The Human Rights Ombudsman and Democracy in Latin America

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Abstract

A striking feature of the past 20 years has been the spread of the human rights ombudsman institution throughout Latin America. Mandated to protect citizens’ fundamental rights, ombudsmen have become a recognised and legitimate resource for citizens in many countries. Situating the analysis within the field of political science – the role of institutions in processes of democratisation and rights protection – this paper is motivated by the broad purpose of attempting to understand some of the implications of the development of the hybrid or human rights ombudsmen in the Latin American context, with particular focus on the political processes that underlie its ability to enhance political accountability and rights protection.

Key words: ombudsman, accountability, Latin America, democratisation, human rights, institutions.

Resumen ejecutivo

Las defensorías del pueblo u ombudsman se han convertido en una de las innovaciones institucionales más prominentes de los últimos 20 años en América Latina. Autorizadas a proteger los derechos fundamentales del ciudadano, estas instituciones han alcanzado un importante grado de reconocimiento y legitimidad de la ciudadanía en varios países. Situando el estudio en el campo de las ciencias políticas – específicamente el papel de las instituciones en procesos de democratización y protección de los derechos humanos – el proyecto pretende entender algunas de las implicaciones del desarrollo de la Defensoría en el contexto de América Latina con un enfoque en los procesos políticos que subyacen en su capacidad de mejorar la accountability y protección de derechos.

Palabras claves: ombudsman, accountability, América Latina, democratización, derechos humanos, instituciones
Introduction

Situating its analysis within the field of political science, this paper is motivated by the broad purpose of attempting to understand, perhaps even explain, the political role of the ombudsman\(^1\) in the Latin American context, with particular focus on the institution’s relevance to the process of political accountability and rights protection. The primary criticism often levelled at ombuds men is that all too often they serve as democratic cover for political regimes rather than enhancing accountability or rights protection. This study contends, that the political agency of the ombudsman within processes of democratisation in Latin America is more complex than this assessment allows. Accordingly, the institution may become more powerful than expected as its ability to cultivate political alliances and activate an effective oversight agenda increases. Political studies of these institutions may remain scarce, but a growing body of work points to the importance of political processes in explaining the variable experiences of these institutions (Uggla 2004; Reif 2004; Volio 2003).

The objective of this paper is to offer a first-cut on situating the ombudsman within the literature on political accountability theory and processes of rights contestation within the public arena. Underlying the perceived objectives of accountability and enhanced representation the end goal, and paramount desire on the part of much of the polity, is security. The ombudsman in Latin America has been identified as a potentially important institutional mechanism of accountability and rights protection (Reif 2004). Such a resource is particularly pertinent in societies that display high levels of exclusion, the resulting resentment and frustration a potent recipe for conflict.

The First Section of the paper will outline a condensed theory-oriented framework based on democratisation, accountability and rights, its conceptualisation, discussion of the principal terms and different dimensions or arenas of analysis and their interaction. The Second Section offers a typological discussion of the ombudsman in Latin America, exploring the phenomenon of regional diffusion, and ends by proposing a formalistic three-fold typology of the institution. Finally, building on the preceding theoretical and conceptual discussion, the Third Section presents a preliminary operative framework to more accurately gauge the political agency of the ombudsman and the challenges it faces in fulfilling its mandate. The operative framework presents four critical factors: (1) institutional design, (2) the democratic ‘quality’ of the context, (3) the nature and characteristics of political alliances, and (4) ‘the personal factor’ (the personal qualities of the appointee). From this discussion emerges a proposal for further theoretical and empirical attention to the multiple challenges facing a state institution at the forefront of rights protection in Latin America and how the variable performance of this institution might be enhanced.

\(^1\) I will use the word ombudsman throughout the paper as the generic term and to refer to a specific institution. Increasingly, gender neutral terms such as Protector, Mediator, Commissioner and ombudsperson are entering into common usage. However, ombudsman is considered to be a gender neutral term in contemporary Sweden and it remains the generic term in use for the institution worldwide.
1. Political Accountability and Rights

1.1 Accountability and (the quality of) democracy

According to democratization theory, accountability enhances the quality of democracy. The ombudsman is a mechanism of accountability, more precisely of horizontal accountability. This section will explore this theoretical connection. This will entail firstly, indicating the key reference points within the debate, democratisation and the quality of democracy.

Although the actual boundaries of the concept of accountability remain highly contested, the lack of accountability has been identified as a challenge facing both new and developed democracies (Mainwaring and Welna 2003; Foweraker, Landman and Harvey 2003). Schmitter and Karl (1996: 50) define modern political democracy ‘as a regime or system of governance in which the rulers are held accountable for their actions in the public realm by citizens, acting indirectly through competitions and cooperation.’

Underlying much of the qualitative issues of democracy in the region is the lack of institutions capable of binding state and society together, and the consequent disengagement of structures of power with popular social actors. This paper departs from the observation that a lack of accountability can help to explain the persistence of asymmetries of power between those who govern and the citizenry (Schedler 1999; Przeworski, Stokes and Manin 1999).

Quality of democracy theory has arguably still to produce a clear conceptualised statement of its research problem (Diamond and Morlino 2005). However, one way to proceed is through the lens of accountability theory. The idea of accountability introduces a dialogue between citizen and public official into the democratic discourse. Research has used this framework to expose inadequacies in the design of democratic systems, but has also rejuvenated the classic concept of sovereignty to the people and the related normative aspiration of representative democracy, the rule of law and democratic social values. This also suggests that accountability should be viewed as a means, rather than an end in itself, with consequently important implications for institutional design (Arato 2006). Such an approach raises further questions of whether it is possible to have too much or the wrong kind of accountability (Whitehead 2002; Philp 2001).

Despite the earlier cautionary proviso regarding quality of democracy, to understand the political work of the ombudsman, some consideration of the democratic ‘quality’ of its operational environment is required. Drawing from the work of Diamond and Morlino (2004: 22), three broad dimensions for assessing the institution’s operational environment can be identified: (1) a largely procedural dimension concerned with rules and practices, (2) respect for civil and political freedoms, and the progressive implementation of greater political (and underlying it, social and economic) equality, and (3) responsiveness, with a focus on public policies and their correlation to citizen

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2 This definition is not without its problems (for example, the notion of acting ‘indirectly’ through representatives). However, its emphasis on citizenship, accountability and the public realm is central to the present discussion.

3 This includes consideration of the rule of law, participation, competition, and vertical plus horizontal accountability.
demands and preferences. Throughout this discussion of the role of the ombudsman, in both political and legal dimensions, it is suggested that variations in the ‘quality’ of the democratic context shape the political agency of the ombudsman and in turn its potential contribution to political accountability and rights protection.


As Graph 1 shows, according to Freedom House scoring, those countries in Latin America with national offices of the ombudsman display considerable volatility in terms of political and civil liberties. Significantly, in 2007 there are more countries considered partly free than free. The question of how the ombudsman contributes to enhancing accountability and rights protection calls for a broadening of the frame of reference to include such contextual variance.

It is also important to consider change within individual countries. For instance, Peru has experienced over the last two decades extensive and serious armed conflict, semi-authoritarian government, transition to democracy and a resulting fragile process of democratisation. For an institution attempting to bridge state and society, such a context presents a range of challenges, above all negative perceptions of the state and, in the case of human rights, the pre-existence of a range of agencies. One novel innovation of the Peruvian ombudsman, and an indication of the continuing grave instability present in Peruvian society, is its overseeing of a system to monitor social conflicts nationwide, following a classification of active, latent and resolved. In September 2007 it reported the existence of 76 conflicts. Of those 29 were active, 47 in a latent state and two cases resolved that month.

4 This study recognises the inherent empirical and methodological challenge of measuring the concept of ‘quality of democracy.’ The ratings process used by Freedom House is based on a checklist of 10 political rights questions and 15 civil liberties questions. Notwithstanding certain reservations, Freedom House claims the methodology of the survey is grounded in basic standards of political rights and civil liberties rather than a ‘culture-bound view of freedom.’ The data offers unparalleled time-series data from 1972 to 2007.
5 See TRC 2003
6 See http://www.defensoria.gob.pe/conflictos.php
Similarly, El Salvador and Guatemala with the residue of recent internal conflict and continuing high levels of violence offer a distinctive contextual trajectory to be factored into an understanding of the political role of an institution such as the ombudsman. Both of these ombudsmen place considerable emphasis on oversight of the state security apparatus and also rights education and training. The Guatemalan ombudsman is active in mediating lynching cases, offering human rights training to civilian and military security forces and coordinating a human rights education volunteer network.7

1.2 Democracy, rights and the public arena

This study contends that the political agency of the ombudsman is informed in large part by volatile processes of democratisation in Latin America reflected in unstable rights frameworks, ‘low-quality’ democracy and insistent demands for more responsive government.8 This section outlines the interaction between democracy, rights and the public arena.

Latin America is this paper’s empirical referent and the region demonstrates the complexity of protecting rights within variable democratic contexts. Scholars working on the region are increasingly focused on the empirical observation that rights, rather than being cast as immune to the political process,9 are better viewed as ‘volatile,’ especially in low-quality democracies, resulting in what O’Donnell has termed ‘low-intensity citizenship’ (Whitehead 2007; O’Donnell 1993). This perspective reflects the reality that for many citizens in Latin America the enjoyment of many rights – especially positive or aspirational rights – remains elusive. This situation is compounded by the absence of requisite rights protection mechanisms or the inefficiency or enforcement failure of those that do exist.

Table 1: Principle issues being addressed by four ombudsmen institution in order of most complaints received in 2006

<table>
<thead>
<tr>
<th>Peru</th>
<th>Costa Rica</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Right to good administration</td>
<td>1. Right to health</td>
</tr>
<tr>
<td>2. Political and civil rights</td>
<td>2. Right to adequate provision of public services</td>
</tr>
<tr>
<td>3. Economic and social rights</td>
<td>3. Environmental rights</td>
</tr>
<tr>
<td>4. Judicial delay</td>
<td>4. Right to employment</td>
</tr>
<tr>
<td>5. Right to adequate provision of public services</td>
<td>5. Rights of women, children and adolescents</td>
</tr>
<tr>
<td>6. Violations of the electoral processes</td>
<td>6. Right to justice</td>
</tr>
<tr>
<td>7. Environmental rights</td>
<td>7. Right to due process</td>
</tr>
<tr>
<td>8. Those deprived of their liberty</td>
<td>8. Rights of the family</td>
</tr>
</tbody>
</table>

8 The variable democratic experiences within the region have led to a growing recognition that democratisation is best understood as ‘a complex, long-term, dynamic and open-ended process’ rather than a linear, exhaustive event as suggested by the consolidation literature. See Whitehead (2002: 3).
9 This refers to the tension competing conceptions of rights particularly between human and citizen rights. Essentially a question of authority, human rights invoke a distinct universalising dimension based on moral authority removed, or above, the political process, whereas citizen rights are traditionally associated with the nation state, essentially localised and politically contingent.
10 This category includes disappearances and police torture and misconduct, forced military recruitment, lack of documentation and a range of other political and civil rights.
11 Peru and Guatemala are the only ombudsmen in the region to have express jurisdiction over the election process.
<table>
<thead>
<tr>
<th>Peru</th>
<th>Costa Rica</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. Rights of the disabled</td>
<td>10. Right to housing</td>
</tr>
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<table>
<thead>
<tr>
<th>Honduras</th>
<th>Argentina</th>
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</thead>
<tbody>
<tr>
<td>1. Crimes and omission of the public administration</td>
<td>1. Right to social security and employment</td>
</tr>
<tr>
<td>2. Right to personal integrity</td>
<td>2. Complaints against public services and financial tribunals</td>
</tr>
<tr>
<td>3. Abuse of authority</td>
<td></td>
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<tr>
<td>4. Right to justice</td>
<td></td>
</tr>
<tr>
<td>5. Judicial delay</td>
<td>3. Human rights and administration of justice e.g. women, children and adolescents</td>
</tr>
<tr>
<td>6. Right to due process</td>
<td></td>
</tr>
<tr>
<td>7. Rights of women, children and adolescents</td>
<td>4. Right to health, education and culture</td>
</tr>
<tr>
<td>8. Economic and social rights (education, work, health, housing, and property)</td>
<td>5. Environmental rights</td>
</tr>
<tr>
<td>6. Right to legal council</td>
<td></td>
</tr>
</tbody>
</table>

Source: Respective Annual Reports 2006

For a formal institution such as the ombudsman, defining and activating an effective oversight agenda may draw strength from legal rights frameworks and their universalising or collective aspiration. However, effective strategising also entails a realistic appraisal of the political and/or legal situation at hand. To a degree this demands an evaluative assessment by the ombudsman on a workable definition of rights. Articulating a rights claim as a ‘human rights’ orientates the discourse towards a legal process perspective, implying an obligation (although not necessarily guaranteeing their enforcement). Whereas, casting them as citizens’ rights or ‘interests’ grounds the claim in a contextual, domestic and essentially political process.

A sketch of the principle issues being addressed by the institution in Table 1 demonstrates the broad array of rights that are material to the work of the institution. Among the rights complaints received by the ombudsman, security is a central concern but not isolated from other rights issues. All four institutions share certain common affinities, in particular a shared focus on the rule of law, a broad understanding of rights and the welfare of marginalised or vulnerable groups within society. However, Table 1 shows that the rights issues being addressed in Peru and Honduras contrast significantly with those addressed in Costa Rica and Argentina, where the majority of complaints concern economic, social and cultural, as well as environmental rights. It is violations committed by the public administration that are the most frequent complaints in both Peru and Honduras. Within this, admittedly vague category used by both institutions, there are further important distinctions to be drawn in terms of policy domains and issue areas. This is suggested with reference to the three most complained against public institutions in Peru and Honduras during 2006. In Peru this was the (1) Ministry of Education, (2) the National Pensions Office, and (3) the Peruvian National Police, whereas in Honduras it was the (1) Internal Secretariat of Security (the National Preventative Police, the General Directorate of Criminal Investigations and the Transit Police), (2) the Supreme Court of Justice, and (3) the General Attorney’s office.13

12 Many of these violations concern the National Preventative Police, including cases of extra-judicial executions, cruel, inhuman or degrading treatment, threats and intimidation, due process, among others.

From a procedural perspective, the diversity of issues being addressed by the institution raises the question of what is the political, legal and technical toolkit required for effective rights advocacy in the contemporary political arena? This is a central issue for examining the political role of the ombudsman and the focus of this study on political processes does not deny the importance of robust institutional design (see Section Three). This implies a certain instrumentalisation of the ombudsman’s political authority across policy domains and the strategies adopted. For example, an ombudsman dealing with negative rights (e.g. torture, disappearances and extra-judicial executions) is likely to act differently from one engaged in promoting positive or aspirational rights (housing, social security and environmental rights).

The Constitutional or legal mandate provided for the ombudsman is typically broad and unrestrictive, as will be further discussed in the typological discussion in Section Two. Certain features in institutional design, particularly in relation to mechanisms of investigation, compliance, monitoring, judicial actions, and certain specific mandates, provide an indication of the procedural toolkit available to the ombudsman. For example, ombudsmen marked by a history of widespread and/or systematic human rights violations often utilise legal prerogatives and will articulate claims through the legal process. An extreme case is Guatemala, where the ombudsman can be ordered by the Supreme Court to participate in habeas corpus actions, not necessarily a natural function for the ombudsman. Argentina, alongside Peru, has also submitted a number of petitions to the Inter-American Commission of Human Rights. The ombudsman can and has drawn on a range of resources outside, or in addition to, its own procedural faculties. This is further elaborated in the following Section.

1.3 Political accountability and its conceptualisation

The key appeal of accountability theory for the purposes of this study, as will be elaborated here, can be found in its conceptual delineation of actors, arenas and

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14 For example, the Peruvian mandate stipulates that ‘it is the duty of the office of the ombudsman to defend the constitutional and fundamental rights of the individual and the community.’ Articles 161 and 162 in chapter XI of the 1993 Constitution.
15 All ombudsmen in the region have express powers to compel public officials to release information with the exception of Mexico and Colombia.
16 The Guatemalan model can request a state agent to be fired if they obstruct an investigation. However, it should be recognised that in almost all cases the ombudsman’s final recourse for compliance through horizontal channels is to either/or refer the matter to the head of the agency in question, the legislature or courts.
17 This generally encompasses the monitoring the bureaucracy and the transmission of information in the state administration. Areas of attention include administrative actions lacking legal basis, access to information, irregularities concerning administrative acts, incompliance with legal dispositions and lack of response or refusal to admit requests and complaints.
18 In Argentina the office has made use of various amparo actions before the courts, most prominently against the State for the freezing of funds during the financial crisis in 2002.
19 For instance, Honduras has an express mandate over domestic violence, Colombia and Venezuela over the protection of ethnic minorities, Ecuador must make periodic visits to police stations and military installations.
20 These cases have taken the form of collective actions on discrimination, indigenous peoples, pensions as well as a number of amicus curiae briefs. See Reif (2004: 180-82).
modalities of accountability and its applicability to observable phenomena in a particular time and place.

A general understanding of the concept of accountability provided by Mainwaring hinges on whether an actor is formally ascribed the right to demand answerability of a public official or bureaucracy (Mainwaring 2003: 7). Schedler considers that, in addition to answerability, the notion of political accountability implies enforcement – the capacity to impose sanctions on powerholders who have violated their public duties (Schedler 1999: 14). This dual approach to accountability has been the focus of a broad debate in the political science literature (Behn 2001, Mulgan 2003, Philp 2001, Przeworski et al. 1999, Schedler, Diamond and Plattner 1999, Schmitter 2003, Peruzzotti and Smulovitz 2006). Beyond answerability and enforcement, Schedler (1999: 14) adds to this definition elements of monitoring and justification. He claims that ‘the attractiveness of the concept of accountability derives from its breadth…It implies subjecting power to the threat of sanctions; obliging it to be exercised in transparent ways; and forcing it to justify its acts.’

Summarising Mainwaring’s (2003: 9-18) extended discussion of competing conceptions of accountability, the main controversies revolve around five key issues:

1. What activities that involve holding public officials responsible for their discharge of their duties should be included under the very broad rubric of accountability?
2. Should accountability be restricted to cases of legal transgressions by state actors?
3. Does the concept necessarily require the capacity of sanctions on the part of the agent of accountability?
4. Should accountability be limited to principal – agent relationships?
5. Which actors can serve as the mechanisms for providing accountability?

An additional complexity relates to the ability of the word ‘accountability’ to travel well. While the term has leapt to prominence in Anglo-Saxon countries, in Latin America accountability is commonly translated as rendición de cuentas or responsabilidad. Neither of these translations conveys the full meaning of the concept. Indeed one could argue that the notion of ‘responsibility’ holds connotations not conducive to answerability and transparency.21

This paper recognises accountability as a radial concept (Schedler 1999: 18). As such, it is possible for accountability to be exercised in the absence of one of its core dimensions – be it enforcement or answerability – without it necessarily being considered a diminished form of accountability as a result (Kenney 2003: 17). This extended notion of accountability may involve trade-offs in terms of conceptual clarity,22 but is also one of the attractions of accountability theory.

21 As Schedler (1999: 19) succinctly puts it: ‘while accountability forces power to enter into a dialogue, the notion of responsibility permits it to remain silent.’
22 Mulgan (2003: 18) advocates that the notion of accountability be considered apart from control. Control implies enforcement power and is a more restrictive concept than accountability ‘which threatens to extend its reach over the entire field of institutional design.’
Essentially, political accountability includes oversight of acts or omissions, in accordance with the law and constitution. This definition also encompasses actions that are ‘politically objectionable, but not illegal’ (Kenney 2003: 67). This represents a key departure from more narrow concepts of political accountability. For instance, O’Donnell’s exclusive focus on control and punishment of unlawful actions or omission by agents or agencies of the state, is, arguably, insufficient to fully account for the political sanctions employed by the ombudsman. Similarly, the ombudsman’s mandate to monitor and supervise public administration suggests a political control function that lies beyond purely legal or formal parameters. As such, this paper argues that answerability and the potential to realise ‘material consequences’ are sufficient requirements (Peruzzotti and Smulovitz 2006: 16). Finally, accountability operates as a two-way relationship between agent and principal. The scope of this relationship is broader than just a citizen-politician interaction, encompassing all official personnel employed by the state and, in some specific instances, private entities.

1.3.1 Arenas and actors of accountability and their interaction

O’Donnell’s (1999) notion of vertical and horizontal accountability has proven influential in the field of accountability literature and is sufficiently suggestive for the purposes of this research. Vertical accountability refers to the ability of the citizen to select and eject their leaders from office, typically through the electoral process. Horizontal accountability can be defined as ‘the existence of state agencies that are legally enabled and empowered, and factually willing and able, to take actions...in relation to actions or omissions by other agents or agencies of the state that may, presumably, be qualified as unlawful.’ The general weakness of institutions of horizontal accountability is arguably a major flaw of democracies in Latin America. From the ombudsman’s perspective, the relationship with complementary institutions in the horizontal network, such as the judiciary and Public Prosecution Sector, is a determinant factor in the activity of the institution, as is apparent with reference to the institution’s primarily non-coercive attributes.

O’Donnell also draws an important distinction between traditional ‘balancing institutions’ and a new generation of horizontal accountability mechanisms or ‘appointed institutions’ (O’Donnell 2006: 338). Such agencies include electoral commissions, state auditors, anti-corruption agencies, specialised courts, commissioners and classical and hybrid ombudsmen. These new agencies are intended to complement balancing institutions – the executive, legislative and judiciary – and can be defined as: (1) proactive and continuous in their respective tasks of controlling actual or presumed encroachments and/or corruption; (2) able to invoke professional or ‘apolitical’ criteria and thus diminish conflict; and (3) specialised where necessary to investigate the complex and sometimes obscure intricacies of political bureaucracy.

23 It is beyond the scope of this paper to elaborate on this argument. It draws inspiration from the general notions of administrative law that have taken on a different resonance in the Latin American context. Within administrative law one finds there are a number of quite widely shared principles such as rationality, consultation, neutrality, mediation, transparency, proportionality. The violation of these principles may not constitute an illegal act but may still merit sanctions – or ‘material consequences.’ See Richard Stewart, ‘U.S. Administrative Law: A Model for Global Administrative Law,’ IILJ Working Paper 2005/7.
Beyond O’Donnell’s notion of vertical and horizontal accountability, drawing principally on Peruzzotti and Smulovitz’s (2006) conceptualisation of social accountability, this study argues that a potentially novel aspect of the ombudsman’s political agency is its ability to enter into alliance with actors in a range of accountability arenas. Peruzzotti and Smulovitz (2006: 351) assert that social accountability mechanisms – organized sectors of civil society and the media – may acknowledge existing institutional deficits, and in response turn their attention to institutional capacities in other arenas or agencies. The experience of ombudsmen throughout the region reaffirms a positive synergy, identified by Peruzzotti and Smulovitz (2003: 309-22), which can be achieved between horizontal and social accountability. This relates particularly to the cultivation by the ombudsman of a range of alliances with accountability actors outside the state able to exert influence on the political system and public bureaucracies. It should be stated that careful analysis of the nature and characteristics of these alliances is required to determine underlying ideological motives that inform these relationships. Described by Pastor (1999: 124-44) as the ‘third dimension’, alliances cemented with external actors of accountability are also considered a significant resource.24 This paper therefore identifies five possible arenas of political accountability in which rights (and power) may be contested: (1) vertical, (2) horizontal (balancing), (3) horizontal (appointed), (4) social, and (5) external.

It is the dynamics of interaction at the fault lines or boundaries of these accountability arenas that may arguably provide some illumination on why democratisation processes in new and emerging democracies stagnate or even regress. It is interesting to consider the potential for one dimension of accountability to have direct or indirect consequences on other spheres, such as the generation of information or legal claims. For instance, the Colombian ombudsman is legally obligated to release the findings of all investigations to the public. Similarly, the Peruvian ombudsman has been widely recognised by civil society NGOs as bringing valuable resources to campaigns and legislative projects.25 As one NGO representative described “they are professionals, with sufficient expertise and faculties to draft legislation and successfully lobby for its implementation at the legislative level.”26

1.3.2 Approaching a horizontal network of accountability and beyond

As O’Donnell (1999: 45) states, ‘achieving a significant degree of...accountability requires the coordination of several agencies, each of them subject to divida et impera strategies.’ This coordination takes place within a network of accountability institutions that includes a strong legislature, independent and efficient courts and administrative tribunals, state auditors, electoral commissions and the ombudsman. However, it may also extend beyond the state, with interaction between those different sources of accountability outlined above. Ideally, this facilitates a ‘virtuous

24 External actors refer to a variety of different trans-national entities including national governments, IGOs, international judicial bodies, International NGOs among others.
25 Francisco Soberon, interview by author, 16 August 2005, Lima, Peru. Francisco Soberon was Executive Secretary of the Coordinadora until 2006.
26 Ana Leyva, interview by author, 23 August 2005, Lima, Peru. Ana Leyva is Environmental Officer for FEDEPAZ, an NGO based in Lima.
circle of accountability,’ or what Schedler (1999: 26) describes as ‘recursive cycles or systems of mutual accountability’ of mutually interlocking agencies.

Underlying the discussion of a functional accountability network and system is the presence of ‘factualy and willing’ agencies, arguably the most significant agency being the courts and judicial branch. Without an independent and reasonably efficient judiciary capable of exercising a control function, the systemic potential of the network will be severely stunted. A related issue pertinent to the Latin American context is the distinction between the rule of law and a democratic legal system.27 Legal systems in the region have been prone to politicisation, juridical formalism and inaccessibility (Prillaman 2000).

While analyses of political accountability have typically focused on the traditional state arena of control – the executive, legislature and judiciary – this study feeds into an emerging current of debate in search of new or reformed institutional forms to enhance representative and accountable government (Dahrendorf 2000). A recent contribution to this field advocates enhanced citizen participation in processes of accountability, termed ‘co-governance’ (Ackerman 2004). Distinct from social accountability, it does however share the notion of transgressing the frontiers between state and society so prevalent in much of the accountability literature applied to regions such as Latin America.

1.3.3 Attention to the citizen

As a horizontal accountability mechanism, the ombudsman offers the citizen an institutional channel through which to activate a horizontal accountability mechanism. The citizen can generally solicit the intervention of the ombudsman through writing, telephone, internet, or in person and services are free. Given the high rate of illiteracy in many countries in the region, especially among the most vulnerable sectors of society, the ability to lodge a verbal claim with the ombudsman is significant. As Table 2 shows, demand for the services of the ombudsman has typically been considerable. In part, this reflects an institutional supply and demand equation. Increasing the supply of institutional channels inevitably encourages demand.

<table>
<thead>
<tr>
<th>Year</th>
<th>Costa Rica</th>
<th>Guatemala</th>
<th>Honduras</th>
<th>Peru</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>23,024</td>
<td>23,299</td>
<td>9,273</td>
<td>52,180</td>
</tr>
<tr>
<td>2003</td>
<td>24,079</td>
<td>36,908</td>
<td>9,374</td>
<td>68,913</td>
</tr>
<tr>
<td>2004</td>
<td>25,812</td>
<td>35,677</td>
<td>11,500</td>
<td>70,907</td>
</tr>
<tr>
<td>2005</td>
<td>24,901</td>
<td>25,361</td>
<td>9,061</td>
<td>62,419</td>
</tr>
<tr>
<td>2006</td>
<td>19,934</td>
<td>24,020</td>
<td>9,390</td>
<td>85,658</td>
</tr>
<tr>
<td>Total</td>
<td>117,750</td>
<td>135,265</td>
<td>74,901</td>
<td>340,077</td>
</tr>
</tbody>
</table>

Source: Respective Annual Reports 2002-2006

27 O’Donnell (2004: 32) defines a democratic legal system – as one characterized by two features: (a) it enacts and backs the rights attached to a democratic regime; and (b) there is no institution or official in the state or in the regime (or, for that matter, in society) that is de legibus solutus.
However, despite the high level of total complaints received by the ombudsman, such aggregate numbers hide a number of problematic features. Particularly pertinent is the number of complaints submitted each year that are not admissible. For instance, in Peru an average 50 percent of all complaints fall outside the mandate of the institution. Such a dynamic is not unusual even among classical ombudsmen in Europe. However, confusion often shown by the citizen toward the institution may be compounded in contexts that exhibit a profound lack of a rights culture, such as in Peruvian society. In response, the Peruvian ombudsman has applied itself to identifying those groups most excluded from the political system and finding ways in which the institution may provide an arena for their inclusion. The experience of this institution reveals the scale of the task. Despite this challenge, the institution continues to enjoy high approval ratings – 46.4 percent in December 2006 – significantly above other state institutions such as the judiciary (15.4 percent) and the legislature (20.1 percent).

On a theoretical note, a restricted notion of accountability agency may require that individuals can only be considered ‘social accountability actors’ if their petitions to accountability mechanisms are framed in a language of rights and legality and do not appeal, at least directly, to material interests (O’Donnell 2006: 342). In part, this proviso recognises that the success of such petitions and their ability to trigger the social-horizontal network will depend largely on the collective organisation of the claimants. Without elaborating on the wider implications of these observations, in analysing the ombudsman, it is useful to make the distinction between individuals taking petitions to the institution and the ombudsman advancing ‘class actions’ on behalf of marginalized or excluded groups.

1.3.4 Modalities of accountability

Given the multitude of agencies outlined above which operate within and across different arenas, it is instructive to distinguish between different institutional modalities of accountability. For the purposes of this study, it is noteworthy to consider the overlapping and/or complementarity of modalities across arenas, especially among social accountability agents and appointed institutions. Peruzzotti and Smulovitz (2003: 312) identify three principal societal mechanisms that may activate the operation of horizontal ones: (1) social mobilisation; (2) media exposure; (3) when individuals or associations activate local judicial proceedings, international ones, or oversight agencies. Of course, the overlapping of modalities may also create tensions if alternate agencies compete for authority.

A discussion of a typology of modalities as applicable to the ombudsman might also go some way to illuminating the political agency of the institution. Tracking how modalities are operationalised and combined in a strategic action or patterns of strategic action provides scope for exploring the distinctive agency of the ombudsman across and within cases. It also offers the prospect of looking at the relationship

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28 See the Peruvian Ombudsman Annual Reports 2002-2006.
29 This has its clearest expression in own-motion class actions on behalf of marginalized groups, decentralization of operations and rights education initiatives. The Peruvian ombudsman currently has 36 offices throughout Peru.
30 This is a common phenomenon among Latin American ombudsmen. Poll conducted on 2-3 December 2006 by the Public Opinion Group of the University of Lima.
between the formalistic side of rights as contained in the Constitution and other prescriptive sources and the political space in which these rights are contested. Questions of how these two dimensions are linked and how the ombudsman fits into this scheme may go some way to understanding the distinctive work of the institution.

The experience of institutions throughout the region attests to the potential for political alliances to enhance accountability, rights protection and also the profile of the ombudsman on the national stage. Notable interventions by the ombudsman institution in volatile conflict situations, alongside NGOs, the media, and other social and external agencies, include the actions of the Bolivian ombudsman during the so-called Cochabamba ‘water wars’ of 2000, the high-profile mediation role of the Costa Rican ombudsman during large scale protests against a proposed law to privatise the electrical and telecommunications sectors in 2000, and the prominent role of the Peruvian ombudsman office during the fraudulent elections of 2000.

2. What is the ombudsman in Latin America?

2.1 What is the ombudsman?

The basic premise of the ombudsman is the protection of the citizen. The classical objectives of the institution are to oversee and improve the performance of public administration and to enhance government accountability to the public through channels that emphasise dialogue, responsiveness, participation and redress. The following list provides an outline of common, though not exhaustive, attributes associated with the institution:

- Autonomy from the government and courts, often enshrined in the constitution
- Appointment by a qualified majority in Congress for a prescribed period of time (although most ombudsmen in Africa and Asia are executive appointments)
- No powers to sanction or enforce decisions, unlike the judicial branch or other legal institutions or agencies
- Complaints and petitions are received from people(s) seeking representation against state authorities, administration and, in a few limited cases, private agents
- Enjoys investigative and oversight powers commensurate with the demands of its mandate
- Services are free at point of access, expeditious, and transparent;
- Commonly enjoys similar prerogatives and protections afforded to members of Congress
- Periodically reports to Congress and disseminates findings within society through the press and civil society.

This generic classical definition of the institution is a useful point of departure and reflects repeated attempts to produce an adequate description, more or less exacting, of the universe of ombudsmen (Rowat 1965; Caiden 1983; Gregory and Gidding 2000). However, the ombudsman institution has proven to be a remarkably
heterogeneous and diffused institution. The empirical referent for this paper is the ombudsman found in Latin America at the national level. As will be explored, this model exhibits a classical heritage alongside new and distinctive traits.

2.2 Evolution from the classical to hybrid model

It is the public sector hybrid ombudsman, also sometimes referred to as the ‘human rights ombudsman,’ that is the subject of this paper. The distinctive or additional features that the hybrid ombudsman possesses include (1) an express mandate to look at human rights, corruption, leadership code etc. complaints against government administration in addition to monitoring the general legality and fairness of administration, (2) having jurisdiction over many departments, agencies and state corporations, and (3) in a few instances, human rights ombudsmen taking human rights complaints arising from the private sector (Reif 2004: 26).

As will become clear, human rights ombudsmen in Latin America exist on a spectrum, with some being closer to the classical ombudsman at one end and others much closer to human rights commissions at the other end of the spectrum. What many of these institutional peers have in common is a function marked by volatile processes of democratisation. Furthermore, many of these countries share a history of recent internal conflict, often characterised by widespread and systematic human rights violations perpetrated by state agents and authoritarian governments. Faced by this reality, the ‘classical’ ombudsman has naturally assimilated functions more associated with human rights institutions – above all, the defence and promotion of human rights as they are broadly understood.

The inclusion of the office in the Constitutions of Portugal and Spain upon their return to democracy in 1975 and 1978 respectively, provided the initial template for the hybrid model. The *Provedor de Justiça* (Provider of Justice) and *Defensor del Pueblo* (Defender of the People) had at their core a human rights protection role with the ombudsman mandate grafted on (Bueso 2000: 328-38). Inspired by the Iberian innovation, governments across Latin America have instituted national provincial and state level offices of the ombudsman. The first regional ombudsman in Guatemala (1985) initiated a landslide: Mexico (1990), El Salvador (1991) Colombia (1991), Costa Rica (1992), Honduras (1992), Peru (1993), Argentina (1993), Nicaragua (1995), Paraguay (1995), Ecuador (1996), Panama (1996) Bolivia (1996), and Venezuela (1999). These fourteen countries all have a national level public sector ombudsman in operation. This excludes Chile where the institution remains under consideration, Brazil with no national office of the ombudsman,31 and the many provincial level offices found for example in Argentina.32

2.3 A typology of Latin American human rights ombudsmen

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31 Brazil has executive human rights ombudsmen in the state of Paraná, Ceará and the Federal District (Brasilia). Brazil also has a number of municipal ombudsmen and police ombudsmen at the state level. See Pereira 2007.

32 *Defensores del Pueblo* have been established in the provinces of Córdoba, Formosa, Río Negro, San Juan, Santa Fe, Santiago del Estero and Tucumán. There are also municipal level *Defensores* in a number of cities.
The ombudsman in Latin America has generated considerable interest within the region, even garnering the title ‘criollo’ ombudsman (Madrazo 1996; Volio 2003). These institutions do share a variety of common characteristics, many of which can be traced back to the generic definition presented at the beginning of this section. This current discussion suggests that while the conceptual category of hybrid or human rights ombudsman suffices to capture many of the traits of the institution, it is possible and even desirable to enhance the precision of the concept. This section drawing on constitutional or legal sources argues that the hybrid ombudsman found in Latin America can be sub-divided according to legal, functional and doctrinal criteria into a further three categories: (1) the hybrid ombudsman, (2) the human rights-hybrid ombudsman, and (3) the human rights ombudsman as presented in Figure 1.

Using data from constitutional or legal sources, the typology is based on three criteria (1) legality: the institution has a legal and/or accountability oversight mandate to protect and promote human rights over state agencies and agents, with commensurate legal prerogatives, (2) functional: the institution has a supervision and/or mediation mandate over the public administration allied with the more ‘classical’ objectives of enhancing bureaucratic performance and state function, and (3) doctrinal: the institution has the ability to promote its work through the express mandate to disseminate human rights norms by a variety of mechanisms, including legislative, judicial and social channels. The mandate to undertake human rights education and training of the public and state agencies such as the police is a distinctive attribute of the ombudsman found in Latin America.

Figure 1: Types of ombudsmen in Latin America

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33 The Costa Rican ombudsman is the only model in the region to not have constitutional status. A number of institutions were created by Executive degree or law and subsequently inserted into the Constitution including Honduras, Argentina, Mexico, Panama, and Venezuela.
34 Legal prerogatives include recourse to popular, nullity, *amparo, habeas corpus, habeas data*, unconstitutionality actions and in some cases judicial actions in the courts on human rights ground, such as in El Salvador and Guatemala.
35 Supervisory powers may include the ability to formulate conclusions, recommendations, amendments, and issue warnings and public criticism on administrative behaviour, law and policy. The mandate may refer to a conciliation or mediation function between the individual and pertinent public authority.
36 Doctrinal refers to a range of activities, from an express human rights education mandate, including training and research faculties, to the ability to act as a non-judicial mechanism for the domestic implementation of international human rights obligation.
37 Certain parallels can be drawn with models operating throughout Eastern Europe.
To summarise, the hybrid ombudsman institution reflects those institutions with the broadest mandates encompassing both a human rights focus with a more classical supervisory role to improve the efficiency and fairness of public administration, and in some instance private utility providers. The institution may also include rights or interests more generally, as found in the Constitution and law. The human rights-hybrid has as its core function a human rights oversight role. This oversight extends to a supervisory role over the public administration. However, its supervisory role is limited to ensuring that the public sector conforms to human rights. The final model is the human rights ombudsman that has a mandate limited to the protection and promotion of human rights with no express additional supervisory function over maladministration. The rationale for differentiating between these three models should be clear from the following descriptions:

- The **hybrid ombudsman**: combines both a human rights mandate and the classical function of the good administrator. This model is the least widely diffused in the region found in Argentina, Costa Rica, Peru and Venezuela. In contrast to the classical ombudsman, the hybrid has an explicit human rights mandate with commensurate legal and investigative powers. However, reflecting its classical heritage, the hybrid is mandated with supervision over the public administration that may involve engaging in processes of mediation, conciliation and policy review to resolve objectionable, as well as illegal, maladministration. Costa Rica and Peru have internal offices devoted to the supervision of the public administration. Also, Peru has a mandate over private utility providers alongside other regulatory agencies. This does not preclude a strong normative dimension, in terms of both human rights promotion and, as in the case of Costa Rica and Venezuela, reference to the broader category of interests of the citizenry.

- The **human rights-hybrid ombudsman**: examples of this type are found in Bolivia, El Salvador, Guatemala, Honduras and Panama have as their core function the protection of human rights with a range of legal and investigative powers, often with recourse to legal action before the courts on human rights grounds. The classical supervision component of the ombudsman template is still present but it is a subsidiary function to the human rights role. This is expressed by the inclusion of an accountability function over the public
administration with express reference to its conformity to human rights.\textsuperscript{38} The institution may also have oversight over private entities providing public services such as in Honduras.

- The **human rights ombudsman**: the human rights ombudsman is the model most aligned with National Human Rights Commissions (NHRCs). The human rights model has an exclusive human rights mandate and a strong doctrinal role in disseminating human rights norms. This model is present in countries that have (or continue to experience) high levels of violence, authoritarian government and/or are experiencing considerable political instability including Colombia,\textsuperscript{39} Ecuador, Mexico, Nicaragua and Paraguay. Confusion between the ombudsman and the NHRC is often compounded by their existence alongside one another, such as in Nicaragua. Hatchard (2006) has distinguished NHRCs against similar institutions such as ombudsmen by several distinctive features: they are multi-member bodies, their jurisdiction focuses specifically on human rights norms, NHRCs may investigate non-government officials, and they have an explicit mandate to promote human rights. The Mexican ombudsman, with the title \textit{Comisión Nacional de Derechos Humanos} is possibly the model most closely aligned with the NHRC model with a strong doctrinal component to its human rights mandate, including research, education, law reform proposals and encouraging the state to sign human rights treaties.

The following section offers an operative framework that departs from this formalistic typology of the institution to provide a framework that considers the political nature of the ombudsman. The evolution of the ombudsman in Latin America has led to a broadening of the institution’s scope of activity and basis of its resolution – in the process exposing the institution to significant political conflict (Uggla 2004: 449). The following discussion also alludes to the complexity of navigating often competing political visions of the ‘correct’ function of the institution. The ability of the ombudsman to exceed its original purpose has been described as a paradox by some observers (Carver 2001: 268). This may well depend on the eye of the beholder.

### 3. An Operational Framework

This paper ends by presenting a preliminary operative framework intended to further enhance understanding of the political agency of the ombudsman and its potential contribution to accountability and rights protection. This is by no means an exhaustive list of factors and their component parts. Rather it provides a general or suggestive summary of those factors, dimensions and indicators that may be integral to understanding, and possibly explaining, the distinctive political function of the ombudsman. In turn, such an exercise is intended to pinpoint what might be considered the core factors that both enable and constrain the institution in fulfilling its mandate as a rights protection mechanism.

\textsuperscript{38} The Bolivian Constitution expressly refers to the protection of human rights and the guarantees of persons only in relation to administrative acts of the public sector.

\textsuperscript{39} The Colombian ombudsman also has a distinctive mediation role within the mandate related to the area of public services.
This focus departs from the observation that (1) it is at the intersection of current academic and policy debate – the role of institutions in processes of democratisation and rights protection – that the ombudsman is most relevant, and (2) existing work on the institution is almost entirely focused on formal legal frameworks and normative prescription that have precluded critical assessment of the political agency exercised by the institution (Gellhorn 1967; Caiden 1983; Gregory and Giddings 2000). That is not to say that the study denies the importance of robust institutional design. Indeed, this is the first factor presented in the framework. The limited number of dimensions presented also alludes to the reality of empirical work in Latin America where systematic data may be scarce. This poses serious challenges in terms of measuring the impact of the institution or attributes such as ‘independence’ for instance. Selection must to a degree conform to the following criteria: (1) availability of data, (2) a comprehensive review of existing work on the ombudsman, and (3) empirically-grounded intuition. It may not be possible to ‘measure’ independence using these indicators, but it may be possible to say that in their absence the independence of the institution is diminished or indeed absent.

Without entering into an expansive summary of the framework, which reflects broadly the preceding theoretical and conceptual discussion, the fourth factor considered requires a brief introduction. ‘The personal factor’ is considered a residual category within the analysis and has not featured explicitly in this paper. The methodological pitfalls of this issue are clearly evident in the list of dimensions presented here. Despite this proviso, the study argues that there are also significant pitfalls in ignoring this dynamic. Given an inherent personalisation in the concept of the ombudsman and the empirical experience of these institutions, there is sufficient reason to consider this category to have an important impact on (1) how the institution is perceived, (2) the impact of its work in the public arena, and (3) the motivation of internal personnel at all levels, among others. Personal leadership qualities of effective ombudsmen have been of paramount important in negotiating with and navigating a course through official interests. Individuals such as Leo Valladares in Honduras, Rodrigo Carrazo and Sandra Pisz in Costa Rica, Ramiro de León Carpio in Guatemala, Jorge Santistevan in Peru and Ana Maria Romero de Campero in Bolivia have demonstrated that the personal qualities displayed by the appointee may be a determining factor in the success or failure of the ombudsman.

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40 For instance, only Peru and Bolivia collect nation-wide data on compliance of state institutions to resolutions emitted by the ombudsman. There are also issues of methodological variation. The Peruvian ombudsman has constructed its own indicator – the Defensómetro – used to determine whether compliance is (1) deficient, (2) insufficient or (3) satisfactory. See Peruvian Ombudsman Annual Report 2006: 264.
### Table 3: An operative framework

<table>
<thead>
<tr>
<th>Factor</th>
<th>Dimension</th>
<th>Indicators</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Institutional design</td>
<td>1.1 Independence</td>
<td>1.1.1 The ombudsman has constitutional status</td>
<td>Law</td>
</tr>
<tr>
<td></td>
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<td>1.1.2 The existence of a civil service law</td>
<td>Law</td>
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<td></td>
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<td>1.1.3 Appointment by a qualified or absolute majority of the legislature</td>
<td>Law</td>
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<td></td>
<td>1.2.1 The existence of a legal norm to guarantee budget</td>
<td>Law</td>
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<td></td>
<td>1.2 Budget</td>
<td>1.2.2 Budget increase (according to inflation)</td>
<td>Contraloría General de la República</td>
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<tr>
<td></td>
<td></td>
<td>1.2.3 International cooperation or AID resources (for core activities)</td>
<td>Annual Report; Contraloría General de la República</td>
</tr>
<tr>
<td></td>
<td>1.4 Jurisdiction</td>
<td>1.4.1 Jurisdiction over all sectors of public activity</td>
<td>Law</td>
</tr>
<tr>
<td></td>
<td>1.5 Mandate</td>
<td>1.5.1 A broad and unrestrictive mandate</td>
<td>Law</td>
</tr>
<tr>
<td></td>
<td>1.6 Investigative powers</td>
<td>1.6.1 Ability to open substantive investigation on any matter pertaining to services provided by government</td>
<td>Law</td>
</tr>
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<td></td>
<td>1.7 Public dissemination of work</td>
<td>1.7.1 Annual Report submitted and presented to Congress</td>
<td>Law</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1.7.2 Production of special reports</td>
<td>Law; Annual Report; Special Reports</td>
</tr>
<tr>
<td>2. Democratic quality(^{41})</td>
<td>2.1 Civil and political freedoms</td>
<td>2.1.1 Respect for civil and political freedoms</td>
<td>Freedom House Scores(^{42})</td>
</tr>
<tr>
<td></td>
<td>2.2 Governance indicators</td>
<td>2.2.1 Control of Corruption; Political Stability and Absence of Violence; Voice and Accountability; Government Effectiveness; Regulatory Quality; Rule of Law</td>
<td>World Bank governance indicators(^{43})</td>
</tr>
<tr>
<td></td>
<td>2.3 Public legitimacy</td>
<td>2.3.1 Public approval ratings</td>
<td>Public opinion data; Latinobarómetro data</td>
</tr>
<tr>
<td></td>
<td>2.4 Extreme social exclusion</td>
<td>2.4.1 National illiteracy rate</td>
<td>National or international agency data</td>
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<tr>
<td></td>
<td></td>
<td>2.4.2 Extreme poverty rate</td>
<td>National or international agency data</td>
</tr>
</tbody>
</table>

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\(^{41}\) This study recognises the inherent empirical and methodological challenge of measuring the concept of 'quality of democracy,' see *Estado de la Nación* (2001), O’Donnell, Vargas Cullell and Iazetta (2004) and Diamond (2005).  
\(^{42}\) As mentioned previously, certain methodological issues arise concerning the validity of Freedom House scores.  
\(^{43}\) A similar qualification is applicable to measuring governance in terms of precision. While not perfect, the World Bank governance indicators claim to be transparent and precise about the degree of imprecision in the data and offer time-series data from 1996 to 2007.
<table>
<thead>
<tr>
<th>Factor</th>
<th>Dimension</th>
<th>Indicators</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 Vertical accountability (Executive)</td>
<td>3.1.1 Number of projects done alongside the Executive</td>
<td>Annual Reports; Media; Government documents; Interviews</td>
<td></td>
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<tr>
<td>3.1</td>
<td>3.1.3 Number of projects done alongside Ministries</td>
<td>Interviews; Media data</td>
<td></td>
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<tr>
<td>3.2 Horizontal accountability (Legislature and Judiciary)</td>
<td>3.2.1 Level of consensus achieved in appointment</td>
<td>Legislative records</td>
<td></td>
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<td>3.2</td>
<td>3.2.3 Number of legislative projects submitted to Congress</td>
<td>Annual Report; Legislative records</td>
<td></td>
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<td>3.2</td>
<td>3.2.4 Legislative actions on behalf of the ombudsman e.g. obligatory compliance</td>
<td>Annual Report; Legislative records; Media</td>
<td></td>
</tr>
<tr>
<td>3.3 Horizontal accountability (utility regulators, anti-corruption, consumer protection agencies)</td>
<td>3.3.1 Collaboration with utility regulators in accountability actions e.g. legal actions, joint investigations, public audiences, training</td>
<td>Annual Report; Special Reports; Media; Agency documents; Interviews</td>
<td></td>
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<tr>
<td>3.4 Social accountability (organised agencies of civil society and media)</td>
<td>3.4.1 Collaboration with social agencies in accountability actions e.g. legal actions, joint investigations, public statements, rights promotion</td>
<td>Annual Report; Special Reports; Media; Agency documents; Interviews</td>
<td></td>
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<tr>
<td>3.4</td>
<td>3.4.2 Legal jurisprudence/information generated by ombudsman actions cited by social agencies and vice versa</td>
<td>Annual Report; Special Reports; Media; Agency documents; Interviews</td>
<td></td>
</tr>
<tr>
<td>3.5 Horizontal accountability (utility regulators, anti-corruption, consumer protection agencies)</td>
<td>3.5.1 Substantive coverage of the ombudsman’s work in the mass media</td>
<td>Media</td>
<td></td>
</tr>
<tr>
<td>3.5</td>
<td>3.5.2 Collaboration with media outlets in accountability actions e.g. joint investigations, public statements</td>
<td>Annual Report; Media</td>
<td></td>
</tr>
<tr>
<td>3.6 External accountability (IACHR, transnational actors)</td>
<td>3.6.1 Submissions to the Inter-American Commission on Human Rights</td>
<td>Annual Report; OAS records</td>
<td></td>
</tr>
<tr>
<td>3.6</td>
<td>3.6.1 Collaboration with transnational actors e.g. joint investigations, financial support for core activities, public statements</td>
<td>Annual Report; Special Reports; Media; Agency documents; Interviews</td>
<td></td>
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<tr>
<td>4.1 Human rights profile</td>
<td>4.1.1 Specialised knowledge of human rights upon assuming office</td>
<td>Interviews; Media; Archives</td>
<td></td>
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<tr>
<td>4.2 Political profile</td>
<td>4.2.1 Previous political activity</td>
<td>Interviews; Media; Archives</td>
<td></td>
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<tr>
<td>4.3 Ability to ‘vocalise’ to different audiences</td>
<td>4.5.1 Impact of public statements</td>
<td>Content analysis; Interviews</td>
<td></td>
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<td>4.6 Technical skills (e.g. internal organisation, people management)</td>
<td>4.6.2 Ability to motivate personnel</td>
<td>Interviews</td>
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<td>4.6</td>
<td>4.4.3 Ability to maximise available resources</td>
<td>Budget data; Internal documents; Interviews</td>
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Conclusion

This paper has offered a first-cut, an approximation, of the political agency of the ombudsman and its potential to enhance political accountability and rights protection. The distinctive institutional design of the institution presents both opportunity and challenges. The ombudsman is arguably a special case among horizontal accountability agencies. Features shared by few other such institutions include a broad and unrestrictive rights mandate, the direct interaction and reactive duty to the citizen, a mandate to generate public information on rights and legality for public dissemination, and (surprising in the current climate) often high levels of popular approval. Its ability to protect and promote rights through a formulation of authority outside legal enforcement channels may also have significant theoretical and policy implications.

This paper contends that the ombudsman model found in Latin America is an important innovation on the classical template and merits further careful theoretical and empirical attention. The rapid diffusion of the institution throughout the region and the subsequent and growing demand for such a resource by the citizenry in many countries attests to the potent novelty factor associated with such a citizen-oriented institution. To add a note of caution, it is important to reflect on the limitations of the ombudsman, or those of any one institution, in being able to effect systematic change. Ideally, the ombudsman is an essentially enabling and/or complementary agency in both theory and practice.

To end, this paper has highlighted a range of challenges facing ombudsmen and other rights mechanisms throughout the region as they attempt to formulate a workable ‘protect and promote’ strategy to attend to a vast array of rights issues across often conflictual policy terrain. Yet consideration of the challenges that face the ombudsman should not obscure its achievements. The institution has made an important contribution to rights protection as well as representing an institutional bridge, of a kind relatively scarce in Latin America, between state and citizen.
Bibliography


