

IS THE GOOD THE ENEMY OF THE BETTER?
PERU'S INDECOPI AND JUDICIAL REFORM

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In an article that appeared in a recent issue of the Journal of Democracy, I postulated that people's experience with "the law of everyday life" can directly affect, for good or ill, the legitimacy of newly established or restored systems of liberal democratic governance. My reference is to the rules and adjudicatory procedures associated with such routine social tasks as buying and selling, obtaining satisfaction under a manufacturer's or seller's warrantee, being compensated for damage accidentally done to person or property, processing a mortgage loan, filing for legal separation or divorce, and the like.[1] The reasoning is simple: I assume that systemic legitimacy claims are continually tested and tacitly reevaluated by citizens through their own life experiences and the experiences of others with whom they maintain social relationships; that the standard most of them apply is the liberal one of fairness and respect for well-understood and widely accepted political and civil rights;[2] and that, for a large majority of citizens, routine efforts to use the law for one's own purposes, just because they are relatively frequent, are much more consequential for shaping political attitudes and behavior than other aspects of the political or judicial process. If there is, however, anything on which students of Latin America's political and legal institutions, irrespective of theoretical standpoint or ideological preference, are in universal agreement, it is that no country's laws or judiciary comes close to meeting these basic criteria of democratic legitimation.

Of course, many such researchers, and particularly the contributors to the growing literature on "democratic consolidation," are looking for more from the laws than their correspondence with the realities of modern social and economic life as actually lived, and more from the judiciary than the efficient resolution of private disputes. To these critics, Latin American governments suffer most from an excess of executive power and a lack of "horizontal accountability"--institutional mechanisms which hold rulers accountable to "coordinate authorities," of which the most significant is an independent judiciary.[3] The difficulty is that it is one thing to identify the absence of politically independent judiciaries as a major shortfall of Latin American democratic institutions, but it is quite another to theorize and implement a politically viable strategy of institutional reform in the face of opposition from elected officials with reasonable public approval ratings, as well as indifference or skepticism from voters who in many countries seem to regard the judiciary as beyond repair.

One possible answer is that internationally powerful economic forces have their own difficulties with existing Latin American legal orders and judiciaries in areas such as intellectual property (inadequately registered and protected), contractual disputes (held hostage to legal formalisms, cumbersome court procedures, corruption, and/or political interference), and unfair business practices (e.g., predatory pricing by national firms that enjoy state subsidies), and that it should thus be possible to enlist them into a coalition for reform. Their presence could also energize local elites with developmental concerns--business "peak associations," economic consultants, staff members of research institutes--to take a more active interest in legal and judicial questions. Unfortunately, insofar as reform appears to depend on such forces, anti-reform governments can adopt a strategy of selective concessions. That is, they can address the specific economic and developmental concerns through limited reforms that do not materially affect the character or incentive structures of the regular judiciary in ways that might encourage it to rule more independently. One way of engineering such limited reform is to turn over responsibility for "the law of the market" to some specialized institutional entity or entities distinct from the regular courts. The former can then be endowed with adequate facilities, better rules, and more competent personnel with less risk that the resulting demonstration effect will spill over to the regular judiciary. It is in this sense that the good may turn out to be an enemy of the best.

In this paper I explore that possibility by examining a Peruvian institution, INDECOPI, which may actually embody the counterstrategy of limited reform. I begin by introducing INDECOPI and exploring the issues it raises in somewhat more detail. Next I describe the philosophy behind INDECOPI and show how several of its functions mesh closely with it. This is followed by a discussion of the institution's history, organization, and mode of operation; together with the discussion of philosophy and functions, this demonstrates that INDECOPI is indeed something new and important in Peru's panoply of adjudicative institutions. An analysis of a few recent cases then serves to document the extent and limits of INDECOPI's power and authority. The concluding section of the paper draws out the implications for the future of judicial reform in Peru.

INDECOPI and the Issue of Judicial Reform

The Peruvian National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) was created by Decree-Law 25868, issued in November 1992, and went into operation in March 1993. It has formal regulatory and adjudicative responsibilities in the following issue areas, all of which are involved with the maintenance and regulation of an open market economy: consumer protection, unfair business practices, antitrust, bureaucratic barriers to market entry, bankruptcy,[4] dumping and subsidies, technical and commercial norms,[5] and the registration and enforcement of intellectual property rights (patents, trademarks, and copyrights).[6] Combining the functions of rulemaking, rule enforcement, and adjudication in a single administrative entity, INDECOPI's organizational structure is based upon the civil law tradition (which countenances administrative assumption of adjudicatory responsibilities far more than does the Anglo-American common law tradition) and more or less follows French models of state administration.[7] There is a significant difference, however: INDECOPI, though an instance of "pure administration" in the sense that it is not principally a provider of goods or services, is organized as a public (state-owned) corporation, which exempts it from civil service personnel rules. Its status as a public corporation also insulates it from the day-to-day managerial control of the executive branch and provides it with some of the autonomy possessed by independent U.S. governmental agencies such as the Federal Trade Commission--although we would be plainly foolish to assume that the Fujimori administration would not curtail this autonomy if its policies or political interests so suggested.

As is evident from its list of functions and responsibilities, INDECOPI is not, and clearly was not intended to be, a vehicle of horizontal accountability in general; only the regular courts have the requisite authority and powers. Even within the formal limits of its jurisdiction, it is uncertain (because we have as yet no cases that might test the point) how much INDECOPI could accomplish if confronted by an anticompetitive action of another arm of the state administration, e.g., a contractual agreement with a private enterprise granting the latter some legal monopoly. Two questions therefore confront those who wish to foster meaningful judicial reform in Peru. How efficiently, honestly, and equitably (with particular attention to the plight of the economically and socially disadvantaged) does INDECOPI perform its assigned tasks? How does its existence affect prospects for reform of the regular judiciary?

The recalcitrance of the Fujimori administration in the face of both external and internal demands for reform of Peru's ineffective, corrupt judiciary makes plain the eminently political character of judicial reform. Indeed, it is difficult to imagine any state executive undertaking institutional reforms intended to limit its own powers and prerogatives unless induced or

compelled by interests which the government feels a need to placate. It follows that the answer to the second question above will largely hinge upon whether INDECOPI itself satisfies key constituencies and "stakeholders"[8] so well as to sap their enthusiasm for further reform of the regular judiciary. The latter currently include transnational corporations and other foreign investors, who worry mainly about intellectual property protection and contract enforcement; the international agencies and aid donors, which have recently turned their attention to the improvement of governance in newly developing countries; lawyers, whose professional ideology and self-interest has often induced them to act as principled defenders of limited government and the rule of law;[9] foreign and domestic human rights NGOs, which hope greatly to strengthen judicial protection of constitutionally guaranteed rights; opposition political parties, appropriately preoccupied in the present political environment with the political rights and civil liberties upon which their existence and future electoral prospects crucially depend; and advocates for the poor, indigenous peoples, women, homosexuals, and other excluded groups, who look to changes in the laws and favorable court decisions to overcome these groups' existing disadvantages. Though not all of these are concerned with all elements of judicial reform, as that term has come to be understood, the reform packages assembled in recent years by the aid agencies are very comprehensive and offer something to each of the interests I have named. And together these interests, drawn as they are from both ends of the socioeconomic and ideological spectra and from both global and domestic society, represent a potent aggregation that would be difficult for a small, economically weak country like Peru to resist.

A successful INDECOPI could divide this pro-reform coalition. Foreign investors might be satisfied enough with its protection of intellectual property and other market norms that they see less need to risk the low political profile they prefer to maintain by speaking out for broader judicial reform. The donor agencies, which in any event tend to regard the judiciary as a kind of public service enterprise dedicated to the efficient settlement of disputes,[10] might also conclude that INDECOPI meets enough of their objectives that there is little point in their continuing to pressure an unwilling government over reform programs whose efficacy, at least in Peru, is open to serious doubt. (They may even be moved to reconsider, as Linn Hamnergren suggests they should, whether the Peruvian courts, and possibly civil law courts anywhere, can ever play the activist role in securing human rights and limiting executive powers that is anticipated by those who look to judicial reform primarily as a way of improving the quality of democratic government.[11]) Lawyers, especially the younger, foreign-trained, economically literate lawyers who comprehend the mutually reinforcing relationship between modernizing development and a strengthened rule of law, might gravitate to INDECOPI rather than work through bar associations or other organizations on behalf of the necessarily vaguer and less certain vision of the "moderate state" (limited government under the rule of law). The net effect of these defections would be to reduce the coalition favoring broad reforms of the regular judiciary to a set of forces and interests that in Peru, wrongly or rightly, have come to be associated with a political Left which manifestly lacks electoral clout and has relatively little influence over public opinion.

Organizational Philosophy and Functions

INDECOPI can be regarded as a response to political concerns about the society's acceptance of market-oriented economic reform. The Fujimori administration, apparently, has little interest in observing the formalities of democratic decisionmaking if--as is almost always the case--it is convinced of the rightness of its cause. It could even offer reasonable arguments for bypassing

Congress and not consulting either organized interest groups or the general electorate. Peru's organized interest groups, particularly those associated with business interests, are often referred to as *fuerzas vivas* (loosely, politically operative forces) because of their effectiveness in determining policy outcomes via the deployment of various forms of backstage pressure and influence; a business sector born and bred into anticompetitive, collusive habits that for years were not just tolerated but actively promoted by the corporatist state was not going to sit idly by while that state withdrew the subsidies and protections upon which it depended and exposed it to the cold blasts of real competition. The small size and tight organization of the Peruvian business sector also meant that the minority of members who might have seen merit in free-market reforms would have to confront the face-to-face opposition of others whom they formerly regarded as friends and colleagues--a socially powerful deterrent against breaking ranks. As for the general public, there were indications that many, specifically including the urban squatters and informals who constitute an absolute majority of the economically active population, were supportive of free-market principles; but Peru was also home to what was still, in the early 1990s, Latin America's strongest and most active Marxist Left outside of Cuba, and sheltered as well an active labor movement with a reputation of virulent opposition to capitalism. Therefore, public support for reform could reasonably be regarded before the fact as uncertain at best.

On the other hand, Peruvian economic reformers understood that the dynamic, modernizing capitalism they hoped to propitiate depended not only on public acquiescence or support for a "one-shot" series of reforms. Ultimately the success of the reform program would require that millions of ordinary producers and consumers adopt new values and modes of behavior. People accept the idea that market forces, not government fiat, should determine prices and employment only because, and insofar as, they perceive market determination as an abstract process that has not been manipulated by particular interests to the latter's advantage; that is, free markets are preferred because, and insofar as, their processes and outcomes are regarded as fairer and more just than would be the case if allocations were determined by identifiable individuals, groups, or organizations. But if the legitimacy of markets depends on their perceived fairness, it follows that abusive business practices threaten this legitimacy directly. Nor is it necessary that the threat take the form of major scandals involving, say, product adulteration or monopoly pricing. More mundane abuses such as short-weighting, false advertising, "bait-and-switch," and the like, if sufficiently widespread, can subject the people's regard for markets to a "death of a thousand cuts." Market competition, however, creates powerful incentives for hard-pressed or merely greedy businesses to engage in just such behavior. The situation they face is a classic Prisoner's Dilemma: although "cooperation"--universal observance of norms of fair dealing--offers the optimum payoff to all players, the potential payoff for "defection"--nonobservance of the rules--greatly exceeds the "sucker's payoff" that a player receives by cooperating while others defect. In other words, it is rational for the individual business owner to cheat his customers if such conduct is common and the probability of being caught is low.

No government can hope to police economic activity so thoroughly as to remove the payoff to cheating by this means alone. All advanced capitalist societies therefore rely heavily on self-policing: government establishes and enforces rules and standards, but enforcement comes into play, for the most part, only after an aggrieved member of the public has suffered an abuse and complained to the authorities. This is not much of a problem in business-to-business dealings, where buyers tend to be well informed of their rights, knowledgeable about contracts, and, often, confident in their ability to gain the attention of the courts or appropriate administrative agencies. It is a problem where buyers are unsophisticated consumers who have little idea of their rights in

the transaction and little faith, in view of past experience, that government will interest itself in their plight.

A further complicating factor in a newly developing society like Peru's is that development itself drastically alters patterns of purchasing and consumption, especially in urban areas where people, many of whom are relatively recent migrants from the very different economic environment of the countryside, cannot be self-sufficient but must buy most of the necessities of daily life. As is true of other social arrangements, the modernization of consumption entails a shift from face-to-face dealings carried on in accordance with customary norms by parties embedded in ongoing social relations that extend well beyond the business at hand, to impersonal dealings with large corporate suppliers--department stores, retail chains, supermarkets--in accordance with abstract, universalistic legal norms. Thus the visitor who walks the streets of Lima today is struck, if she remembers the city twenty years ago, by the proliferation of supermarkets and chain stores, many of them newly founded by enterprising Peruvians in response to the economic reforms. Whereas a consumer who has been short-weighted by an ambulante (street vendor) or small neighborhood merchant might resolve the dispute by force of direct argument and the support of neighbors, what is he to do when he tries to return a broken toy he has bought for his child's birthday to a large department store and finds that the store will not honor its warrantee?

Two other recent developments also bring consumers into economic contact with large corporate suppliers. One is the privatization of public utilities and other providers of public services. Privatization in these areas is justified politically with widely publicized claims that in addition to offering better service at lower rates, private owners will be far more responsive to consumer complaints about service and billing than the government agencies or parastatals they replace ever were--and the inevitable result is that both the number of complaints and the complainants' insistence on satisfaction increase dramatically. The other is the great expansion of consumer credit brought about by modernization of the banking system (including the entry of European, particularly Spanish, banks with experience in consumer lending) and by the growth of small-scale mortgage lending in response to land titling programs aimed at regularizing the property rights of urban squatters. With this proliferation of consumer credit comes an enormous potential for disputes over terms, repayment, foreclosure, etc., which again involve large corporate entities at one end of each transaction.

Considerations such as these lead to the conclusion that in countries at Peru's stage of development, successful marketizing reform is not only an inherently political question but a cultural one as well. Success demands more than that businesses be goaded by the law as well as competitive pressures and principled belief to deal fairly and honestly, more than that government be responsive to consumer complaints and have effective remedies at hand. It also demands that consumers, most of them poor people whose past dealings with government and with private economic power have been marked by domination or unresponsiveness, become active subjects fully aware of their rights and determined to have them enforced.[12]

Areas of Responsibility

Consumer protection means, in this context, ensuring that buyers of goods and services are fully aware of the price they will pay and the value they will receive in return before entering into a transaction; that the goods and services they acquire actually are as represented and meet reasonable standards of merchantability; that their contractual and legal rights are honored; and that the seller fully honors any after-market obligations he has assumed with regard to returns and

refunds, warranties, or service. INDECOPI understands consumer protection as entailing consumer education as much as law enforcement. It therefore devotes much effort on data collection and mass-media publication of comparative prices and other service indicators (such as the on-time performance and accident rates of providers of public transport) to facilitate comparison shopping. It also involves itself proactively in high-visibility enforcement activities designed to enhance consumer awareness. (For example, INDECOPI officials periodically appear at public markets with certified portable scales and offer free re-weighing of produce that consumers have just bought. If short-weighting is detected, the officials and the affected consumer go immediately to the stall that sold the goods and complain loudly; raising the complaint openly in such a public--and competitive--setting is usually enough not only to get the complainant an immediate adjustment but to deter further such abuses at least for a time.)

Technical and commercial standards refers to "weights and measures" (metrology), composition and performance standards (such as octane ratings of gasoline), and the elimination of harmful or dangerous contents or design features. Although the establishment of the relevant standards is a somewhat arcane technical function, their enforcement is an aspect of consumer protection. Assuring accurate weights and measures is an obvious example, but so too is making possible meaningful price-comparison shopping by assuring that the basis of comparison, e.g., a particular grade of gasoline that an engine may require, is uniform and that the competing products will all perform as advertised. It goes without saying that consumers are hardly in a position to know unaided about possible harmful adulterants in processed foods or cosmetics; and while their well-informed individual decisions might eventually aggregate to the point where market pressures persuade manufacturers of mass-produced goods to eliminate dangerous design features, the result takes a great deal of time and many consumers will have suffered harm in the interim.

Antitrust regulation affects ordinary people chiefly through its impact on consumer prices. Peru's business sector has long been anticompetitive in organization and behavior, a situation that can be related to three other features of the Peruvian political economy: (a) Arm's-length transactions with counterparts selected on purely economic criteria (lowest price, highest quality, fastest delivery) and secured by contract are avoided in favor of transactions with personal acquaintances secured by *confianza*,^[13] a preference closely bound up with the absence of the rule of law; (b) A highly concentrated ownership structure (again related to the absence of the rule of law) and previous governments' corporatist policies have for years encouraged market-sharing and rent-seeking business behaviors; (c) A network of cohesive business associations, in part another product of past corporatism, discourages competition and establishes forums in which "competing" executives, having come to see one another as friends and colleagues engaged in a common enterprise, readily collude over prices and market shares. The worst offenders, it appears, are domestic consumer-goods industries with low per-unit profit margins and, consequently, little competition from imports or from local TNC operations; examples include ground transportation and the poultry industry (which, together with the fishing industry, supplies the bulk of the country's animal protein).

Since consumer prices are the focus of the government's strategy for obtaining popular support for marketizing reform, INDECOPI focuses strictly on anticompetitive behavior such as price-fixing and does not concern itself with industrial concentration per se. (With a total population of some 24 million, of whom perhaps 20 percent participate in the money economy only peripherally, the national market is not large enough to support many independent firms in product lines where the productivity of each is high.) Hence, in this area too, price monitoring by alert consumers is an essential first step in enforcement. Recent antitrust targets include consumer

banking and automotive parts (both resolved by voluntary agreements to refrain from anticompetitive practices) and the poultry industry (one of the very few to challenge INDECOPI in the regular courts).

Intellectual property bears mention because its protection has proven less controversial in Peru than the literature might imply. Contrary to claims that greater protection of intellectual property rights is primarily a TNC demand that keeps newly developing countries technologically dependent,[14] the main issue is the pirating of software, entertainment media (video and audio tapes and CDs), and trademarks. Peruvians have great respect for their own artistic and literary creations, for which they readily seek copyright protection, and appear to be acquiring a comparable respect for their capabilities as technical innovators. This, along with the fact that Andean and "chicha" music (a blend of Andean, rock, and salsa themes that has become the popular music of the urban squatter settlements) has found a welcome in the United States and Europe--thereby giving musicians of very modest means a direct interest in protecting the tapes they produce for sale in those markets--has created a generally favorable attitude toward INDECOPI's efforts to stamp out piracy. Interestingly, many Peruvian microbus owners, who are mostly "informals" but account for most of the country's municipal bus transport, have registered the distinctive colors of their vehicles (which identify their routes) as trademarks in order to protect themselves against "pirate" competition.

Origins and Institutional Development

When circumstances call out for major policy reform or institutional redesign, the Peruvian tradition has been to seek ways around the inevitable obstacles posed by vested interests rather than confront and overcome them. Thus, the creation of a parallel institution--INDECOPI, not a reform of the regular courts or of another executive agency--is the normal way of engineering institutional reform.[15] INDECOPI itself originated as an attempt to reform an older agency, ITINTEC, whose responsibilities were limited to supervision of weights and measures and registration of trademarks and patents.

As was true of the entire government bureaucracy, most of ITINTEC's bloated, inefficient staff consisted of APRA party stalwarts whom the previous government of Alan García (1985-90) had appointed as a reward for their loyalty. In mid-1992, Jorge Camet, then Minister of Industries, concluded that ITINTEC (which, as a dependency of the ministry, fell within his area of responsibility) should be reorganized. The three-member commission he appointed to study the situation[16] recommended the abolition of ITINTEC and its replacement by an entirely new institution. The requisite enabling legislation was approved in late 1992, and INDECOPI began operations in March 1993. Initially it was by design a small, select agency with a three-member Board of Directors that met biweekly and functioned by consensus; the president of the Board, who is the institution's real CEO and supreme authority, was appointed by President Fujimori. In a highly innovative departure from traditional governmental practice, INDECOPI was formally set up, as I have mentioned, not as a regular administrative agency but as a public enterprise--which, inter alia, exempted it from civil service employment regulations. Although the business sector, through its peak associations, objected to several provisions of the enabling legislation, notably those empowering the new institution to levy fines, business chose not to prioritize the issue and its opposition bore no fruit.[17]

Having begun life with responsibilities limited to intellectual property and metrology, over the next few years INDECOPI was given additional functions and responsibilities with respect to

"orphan" issues--that is, regulatory issues that lacked established administrative "homes" and, correspondingly, vested interests. But the institution's current dynamism traces to Fujimori's 1996 appointment of a new president, Beatriz Boza Dibos, at that time a distinguished associate of a New York law firm and the respected chairperson of the Committee on Inter-American Affairs of the Association of the Bar of the City of New York. Boza promptly set to work enhancing INDECOPI's budget, which was and is financed largely from fines it collects. Whereas the original enabling legislation had sought to limit INDECOPI's powers by limiting the maximum fines it could levy to less than \$50,000 for antitrust violations and less than \$4,000 for others, Boza persuaded Fujimori to issue a 1996 presidential decree that raised these figures to about \$6 million and \$100,000, respectively. She also recruited a staff of mostly young, "modernizing," often foreign-educated economists and lawyers like herself.

Still, the institution would not have prospered without the support of Fujimori himself. Not long after assuming the INDECOPI presidency, Boza found herself in the middle of a dispute between the Ministries of Agriculture and of Economy and Finances, which had developed conflicting proposals for the regulation of agricultural imports. INDECOPI's staff was working behind the scenes to get the dispute resolved along the less protectionist lines preferred by Economy and Finances; but because the political stakes were high, the cabinet reserved the right of final decision for itself and drafted a Supreme Decree supporting the trade barriers that Agriculture had insisted upon. At this juncture, during a private meeting for an ostensibly different purpose, Fujimori showed Boza a copy of the proposed decree and solicited her opinion; she replied that if he signed it, most of the INDECOPI staff would resign in protest, and she would then be compelled to resign as well. Fujimori did not reply, but he dropped all references to the decree from the text of a speech he delivered later that day to a group of vicuña farmers and refrained from signing it. Ever since, having convinced Fujimori that it was an indispensable element of his effort to prioritize the country's economic modernization and demonstrate his government's commitment to full participation in the global market system, INDECOPI has enjoyed his support against protectionist policy proposals. But the episode also increased INDECOPI's political sensitivities. Thus, it has modified its ideological discourse: instead of "free markets" and "free competition" (*mercado libre, libre competencia*), it now claims to support "loyal and honest competition" (*competencia leal y honesta*).[18]

Today INDECOPI manages to maintain a very high degree of independence from political forces and organized interest groups. It does so in two ways. First, most of those who staff its tribunals are part-time employees--typically, attorneys in private practice who earn enough that they do not have to depend on the salaries it pays them (which in most cases they turn over to their firms); they do this work because it is prestigious and exposes them to interesting cases.[19] Full-time legal staff is also well compensated by local standards. Although the pay does not compare with what can be earned in a good law firm,[20] the country's supply of young attorneys, many with good foreign educations, exceeds the private sector's demand; full-time employment with INDECOPI becomes their next-best alternative. (These salary levels have been made possible by aid from the World Bank and the IDB.)

Yet another way that INDECOPI secures a high-quality staff is by taking advantage of Peruvian rules that require everyone wishing to enter the practice of law to first serve for a year on the staff of a government agency. Its prestige and reputation for political independence enable INDECOPI to attract the best young legal minds to these mandatory internships, thereby providing itself a constantly renewable source of young legal talent: the average age of the staff is 31 years, and the average time of service in the institution is 1 year. All of the staff members I interviewed

agreed that the most significant difference between themselves and most older attorneys in private practice is that the latter tend to have little comprehension of economics and do not understand what "free competition" really signifies.

Second, about 70 percent of INDECOPI's annual expenditures is covered by fines and by the fees it earns from trademark registration;[21] only 30 percent is covered by state tax revenues. Not only does its fiscal independence insulate INDECOPI from political pressures and patronage and enable it to maintain a staff selected for expertise alone; in addition, its high salaries, adequate budgets, and heavy reliance on well-compensated part-timers eliminate the bribery incentives that plague the rest of the state apparatus, including the ill-paid regular judiciary. Under Boza's leadership, INDECOPI has further protected itself against bureaucratic bloat and political corruption by developing and propagating an institutional culture in which its small staff size and transparent decisionmaking style are points of pride. This culture also incorporates the strong moral norms that are required to prevent dependence on part-time staff drawn from the private sector from creating conflicts of interest; part-timers must and do recuse themselves from any case in which their law firms have any involvement.

Illustrative Cases

Combating Discrimination

Despite the fact that an overwhelming majority of citizens are of ethnic Native American background and cholo (mestizo) culture, until 1968 Peruvian society was characterized by the dominance of a Caucasian, culturally "Europeanizing" oligarchy and by blatant discrimination in all aspects of political, economic, and social life. The military's "revolution" of 1968-75 put an end to oligarchic domination and made pre-Columbian and Native American symbols and culture a central component of the national political symbology (as occurred with the Mexican Revolution some fifty years before); but even though today's Peruvians of Caucasian descent join their cholo neighbors in visiting the archaeological treasures in the National Museum, listening to the music of zampoñas (panpipes) and quenás (wooden flutes), and eating cuy (guinea pig) or anticuchos (marinated beef heart) in restaurantes típicos, widespread though unacknowledged discrimination against those with dark skins--and, especially, traditional native clothing--is the country's "dirty little secret." [22]

Recently INDECOPI reviewed this situation and concluded that the existence of racial-ethnic discrimination in the provision of goods and services was undermining the public's appreciation of free markets. Preliminary soundings revealed considerable public interest in, and potential support for, anti-discrimination measures, and INDECOPI therefore decided to attempt to stimulate a major government campaign against this social evil. The institution has drawn up a set of rules prohibiting discrimination and has met with owners of the largest restaurants and discos (the businesses most frequently accused of discrimination) to negotiate their voluntary compliance. Most have gone along willingly; however, one obtained a judicial writ of amparo (a form of appeal) against INDECOPI and Beatriz Boza personally on the ground that the constitution's guarantees of freedom of association and of contractual and property rights are infringed by any rule that interferes with a business's private decision as to whom and whom not to serve. The case has now moved to the courts--where, if past practice is any guide, it is likely to languish for years. [23]

Negative Advertising

Procter & Gamble filed a complaint with INDECOPI alleging that its Peruvian business was being unfairly harmed by negative advertising placed by a small local competitor. The complaint protested a television advertisement in which a young woman was shown telling a friend that a certain kind of sanitary napkin--the brand was not mentioned, but only Procter & Gamble sells this product locally--causes her irritation. Procter & Gamble lobbied INDECOPI extensively in hopes of getting a blanket ban on negative advertising; it claimed that it is an unfair business practice, and therefore illegal under INDECOPI's rules, to advertise in ways that compare competing products unfavorably to the product being advertised, if the comparison is subjective or based on "mere opinion." Plainly, had INDECOPI ruled in Procter & Gamble's favor, the ramifications would have gone far beyond the case of sanitary napkins; the ruling would have outlawed, e.g., any advertisement in which someone claimed that a given detergent makes clothes "whiter and brighter" than another (because all such claims are of course subjective).

INDECOPI has consistently opposed Procter & Gamble's demand for action on grounds directly related to its mission to promote competition. It argues that in general it should not interfere with producers' rights to publicize their products however they wish, so long as they do not commit fraud or misrepresentation and their publicity campaign does not increase market concentration. In this instance it was evident that the threat of market concentration resided in the dominance of Procter & Gamble, not in the efforts of the local firm to find a niche for its competing product. Staff members insisted, however, that the institution's position was not influenced by the nationality of the disputants.[24]

What is especially noteworthy about the Procter & Gamble case is that before the establishment of INDECOPI, its complaint, as well as any others filed by large transnational firms that the government wished to placate, would have been lodged and processed through "back channels" of the state administration in order to minimize the prospect of bad publicity (in Peru's ideological climate, any complaint publicly levied against a national firm by a TNC tends to result in bad publicity for the latter). Hence, INDECOPI has greatly enhanced transparency and public accountability in the processing of such issues.[25]

Confronting the Business Sector and Municipal Government

Two further cases, both involving (rare) appeals to the regular courts against INDECOPI decisions, illustrate the limits of the institution's authority. One such appeal has been filed by the poultry industry against a 1998 decision that held the industry's trade association and several large producers guilty of price-fixing and other collusive practices in restraint of trade. This is the first dispute in which CONFIEP, the business sector's principal peak association, launched a frontal attack against INDECOPI for its stands against monopolistic practices, subsidies, tariffs, and excessive state regulation.[26] The case demonstrates the growing opposition of traditional business sectors--i.e., those that have long depended on state subsidies, tariff protection, and officially sanctioned oligopoly--to INDECOPI's vision of a market society. Indeed, such firms and their trade associations refuse to supply it with pricing data it needs in order to protect them against dumping and "disloyal competition" (competencia desleal signifies predatory pricing).[27]

For these reasons INDECOPI spokespeople argue that their goal of creating a truly competitive market economy requires it to encourage, through antitrust regulation, a transformation of the business elite itself. This will be accomplished, they maintain, by lowering barriers to

market entry, thereby bringing into the business elite new, upwardly mobile executives who, by background, training, and lack of a vested interest in the old system of protections and subsidies, will be both more aware of and more sympathetic to the idea of a truly free market. They point to the fact that they receive the willing cooperation of local businesses that produce software and videos, whose younger and more "modern" owners have given INDECOPI access to their records so that it can help protect their intellectual property rights. The institution also boasts of cooperation in the area of consumer protection from some large TNC and local manufacturers of mass consumption goods who apparently realize that a solid reputation for consumer service can improve their sales figures while weakening those of competitors with inferior products. Nevertheless, the transformation INDECOPI seeks will take time. In the interim it must do battle alone against entrenched economic interests. The Fujimori government has not rushed to defend the latter, but neither has it fought them in this matter with anything like the tenacity and vigor it regularly demonstrates when confronted by political or ideological dissent.

The other problematic case is more specifically political. The municipal government of Trujillo, a small coastal city well to the north of Lima, became concerned that some "informal" taxi drivers[28] were assaulting and robbing passengers and therefore adopted a regulation that only yellow automobiles could provide taxi service in the downtown area. INDECOPI invalidated the regulation on the ground that it would do little to solve the problem at which it was aimed but would significantly reduce price competition. Then Alberto Andrade, the popular mayor of Lima who has long been one of Fujimori's principal political opponents and is running against him in this year's presidential election, joined the fray. He and a group of other mayors he organized have filed a constitutional complaint charging that INDECOPI infringed upon police powers that the otherwise very weak Peruvian municipal governments had traditionally exercised; their complaint additionally alleges that INDECOPI's action represents a step away from the decentralized government promised by the 1993 constitution and a return to a highly centralized state--a particular sore point with many Peruvians. The mayors have also placed their case directly before the public in a series of full-page newspaper advertisements.

Here too the controversy has drawn a hands-off response from President Fujimori and his inner circle as it continues to wend its way slowly through the thickets of the Peruvian regular judiciary, which is somewhat surprising in view of the high-profile involvement of one of his most determined political critics.[29] A cynic would answer that he has no reason to become personally involved because he can count on the courts he has packed to render a decision that will not favor his opponent. A more nuanced view, however, appears closer to the truth. Given the considerable public prestige that INDECOPI has garnered, why not let it battle the municipal governments alone, at least for now? If it wins, so does Fujimori--and without his having taken any political risks at all; whereas if it seems likely to lose, he remains free to intervene personally at that point to protect the interests of poor taxi passengers against grasping municipal overregulation.[30]

It also bears mention in this connection that INDECOPI's relations with the formal political system, such as it is, are reasonably good. Some staff members believe that since no party of current significance understands the importance of the issues with which INDECOPI is concerned, they all treat the institution as a kind of dumping-ground for problems that they do not know how to solve by other means. On the other hand, the institution's reputation for technical competency has grown to the point where congressional committees and a few party organizations--the spokespeople would not name them, but one assumes they are associated with the governing majority--occasionally request its consultative assistance in the formation of policy. It has also prepared technical reports for use as testimony in the regular courts.[31]

Consumer Outreach

INDECOPI's elaborate consumer protection services involve the provision of "consumer-friendly" information designed to foster better purchase decisions and comparison shopping; educational programs that teach about consumers' rights; the resolution of complaints; and a measure of oversight of firms' practices that affect competitive pricing or consumers' rights. It goes so far as to conduct consumer surveys and publish the results as comparative ratings of product quality and purchaser satisfaction, much as Consumers Union does in the United States.

Consumer services are free; complaints are accepted by telephone, mail, and e-mail as well as in person and need not be in writing. INDECOPI is empowered to initiate administrative proceedings against sellers who have been alleged to have grossly violated the rights of consumers. About eight or nine such cases are initiated weekly, on average, and about three hundred in total were initiated during the last six months of 1998, during which period about 4,500 complaints were received. Of these, the lines of business most frequently involved were, in descending order, banking, automobile sales, home appliance sales, and, interestingly, municipal taxation. Although INDECOPI, as we have seen, can levy stiff fines and has what seems an incentive to do so stemming from its dependence on the income, it prefers mediated or conciliated solutions that do more to meet the substance of the complaint and provide rapid satisfaction.[32] Mediation, conciliation, and consumer education all entail close liaison with autonomous groups in civil society, notably women's groups (since Peruvian women often control household budgets and make key purchasing decisions for their families).

Public education is an important INDECOPI activity; here is where the institution tries to observe Douglass North's injunction that it work to make Peruvians into "rational consumers." It has used radio and newspaper advertisements to diffuse its competitive pricing information. Otherwise it works closely with local NGOs, universities, and chambers of commerce. It also runs consumer education programs for public school teachers and encourages them to incorporate the lessons into their classroom work. The INDECOPI staff members with whom I discussed these activities were quite conversant with recent disciplinary writings on the nature of civil society and its place in a democratic order. Acknowledging the atomization that everywhere tends to vitiate the potential clout that well-organized consumers could exert, they regard themselves as working to actualize this potential by propitiating the formation of a real consumers' social movement.

INDECOPI versus Judicial Reform?

An essential institutional attribute of any judiciary that claims to function as a truly independent power of government is that it be, and be perceived as being, neutral and disinterested with respect to relations between state and civil society. The U.S. political tradition, obviously, tends to regard all administrative agencies of the Federal government, even those formally and practically independent of cabinet agencies, as embodiments of the interests of the government executive; only the courts have a reputation for neutrality in this connection, and for that reason we insist that disputes between private parties and elements of the state be adjudicated in the courts. It is not wholly impossible, however, for administrative agencies in other political jurisdictions and cultures to acquire reputations for neutrality with respect to the political interests and concerns of elected officials; the French state administration enjoys such a reputation, and it would be a mistake to rule out a priori the possibility that INDECOPI is currently earning one (note too that Peru has long been influenced by French political-institutional forms, although its efforts to reproduce them

have mostly generated only third-rate imitations). The business groups and municipal governments that have challenged INDECOPI accuse its tribunals of acting like judges in the institution's own cause. The charge is accurate in the limited sense that INDECOPI's mission is to enhance open markets and its tribunals decide cases in ways they hope will further the mission. Yet the institution is highly regarded by public opinion and is one of the very few Peruvian government entities that is not thought to be a loyal servant of Fujimori's political ambitions.

This unusual (for Peru) degree of political independence is very much bound up, at present, with the specific individuals who head and staff INDECOPI. The institution seems to have been effective in creating a set of internal norms and an esprit de corps that enable it to attract people with modernizing ideas and an independent turn of mind--people, moreover, whose personal futures do not depend so much on state employment and who are thus less easily manipulated by the usual methods. Yet President Fujimori, who is plainly adept at reining in the slightest signs of independence anywhere in the Peruvian government, named INDECOPI's director, respects her autonomy (to the point, as we saw, of allowing her threat of resignation to affect at least one significant policy decision), and has made no move to go over her head in the appointment or management of staff. On the one hand, this situation leaves INDECOPI vulnerable to personnel changes at the top; we ought not to regard its internal norms as sufficiently institutionalized, after a mere seven years of existence, to persist apart from its president's active support. On the other, it indicates that Fujimori is content with INDECOPI as it is and does not require its subservience. The contrast with the situation of the regular courts, where almost 80 percent of sitting judges are "provisionals" without job tenure and hence wholly dependent on the pleasure of the executive, could not be more marked. What is more, the institution's literature, advertisements, and publications, though obviously respectful of the current president of the republic, do not go out of their way to credit him with its accomplishments. INDECOPI's evident and frequently expressed pride in itself is to this extent narcissistic. But given its high reputation (as compared to any other agency of the Peruvian government) among the popular sectors, it is noteworthy that a president who, according to his critics, is promoting squatter settlements to gain votes in this year's election, refrains from the populist misuse of, and even from a closer personalistic identification with, the institution.

I therefore conclude that INDECOPI has come to be regarded in Peruvian executive circles as something of an antidote to pressures for more thorough judicial reform. The evidence for this conclusion admittedly rests largely on counterfactuals: the absence of efforts to manipulate the institution for political advantage. However, the simultaneity of INDECOPI's progress and the collapse of broad-scale judicial reform that has been documented in Linn Hambergren's contribution to this Congress[33] strongly suggests a connection between the two that is not wholly coincidental. As compared to the current controversy over alleged forgeries of signatures on Fujimori nominating petitions, the World Bank's suspension of further outlays for one of the largest programs of judicial reform it has ever sponsored, owing to Peruvian government refusal to regularize the situation of the "provisional" judges and to take other measures intended to enhance judicial independence, passed without a ripple of adverse comment from the U.S. Government, the foreign press, or the policy experts who normally pronounce on such issues.

Hence INDECOPI, by answering to some of the most urgent needs of both powerful economic interests and ordinary Peruvian citizens, may well have made it harder for advocates of institutionally limited government and human rights to find allies in their battle for reform of the regular judiciary. To that extent it may well be the good that defeats, or at least postpones, the better.

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NOTES

1. David G. Becker, "Latin America: Beyond 'Democratic Consolidation,'" *Journal of Democracy* 10, 2 (April 1999): 138-51.

2. See, e.g., Tom R. Tyler, *Why People Obey the Law* (New Haven: Yale University Press, 1990). Tyler's research deals specifically with civil litigants and minor criminal defendants in the Chicago court system, most of them members of disadvantaged social sectors. I doubt that the underlying norms and behavior patterns Tyler observed differ very much from those encountered in Peru and other Latin American countries, but I concede that survey research to verify the point would be highly useful.

3. See Richard L. Sklar, "Developmental Democracy," *Comparative Studies in Society and History* 29, 4 (1987): 694. He goes on to describe constitutionally guaranteed judicial independence as "a second line of defense against the dangers of despotic government" and adds that even where the state executive has tamed and subordinated the courts, a strong popular belief in the idea of the rule of law may nonetheless serve as a political restraint on abuses of executive power. This notion is further developed in Richard L. Sklar, "Towards a Theory of Developmental Democracy," in *Democracy and Development: Theory and Practice*, edited by Adrian Leftwich (Cambridge, Eng.: Polity Press, 1996), 26-27. For an analysis of how the absence of horizontal accountability damages both the democratic quality and the effectiveness of Latin American government, see Guillermo O'Donnell, "Delegative Democracy," *Journal of Democracy* 5, 1 (1994): 55-69; also Guillermo O'Donnell, "Horizontal Accountability in New Democracies," *Journal of Democracy* 9, 3 (July 1998): 112-26.

4. INDECOPI assumed responsibility for business bankruptcies because they can and do affect market concentration. Existing Peruvian law provided no alternative to liquidation once a business found itself unable to pay its debts; but that "solution," besides producing greater market concentration by definition, was invariably a lengthy, drawn-out legal process that left the failed entrepreneur with no assets and her creditors with but a fraction of what they were owed. INDECOPI's rules have modernized this outmoded legal regime by providing, for the first time, for reorganization of the failed business with arrangements for equitable repayment of most of its outstanding debt over time, as is often done in the United States under Chapter 11 bankruptcy proceedings.

5. I.e., weights and measures (metrology), motor fuel octane ratings, etc.

6. Beatriz Boza, "The Role of INDECOPI in Peru: The First Five Years," in *Peru's Experience in Market Regulatory Reform, 1993-1998*, edited by Beatriz Boza (Lima: INDECOPI, 1998), 3-37.

7. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983), 35; John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*, 2d ed., reprint, 1969 (Stanford, CA: Stanford University Press, 1985), 15-18, 88-89, 134; Dallis Radamaker, "The Courts in France," in *The Political Role of Law Courts in Modern Democracies*, edited by Jerold L. Waltman and Kenneth M. Holland (London: Macmillan, 1988), 129-52; Doris

Marie Provine, "Courts and the Political Process in France," in *Courts, Law, and Politics in Comparative Perspective*, Herbert Jacob, et al. (New Haven: Yale University Press, 1996), 232-36; Allan R. Brewer-Carías, "Features of Civil Service Law in Latin American Countries," in *Comparative Law Studies: Law and Legal Systems of the Commonwealth Caribbean States and the Other Members of the Organization of American States*, rev. ed., edited by OAS Secretariat for Legal Affairs (Washington, DC: OAS General Secretariat, 1987), 136-38; Martin Shapiro, *Courts: A Comparative and Political Analysis* (Chicago: University of Chicago Press, 1981), 27-28, 153-54.

8. On the role of political constituencies and "stakeholders" in judicial or other governance reform, see, e.g., Benjamin L. Crosby, "Policy Implementation: The Organizational Challenge," *World Development* 24, 9 (1996): 1403-15; Carol Graham and Moïss Naïm, "The Political Economy of Institutional Reform in Latin America," paper presented at a MacArthur Foundation/IDB conference on Efficiency and Equity Enhancing Reforms in Latin America (Washington, DC, 1997), Mimeo (rev. version); Linn Hammergren, *Political Will, Constituency Building, and Public Support in Rule of Law Programs*, publication no. PN-ACD-023 (Washington, DC: U.S. Agency for International Development, 1998), Mimeo.

9. Terence C. Halliday and Lucien Karpik, eds., *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries*, Oxford Socio-Legal Studies (Oxford: Oxford University Press, Clarendon, 1997).

10. For discussion of the World Bank's approach to judicial reform (which closely parallels those of USAID and the IDB), see, e.g., Malcolm Rowat, Waleed H. Malik, and Maria Dakolias, eds., *Judicial Reform in Latin America and the Caribbean: Proceedings of a World Bank Conference*, World Bank Technical Paper no. 280 (Washington, DC: World Bank, 1995); Ibrahim F.I. Shihata, "Legal Framework for Development: The World Bank's Role in Legal and Judicial Reform," in *Judicial Reform in Latin America and the Caribbean: Proceedings of a World Bank Conference*, edited by Malcolm Rowat, Waleed H. Malik, and Maria Dakolias, World Bank Technical Paper no. 280 (Washington, DC: World Bank, 1995), 13-15; Maria Dakolias, *The Judicial Sector in Latin America and the Caribbean: Elements of Reform*, World Bank Technical Paper no. 319 (Washington, DC: World Bank, 1996). For a cogent critique of this approach, see Lawyers Committee for Human Rights, *The World Bank: Governance and Human Rights*, 2d ed. (New York: Lawyers Committee for Human Rights, 1995).

11. Linn Hammergren, "The Fujimori Judicial Reforms: Finally Cutting the Gordian Knot or Just Another Trojan Horse?" unpublished paper prepared for the XXII Congress of the Latin American Studies Association (Miami, March 2000), Mimeo.

12. The INDECOPI staff members I interviewed frequently cited Douglass North, who has visited Peru several times in the last few years and served as a consultant to the institution's management, as the source of most of these concepts.

13. Trustworthiness, understood to be grounded upon a kinship or affective relationship, or upon the personal recommendation of someone with whom one maintains such a relationship.

14. In reality, "high-tech" industries rely relatively little on patent protection, since it has proven quite easy to "design around" patents by finding slightly different ways of accomplishing the same ends. Instead they base their "edge" on secrecy, where possible, and even more on constant innovation that, they hope, will keep them a step ahead of the competition.

15. Interview with George Wachtenheim, Lima, 10 August 1998. Wachtenheim was formerly the USAID Mission Director in Peru and later served as Deputy Assistant Administrator of the agency's Latin America and Caribbean Bureau. He is currently an independent policy consultant.

16. Its members included a lawyer in private practice with solid technocratic credentials and a textile manufacturer who currently serves on INDECOPI's Board of Directors.

17. Interview with Jorge Camet, former Minister of Industries and a member of the INDECOPI Board of Directors, Lima, 10 August 1998. Camet added that, contrary to views that have occasionally been expressed by some outside observers, the U.S. Federal Trade Commission was not a model for INDECOPI and did not figure in the deliberations of the study commission. He also stated that although neither the IMF nor the WTO played any role at all in the foundation of INDECOPI, the World Bank expressed support that proved useful in overcoming the resistance of the business sector.

18. Interview with Dra. Beatriz Boza Dibos, President of INDECOPI, Lima, 10 August 1998.

19. Interview with Jos, Balta, an attorney in private practice and part-time vocal (member) of INDECOPI's antitrust tribunal, Lima, 9 August 1998. Balta receives \$2,400 per month for this work (all of which is paid not to him but to his firm as a compensation for the loss of his services), to which he devotes four hours per week.

20. Jos, Balta (*ibid.*) reported that in his first year of private legal practice, he earned considerably more than the chief justice of the Supreme Court.

21. Trademark registration fees are high by local standards, but the lion's share of registrants are large firms that can easily afford them. The effect is that the large firms finance the bulk of INDECOPI's services to the general population, which can be considered a salutary downward transfer of wealth.

22. To be fair, it must be noted that Afro-Peruvians, who number in the tens of thousands and are heavily concentrated in the port city of Callao, suffer still worse discrimination. However, the fact that they are such a small minority of the national population, their lack of organization, and their concentration in a major population center (Callao is part of the Lima metropolitan area) where they are overwhelmed by the far larger number of migrants from the countryside, all conspire to deprive them of political power and visibility.

23. Interview with Dra. Beatriz Boza Dibos (*fn.* 18).

24. Their claim is verified by another case in which INDECOPI, acting on a complaint brought by Coca-Cola on grounds of trademark infringement, enjoined a group of women in a small northern

town from selling a soft drink they had concocted and were bottling, for lack of an affordable alternative, in used Coke bottles. It may be noted, however, that Coca-Cola by no means dominates the Peruvian soft drink market; a local product, Inca Kola, has outsold it for years and is now being exported to the United States. For a discussion of this case see J. Welby Leaman, "Coke Bottles, Candy Bars and Combis: Building an Institution," in *Peru's Experience in Market Regulatory Reform, 1993-1998*, edited by Beatriz Boza (Lima: INDECOPI, 1998), 123-32.

25. It could be added that the government's loss of the apparent ability to deal with TNCs outside of the glare of public opinion is more than offset by the protection it gains against a frequent outcome of such cases: eventual journalistic exposure of whatever agreement is reached, followed by the eruption of a public scandal in which the government suffers a loss of prestige and support irrespective of the content of the agreement. A cautionary example is the scandal unleashed in Argentina when it was charged that the government had been bribed by IBM during "back-channel" negotiations over the award of a contract to provide computing services; see Jesús Rodríguez, *Fuera de la ley: la relación entre IBM y los funcionarios públicos en los contratos informáticos del Estado* (Buenos Aires: Planeta, 1998).

26. CONFIEP and the poultry producers' association went so far as to place an advertisement attacking INDECOPI in the *New York Times*. According to Beatriz Boza (fn. 18), this is the first and, thus far, only time that a Peruvian government agency has been attacked by private parties in a foreign print medium.

27. The problem, from the firms' perspective, is that INDECOPI wants information about their internal cost structures so that it can decide for itself whether dumping or predatory pricing has occurred. The firms want such determinations to be made solely on the basis of published prices, which would penalize firms that choose to pass the benefits of greater efficiency on to consumers in the form of lower prices.

28. Taxi services were almost totally deregulated some years ago. Consequently, many private automobile owners place "Taxi" signs on their windshields and pick up paying customers (who negotiate the fare) if they are not otherwise engaged.

29. According to George Wachtenheim (fn. 15), Fujimori has no interest in decentralized government. It appears that Asian officials with whom Fujimori has spoken (it is said that he has often sought advice from East Asian presidents and prime ministers) have recommended against sacrificing policy control and coherence for decentralization.

30. Note that in the 1986 municipal elections, Alfonso Barrantes, Lima's once very popular Marxist mayor, was defeated by an aprista, Jorge del Castillo, whose campaign made much capital out of Barrantes's effort to regulate the city's taxi industry. Barrantes, hoping to protect passengers against fare-gouging, promulgated a regulation requiring all taxi owners to buy and install meters, which the city proposed to purchase in bulk from an Italian firm and resell to the owners at cost. The measure proved wildly unpopular with the taxistas, most of whom (as in Trujillo) were "informals" unwilling to invest that much capital (\$500-\$1,000) in what was for many of them a side business; but it also proved unpopular with the public, which simply assumed that it would lead to lessened competition and higher fares.

31. Interview with Jos, Balta (fn. 19). In the Peruvian courts, as in other pure civil law systems, all testimony is submitted in writing. Reports such as these are thus the equivalent of the expert testimony that in common law systems is delivered orally in open court.

32. For example, travelers and their families had long complained about the layout of roads entering and exiting Lima's Jorge Chávez International Airport: the location of the automatic gates and payment booths forced people driving to the airport to drop off or pick up family members at curbside to pay the parking tariff just for access to the dropoff and pickup points. In the past it would have been exceedingly difficult even to gain the attention of the cognizant authority (CORPAC, the parastatal that administers national airports), let alone obtain a satisfactory solution; a good outcome for consumers would almost certainly have required protest demonstrations and the use of political influence--which tends to foster the widespread impression that almost everything worthwhile in Peru is the result of combative public politics. INDECOPI, however, intervened with CORPAC on behalf of consumer interests and produced a mediated solution in which CORPAC revised the airport's access roads and traffic patterns to eliminate the problem. According to INDECOPI data for 1997, 76 percent of that year's consumer complaints were settled to the complainants' satisfaction by conciliation; only 3 percent led to formal administrative action, and 21 percent were dismissed for lack of merit; see Romano Paredes, "INDECOPI by the Numbers," in *Peru's Experience in Market Regulatory Reform, 1993-1998*, edited by Beatriz Boza (Lima: INDECOPI, 1998), 66.

33. Hammergren, "Fujimori Judicial Reforms."