

Judicial Reform: The Neglected Priority in Latin America

By WILLIAM RATLIFF and EDGARDO BUSCAGLIA

ABSTRACT: Judicial reform is essential in Latin America today where countries lack the legal systems needed to secure democratic rule and facilitate foreign political and economic relations in the emerging world of competition and interaction between nations. Indeed, the crisis in the Latin judiciary today is so profound that it may precipitate reforms that otherwise would be impossible. In this article, we offer new data on views from within judicial sectors and society at large. We discuss judicial and nonjudicial problems, including institutional inertia and traditional beliefs, and propose reforms needed to bring justice to all levels of society by enhancing efficiency and reducing the predatory role of the state, including the bribe culture within the public sector. We consider the expected costs and benefits both for the people in general and for government officials and politicians, the latter constituting essential considerations if reforms are to be realistic and stand any chance of being enacted.

William Ratliff, a senior research fellow at the Hoover Institution, Stanford University, has written widely on recent reforms in Latin America, the Castro and Sandinista revolutions, and U.S. foreign policy. He is coeditor with Edgardo Buscaglia of The Law and Economics of Development.

Edgardo Buscaglia is a research fellow at the Hoover Institution, Stanford University and vice president of the Latin American Law and Economics Association. He is also a professor of law and economics at Washington College and a law and economics adviser to the World Bank.

MEXICO and the United States have a long border and a long history of suspicion and hostility. Even before the signing and formal implementation of the North American Free Trade Agreement (NAFTA) in the 1994-96 period, however, a new relationship seemed to be emerging, one marked more by cooperation and searching for policies that will serve the interests of both nations. Hemispheric and world conditions have been conducive to improved relations for many reasons. Most important, the political and ideological rivalries of the Cold War—which is to say, East-West conflicts—are in large part behind us and more fundamental North-South interests, which for so long took second place, have been recognized as central to international relations in the Western Hemisphere.

NAFTA itself is a formal recognition of that new relationship in largely economic terms, while the expansion of democratic practice in Mexico and Latin America generally is a positive political indicator. But the emergence of free markets and democratic governments and relations does not mean their institutionalization, for the latter requires more time, more experience, and a firmer legal framework than yet exists. The latter point is essential because law is central to a true and stable democracy, on the one hand, and to efficient economic interaction and development, both domestic and international, on the other.

Legal principles underlying the current economic system in Latin America are supposedly based on the freedom to exercise individual property rights, but in reality these rights

are often ignored or violated. Two American scholars have phrased the overall problem this way:

Legislatures and judicial systems in much of Latin America still lack autonomy, stature, resources and competence needed to carry out all of their constitutional functions fully. Courts are overburdened and their proceedings, both criminal and civil, are routinely delayed for years. Judges are, for the most part, poorly trained and paid, and they lack the funding to conduct investigations and administer justice effectively. In many places, judicial decisions are heavily influenced by political considerations, intimidation or outright corruption.¹

Immediately after taking office in late 1994, Mexican president Ernesto Zedillo declared that a central goal of his administration would be legal reform, though, as University of San Diego law professor Jorge Vargas notes, Zedillo has aimed at the federal courts while state and local courts, with judges appointed by the states' governors, still suffer from "rampant corruption."² But it remains to be seen if Zedillo and leaders in other countries will have the will and the power to implement long-term programs of change at all levels. One tough-minded Mexican critic goes so far as to conclude, "It would be naive to think that the ghost of the old Spanish colonial state—with its enduring paternalism, corruption, bureaucracy, and extreme centralization—can be exorcised completely." What Latin America

1. Peter Hakim and Abraham Lowenthal, "Latin America's Fragile Democracies," *Journal of Democracy*, p. 22. (Summer 1991).

2. Arthur Golden, "Study Calls Latin American Courts Corrupt," *San Diego Union Tribune*, 26 Jan. 1996.

needs is "new legal systems modeled frankly and unashamedly on the Anglo-Saxon pattern."³ This is indeed a radical solution, but no more extreme in legal terms than the policy affirmed in 1992 by the U.S. Supreme Court, namely, that foreign suspects can be kidnapped abroad and spirited to the United States for trial.⁴

The problems in Latin America's legal system are so pervasive as to make it the butt of such wisecracks as "hecha la ley, hecha la trampa" (make the law and then find a way around it). An analysis of Latin American legal reform published in London's *Financial Times* was accompanied by a cartoon that showed a judge calling from his bench for the "next case" while readers can see that the waiting room is filled with skeletons draped with cobwebs.⁵ A recent rating of judicial systems of the world that focused on efficiency and the opinions of users found the Mexican and all Latin American judicial systems except Chile's in the bottom 20 percent globally.⁶

In recent years, some Latin American countries have given somewhat greater attention to enforcing their own laws. The most dramatic examples are the impeachment of President Fernando Collor de Mello in Brazil in 1992, the removal from of-

fice of President Carlos Andrés Pérez in Venezuela in 1993, and serious charges levied against President Ernesto Samper in Colombia in 1996.⁷ To amount to anything, however, reforms must go to the political, economic, and legal roots of the dysfunctional judiciary. These changes must be accompanied by a systematic effort to convince the people that the reformed system will serve their real needs.

Some of the critical problems that must be addressed if democracies and economic agreements led by NAFTA are to thrive include the attitudes of members of the judiciary and the way they carry out their tasks, so as to reduce delays and incentives for corruption; access to the system by people at all income levels; independence of the courts from all forms of political pressure and other influence-peddling and blackmail; legal education programs aimed at students, lawyers, judges, and the public; and alternative dispute resolution (ADR) mechanisms. In the long run, judicial reform will be effective only if it is accompanied by a change of mentality as well as a systematic delivery of justice. It will take a generation or more to complete the necessary changes in perspective and service, but even in the short term the impact of serious reforms will in varying ways touch the lives of the majority of Latin Americans, in both the public and private sectors, including the legal community itself.

As a general rule, we believe it is extremely difficult for a democratic

3. Enrique Krause, "Old Paradigms and New Openings in Latin America," *Journal of Democracy*, pp. 20, 21 (Jan. 1992).

4. William Ratliff, "Latins Take on the U.S. Supreme Court," *Wall Street Journal*, 3 July 1992.

5. Edgardo Buscaglia, Jr., "Stark Picture of Justice," *Financial Times*, 21 Mar. 1995.

6. *World Competitiveness Report* (Geneva, Switzerland: World Economic Forum, 1994); Holly Johnson and Susan Jackson, "Rough Justice," *Business Latin America*, 4 Dec. 1995.

7. "De la Calle pide a colombianos apoyar actuación de la Fiscalía," *El nacional* (Caracas), 17 Feb. 1996.

government to toss aside history and traditions even when the objectives seem desirable, though in certain respects President Alberto Fujimori seems to be trying to do that today in Peru. In most cases, reforms must be carefully and realistically planned in a sequence of stages, keeping in mind both the short- and long-term costs and benefits they have for people in general but also what they will do to the political leaders and court officials who have so much influence on whether the reforms will even be seriously tried and how.

PROBLEMS OF THE JUDICIARY TODAY

The problems and challenges to the Mexican and Latin American judiciaries today range from a lack of access to the courts to a steady decline in domestic and international confidence in and access to even-handed justice as a consequence of debilitating inertia, long delays, and crippling corruption.

Perceptions of the judiciary

Most Latin Americans and foreigners lack confidence in the Mexican and other judicial systems for assorted reasons, and many make every effort to avoid using the courts at all. Surveys in Argentina, Brazil, Ecuador, and Peru show that between 55 and 75 percent of the people have a very low opinion of their judicial systems. From 46 to 67 percent of the people in Argentina, Brazil, Ecuador, and Venezuela consider the judicial sector inaccessible. Some 77 percent of judges interviewed in Bra-

zil think there is a crisis in the judiciary.⁸ Even in Chile, which has the most respected judiciary in Latin America, some 1462 poor respondents in five central cities gave highly critical assessments of Chilean justice.⁹ A 1994 study of Chile's judiciary remarks on a "decrepit structure and inefficient administration that some time ago left justice in Chile terminally ill and, unless it undergoes major surgery, condemned to death."¹⁰

Business surveys of 60-100 firms per country in selected Latin American nations indicate that the majority of enterprises consider the role of the judiciary "deficient" and among the important constraints to private sector development. Thus about 55 percent of potential business users of Latin American courts responded that they would rather negotiate a partial settlement outside of court than have their case adjudicated in the formal court system.¹¹ Peruvian executives are prepared to lose up to 20 percent of bad loans, according to a 1993 study, before turning to the courts, whose rulings they consider unjust and tortuous. A World Bank survey in 1994 concluded that Latin American judicial systems are plagued by erratic and inconsistent

8. Jorge Correa Sutil, *Situación y políticas judiciales en América Latina* (Santiago de Chile: Instituto de Estudios Económicos, 1993), pp. 15-20.

9. Jorge Correa Sutil and Luis Barros, *Justicia y marginalidad: Percepción de los pobres* (Santiago de Chile: Instituto de Estudios Económicos, 1992), p. 64.

10. Grace Gibson and Cecilia Valenzuela, "Las penas de la justicia," *Qué pasa*, 10 Dec. 1994.

11. Correa Sutil, *Situación y políticas judiciales*, pp. 12-13.

decisions, limited access for most people, and unreasonable resolution times; it placed productivity loss at 23 percent.¹² A European business official in Brazil remarked on the need for lawmakers to enact laws that give a regulatory framework for each sector. Such laws, he said, are "much more important [than the constitution] for defining the attractiveness of the opportunities of private investors."¹³

This lack of public confidence and trust in the courts and judges derives in substantial part from the perception that many judges use their positions for personal gain and therefore apply the law arbitrarily. Business and individual court users surveyed in Argentina, Chile, Brazil, and Venezuela say that an increasing percentage of litigants are forced to provide "informal incentives" in order to get court officers to take up their cases in months rather than years. Still more important than this rise in procedural corruption is the substantive corruption that involves bribes sought and accepted in an effort to influence the outcome of the case once it is in court.¹⁴

Lack of confidence in the judicial sector's ability to foster private sector development within a market system is rising rapidly.¹⁵ A U.S. official remarked to the Council of the Americas in Washington, "The rule of law

and a judicial system which is efficient, impartial, transparent and fair . . . are important not only to a country's citizens but also to the foreign investors which work within that country's legal framework."¹⁶ Among the basic elements of an efficient judicial system that are missing are accessibility to the courts by all people regardless of income level; reasonable times to disposition; predictable outcomes within the courts; and adequate court-provided remedies. The critical problems of the legal system we will discuss in this article include access to court services; inertia that slows or prevents substantive reform, including particular problems of administration; the courts' lack of independence; the dead weight of long and increasing delays; and the plague of corruption.

Access

The cost of access to the courts consists of direct, indirect, and invisible expenses that are so high that they prevent many potential litigants from even considering the public justice system. Even high-income parties may have trouble if they are unwilling to pay bribes. Because of these obstacles, people who believe they have grounds for legal action nonetheless often avoid taking their cases to court. Moreover, there are far too few competent public defenders, especially for handling criminal cases.

16. Alexander Watson, "Trade and Other U.S. Priorities in the Americas" (Remarks delivered to the Council of the Americas, Washington, DC, 22 May 1995).

12. Johnson and Jackson, "Rough Justice."

13. Matt Moffett, "Latin Nations Open up to Long-Term Foreign Capital," *Wall Street Journal*, 23 June 1995.

14. Correa Sutil, *Situación y políticas judiciales*, pp. 17-21.

15. Edgardo Buscaglia, Jr., "Law, Technological Progress, and Economic Development" (Working Paper in International Studies no. 5, Hoover Institution, 1993).

Inertia

Probably the most serious obstacle to reform of the court system in Latin America is inertia. In some cases, the lack of change is related to institutional structures. As Mexican Octavio Paz has put it, with special reference to the church, military, and bureaucracy in Latin America, "Though Spanish-American civilization is to be admired on many counts, it reminds one of a structure of great solidity—at once convent, fortress and palace—built to last, not to change. In the long run, that construction became a confine, a prison."¹⁷ At other times, and in many situations, the inertia can be traced directly to individuals and/or groups in positions of power who are guarding their vested interests, who know that if the reforms succeed, they will lose the special benefits they have up to now gained from the system as it is today.

Administration

The speed and quality of justice in Latin America is greatly influenced by traditional and contemporary administrative factors ranging from personnel and budget matters to the processing of cases. Surveys of court officials in Argentina, Brazil, Peru, and Ecuador show that judges spend between 65 and 70 percent of their time on nonjudicial administrative tasks including filling out requests for supplies and signing checks. These administrative activities both take the judges away from judicial

work and make the court less efficient because most judges lack adequate training in finances and accounting. Not surprisingly, maintaining control of the administration enhances "rent-seeking" capabilities.¹⁸ Administrative inefficiency is increased by excessive centralization.

Independence

Since the colonial period, Latin American judiciaries have been compromised in many instances by their lack of independence from other branches of the government—particularly the executive—in interpreting the law. Another debilitating factor is the fact that civil law judicial systems do not have to recognize that a court ruling in one case creates a precedent that is applicable also in subsequent legal cases.¹⁹

Delays

In the past few years, backlogs and delays have increased at a crisis rate throughout Latin America so that even individuals or organizations with relatively greater access to the system now often get bad service. There are many reasons for the delays, including inadequate financial resources; the lack of professional standards and training of litigants' lawyers; the administrative workload borne by judges; antiquated or

18. Buscaglia, "Stark Picture of Justice"; idem, "A Quantitative Assessment of the Judicial Systems in Latin America" (Paper delivered at the annual meeting of the American Law and Economics Association, Berkeley, CA, 21-23 May 1995), pp. 25-27.

19. Alan Watson, *The Civil Law* (Cambridge, MA: Harvard University Press, 1981), pp. 34-36.

17. Octavio Paz, "Reflections: Mexico and the United States," in *A New Moment in the Americas*, ed. Robert Leiken (New Brunswick, NJ: Transaction, 1979), p. 78.

unenforced procedural codes; the passivity of judges; outright corruption; and political interference.

Corruption

Bureaucratic societies throughout history often had so much corruption that the practice became accepted so long as it did not get outrageously out of hand. On colonial Latin America, historian Charles Gibson remarked that "venality, graft, speculation, and personal use of public funds attended the operation of government at all levels. . . . The distinction between fees and bribes became blurred. . . . This situation was rather one of normal and expectable corruption, within which an occasional figure stood out for resisting temptation."²⁰ The problem continues to this day in part, as Nadelmann notes, because, "in Latin America, where divergence between *the law* and *accepted norms* is often strikingly broad, defining corruption is a particularly ambiguous task."²¹ San Diego professor Vargas says corruption is "one of the most

pervasive, complex and difficult-to-eradicate problems" in Latin America.²² The most harmful practice in Latin courts—for users, of course, not for members of the judiciary—is *ex parte* communication that permits judges to meet separately with lawyers and other parties from either or both sides in a case. This practice gives justices and other court officials almost unlimited opportunities to exact favors for their services. Incentives for corruption in Latin America include low salaries, opportunities, bad working conditions, greed, tradition, and fear, among other things. At present, judicial systems in Mexico and elsewhere lack transparency since judges are appointed secretly for short terms and/or have insecure and inadequate pensions.

We should note that some judges in Mexico, Colombia, and other countries have taken and still do take strong stands against corruption inside or outside of the system, but when they do so they are not only putting their future personal employment prospects in jeopardy but also opening themselves and their families up to a range of possible abuses, including bodily harm, at the hands of those they try to prosecute. For example, drug dealers often give officials the choice between *plata o plomo* (money or a lead bullet).²³

20. Charles Gibson, *Spain in America* (New York: Harper Torchback, 1966), pp. 107-8.

21. Ethan Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement* (University Park: Pennsylvania State University Press, 1993), pp. 251-312. A composite of seven polls on corruption around the world dating from the 1990-94 period was released in mid-1995. Although dozens of countries were mentioned in the polls taken by journalists and businesspeople, the composite included only the 41 countries that were listed in at least two of the seven polls. On a scale of 10 (completely honest) to zero (completely corrupt), Chile was 14th most honest and the United States was 15th. The ratings of American countries were as follows: Canada (8.87), Chile (7.94), United

States (7.79), Argentina (5.24), Colombia (3.44), Mexico (3.18), Brazil (2.70), and Venezuela (2.66). Barbara Crossette, "A Global Gauge of Greased Palms," *New York Times*, 20 Aug. 1995.

22. Golden, "Latin American Courts."

23. Nadelmann, *Cops Across Borders*, pp. 258, 309.

A PROGRAM OF REFORM

Now that we have examined the overall problems facing legal systems, and nations, in Latin America today, we will suggest what can and must be done to improve the situation.

Framework

Domestic economic crises in Mexico in 1982 and subsequently, and in Latin America generally, led to an uneven but widespread turn to free market economics, especially during the 1990s. In turn, these economic reforms as well as inherent domestic inadequacies have brought on a crisis in the judicial system. For judicial reform, we believe the skills of leadership at the upper levels are particularly important, whether in promoting or impeding reforms. The effectiveness of political parties and other organizations can be important also, depending on the country.²⁴ As we will note in the following, civil society is increasingly important in Latin America, and in the long run it will be essential for the effective operation of a reformed judicial system, but for now its input will be of limited importance in most countries with respect to judicial reform.

Any realistic program of democratic judicial reform must ask far more than what the costs and benefits will be for the majority. It must in particular consider what the costs and benefits will be for that much smaller number of now influential

Latins who have the most to lose and also are in the best positions to promote, debilitate, or kill any change. That is, it must take full and realistic account of the predatory role of the public sector, namely, the rent-seeking activities conducted by individuals and groups within the public (and sometimes private) sectors. These groups have grown and thrived in the past, and over the decades—even centuries—they have become the main sources of inertia blocking judicial reform. Thus judicial reform is in large part a matter of coaxing or manipulating one self-interested group within the government or society to reduce the influence of another self-interested group that is so weakened by the crisis that it cannot resist effectively. While being relentlessly realistic about stakes, neither a Mexican nor any other program should generate hostility needlessly between the parties involved. Indeed, the message that must be delivered convincingly is that in the medium and long term, all Latin Americans, including those who derive special advantages from the current system, will benefit more from change than from the status quo.

Access

One obvious key to bringing people back into the system is making it really accessible to them. An example of the kind of program that could be promoted would be the establishment of more small claims courts to deal with cases up to a specified dollar amount. These courts, which are few and far between today, could

24. Robert Packenham, "The Politics of Economic Liberalization: Argentina and Brazil in Comparative Perspective" (Working paper no. 206, Kellogg Institute, 1994).

reduce delays, particularly in urban areas where the backlogs are most serious.

Delays and backlogs

Mexican and almost all other Latin American courts seem to be unable to perform their most basic function as solvers of conflicts. If this problem is to be resolved, the first requirement is to recognize that, while the existence of backlogs and delays is obvious, we still do not know as much as we should about what led to this situation. Serious delay-reduction studies must be conducted in order to identify overarching bottlenecks as well as problems that are specific to individual countries, regions, or even courts. Such studies could bring more effective reforms of administrative procedures and procedural codes. Time-to-disposition standards should be defined with respect to the type and complexity of the case and the court user's willingness and ability to pay. Additional variables that must be considered include the growth in government costs of providing court services; the increase in interlocutory appeals; time changes allocated to each procedural step; the work time and staffing of the judiciary; change of venue for and within cases; how much time judges give to mandatory settlement conferences and administrative work; and measures of performance for judges, such as the average time per motion, conference, and disposition. Delays can be reduced by a more efficient use of information technology. Computer technology also would reduce opportunities for rent seeking—when the

judge is cooperative—thus providing momentum for broader reforms.

Standards and discipline

Latin America must have a much more effective system of discipline for judicial officials if it is to attain and maintain high judicial standards. At present, disciplinary systems are usually vague, leaving loopholes for corruption; ineffective; and in some cases simply ignored by the courts and by the public, which sees no point in even trying to challenge officials. The requirements to be a practicing attorney usually are nothing more than holding a university law degree and being a member of the bar, the latter signifying nothing more than that one has a degree and has paid his dues. The bar associations themselves are usually weak and their ethical guidelines are so vague they could hardly be enforced even if the will to do so existed. What is more, punishments are so inconsequential that enforcement would never deter unethical behavior; removal from the bar is not even a possibility.

Education

There is a strong need for legal education and training for law students, lawyers, judges, and the public. Education and training are important at every level, but particularly in law schools that have, in fact, deteriorated in many countries over the years. Basic curricula offer little in the way of specialty law classes—including intellectual property, law and economics, and environmental law—and entrance and graduation requirements are inadequate. Educational pro-

grams are difficult for other reasons as well, one being that many lawyers are unwilling to pass along the secrets of the trade to their students (and future colleagues or competitors), and they often are not willing to volunteer their time to teach others. In addition, in most countries, continuing legal education and judicial training are inadequate or nonexistent.

Education is also particularly important for the public if people are to know their legal rights and be familiar enough with how the judicial system operates to use it, defend it, and support its reform. Predictably, many in the courts fear that if the public comes to understand its rights, it will pose a threat to rent-seeking activities. Education via radio and television programs has been tried in some countries, often concentrating on providing important information to certain groups. Bar associations could be a forum for discussing and implementing changes. In fact, lawyers often become members of specialty private bar associations, and these might be more active in training than public associations. Some countries that have had public discussions about judicial reform now have public interest groups and research institutions focusing on judicial reform. Their activities have ranged from conducting public surveys on the judiciary to generating public awareness. On balance, however, in weak democracies, these groups have limited influence.

Judicial councils

Some consideration has been given to setting up judicial councils

that would serve as buffers between the judicial and other branches of the government. Such councils could have many virtues, assuming they were not set up to represent, or did not come to represent, just one more clique or elite group in society. The councils might include representatives from various levels of the judiciary, legislature, executive, bar associations, and even private organizations of lawyers and the public. They could improve the image and performance of the courts by, among other activities, nominating lawyers for judicial positions, establishing and enforcing professional standards, and helping to set judicial budgets. The councils could promote computer technology and more skilled professional administrative staffing within the courts toward the end of improving the operation of the courts and giving the judges more time to work on legal matters. Ideally, these and other changes would bring about a more active case-management style by the judges that would reduce delays and be of immediate value to all who would use the courts.

Alternative dispute resolution

In many ways, the most immediately viable responses to some of Latin America's judicial problems are alternative dispute resolution mechanisms. Latin American codes of civil procedure generally already allow for mediation within the legal process. ADR mechanisms may be established under court-annexed or private systems. Participation may

be voluntary or mandatory, the most extensive recent development in this realm being the mandatory mediation implemented during early 1996 in Argentina.

Private ADR mechanisms may be an alternative to the formal justice system. Indeed, their increasing popularity today is in large part because they are a way to avoid the corruption and delays of the formal justice system, thus reducing judicial caseloads and opportunities for rent seeking. ADR can involve such services as arbitration, mediation, early neutral evaluation, summary jury trial, provision of court materials, and judge-hosted settlement conferences.

There are some clear advantages to the ADR system. When parties have asymmetrical expectations of winning a case, early exchanges of information can prevent delay, and when well-trained mediators and arbitrators have more specialized knowledge than court officials, the rulings may be more predictable and just. The informal system may also be better because it is more private, a desirable factor when the parties involved want to maintain a working relationship in the future. ADR may also help parties avoid court litigation that might be more drawn out, expensive, and emotionally draining. In many countries, specialized private ADR assistance is supplied for contract and commercial disputes by chambers of commerce. Sometimes it is given by justices of the peace, who may be elected by the communities or appointed by the judicial system. These justices of the peace may have little formal training in resolving dis-

putes, but they may usefully propose solutions until they come up with one that works.²⁵

There is no absolute agreement on what cases should be included or excluded from ADR. An evaluation must be made as to what cases are causing backlogs in the court system and whether these particular types of cases demand more court resources than other cases in the system. Even though some countries have established successful ADR programs, the issues that must still be addressed include the availability of mediators; whether arbitration and mediation should be a regulated profession; whether certain training should be required; and what ethical standards the mediators should be judged by.

CONCLUSION

For centuries, the judicial system in Latin America has been influenced or sometimes even dominated by international forces and pressures. On the one hand, important Latin American leaders and groups often have been individually influenced by foreign political, economic, and other powers through persuasion, direct pressure, or perceived individual interests. On the other hand, throughout history certain powerful foreign governments and systems have had a strong direct or indirect influence through the impersonal interaction of economic, legal, and other national systems and institutions. In the colo-

25. Hans-Jurgen Brandt, *En nombre de la paz comunal: Un análisis de la justicia de paz en el Perú* (Lima: Centro de Investigaciones Judiciales, 1991).

nial period, the major force usually was Spain, while today it is the United States or any of several other nations who participate actively in the expansion of the free market internationally or in some individual country. Thus today moves toward judicial reform are inspired and impeded by the cooperation and clashes between foreign and domestic interests, themselves splintered because of competing and evolving interests.

The primary impetus for substantial reform to completely overhaul the Latin American judicial system comes from Latin American political reformers, most of them educated in the United States, and economic powers who wish to integrate the economic systems of the hemisphere and the world. Many reformers have looked at how their countries have failed in the past to provide for the interests of the population; they have concluded that, in light of the failures of state-dominated economies all over the world, the free market may enhance prospects for domestic development. But for Latin America to participate actively in the international free market and security network, the Latin American judiciary must adapt to the practices of the main global powers, particularly the United States. Many wealthy Latin Americans have suffered in some degree by the dismantling of the mercantilist system that brought them much of their wealth over the decades, and yet many of them and others have seen new opportunities for themselves in the new order. Many who have benefited or simply survived in the old order, which has

been characterized by high levels of bureaucratic centralization, paternalism, and corruption, do not want to change or are afraid to do so. It is this thinking, in support of what are presumed to be personal, family, and group interests, that creates the most serious inertia slowing down or standing in the way of the process of change.

Within the judicial sector, the main inertia comes from court officials at all levels, who, under frequently unfavorable conditions, have become accustomed to padding their often small salaries by taking bribes from litigants, bribes that serve simply to get cases brought forward or to reach a verdict to the advantage of the paying party. In almost every country, the system has become so antiquated and, in many respects, so corrupt that delays and backlogs, taken with the corruption and other circumstances, have led increasing numbers of Latin Americans to seek non-court solutions to their legal problems. Some are finding help in ADR mechanisms, but as useful as these are, they are fostered primarily by the private sector and cannot be the answer to the fundamental problems of the judicial system. A nation needs an efficiently functioning judiciary to defend legitimate relations between citizens and to correct illegitimate relations between them, regardless of their income levels. Working together, the judicial system and ADR can foster the much-needed balance between equity and efficiency in the provision of justice which today is rarely found in Latin America. The current crisis of the judicial system,

and the pressures toward reform, are at an all-time high and this crisis may in fact propel major and constructive changes in the judiciaries of many or most Latin American countries that would otherwise not be possible.