

Institutional Design and **Accountability in Latin America**

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I Introduction : A Synthetic View

Other panelists are presenting country studies, or studies dealing with particular aspects of institutional accountability, such as the role of electoral rules, or the mutual controls arising from the division of powers between executive and legislative, especially when these are controlled by different parties. Related topics are also being covered in a series of other panels, for example on 'state reform', international human rights monitoring, decentralization, the military and the justice system, etc. This paper attempts to elaborate a more synthetic view situating these various themes and case studies in a long run comparative perspective. This exercise rests on the assumption that there is some underlying thrust towards institutional reforms aimed at strengthening public accountability across a wide range of countries, and a broad array of policy arenas. If so, it may be worthwhile to stand back from specific case studies and enquire why the drive for enhanced accountability is so widespread, what the theoretical implications might be, and what degrees of continuity or discontinuity are to be expected. So this paper is quite general, and is concerned with 'foundations'. Of course it is not intended to substitute for the more detailed materials presented elsewhere, but rather to contribute to an integrative discussion that should make use of their findings.

A long run and comparative perspective on institutions of accountability is particularly necessary when considering a sub-continent that has been subject for some five centuries to a substantial degree of administrative continuity – at least at the formal. Of course there have also been great spatial and temporal variations. The Spanish colonial system was markedly different from that of Portugal; inaccessible and under-populated regions were administered differently from resource rich centres on major communication routes; early and late colonial institutions must be carefully differentiated; and of course the break between colonial rule and republican regimes was in most cases severely disruptive. When we reach the twentieth century further complications arise, such as the selective importation of political models from a variety of sources (e.g. first from the USA, then from the Soviet Union, in the case of Cuba; elsewhere from Iberian corporatism, Italian fascism etc. in the 1930s and 1940s; and from various western liberal democratic sources, especially over the past

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twenty years). While acknowledging these temporal and spatial variations, it is important not to lose sight of the common and recurrent patterns of administration (and their implications for accountability) that are broadly shared across the whole region, and that tend to differentiate it from other parts of the world.

From the earliest days of colonial rule, there was a body of legal and administrative regulations set down on paper and backed by machinery for adjudication and enforcement. Certainly the gap between what was written and what was done was often very wide. The machinery for enforcement could be hopelessly remote and unresponsive to feedback;¹ or equally well, it could be sufficiently close to vested interests to be vulnerable to local capture.² Such legal formalism combined with substantive discretionality have been the hallmarks of public administration throughout Latin America and across several centuries,³ Institutions such as courts, ministries, and municipalities have displayed a tendency to reproduce such administrative characteristics over generations, and even across periods of political upheaval or regime change. To some extent these continuities persisted even when colonial rule gave way to independence. Although the republican constitutions of post-independence Latin America were broadly liberal in inspiration, and therefore grounded on ideas about the division of powers and the need for 'checks and balances', Brian Loveman, among others, has rightly drawn attention to the scope also provided for emergency decrees, states of siege and all the multiple procedures used by

¹ Under the early Spanish empire "All important decisions and many unimportant ones, were made in Spain. A request to Spain for instructions could not be answered in less than a year, at best. Two years was more usual; and the answer, when it came, might be merely a demand for more information.... Appeals and counter-appeals might hold up essential action for years until the occasion for it was forgotten. Even when the government had made up its mind and given a firm instruction the conventional formula "obey but not enforce" might still excuse procrastination if the decision were unpopular". J. H. Parry, The Spanish Seaborne Empire (Pelican edition, 1973) p.199.

² David Brading quotes a secret report of 1749 (from Peru) which described the end of the Spanish Habsburg period in terms of the "sheer weakness of royal authority in the Indies and the failure of Spain to obtain any real profit from its vast overseas empire. It was not simply the case that the corregidores were corrupt, they were also powerless in their dealings with the local élité... Without the sanction of armed force, so Ulloa averred, it was impossible to uphold the rule of law..... As a result, all royal officials from the viceroy downward went to the Indies with the sole purpose of enriching themselves. With taxes so light and military service almost unknown, royal authority was at a discount." The First America: The Spanish Monarchy, Creole Patriots, and the Liberal State (1492-1867) Cambridge University Press, (1991) p.473.

³ On colonial Brazil, E. Bradford Burns compares the Relação (High Court) established in 1609 with the equivalent legal authorities in Spanish America (the Audiencias) but concludes that 'In truth, the governor-general and his successor, the viceroy, never exercised the same degree of control or authority as did their counterparts in New Spain. For that matter, in remote corners of Brazil, the captain-general, governor-general, and King all seemed equally removed and theoretical". A History of Brazil, (Columbia University Press, third edition, 1993), pp.87/9.

powerholders to circumvent accountability while preserving a figleaf of 'legality'.⁴ This long has been, and still remains, a major institutional escape valve that can be used to reconcile the judiciary and the various branches and levels of government to an unaccountable centralization of power (authoritarian if not necessarily tyrannical). In practice such 'exceptional' procedures have opened the way to almost unlimited abuses of state power. Nevertheless, it is also relevant for our purposes that in principle (from a legal point of view) these are temporary mechanisms. They recognize the possibility that in extreme conditions it may be necessary to suspend standard procedures of accountability, until the authorities have overcome an emergency (a war, an insurrection, etc.). This is a possibility acknowledged by other constitutional regimes, as well (think of Lincoln's powers in the US Civil War), though systematic abuses that have so often occurred in Latin America are not endemic elsewhere. The fact that legal accountability is only suspended and not definitively repudiated is of importance when considering future improvements in institutional design concerning emergency powers.

The long run persistence of legal formalism plus practical discretionality requires an explanation. Relevant areas for enquiry would include training and recruitment practices in the legal profession;⁵ broader patterns of elite socialization that promote expectations of impunity; and uneven processes of social incorporation that have reached different sections of a highly differentiated society unequally, so that some groups have become highly institutionalized but expect favoured treatment from the authorities, while other large social categories have only unstable or unfavourable experiences of the public administration. Admittedly these are only very broad tendency statements that require careful specification for each period and place.⁶ Nevertheless, they should be borne in mind because they mark out a recurrent Latin American reality and they provide a necessary backdrop to the analysis of contemporary efforts to strengthen liberal democratic institutions, and to give substantive content to the formal notions of public accountability that have long existed on paper.

The current drive for strengthened public accountability has been gathering momentum for a decade for more, and would seem to derive from a variety of partially overlapping sources. Democratization necessarily requires an honest electoral process and a plurality of centres of power. Some forms of

⁴ Brian Loveman, The Constitution of Tyranny (Pittsburgh University Press, 1993).

⁵ Brading quotes the Mexican patriot Rivadeneria, whose 1771 philippic against royal magistrates raises issues of recurring significance: 'they come to govern a people they do not know, to administer laws that they have not studied, to encounter customs with which they are not familiar, and to deal with people they have never seen before'. (op. cit. p.481).

⁶ For a representative example of this type of work, see Sérgio Adorno's study of the São Paulo Law School in the mid-nineteenth century Os Aprendizizes do Poder: O Bacharelismo Liberal na Política Brasileira (Paz e Terra, São Paulo, 1988).

accountability follow more or less inevitably from this requirement, and others are natural accompaniments. Economic liberalization also requires various kinds of public authority that must be answerable to rival claimants, and therefore capable of upholding neutral procedures (e.g. with regard to taxation, the regulation of privatized monopolies, the stability and openness of the financial system, etc.). Outward-looking policies and regional integration initiatives inject external standards of evaluation into areas of public policy that were hitherto a sheltered domestic reserve. Capping such essentially pragmatic considerations is a more essential question of principle. If these new democratic regimes and these liberalised economic and foreign policies are to endure they will need to establish firm bases of social support. One could even say they will need to be 'legitimized'. In order for enfranchised citizens and sovereign consumers to provide such support on a consistent basis, they are likely to need assurance that the major beneficiaries of a liberalised order – the party politicians, the private entrepreneurs, the promoters of internationalization – are not merely pursuing their own vested interests. All of these beneficiary groups claim to be promoting policies that serve the public good, but none of them have impregnable reputations for disinterested public service. That is why liberal democracy requires accountable institutions, and why the exercise of citizenship involves vigilance, and the monitoring of public authority. In accordance with this principle, the current drive for increased accountability in Latin America is therefore not an optional add on, or convenience. Rather, it is an essential component of any enduring economic and political liberalization.

That said, the drive for accountability is also quite problematic. "Accountability" in the abstract may seem an unobjectionable goal. But as already mentioned, some forms of legal accountability have existed – at least on paper – since colonial times. The question at issue is therefore not how to introduce public accountability where it had never previously been known, but rather how to redesign, focus, and render effective practices that have long been subject to manipulation and abuse and that have therefore traditionally been viewed with cynicism. This paper is directed to that question. It is organized as follows: section two looks more closely at the notion of 'accountability', seeking to identify its potential and its pitfalls. Section three surveys a range of institutional innovations that have been proposed or attempted in an effort to break with an arbitrary and unaccountable recent past. The concluding section attempts a provisional assessment of the scope for improved public accountability in Latin America, and the limitations of that project.

II Accountability : A Means to Other Ends

If the protection of civil, political, and economic liberties is considered a cornerstone of institutional design in liberal democracies, then the promotion of accountability will need to be harmonized with the protection of liberty. But both theory and experience indicate the scope for disharmony here. (Slaveowners were often most assiduous in enlisting public authority to hold their legal rights to detailed account; for his part Hayek always insisted that the constitution of liberty

required the sheltering of property rights from intrusive accountability to the will of a fickle electorate). The other two classical republican virtues are of course equality and fraternity – currently out of fashion but difficult to dispense with altogether. If institutional design is either to promote greater equality, or to strengthen social solidarity – both virtues conspicuous by their absence in most of Latin America – then further scope for disharmony arises. Whereas liberty, equality, and fraternity can all be considered ends of institutional design, accountability is really only a means.

If accountability is viewed as a means to an end, rather than an end in itself then it is clearly possible to have too much accountability, or the wrong kind. Enthusiasts for the current drive to increase accountability in Latin America can with good reason point to the long record of fraud, corruption, abuse of power, and uncorrected policy errors that preceded the recent liberal democratic moment. But before accepting an unqualified endorsement of this new orthodoxy (which is not even translatable into Spanish without complex circumlocution) some further analysis is in order. There are, after all, respectable theoretical arguments for the merits of a certain degree of laxity in the enforcement of sanctions (e.g. the case for ‘speed money’ or petty corruption to circumvent excessive state regulation of the economy). There could even be a public interest defence for certain kinds of impunity. (It can be heard on the right, in favour of impunity for Pinochet; and on the left, in favour of impunity for Castro; and on the centre in favour of impunity for Salinas and Menem). In any case accountability can operate at various levels. Upward accountability can be contrasted to the downward variety. Thus under authoritarian rule the top political leadership may have been insulated from public accountability for decisions taken with respect to human rights, or the allocation of government resources – but the police and the tax authorities could be held strictly accountable upward to their superiors, for the discharge of their duties. Inversely under democracy rulers may be accountable downward to their electors, but the institutions below them may be less answerable to above. In certain conditions accountability can be too fragmented between competing jurisdictions; in others too aggregate to allow the necessary fine distinctions between different types of responsibility. There is also scope for conflicts of accountability (e.g. accountability to the electorate versus accountability to the courts).

In general it is necessary to distinguish between different institutional modalities of accountability – through legal process; through internal administrative investigation and audit; through the interplay of plural institutions (which may or may not be horizontal in character); through electoral sanction; through the supervision of an independent mass media; through international scrutiny; through the monitoring activities of policy networks; through the activities of NGOs, and through feedback from liberalised markets. Each of these modalities has its own logic and may require its own particular variety of institutional design. Thus, if the courts are expected to enforce some forms of public accountability the nature of the offences will have to be precisely specified, and the required

standards of proof will be exacting. This mode of accountability will only be effective if the activities subject to control are narrowly defined, and even then very protracted litigation must be expected. (Obviously the courts themselves must also be efficient and trustworthy, a tall order in many parts of the region). An alternative procedure is to rely on a *Controlaría*, or equivalent specialized auditing agency. Here too the matters covered will be narrow and technical although it may be possible for fairly rapid and publicly trustworthy judgements to be delivered. By contrast, where elected officials enjoy legal immunity for acts carried out during the discharge of their duties, the main mechanism of enforcement may be a congressional enquiry, backed by the sanction of a possible vote to lift immunity. But this mechanism turns enforcement into a political process, subject to the imprecision and partisanship characteristic of such votes. Then there is the broader form of electoral accountability arising from the possibility that incumbent politicians may be voted out of office as a sanction for misconduct. However, this mechanism is very imprecise, since not all wrongdoers will present themselves for re-election, and those that do will try to run on party tickets that shift the issue away from the matters on which they are accused. Electors may either support or reject such candidates, on grounds quite other from those required by the logic of accountability. Indeed charges of misconduct during election campaigns are rarely evaluated on their substantive merits. Similar imprecisions arise when either the press or the markets hold public officials to account for alleged misconduct.

As this brief listing of possibilities indicates, there are various different modalities of accountability in a liberal democratic system, and each has its own specific logic and limitations. An overall system of accountability will probably require a combination of overlapping modalities, but if so a key problem of institutional design may concern co-ordination between these alternatives, or at least the avoidance of contradiction between them.

So, on the one hand, the current enthusiasm for strengthened mechanisms of accountability in public affairs arises from a long history of abuses, and is broadly justified on instrumental grounds. But, on the other side, accountability must not be made an abstract slogan. On its own it provides no easy or straightforward solutions to complex public policy dilemmas. Both in terms of detailed institutional design, and indeed at the level of first principles, the strengthening of accountability involves some hard choices, and requires careful consideration. Indeed ill-judged choices or inappropriate designs can produce unintended or undesired effects that are subsequently difficult to correct. Too much enthusiasm for 'accountability' as an orthodoxy can even lead to the opposite of what is expected: an upsurge in demands for strong leadership and unfettered authority, to overcome the defects of institutional pettifogging and enforcement gridlock.

III Institutional Design: Not just on Paper, but also in practice

If the region's newly liberalised economic and political institutional arrangements are to endure they must both work well, and be seen to work well. Sound principles of institutional design is therefore one desideratum, reliable results another.⁷ In the area of accountability this points to institutional designs that not only establish desired incentives, but also promote effective and publicly visible processes of enforcement. In the abstract it is possible to envisage a considerable variety of incentive mechanisms. In practice the organograms and statute books of Latin America are littered with every variety of possible provision. But many of the existing institutional arrangements are not very effective, or publicly visible, and are laxly enforced. This section focuses on this gap between well-intentioned designs and disappointing results. Since the topic of accountability is so vast, and the range of possible examples is so wide, it has been necessary to make a simplifying selection of sub-topics. These have been chosen because of their public visibility, and potential impact on the legitimacy of currently prevalent liberal models. Therefore the discussion starts with the issue of presidential accountability (high level political impunity, and the question of impeachment). A second crucial 'high level' issue concerns public accountability for a liberalised financial system. Moving down from this rarefied level, a third critical area concerns the regulation of campaign financing in competitive elections. The fourth concerns public accountability for the socially responsible conduct of privatised enterprises. Last, (but far from least of the concerns of the public at large, and the poor in particular), is accountability for local justice and policing – especially the balancing of demands for citizen security against the requirements of respect for human rights. Across all these five areas, what emerges is that even where it is difficult to find fault with prevailing models of institutional design, the practical results of efforts to enforce better accountability have so far been far from uniformly satisfactory. Current institutional arrangements therefore frequently lack solid public support.

i) Presidential Accountability

The quest for presidential accountability was a central theme of successive regime crisis in Brazil over the past half century. In 1954 President Vargas committed suicide rather than answer his accusers. In 1961 President Quadros threatened to resign unless granted fuller powers. To his surprise his resignation was accepted and his Vice President installed in his place, but with special constraints added in an attempt to tame his radicalism. The breakdown of that artificial arrangement paved the way for the 1964 coup and twenty years of military authoritarianism. Given these antecedents it is not surprising that the framers of the 1988 Constitution devoted two carefully constructed articles (85

⁷ The illustrative material in this section can usefully be structured around this simple distinction between design principles and results. But this distinction fails to do justice to the progress being made at the theoretical level concerning both the underlying principles and the dynamics of institutional design. See, for example, Robert E. Goodin (ed.) The Theory of Institutional Design (Cambridge University Press, 1996), in particular Claus Offe's chapter on eastern Europe.

and 86) to the grounds on which an incumbent Chief Executive may be suspended or eventually impeached, and the procedures to be observed in such cases. Within four years these articles were invoked, and the first President of Brazil to be elected by universal suffrage was constitutionally removed from office in mid term.⁸

At one level the impeachment of President Collor was a striking break with Brazil's institutional past, and a vindication of the claim that the new more impersonal and authoritative state institutions of the liberal democratic era were capable of enforcing accountability even at the highest levels where it had never previously been applied. However, the circumstances were very unusual (Collor had very little organized support, and it was only when his brother turned against him that the incriminating evidence became available). On a broader canvas, the norm continues to be that discredited Presidents are hard to remove solely by constitutional means.⁹ Even when grounds for legal action come to light after an outgoing President has left office, it is widely alleged that neither judicial nor political redress is likely to be sought for fear of the intra-elite conflicts such procedural accountability could precipitate.¹⁰ The current Pinochet issue has dramatized this doubt about Chilean institutional procedures, but in fact the doubt is much more widespread, and refers to democratically elected Presidents as well as to ex-dictators. Indeed, the widespread fashion for amending the constitution to permit additional rounds of presidential re-election – and to extend this right to the incumbent presidents who sponsor the constitutional revisions – can in part be understood as confirmation of the apprehension reportedly felt by various heads of state (and their protégés) about the treatment that could be meted out to them once they had relinquished the levers of state power.

⁸ Ari de Abreu Silva 'Processos Institucionais de Administração de Conflitos: O Impeachment Presidencial' (delivered at the Primeiro Encontro Nacional da ABCP, Rio de Janeiro, December 1998), sketches an intriguing contrast between impeachment in the US system and in Brazil. He concludes with a paraphrase from Michael J. Gerhardt to the effect that the constitution may explain what is permissible, but it is the political culture which indicates what must be done (Quoting The Federal Process (Princeton University Press 1996) p.178.

⁹ In 1985 President Siles of Bolivia stepped down a year early because he could not handle a hyper-inflationary crisis; in 1989 President Alfonsín stood down six months ahead of time; and in Ecuador President Mahaud was recently displaced by his Vice-President despite his protests. None of these changes were achieved by the prescribed constitutional mechanisms alone. The impeachment of Venezuelan President Pérez was constitutional, but followed a failed coup.

¹⁰ No Mexican President since Carranza has been held to account for any wrongdoing during his incumbency, although some have been encouraged to live abroad for a while, in disgrace. This is the worst sanction so far meted out to ex-President Salinas, for example although his brother has been jailed. In the Mexican tradition such figures are referred to as 'intocables', and the ruling party has cultivated an informal convention of impunity. But it is important to note that articles 108 to 114 of the 1917 Constitution always contained substantial formal protections for incumbents. Mexico has no Vice-President who might rally opponents of the incumbent.

Whether or not such reports are well-founded may vary from case to case, but in either event they are widely believed, and thus weaken public confidence in claimed institutional commitments to enforce accountability at all levels of government.

ii) Financial Systems

Similar public doubts arise in relation to another popular type of institutional reform – the establishment of carefully insulated and allegedly ‘independent’ central banks charged with guaranteeing monetary stability and the integrity of liberalised financial systems. Prior to the 1990s most Latin American countries had managed currencies and financial repression, often with large amounts of state directed credit and public ownership or intervention in the banking system. Central banks were subject to direct political control from the presidency or the Finance Ministry and management of the money supply was highly politicized. As is well known, the Latin American region became notorious for its endemic high inflation, and its tendency to generate bursts of hyper-inflation. The debt crisis of the 1980s brought all these findings to the fore. From an institutional point of view the problem was not that the guardians of the currency were unaccountable, but rather that they were too accountable, and to the wrong masters. They therefore lacked the autonomy to perform their specialized functions. Not infrequently they ended up dependent upon short term loans and rescue packages from foreign sources, in which case their vulnerability to domestic political direction was temporarily superseded by the requirement to satisfy stringent external conditionality (often on a three monthly basis, in the case of the IMF). Given this background, the thrust of institutional reform was not toward greater accountability, but rather in favour of increased autonomy, with delegated authority to deliver a more stable price level regardless of political pressures. Such institutional reforms were typically just one component in a broader package of financial liberalization measures (exchange rate unification, freeing up the capital account, interest rate liberalization, and perhaps also bank privatization). Therefore the granting of central bank autonomy was usually accompanied by the dismantling of most of the old instruments of direct monetary control, and the establishment of new market-related systems of financial direction and supervision. (Naturally the division of responsibilities between Central Bank, Finance Ministry, and independent regulatory agencies varied somewhat from country to country within this generally liberalized framework).

Generally speaking these new central banking arrangements contributed to much lower and more predictable rates of inflation, increased financial confidence, and a more neutral depoliticised allocation of credit. Given the severe irrationalities and financial distortions of the previous period, these institutional innovations could be characterized as a necessary and effective restructuring of the rules of accountability applicable in this area, rather than the destruction of accountability. Specialists in central banking and financial regulation were given clear narrow mandates, high salaries, long terms of service, and increased protection from political interference so long as they performed their public services. This, at

least, was the rationale behind the shift to 'central bank independence'. It was the banking equivalent of establishing an incorruptible tax administration, or an institutionally secure and autonomous judiciary. After about a decade of experience this is a ripe field for systematic comparative research about the relative merits of alternative patterns of institutional design. That is work for the future, and there is only scope here for a brief illustrative discussion.

The example of the Banco de Mexico may serve as illustration. Independence was granted in 1993, just as the reprivatization of the banking system was being completed by the Salinas administration. During the 1994 election campaign the Bank did its best to support a steady downward path in inflation and the stability of the financial system, reassuring foreign creditors that peso dollar convergence would be maintained. As soon as Salinas left office it was discovered that the foreign reserve position was untenable and that a sharp devaluation would be required. (Some external critics have claimed that the independent Bank was not entirely transparent in its reporting of the reserve position). President Zedillo's attempt to achieve a 'controlled' devaluation failed (or was bungled) and the 1995 peso collapse and bail out ensued. It was in these conditions that a new Governor of the Banco de Mexico was appointed in 1995. This was properly done, in accordance with the institutional rules drawn up under Salinas, and the new Governor turned out to be the old Finance Minister. Indeed, the new Governor proved to be precisely the individual who had designed the reprivatization of the banking system, and who had assured both domestic and foreign stakeholders that all necessary protections of the public interest had been put in place. Far from being held 'accountable' for his ministerial errors, he was placed in a higher position of public trust, where he would be insulated from formal political control, and secure from dismissal until 2003 (i.e. halfway through the tenure of the president to be elected in July 2000). The banks that he privatised have subsequently been 'bailed out', at a cost to the Mexican taxpayer in excess of 15% of GNP (or running fiscal cost of at least 1% of GNP a year for many years to come).

If we compare the theoretical claims in favour of central bank independence with the particular manner in which these institutional procedures were used in the Mexican case, it may help explain why public perceptions of the consequences of institutional choice may not entirely coincide with the predictions of design theorists, and why, therefore, the legitimacy of the new institutional arrangements may remain contested. The underlying issue, which applies to all 'guardianship' arrangements, not just those governing the financial system, is that the entrenchment of institutions which are formally 'insulated' from political interference will create strong incentives from informal 'captive' or colonization. If the Central Bank, or the Supreme Court, or the National Security Council, or whatever is to be sheltered from the public pressures bearing down on other political actors then those who occupy these sheltered positions will tend to be those most in need of such sheltering. The classical question "quis custodiet ipsos custodes?" still presents a conundrum.

iii) Campaign Financing

The financing of competitive election campaigns provides a third area where careful institutional design is required, but also where theory and practice may diverge, and where public opinion is understandably hard to reassure. In principle, the cause of fair elections and accountable political parties can be promoted by establishing public sources of campaign funding, and by restricting or at least monitoring the private financing of candidates and their parties. Given Latin America's abusive electoral traditions, concentrations of private economic power, and the customary use of state patronage to protect the positions of incumbent office-holders, the general case for strong institutional reforms to rebalance campaign financing seems compelling, on public accountability grounds.

But if the principle seems clear, the details of institutional design are more controversial, and the practical consequences of any particular scheme may be strongly resisted by those who feel they are the losers. For one thing it is very difficult to monitor, let alone to limit, the private resources that enthusiasts may wish to channel towards parties with which they sympathize (or whose gratitude they hope to enjoy when the party wins office). Such contributions can be given surreptitiously, or in kind, if formal monetary transactions are controlled. In addition, when multiple parties receive public support, the formula for distributing the funds becomes a political football. If funds are allocated on the basis of previous electoral support then new parties and alternative candidates may never receive a fair hearing. But if previously weak or non-existent parties can gain state funding, then that creates an incentive for party fragmentation or indeed the creation of candidacies solely aimed at attracting the subsidy. As they witness such anomalies it is understandable that some taxpayers may come to doubt the public service rationale for spending their scarce fiscal resources in this way, especially when so many other forms of public expenditure are severely constrained. Generic problems of this kind may take a particularly damaging form in countries where the broader institutional structure is weak or distorted.

One example from Colombia may serve to illustrate this broader point. The 1991 Constituent Assembly sought to broaden the party system, and create opportunities for new candidates and third parties to break in where a Liberal-Conservative duopoly had long monopolized electoral representation. More stringent accounting for campaign finance was one of the favoured reforms, which also provided for a 'second ballot' where no presidential candidate secured a clear majority in the first round. The 1994 presidential elections were the first to be fought under this untried, but on paper desirable, new system. As it turned out the contest for the first round was much closer than anticipated. As the frontrunners battled for the last vote they had no choice but to spend up to the very limit of their legal entitlements. Despite this, no candidate secured a clear majority. They were now faced with a decisive run off between the two main contenders, but no legal funding to pay for the second round of the campaign. Whether or not this helps explain the subsequent scandal that erupted

concerning allegations that the drugs cartels provided the eventual winner with illicit resources remains a disputed issue. What is beyond dispute in this case is that institutional reforms designed to promote more choice and greater equity in the electoral arena, actually produced unanticipated results that helped delegitimize both that particular election, and Colombian democratic practices more generally.

iv) Privatised Enterprises

A fourth area of institutional reform concerns the procedures set in place to promote the public accountability of newly privatised corporations. Once again, the starting point for the analysis should be the severe management problems afflicting many Latin American state enterprises before they were privatised, problems that can not infrequently be traced to lack of adequate systems of public accountability. "Privatization" covers a range of loosely connected policies, so the resulting issues of accountability take multiple forms. The costly failure to provide adequate supervision of Mexico's banks following privatization has already been mentioned. For simplicity this discussion will concentrate on the systems of accountability designed to deal with privatized natural monopolies and utilities, one area where even the most fervent neo-liberal would acknowledge that the market alone cannot protect the public interest, and that some form of official institutional supervision will be required. In such cases standard theory states that the principal issues are how to handle information asymmetries, and so to avoid the 'capture' of the regulator by the monopoly it is expected to regulate. At the same time, an effective regulator is also required to leave the enterprise scope to accumulate profits and promote efficiency, both viewed as public as well as private goods.

As in the previous discussions, careful comparative analysis of the experiences so far should permit refinements of institutional design within the framework of the theoretical standpoint. However, once again, from the standpoint of accountability there are broader questions of principle to consider. Privatized water monopolies provide an illustration although comparable points can be made about other utilities, notably electricity. Since safe drinking water is essential for public health, and since access to water is a universal necessity, the public interest is not just that private efficiency and profitability needs to be aligned with social efficiency. There is a basic human right at stake, an essential component of citizenship that needs to be secured if a liberalised water regime is to be reconciled with core democratic values. In this case, therefore, the supervisory authority will need last resort powers that go beyond technical regulation. In normal times a privatized water monopoly may arguably provide the best public service and the best chance of long-term investment and modernization to meet the water needs of the citizenry of future generations. But in times of emergency – drought, flood, earthquake, or other environmental crisis – public and private interests are not necessarily so easy to harmonize. In such circumstances if the water regulator takes too narrow a view of its responsibilities or is too subject to 'capture' by the monopoly it is supposed to regulate, then the

regulatory regimes as a whole is liable to be accountable by the society at large. That this is not a purely hypothetical concern can be seen from the 1999 Chilean drought, although fortunately in that case the rains finally arrived just in time to avert a larger conflict.¹¹ It would be foolhardy to assume that Latin America's privatized monopolies will always be so fortunate.

v) Public Security

A final area for discussion in this section is accountability for local justice and public security, including the policing system. Here is one of the sharpest challenges to the legitimacy of prevailing politico-economic models of legitimation. Under authoritarian rule the politically active were often subject to fierce police repression and a generalized denial of justice, but from the standpoint of non-political majorities there was not infrequently a sense that order had been imposed and that general public security might thereby be enhanced. Democratization has not always been identified with the defence of public order, in part because the security forces have found themselves on the defensive, in part perhaps because a legitimate concern for improved policies on human rights has been perceived as leniency towards the perpetrators of crime. In addition, economic liberalization has undermined many of the corporatist social arrangements that cushioned a significant sector of the labour force from the harsh exigencies of survival in an informalized market society. The withdrawal of state subsidies, the curtailment of social programmes, and the increased reliance on market disciplines has often added to the sense of insecurity affecting such sectors of society, and has therefore increased public demand for effective policing and enforceable justice. Where those demands remain unmet, vigilante justice and extra-legal forms of social control have tended to flourish.

So what are the appropriate models of institutional design to foster democratic accountability in this critical area, and what does experience suggest about theory? The experience of Costa Rica is extremely different from that of Guatemala, and within Mexico that of Aguascalientes is quite different from that of Tijuana. So what might count as an appropriate model of local justice has to be closely tailored to a specific setting. Nevertheless, an accountability perspective suggests some broad general directions of reform. The police and the justice system will both need sufficient resources and specialized training to perform their difficult functions professionally. Internal structures of command and intelligence gathering will need to be well disciplined and highly co-ordinated. In other words, there can be no escaping the necessity for vertical accountability within a local justice system. But, as noted above, authoritarian regimes typically championed just such as hierarchical vision of the imposition of order. Democratic accountability cannot dispense with hierarchy and

¹¹ See Carl J. Bauer Against the Current: Water Markets, and the State in Chile (Kluwer Academic Publishers, Boston, 1998) for an illuminating discussion of the issues at stake in the Chilean water industry, and Esteban Castro Water and Citizenship in the Valley of Mexico: A Long Term Perspective (Macmillans, forthcoming) for a broader sociological analysis. In Chile the courts play a key role in industry regulation whereas in Mexico such issues are still politically mediated.

professionalisation, but must compliment them. In principle three additional considerations would seem indispensable. First, the forces of law and order must be accountable to the courts, they must themselves be subject to the rule of law. This is no light requirement, when especially at the local level and in the poorer communities the courts are typically absent or inaccessible. Second, with or without close monitoring by the judiciary, the local agents of law enforcement will need to strike a balance between respecting the rights of those they deal with, and performing their duties. Third, the police will need to establish relationships of mutual support with the communities in which they operate. Community leaders and law enforcement officers will have to find common ground about the overall balance between rights and duties, and the overall priorities and constraints within which legitimate policing can be conducted. At one level these theoretical requirements are simply the baldest of platitudes, They just restate what an accountable form of policing in a liberal democracy must entail. But, as anyone with familiarity with problems of law enforcement in most of Latin America will know, at another level they seem wildly utopian. It is hard enough to achieve a minimum level of hierarchical discipline and professionalism, let alone to balance rights against duties, and still less to forge mutually supportive relations with most local communities.¹² Here, at the sharp end of accountability, the gap between theory and experience is wider than ever.

As in each of the five areas discussed in this section, to address questions of institutional design is only the beginning of the enquiry. Processes of effective implementation and enforcement cannot be read off from any design manual, but unless principles of accountability can be turned into tangibly improved outcomes, the entire prevailing model of liberalizing reforms may founder through lack of legitimation.

IV Conclusion: Cloudy Prospects for Improvements in Accountability

Throughout the 1990s the dominant trend in Latin America was towards economic and political liberalization and international opening, with an associated tendency for the institutions and practices of public accountability to be strengthened. Given the preceding prevalence of authoritarianism, populism and economic interventionism there was ample scope for this trend to develop, without that meaning that at the end of the period all was securely liberalised and institutionally consolidated. In particular, the machinery of accountability takes time to assemble, and is unlikely to work well in times of emergency. Thus, in countries such as Argentina and Chile, where economic and political liberalization is well advanced, improvements in public accountability are only now taking centre stage. In Brazil and Mexico liberalization and accountability

¹² Notwithstanding these difficulties, the study of police reform in new democracies is of critical importance, both for analytical reasons and as a practical matter. The police reform in El Salvador that followed from the 1992 peace treaty provides a vivid case study, and a group of Oxford-based academics propose to explore the scope for building democratic accountability on this new basis.

have been more closely linked, but both have advanced quite intermittently. And in Colombia, Ecuador and Venezuela neither liberalization nor accountability are consensual projects. Indeed, the Venezuelan Constitution of 1999 can be viewed as the strongest evidence yet that the liberalizing reform dynamic of the past decade is vulnerable to near term reversals. Taking a long view, and looking at the region as a whole, the strengthening of mechanisms of public accountability is a recent and patchy process, which may not be easy either to generalize or to extrapolate.

Depending on where one looks, it is possible to find examples of more or less classical praetorianism - in Ecuador two months ago, for example - as well as instances of strong institutionalization - not only in Uruguay, for example, but perhaps also in the Argentina of the de la Rúa administration. In the 1960s Samuel Huntington famously reinterpreted the politics of development in terms of 'institutionalization' and the curbing of praetorianism, and to some extent Latin American politics since then can be understood in those terms. But neither pole fits precisely with Latin American political traditions or understandings, and the progression between the two is neither linear nor assured. Even now the bulk of Latin American politics remains between these two poles neither fully institutionalized nor entirely praetorian. For Latin Americanists the main problem with Huntington's dichotomy was indicated in the historical introduction to this paper. Ever since the sixteenth century there has been a loose institutional framework of government, with associated rules of accountability and legal structures. Interpretation and enforcement of these institutional precepts has been very variable over time and space, but they have a strong continuity as points of reference, and all actors are aware that from time to time they may be more rigorously enforced. So the problem is not an absence of institutions, and the solution is not necessarily to create new ones. The problem is that the existing, often very venerable, institutions often lack "bite" - their coverage is uneven and uncertain. Instead of operating uniformly and according to plan, they may become inflexible and oppressive in some areas and virtually inoperative in others. In both they may be dominated by informal practices and special interest capture. They tend to lack co-ordination and rule of law coherence. The solution implied by strategies of liberalization is to strengthen feedback mechanisms, both through the electorate and the market, so that the existing institutions are brought under external pressure to improve coverage, co-ordination and effectiveness, and to desist from predation. While liberalization sometimes involves the creation of new institutions (Andreas Schedler will discuss the Mexican IFE) it more often involves reshaping existing institutions so that they come closer to performing in accordance with their theoretical design (the Mexican Congress, the municipalities etc.). In general the drive for strengthened accountability is therefore a drive to establish a certain type of institutionality, different from the region's longstanding norms. It is not 'foundational' in the sense of involving wholesale importation from outside (as in post-1945 Japan or post-1990 East Germany), nor the invention of a new system (as in North America or France at

the end of the eighteenth century).¹³ Instead the task is to convince or induce social actors to reassess old landmarks, and to adjust their behaviour without leaving familiar territory. Hence the main impediment to strengthened accountability is not the difficulty of building new institutions, but that of breaking the inertia of the old ones.

Recent pressure for improvements in accountability has been widespread and sustained. It has come both from within the region, and from without.

i) From Within

The mainspring of domestic support has been reaction against the arbitrary and unsuccessful policy experiments of the 1970s. Professional associations (lawyers, journalists, academics), some business interests (especially the more technically advanced, and those geared to international markets), and a broader array of loosely "middle class" groupings may have particular interests in improvements in accountability, but the population at large is also involved. The poor tend to vote against inflationary excesses and the unorganized can appreciate it when their rights to participation and redress are extended. But this domestic coalition of support is very heterogeneous and unstable. In very broad terms it may favour more accountability than prevailed in the 1970s, but that still leaves great scope for disagreement about which of the various modalities (discussed in section two of this paper) deserve priority; or about how best to bridge the gap between theory and experience in specific areas of accountability (illustrated in section three of the paper). So it would be unrealistic to assume the continuation of a strong and unified domestic demand for improved accountability, regardless of the results delivered so far. Where a particular measure of institutional reform has delivered expected benefits, and in particular has induced the interested parties mutually to adjust their conduct in accordance with the new structure of incentives, a specific coalition can be created that may defend that reform, and indeed press ahead for others. (Mexican voters may now be such a support coalition, able to back the IFE and block any return to wholesale fraud). But the third section of this paper has pointed to various areas where the results have not been of this quality, and where therefore the institutional reforms, – (however intelligent in design) – may lack social legitimization. In times of authoritarian rule broad professional associations of lawyers and journalists may defend the principles of legality, and oppose censorship and regression; but in more relaxed and liberal environment there can be no assurance that the same professional groupings will not champion variants of institutional reform that facilitate "capture" by their colleagues or will not resist forms of accountability that put their own prerogatives at risk. The inertia of old institutional practices, and the absence of a clearly defined and self-conscious

¹³ Post-independence constitutionalism in Latin America was certainly a major break with the past, but the institutions created were more derivative and less authoritative, and the real issues was how to fill the void left by the breakdown of colonial rule.

support coalition in favour of the new, could easily cloud the prospect for further advances in accountability in some major policy areas.

ii) From Without

Pressures for strengthened accountability also derive from without. Thus, a Mexico within NAFTA might hesitate to repeat the "system failure" of the 1988 elections, for fear of the adverse repercussions in Canada and the USA, and that international constraint could reinforce the hand of the IFE. Similarly, central bankers are under more external pressure than before to present their accounts in a trustworthy manner, and to minimize the abusive practices of the past. International monitoring of human rights practices may gradually help strengthen the integrity of local justice systems. Regional co-operation, convergence and integration also exposes each Latin American country to the best practices of institutional accountability achieved by its neighbours. A succession of international pressures, influences and examples of this kind may all tend to upgrade the overall standards of the public accountability in the region over time. However, here too it is necessary to note some qualifications. First, international convergence favours higher standards of accountability in some policy areas far more than in others (Mexican Labour standards and trade union rights have hardly been upgraded by NAFTA, for example). Narrow special interest versions of accountability may be privileged by international pressures, at the expense of broader and most socially embedded domestic variants. Second, transmission effects may operate in both directions. (There is, for example, a serious possibility that cumulative institutional failures in Paraguay could produce damaging consequences in the rest of Mercosur). Third, and most fundamentally, international liberalization and convergence is often associated with a restructuring of social and power relations in ways that may reduce or erode the efficiency of the nation state. This, at least, is the fear expressed by those most critical of "globalization". But if it has any substance, then processes of internationalization cannot be considered univocally favourable to the strengthening of "accountability". Certainly in Latin America, and probably in all parts of the world, if accountability is to be strengthened it will have to be done through the instrumentality of the nation state. Directly international forms of accountability, bypassing the state, are unlikely to work well except in very restricted circumstances. Therefore, we have to consider the interplay between two types of external influence on Latin America - those promoting accountability on the one hand, versus those weakening state capacity on the other. So here too the prospects are mixed.

In conclusion, to argue that progress has been uneven and future prospects are uncertain is by no means to denigrate the advances in accountability that have been achieved in Latin America over the past generation. Nor is it intended to discourage future efforts at liberalizing state reform or best practice innovations in institutional design. The damaging socio-political and economic consequences of unconstrained state voluntarism are all still too apparent across the subcontinent, and the benefits of subjecting policymaking to improved

political and economic monitoring and feedback are evident both in theory and through practical experience. The essential case for strengthened accountability is that the good use of public resources requires the establishment of effective error-correction and damage limitation procedures. In theory Latin American institutional design has always recognized this case, and on paper such procedures have always been available. So the challenge is not so much to invent totally new institutional forms, but rather to promote innovations that will i) bridge the gap between official theory and social reality, ii) generate rational and effective forms of accountability rather than institutional gridlock, and iii) deliver benefits and generate support coalitions that legitimize an institutional framework often still currently lacking reliable support.