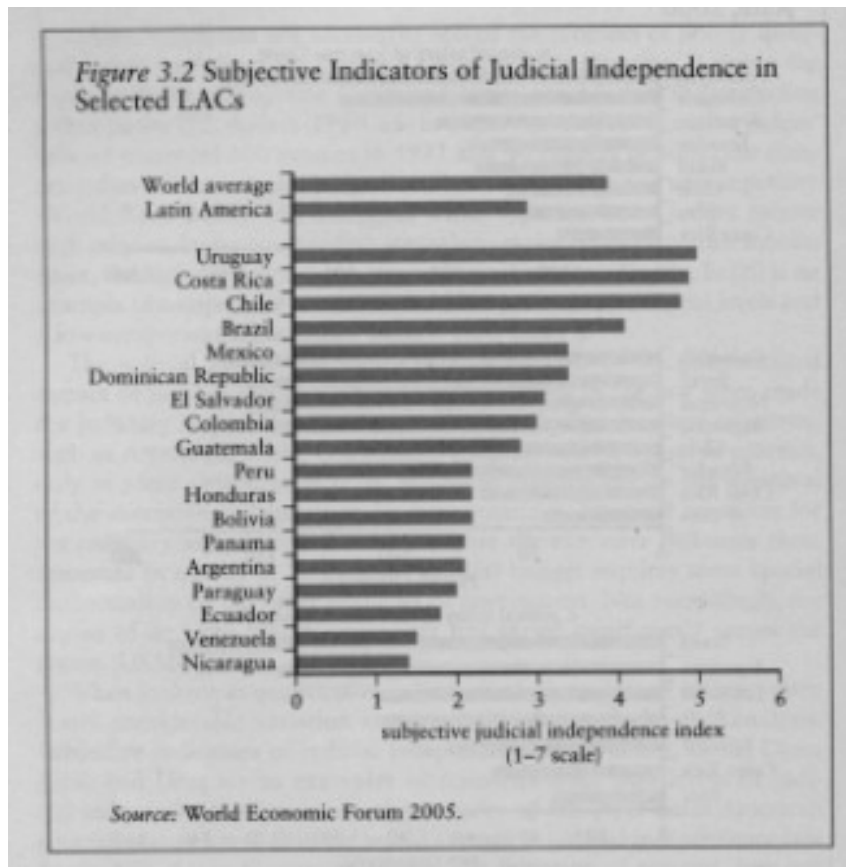


Figure 6



Source: Sousa (2007) figure 3.2, p. 106

Figure 7. Accountability Deficit in Latin America

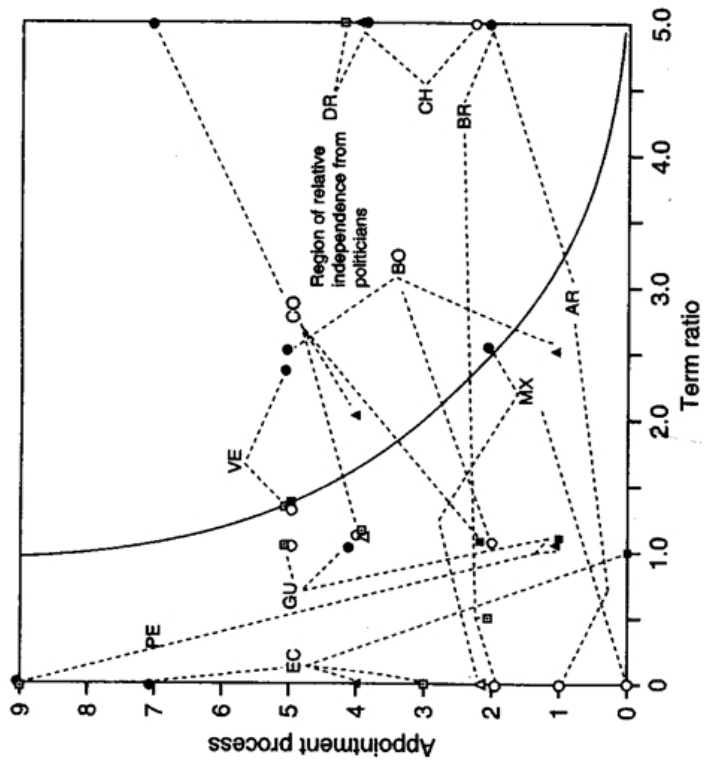
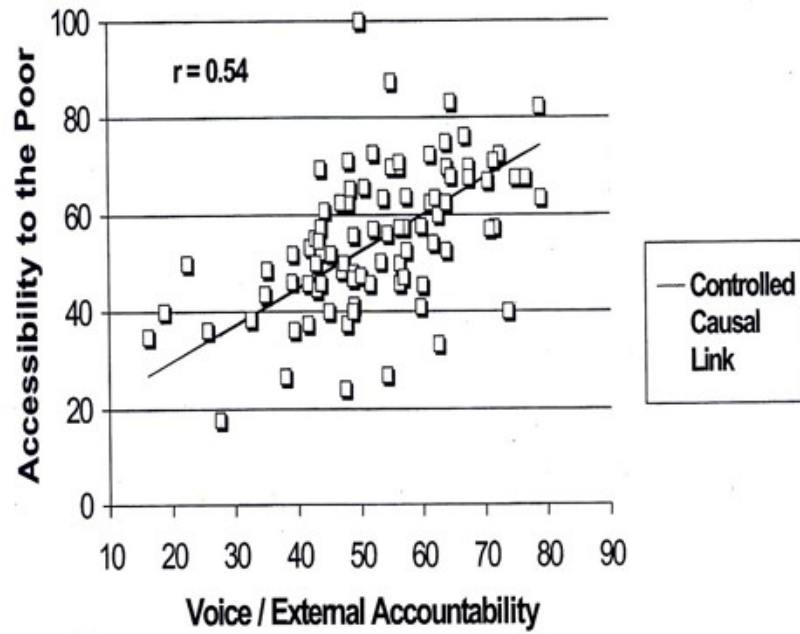


FIG. 4.3. Independence of high courts and superintendence agencies in Latin America (Source: Appendix Tables.)

- Key to scale on appointment process:**
- Legislative-dominant: appointment by:**
- Legislative majority only
 - Legislators, with opposition participation
- Mixed: appointment by:**
- Legislators and elected president
 - State entity other than legislature or elected president (e.g. weak upper house or head of state)
 - Judges and politicians
 - Civic groups and politicians
- Judicial-dominant: appointment by:**
- Supreme court or council of judges with participation by state entity other than legislature or elected president
 - Supreme court or council of judges
- Civil-society-dominant: appointment by:**
- Commission of lawyers, academics, etc., with participation by state entity other than legislature or elected president
 - Commission of lawyers, academics, etc.
- Key to country abbreviations**
- | | |
|----|--------------------|
| AR | Argentina |
| BO | Bolivia |
| BR | Brazil |
| CH | Chile |
| CO | Colombia |
| CR | Costa Rica |
| DR | Dominican Republic |
| EC | Ecuador |
| GU | Guatemala |
| MX | Mexico |
| PE | Peru |
| VE | Venezuela |
- Key to symbols**
- Supreme Court
 - ▲ Constitutional Tribunal
 - △ Attorney General
 - Prosecutor General
 - Ombudsman or Defender of human rights
 - Controller General or audit court

Figure 6: External accountability/feedback improve access of the poor to public services (Bolivia GAC diagnostic)



Source: Based on Kaufmann, Mehrez and Gurgur (2002). The sample of institutions includes 44 national, departmental, and municipal agencies that provide services to the poor. Each point depicts an institution.

Kaufmann (2003)

Figure 8