



**Latin American Political
Economy:
The Justice System's Role in
Democratic Consolidation and
Economic Development**

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Legal Systems in Latin America

Community-based dispute resolution systems developed by indigenous populations of the region destroyed as highly autocratic judicial structures and closed legal proceedings imposed during conquest, discouraging the participation of civil society in judicial matters.

The justice systems imposed represent variations of the civil code tradition with the inquisitorial system of fact finding, largely based on written procedures and an almost exclusive reliance on statutory law.

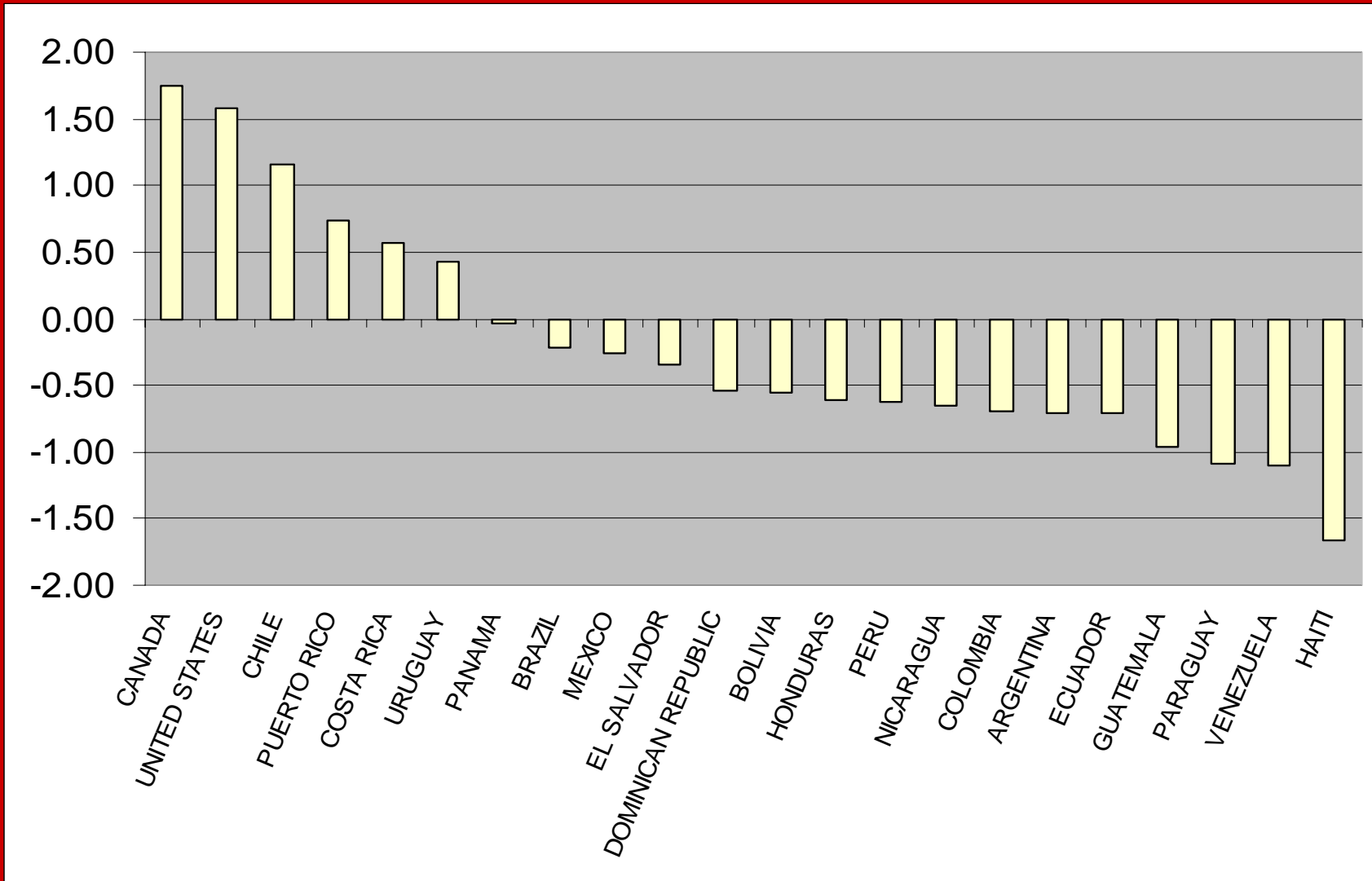
Judicial Reform in Latin America

The judicial reform movement is a regional phenomenon but originates by country in response to legal standards required by free trade agreements, a lack of protections for individual rights that reaches crisis proportions, or a combination of the two. In the 1980s and 1990s, many countries of the region were not democratic. During this time, judicial reform was viewed as critical to the protection of human rights. Today, while concerns with human rights remain, the objective of reform is broader and seeks to achieve democratic consolidation, economic growth and its equitable distribution.

Democratic Consolidation through Judicial Reform

A close fit between formal rules and behavior is necessary for a consolidated democracy and is an indicator of a strong rule of law. The rule of law is necessary for democratization, without it citizens are able to exercise their political rights. The more that institutions of the state function according to the principle of the rule of law, the higher the quality of democracy and thus the more consolidated it is. When there is no strong rule of law to provide norms and procedures of democratic conflict regulation to be developed, the system breaks down. State violence as well as state weakness may subvert the rule of law, providing a major obstacle to democratic consolidation.

Governance Indicators: Rule of Law



Economic Impact of Judicial Reform

Chief among development and growth's requirements is a functional system of legal proprietorship. Also critical is the right of individuals and business entities to enter into contracts that are legally enforceable. Guarantees against nationalization, confiscatory taxation, import restrictions and limits on repatriation of profits encourage foreign investment, stimulating the incorporation of capital and technology. Once in place, these legal criteria allow the replacement of short-term speculation with long-term productive investment and a stimulation of the economy by providing private entrepreneurs certainty, and limiting state interference with the private economy.



Chile

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- Orthodox Inquisitorial System
 - Breakdown
 - 1990: “Judicial Bench is in Crisis.”
 - October 1999: law establishing a *Ministerio Público* published in the *Diario Oficial*.
 - Criminal justice system shifts to public trials, oral hearings, and adversarial presentation of evidence.
 - 2004: Chile – U.S. Free Trade Agreement.
 - Reforms follow in Family Courts, Juvenile Justice.
 - Civil and commercial legal and procedural reforms underway.
 - Chile presents the strongest legal environment and most dynamic economy in Latin America.

Peru

The U.S. and Peru concluded free trade agreement negotiations and signed the Peru Trade Promotion Agreement (PTPA) in April 2006. Peru's Congress has ratified the agreement but approval by U.S. lawmakers remains uncertain due to concern with Peru's labor rights protections. During negotiations, Peru's intellectual property rights protections were viewed as a primary obstacle to the trade agreement's passage in the U.S. while in Peru controversies centered on the agricultural sector, due to U.S. subsidies. The PTPA includes provisions that Peru provide a secure, predictable legal framework for U.S. investors operating in the country, including the enforcement of labor and environmental standards; protection of intellectual property rights; and an effective dispute settlement process.

PERU
Estimated Trade Losses Due to Copyright Piracy
(in millions of U.S. dollars)
and Levels of Piracy: 2001-2005⁴

INDUSTRY	2005		2004		2003		2002		2001	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music ⁵	66.0	98%	68.0	98%	87.0	98%	70.2	98%	57.8	97%
Business Software ⁶	23.6	73%	22.0	73%	19.0	68%	14.7	60%	11.2	60%
Motion Pictures ⁷	NA	NA	4.0	75%	4.0	45%	4.0	50%	4.0	50%
Entertainment Software ⁸	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Books	9.0	NA	8.5	NA	8.5	NA	8.5	NA	9.0	NA
TOTALS	98.6+		102.5		118.5		97.4		82.0	

⁴ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2006 Special 301 submission at www.iipa.com/pdf/2006/spec301methodology.pdf. For more information on the history of Peru under Special 301 review, see Appendix D (<http://www.iipa.com/pdf/2006/SPEC301USTRHISTORY.pdf>) and Appendix E (<http://www.iipa.com/pdf/2006/SPEC301HISTORICALSUMMARY.pdf>) of this submission.

LEGAL ENVIRONMENT, 2006

	Rule of Law ¹	Corruption Perception ²		Days Required to	Economic Freedom ⁴		Crime Victimization ⁵
	Percentile Rank	Index	Rank	Start a Business ³	Index	Rank	% Yes
NAFTA REGION							
Mexico	45.9	3.5 ↑	65	58	2.83	60	75.7
CENTRAL AMERICA							
Costa Rica	65.7	4.2 ↓	51	77	2.69	46	35.7
El Salvador	42.5	4.2	51	40	2.35	34	34.2
Guatemala	18.8	2.5 ↑	117	39	3.01	74	41.5
Honduras	33.8	2.6 ↑	107	62	3.28	102	34.2
Nicaragua	30.4	2.6 ↓	107	42	3.05	80	34.6
Panama	52.7	3.5 ↓	65	19	2.70	49	28.7
CARIBBEAN							
Dominican Republic	38.2	3.0 ↑	85	75	3.39	116	**
Jamaica	43.5	3.6 ↑	64	9	2.76	54	**
Trinidad & Tobago	56.0	3.8 ↓	59	**	2.50	42	**
ANDEAN SOUTH AMERICA							
Bolivia	37.2	2.5 ↑	117	50	2.96	67	33.8
Colombia	29.5	4.0 ↑	55	43	3.16	91	37.4
Ecuador	28.5	2.5 ↑	117	69	3.30	107	40.4
Peru	31.9	3.5	65	102	2.86	63	37.8
Venezuela	12.6	2.3	130	116	4.16	152	44.2
BRAZIL AND SOUTHERN CONE							
Argentina	28.5	2.8 ↑	97	32	3.30	107	47.1
Brazil	46.9	3.7 ↓	62	152	3.08	81	35.6
Chile	85.5	7.3 ↓	21	27	1.88	14	36
Paraguay	13.5	2.1 ↑	144	74	3.31	109	46
Uruguay	61.8	5.9 ↓	32	45	2.69	46	27.7

1: As measured by the World Bank's Governance Indicators: 1996-2004 <www.worldbank.org>. The percentages measure the extent to which agents have confidence in and abide by the rules of society, including perceptions of the incidence of crime, the effectiveness and predictability of the judiciary, and the enforceability of contracts.

2: As measured by Transparency International, Corruption Perceptions Index 2004 <www.transparency.org>. Focuses on corruption in the public sector and defines corruption as the abuse of public office for private gain. The country ranks measure the corruption level in 159 countries as perceived by business people, risk analysis, investigative journalists and the general public. The scores used range from 10 (country perceived as virtually corruption-free) to almost 0 (country perceived as almost totally corrupt).

↑↓ Up or down indicate, respectively, an improvement or a worsening of the environment from 2004.

3: As measured by the World Bank Group's report "Doing Business in 2006: Removing Obstacles to Growth"

4: As measured by the Heritage Foundation's 2006 Index of Economic Freedom. Scores are based on a 1-5 scale, 1 being the best, 5 being the worst. Countries are also ranked in order of economic freedom, with 1 being the most free.

5: As measured by Latinobarometro 2002. "Have you, or someone in your family, been assaulted, attacked, or been the victim of a crime in the past 12 months?" Those who responded "Don't know" or did not provide an answer were excluded from the results.

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