

Accountability and Human Rights: The Political Impact of National Human Rights Institutions in New Democracies

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Introduction

Formal human rights institutions can provide powerful venues for affecting the outcome of political processes and influencing their activity is of increasing importance to politicians and human rights activists alike. However, the actual performance or quality of new human rights institutions in holding state actors to account, especially in new democracies, has often disappointed scholars and civil society observers. The stakes are high, above all for those who have suffered rights violations at the hands of government and security forces, yet find they have little recourse to justice.

National Human Rights Institutions (NHRIs), such as human rights ombudsmen or commissions, offer a rich study of how formal institutional innovation is rarely, if ever, enough. Local rule of law frameworks may rest upon formal institutions, but the experience of NHRIs shows that it is the less visible world of informal institutions and relationships that is often decisive in determining the effects of these formal organisations upon accountability politics and rights outcomes. Inquiry into the nature and mechanics of this informal realm places a spotlight on individual agents located within formal structures. More specifically, it elucidates how internal factors in the organization and practice of the NHRI may serve to scale up the legitimacy of a national institution by building connections to government, state and civil society. This domestic level of explanation is applied to the individual cases of Colombia, Costa Rica and Peru as well as a broader comparative of similar organisations operating in Latin American political systems. Every country in the region, with the exception of Brazil, has established a NHRI of some description over the past 30 years.²

Accountability and Human Rights traces the development and effects of human rights ombudsmen (*Defensorías del Pueblo*)³ in the new democracies of Latin America from point of origin to the present day. The region is an especially instructive illustration of the experience of these institutions in democratising contexts displaying variably stable political and institutional frameworks. By examining the circumstances of their origin, coupled with a sustained focus on how *Defensorías* actually work, including when and why they matter for human rights protection, the book details the transformative potential of NHRIs in their

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² International promotional efforts have triggered a norm cascade on a global scale, with NHRIs spreading very rapidly across diverse political systems, from twenty NHRIs before 1990 to almost 120 NHRIs in 2012. See Pegram 2010.

³ The book uses the generic Spanish title *Defensoría del Pueblo* ('Citizens Defender'), or *Defensoría* for short, to refer to NHRIs in Latin America and *Defensor* or *Defensora* when referring to the office-holder. Other titles for these entities in the region also include *Procuraduría de los Derechos Humanos* ('Human Rights Attorney') and *Comision de los Derechos Humanos* ('Human Rights Commission').

relationship with other institutions along three dimensions: vertical (intra-executive), horizontal (state checks and balances) and social (nongovernmental, civil society). An innovative analytical framework, drawn from political accountability theory, reveals how such formal organizations have been shaped decisively by both relations between institutions, and rules of access, be they informal, personal or codified in law. The book finds that although some *Defensorías* have emerged as credible and authoritative rights defenders – even in countries where democratic institutions have proven difficult to establish and sustain – others have succumbed to politicisation or obsolescence.

Accountability and Human Rights draws on a wealth of primary sources including government records, archival documents, contemporary news accounts and interviews with over 120 key participants within NHRIs, state agencies and nongovernmental actors in Latin America. It highlights the great proliferation of NHRIs over the last twenty years and the ways in which NHRIs have affected domestic accountability and human rights conflicts, in some cases significantly altering the political outcome – for good or ill. Key questions motivating the study are, firstly, why have governments in Latin America decided to commit major institutional resources to the protection of human rights? And what explains the variable political impact of NHRIs once activated?

An empirical puzzle motivates the book, namely, how to explain why highly impactful NHRIs do not necessarily correspond to highly institutionalised democratic settings. It finds that instances of NHRI success and failure are attributable not so much to formal rules but rather to those informal institutions and networks that overlay, supplement and sometimes supersede their formal counterparts. The book argues that although formal design is important, the success of an NHRI is shaped decisively by the influence of informal rules, norms, and practices. These informal factors arise even in cases in which formal rules would otherwise suggest little flexibility (e.g., well-specified appointment procedures; formal independence from presidential control). The study accordingly examines gaps between formal rules and widely accepted informal practices common to contemporary Latin American democracies, and the conditions under which NHRIs operating in such circumstances can achieve meaningful impact.

First, the monograph traces the diffusion of NHRIs beyond the liberal democratic regimes of the industrialised West to Latin America, with a particular emphasis on the Iberian influence. The discussion maps in detail those factors that have sped up the adoption of *Defensorías* as well as the resulting organisational design at point of origin. While analytically distinct, the study reflects on how such external drivers of domestic reform and resulting incomplete institutionalised outcomes have had a bearing on the future development of *Defensorías*. It then builds upon this foundation to construct a domestic-level explanation that connects the variable political impact of NHRIs to those informal institutions and relations that decisively influence their institutional development over time.

Accountability and Human Rights explains why some NHRIs have successfully protected human rights while others have effectively undermined human rights on behalf of their governments. While exploring the promise of NHRIs, it also cautions against unrealistic expectations divorced from an appreciation of broader institutional settings. By highlighting the way in which informal institutions and relations inform political behaviour, often subverting the formal ‘rules of the game’, the book further challenges conventional wisdom on sources of institutional and political change, with significant implications for scholarship and policy.

Chapter 1

National Human Rights Institutions in Latin America and Accountability Theory

A striking feature of the past three decades has been the regional proliferation of national human rights institutions (NHRIs) or *Defensorías del Pueblo* in Latin America.⁴ First established in 1985 by the Guatemalan military junta, independent national agencies dedicated to the promotion and protection of constitutional rights,⁵ have since emerged in almost every country in the region. This parallels a norm cascade on a global scale, from approximately 20 NHRIs in 1990 to almost 120 NHRIs in 2012.⁶ Their rapid diffusion is part of a broader trend driven by international actors that has seen the promotion of innovations across Latin America, especially in relation to democracy, rule of law and regulatory practices. Scholarship has addressed these developments, particularly the growing role of the courts in Latin American politics.⁷ However, little attention has been paid to a new class of quasi-judicial institutions intended to enhance citizen scrutiny, participation and state democratic obligations. While lacking legal enforcement powers, *Defensorías* have nevertheless emerged across countries and at different times as central players in Latin American politics. This is a study about why governments in the region have created these institutions and why NHRIs matter, how they operate in practice, and, crucially, under what conditions they can serve as powerful venues for holding state actors to account.

Early debate on the merits of *Defensorías* commonly took the form of dismissive critiques, the institution viewed principally as democratic window-dressing.⁸ In turn, a lack of formal enforcement powers led formally-oriented observers to characterise the institution as a toothless watchdog offering a ‘diminished, limited’ form of accountability.⁹ Such critiques reflected broader concerns with the consolidation of democracies in Latin America, defined by legacies of authoritarian government and systematic rights violations. The persistence of authoritarian enclaves, executive dominance, low public support, and structural human rights violations does not bode well for the functioning of a structure dedicated to improving human rights performance. In particular, the acute weakness of the judiciary, widely regarded across the region as inefficient, inaccessible and corrupt poses a serious obstacle to meaningful accountability reform.¹⁰ Early indications were not encouraging. In Guatemala, the military junta appointed a well-respected but bookish academic as *Defensor*, serving ‘mainly to improve the country’s image in the international arena’.¹¹ In Mexico, the proposed NHRI was rushed through the legislature in 48 hours, an attempt to head off criticism of the country’s

⁴ This book uses the generic Spanish title *Defensoría del Pueblo* (‘Citizens Defender’), or *Defensoría* for short, to refer to NHRIs in Latin America and *Defensor* or *Defensora* to refer to the office-holder. Other titles for these entities in the region also include *Procuraduría de los Derechos Humanos* (‘Human Rights Attorney’) and *Comisión de los Derechos Humanos* (‘Human Rights Commission’).

⁵ The UN broadly defines an NHRI as ‘a body which is established by a government under the constitution, or by law or decree, the functions of which are specifically designed in terms of the promotion and protection of human rights.’ See United Nations, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (New York: United Nations, 1995), p. 6.

⁶ Linos and Pegram 2013

⁷ Helmke and Ríos-Figueroa 2011; Detlef Nolte 2012

⁸ Hyde 2011

⁹ Kenney 2003, 66

¹⁰ W. Prillaman, *The Judiciary and Democratic Decay in Latin America* (Praeger Publishers, 2000)

¹¹ Polanco quoted in Dodson and Jackson 2004, p. 14.

human rights record.¹² And the El Salvadorian Congress appointed one of their own in 1992, a politician with little human rights experience.¹³

However, a closer look at the experience of NHRIs paints a far more complex (and interesting) picture, suggesting that formalist critiques have not always been strongly established in evidence. *Defensorías* have been greatly influenced by highly unstable social settings, but not necessarily rendered irrelevant as a result. In 1993, the prestige of the Guatemalan NHRI elevated the *Defensor* to the Presidency of the Republic in the midst of a failed ‘self-coup’ (autogolpe). In El Salvador and Honduras during the mid-1990s, both NHRIs became powerful human rights defenders under highly credible leadership. In Peru, the *Defensoría* operated, practically, as the sole democratic agent of accountability within President Fujimori’s mafia state.¹⁴ Early scholarship observed that in fragile democracies, NHRIs may compensate for an incapacitated judiciary and in doing so assume an important role in ‘enhancing democratisation processes’.¹⁵ Others noted an emergent stabilising role of *Defensorías* as ‘interlocutors of democratic aspirations’.¹⁶ More recently, scholars have noted the ability of *Defensorías* to legitimate the growing demands of social actors for greater accountability.¹⁷ *Defensorías* have also been identified as one of the most effective state actors in advancing a human rights culture, especially via ‘judicial activism’.¹⁸ Alternatively, others have emphasised the institution’s use of peer pressure and persuasion through bureaucratic channels to explain the compliance of state agents with its decisions.¹⁹ However, despite their growing profile, the activities and political impact of *Defensorías* are still under-theorised and not well understood.

All *Defensorías* in Latin America are operating in relatively less stable institutionalised environments than that presupposed by formal institutional theory. Reflecting on a diverse empirical experience, this study encourages reflection on the potentially enabling, rather than just disabling, effects of weakly institutionalised settings. Scholars have referred obliquely to the influence of *Defensorías* being ‘generated by a process that is primarily political’.²⁰ Building upon this assertion of a ‘primarily political’ causal mechanism, this book demonstrates how the performance of NHRIs in Latin America has been shaped decisively by powerful – and, at times, systematic – effects of informal institutions. Simply put, understanding the experience of NHRIs in contexts where formal rules are widely contested, routinely violated, and frequently changed poses a challenge to formal institutionalist assumptions that equate formal rules with the creation of predictably stable, credible and routinised practices. This empirical turn towards mapping the effects of informal institutions provides an opportunity to both refine existing institutional theory as well as advance understanding in important area of comparative political research.²¹ It also speaks to the pragmatic concern of how to make institutions work, Latin American democracies being littered with institutional creations that have long ceased functioning (if they ever did) as intended.²²

¹² ICHRP 2000, p. 37.

¹³ Dodson 2000, p. 39.

¹⁴ Pegram 2008.

¹⁵ Reif 2000, p. 2.

¹⁶ Volio 2003, p. 248.

¹⁷ Peruzzotti and Smulovitz 2006, p. 21.

¹⁸ Domingo 2006, p. 244.

¹⁹ Ugglá 2012

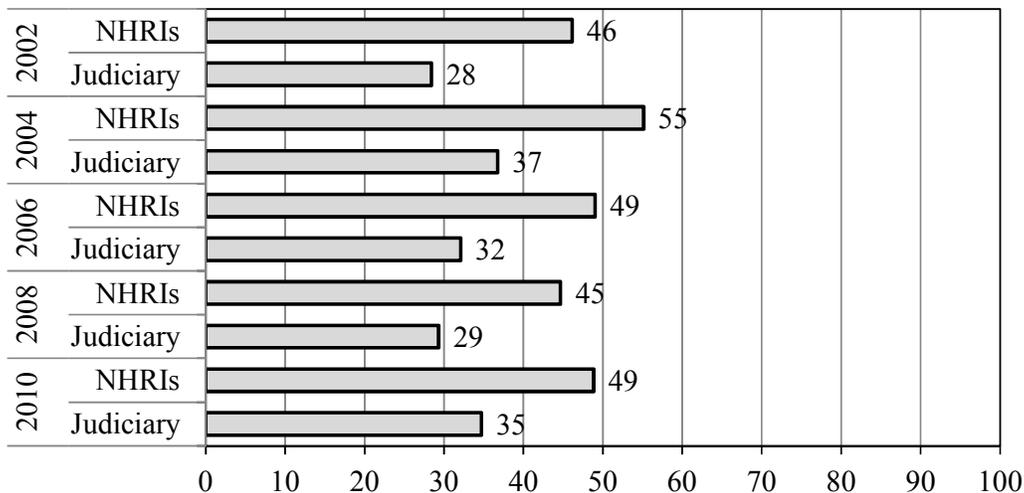
²⁰ Ugglá 2004, p. 448.

²¹ Levitsky and Murillo 2012

²² Crabtree 2006

In Latin America, even the most robust formal defences may not withstand determined attack. Judicial institutions in particular have suffered repeated assault, subject to partisan appointments, impeachments, and even dissolution. While no *Defensorías* have been dissolved, they have not been immune to subversion by domestic political forces, with counter-productive and damaging effects. As this book attests, while some NHRIs have successfully protected human rights, others have effectively undermined human rights on behalf of their governments. And these two outcomes are not mutually exclusive. In perhaps the most notorious case, the Honduran *Defensoría*, formerly one of the most high-performing NHRIs in Central America, was accused during the 2009 military coup of compromising its independence and failing to provide assistance to victims of military aggression.²³ As such, this is also a story about institutional change. Often abrupt, sometimes gradual, it is driven by factors endogenous to structures themselves, as well as the relative power of actors external to the *Defensoría* who have supported, opposed, or otherwise strived to influence the institution. This approach bears an affinity with historical institutionalism's emphasis on legacies of historical contest, the ongoing distributional effects of formal instruments, and the coming together, or falling apart, of processes and mechanisms across distinct episodes, and under specific historical circumstances.²⁴

Figure 1.1 Average Approval of *Defensorías* and Judicial Systems 2002-10



Source: LAPOP surveys and additional opinion poll data

As such, explanatory models that emphasise stability and endurance, such as the heuristic concept of path dependency, may be less appropriate to the fluid institutional settings of Latin America. Indeed, a central empirical puzzle in this study of NHRIs is how specific institutions might escape their past or, more specifically, their origins. Most striking are cases, such as Colombia, El Salvador, Guatemala and Peru, where NHRIs, brought to life by autocratic or illiberal government, have gone on to exert an independent force that have ultimately challenged the state's human rights practices. Scholarship has begun to address the puzzle of NHRIs 'taking on a life of its own'.²⁵ This book seeks to further deepen

²³ See COFADEH (2009: 10). As a result, the office has been stripped of its formal participation rights at the UN. See SCA 2010.

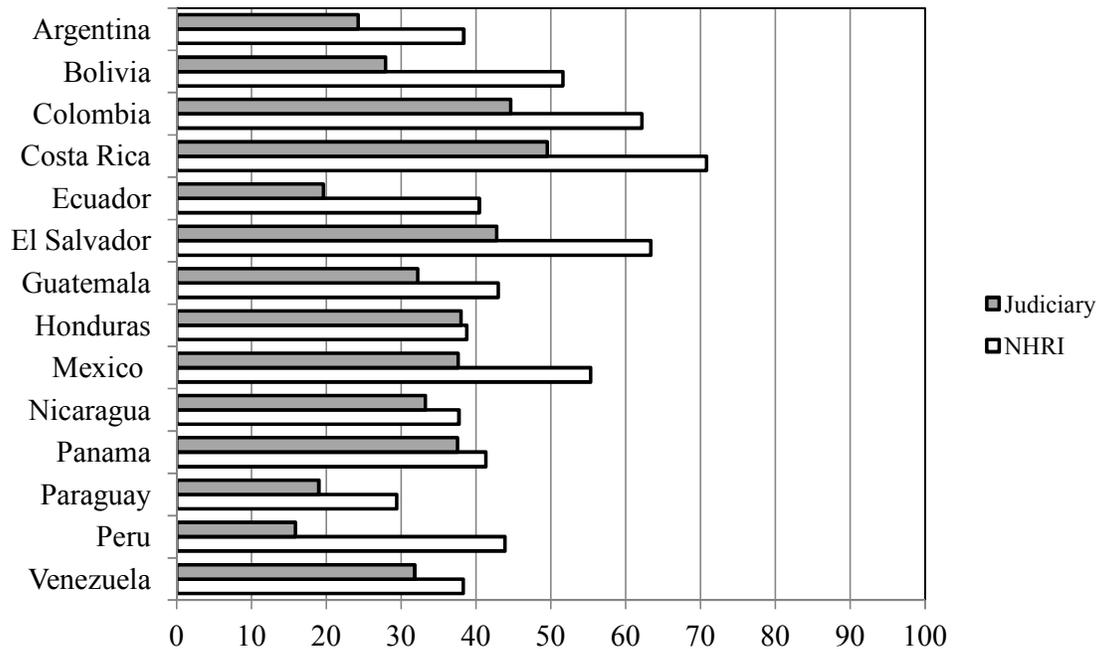
²⁴ Mahoney and Thelen 2010, p. 8.

²⁵ Finkel 2012.

understanding of the conditions under which *Defensorías* can develop an independent path despite adverse beginnings.

Notwithstanding valid concerns over the validity of public opinion polling as an accurate reflection of legitimacy, it is noteworthy that in many countries in Latin America, much of the time this is an institution held in high public esteem in political systems that are generally not trusted. For instance, biannual data from the Latin American Public Opinion Project (LAPOP), presented in Figure 1.1, demonstrates that NHRIs generally inspire considerably more confidence than the judicial system.²⁶ On average, confidence in NHRIs between 2002 and 2010 has varied between a high of 55 percent and a low of 45 percent. In contrast, confidence in the judicial system has fluctuated from a high of 37 and a low of 29 percent.

Figure 1.2 Average Approval of *Defensorías* and Judicial Systems by Country 2002-10



Source: LAPOP surveys and available opinion poll data

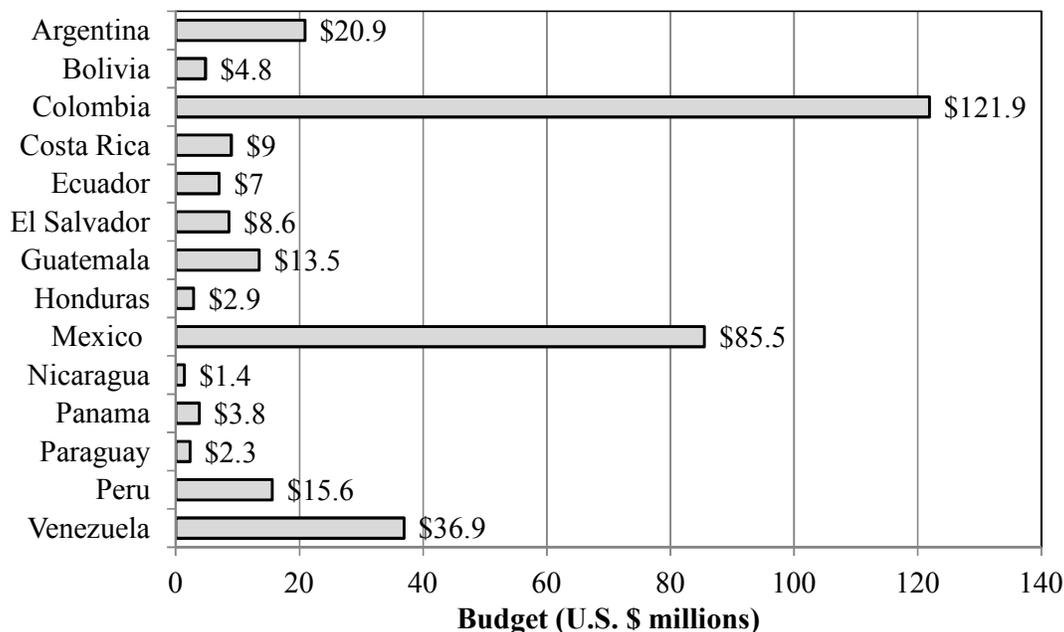
Disaggregating the data across countries reveals considerable cross-national variation (see figure 1.2). Nevertheless, country-level NHRIs are still generally held in higher regard than their national justice systems. Notable are those offices that have retained approval ratings of more than 60 percent over time. This is the case in Colombia, Costa Rica, and El Salvador where, incidentally, the highest judicial system approval ratings are also displayed. Particularly striking are those NHRIs that display approval ratings significantly higher than national-level judicial structures. Bolivia, Ecuador, El Salvador, and Peru all average approval ratings of 20 percent or more above the score for judicial systems, with Peru displaying the largest gap of 28 percent. In contrast, NHRIs in Honduras, Nicaragua, and Panama show the smallest difference over time, with positive margins of four percent or less. As developed in this book, the NHRI experience over time is one defined by institutional change rather than stability, and individual NHRI approval ratings are suggestive of this

²⁶ Question asked: ‘To what extent do you have confidence in [institution]?’ Scale from 1 (low) to 7 (high). Figure shows percentage of respondents giving values 5 to 7. Latin American Public Opinion Project (LAPOP): www.vanderbilt.edu/lapop/

empirical reality. In almost all cases, NHRI approval has diminished by an average of nine percent over the period 2002 to 2010. The only cases to resist this trend are El Salvador, Mexico and Paraguay with modest gains. The most dramatic fall is observed in Honduras with a fall of 16 percent in the lead-up to the military coup of 2009.

Despite the potential for NHRIs in Latin America to offer an insightful empirical angle of vision on questions of democracy, rule of law and accountability, they have thus far received little attention. Scholarship has tended to focus exclusively on the executive, legislature and judicial branches of the state, with significant, but less prominent, state actors consigned to the margins.²⁷ There are good reasons to question this current state of knowledge. Not only do NHRIs consistently command some of the highest approval ratings of any state agency in Latin America, governments have also committed major resources to these structures. *Defensorías*'s invariably complain of inadequate funding. However, as Figure 1.3 shows, many offices receive significant annual budgets. With the exceptions of Honduras, Nicaragua, Panama and Paraguay, all *Defensorías* received budgets of \$5 million or more in 2011, in many cases comparing favourably to similar organisations in advanced industrialist countries.²⁸ Indeed, the budgets of NHRIs in Colombia and Mexico are among the highest in the world.²⁹

Figure 1.3 Total Annual Budgets of *Defensorías* for fiscal year 2011



Source: country *Defensoría* annual reports and Ministry of Finance documents.

Civil society observers and the media have subjected the performance of these institutions to increasing scrutiny, with one memorable 2008 headline in *The Economist* describing the

²⁷ See Przeworski et al. 1999

²⁸ For instance, in Australia the NHRI's budget for 2011 was \$14,661,732, in Spain \$19,761,442, and in Ireland \$1,905,071.

²⁹ The budget of the Colombian NHRI has recently ballooned following the passage into law in 2011 of the Victims and Land Restitution Act which obliges the *Defensoría* to represent claimants seeking reparations under the new law. See *Ley de Víctimas y Restitución de Tierra*, published 10 June 2011, Article 43.

Mexican office as ‘Big, expensive and weirdly spineless’.³⁰ However, scholarship has lagged far behind. A vast body of literature on courts in Latin America has sprung up in recent years.³¹ However, NHRIs have rarely entered the frame of macro-accounts on the effective functioning of democratic and rule of law frameworks.³² In turn, early NHRI literature, written principally by legal scholars and practitioners, has tended to focus on general trends of diffusion and highly formalist accounts of institutional effectiveness and activity.³³ Relatively little attention has been given to important areas of variation, such as diverse outcomes at the regional level, and unanticipated consequences of NHRI creation in particular domestic settings. This has begun to shift, with recent work applying more systematic approaches to understanding the variable effects of NHRI adoption and the power and potential of NHRIs in different domestic contexts.³⁴ As such, this single-authored comparative study builds on the insights generated by this ‘second generation’ of NHRI scholarship by inquiring into two foundational questions: (1) to what extent are NHRIs in Latin America willing and able to promote and protect human rights? And (2) under what conditions are NHRIs prone to subversion by countervailing domestic forces with potentially deleterious effects?

By focusing on these two questions, the book seeks to deepen understanding of the role of NHRIs in processes of political accountability and rights protection; contribute to the general literature concerning the impact of international democratic and human rights norms at the domestic level; and, yield some insights into the performance and effects of NHRIs within Latin America and its different national settings. In so doing, it also address an empirical puzzle, namely how to explain why highly impactful NHRIs do not necessarily correspond to highly institutionalised democratic settings. In addressing this conundrum, the book exposes significant variation across and within countries. Few NHRIs present a picture of stable and enduring success or failure over time, irrespective of the stability of their institutional setting. Rather, the evidence is mixed with the fortunes of NHRIs waxing and waning depending on a range of intervening, often informal, factors. Highly successful NHRIs may subsequently be rendered obsolete or captured (notably in Honduras). Conversely, largely irrelevant or partisan human rights structures may suddenly be enabled, and emerge as forceful rights advocates (notably in Guatemala). Such findings promise to also generate insights into how an accountability agenda might be advanced in contexts where formal rules are unstable, weakly enforced or non-existent.

In addition to contributing empirically to knowledge on the experience of the region’s NHRIs, the book also seeks to advance long-standing theoretical debates concerning the relevant domestic actors and diverse mechanisms of influencing state compliance and social change at the domestic level, as well as identifying significant interactions across distinct domains. This approach draws on a growing body of research which points to sources of institutional restraint and alternative modes of accountability outside legal enforcement channels that may nevertheless have material consequences. This line of inquiry opens up a broader set of questions concerning the determinants of the impact of NHRIs, including: What explains the human rights strategies pursued by NHRIs? How have NHRIs achieved

³⁰ *The Economist*, ‘Big, expensive and weirdly spineless: A much-needed human rights watchdog continues to disappoint’, 14 February 2008.

³¹ Kapiszewski and Taylor 2008

³² But see Gargarella et al 2009

³³ But see Reif 2000; ICHRP 2000

³⁴ See Dodson and Jackson 2000; 2004; Reif 2004; Okafor 2002; Cardenas 2007; Ugglá 2004; Pegram 2008; 2011; Goodman and Pegram 2012; J. Finkel 2012; E. Finkel 2012

compliance and social change outside legal enforcement channels? How might this differ in more or less highly structured and stable institutional and political settings? What role, if any, does individual leadership play? What sort of opportunities, trade-offs, and pitfalls do NHRIs face as they navigate among different state and non-state actors, and the public? While affirming the general utility of accountability theory as a framework, the experience of Latin American NHRIs also suggests avenues for modification and refinement of the theory and its application.

Within political accountability, neo-functionalist contributions that emphasise formal compliance frameworks and coordination usefully contrast with other accounts that dispute formalist assumptions and prioritise power asymmetries and political conflict. Simply put, the neo-functionalist conceptualisation of the NHRI is as a ‘fire alarm’ form of oversight, highly specialised, and able to ‘exercise control in a proactive and permanent manner’.³⁵ However, lacking legally binding powers, it can offer only ‘a diminished, limited form of accountability’.³⁶ This functionalist account of NHRIs in Latin America has understandably resulted in a largely negative assessment of their prospects for success. Reflecting the challenges raised by the functionalist account, this study accepts that the impact of NHRIs will be shaped by their institutional settings. However, it does not share the determinative assumption that this necessarily spells failure for the organisation. In turn, the empirical record suggests that NHRIs in different places and at different times have defied formalist predictions. Even in highly stable institutional settings, it may be necessary to ask whether fire will always trigger the alarm and, similarly, when the alarm sounds will this always indicate fire?

Such contextual questions become even more pertinent in contexts of unstable and routinely violated formal rules. As such, this book directly engages some of the assumptions and claims that underlie current thinking on NHRIs as ‘quasi-judicial’ accountability actors. It builds on the incipient literature that has begun to probe into the conditions under which NHRIs are more or less effective in advancing their mandates. It also takes into account diverse mechanisms of influence such as peer pressure, building relationships, and mobilisation of public opinion which may impact upon the political behaviour of state agents.³⁷ As the next section develops, political accountability theory serves the comparative intent of the book, permitting, through appropriate application, closer assessment of the extent to which similar actors, patterns, and processes exist within and across different contexts. Importantly, in contextualising vertical (direct electoral channels) and horizontal (state checks and balances) accountability domains within the state, the study conceives of these dimensions as variables rather than fixtures of institutional frameworks characterised more by informal power structures than by formal compliance arrangements.

The chapter proceeds with three objectives in mind. First, a descriptive typology of the roles NHRIs can play is developed and used to structure discussion of the experience of these institutions over time and across countries. Second, the theoretical contribution of the study is elaborated. Specifically, I describe the ways in which the study advances scholarly debate about political accountability in weakly institutionalised settings. Finally, the chapter ends with some reflection on the broader salience of the topic for understanding the variable quality of democracies in Latin American and beyond.

³⁵ See Przeworski 1999, p. 29; O’Donnell 2006, p. 337.

³⁶ Kenney 2003, p. 66.

³⁷ Peruzzotti 2012; Ugglia 2012

The domestic impact of NHRIs

The empirical focus of the book is on how *Defensorías* actually work, including when and why they matter for human rights protection. The point of departure for this focus is the observation that NHRIs can serve as a potential bridge between state and society, uniquely placed to interlink distinct rights arenas and promote accountability across institutional domains.³⁸ Unlike the judiciary and other specialised agencies, NHRIs do not exercise ‘control’ in a strict legal sense, enjoying an expansive accountability and human rights mandate. The function of the *Defensoría* is therefore comparatively open-ended. The transformative potential of NHRIs is captured well by the social science framework of political accountability. This study examines the experience of NHRIs within two principal accountability domains; the first operating within intrastate vertical (executive branch) and horizontal (checks and balances) channels of accountability, the second located in the relationship between the NHRI and social (non-governmental) arenas of accountability. This section provides an overview of the potentially enabling and disabling effects of formal and informal relations across these three arenas of accountability, and, drawing on evidence contained in the book, outlines the ability of the organisation to exercise a bridging function within the political systems of Latin America. First, however, some brief provisos on the scope of the analysis are detailed.

Defensorías constitute just one of many liberal innovations introduced in recent years intended to enhance state democratic obligations in the region. The study recognises, but does not directly consider, the contribution of alternative institutional forms to the objectives of administrative oversight, human rights compliance, and political accountability, such as advocates offices, anti-corruption commissions, electoral commissions, information commissions, petitions committees, privacy commissions, state auditors and other so-called ‘advisory counterparts’.³⁹ Although these other types accountability agencies certainly merit attention, and do, in certain instances, feature in the analysis, the central concern of this study is the *Defensoría del Pueblo*. The rationale for this focus is simple. Few, if any, state agencies display the breadth of mandate, jurisdiction and powers enjoyed by Latin American NHRIs. As such, the constitutive potential of these institutions, largely unattended in the literature, promises to yield significant insights into state compliance with human rights and accountability norms, beyond legal enforcement frameworks. Furthermore, their potential freedom of action allows these areas of academic inquiry to be approached as overlapping, rather than discrete, concerns. This focus also precludes consideration of NHRI-like institutions that operate in the private sector or within a highly restrictive mandate. Finally, the impact of *Defensorías* at the sub-national level, while probed here, merits further study. It is often in remote areas where the state is largely absent that the greatest gaps between formal rules and informal practices exist.⁴⁰

The relationship between NHRIs and the political order is multidimensional. In order to conceptualise the role of the *Defensoría* it is necessary to first situate the contemporary structure among its historical and normative antecedents. The two archetype NHRI models that have most influenced the modern Iberian *Defensoría* are the classical ombudsman’s

³⁸ Anne Smith (2006) has questioned whether the unique position occupied by NHRIs between government, civil society, and NGOs may be ‘a mixed blessing’.

³⁹ See Christopher Elmendorf, ‘Advisory Counterparts to Constitutional Courts’, *Duke Law Journal*, vol. 56, no. 4, February 2007, pp. 954-1045.

⁴⁰ Local government municipalities are the source of thousands of annual complaints to *Defensorías* throughout the region.

office and the human rights commission.⁴¹ Along a vertical accountability plane (executive branch), human rights commissions established in Europe prior to the 1990s generally served as consultative councils to government. Most of them have an advisory or promotional human rights mandate, as opposed to the investigative faculties required to perform a protective horizontal accountability function.⁴² An inability to receive complaints is a significant block on their performing a social accountability (non-governmental) role. In contrast, the classical ombudsman model operates principally within a horizontal arena of accountability, empowered to investigate (and prosecute if necessary)⁴³ grievances of public sector employees and the citizenry against the public bureaucracy pertaining to legality and administrative fairness.⁴⁴ The classical ombudsman generally displays robust safeguards of independence and investigative jurisdiction over all branches of the state, as well as the military. However, their ability to perform a social accountability function is limited by a highly restrictive mandate, rarely containing mention of human rights standards and confined to questions of administrative legality.

The Iberian *Defensoría*, emerging in post-authoritarian Portugal and Spain in the late 1970s,⁴⁵ is generally regarded as a new class of ‘hybrid’ or human rights ombudsman, which has at its core a human rights promotion and protection mandate, robust investigative powers, and the ability to receive complaints. It displays the structural hallmarks of the earlier archetype NHRI models. The vertical consultative role of the human rights commission is retained, with the *Defensoría* mandated to advise the executive and public bureaucracy on public policy as well as devise and make recommendations on legislative projects. In turn, the office is widely empowered to educate and promote an explicit and broad rights mandate through the issuing of parliamentary annual reports, and special reports on urgent rights issues, and to engage in rights education of state agents and citizens. In turn, the horizontal accountability function of the classical ombudsman is apparent. The *Defensoría* has a mandate over administrative fairness and exercises a ‘fire alarm’ form of oversight over the public bureaucracy.⁴⁶ Reflecting a core accountability role, safeguards of independence are generally robust, including no executive designation of personnel, no government representation, and immunity from prosecution. Significantly, the *Defensoría* imports the ombudsman-like investigative faculties required to perform a protective function, including complaint-handling powers and robust investigation, legal and court referral prerogatives, though not legally binding authority.

In fusing these two distinct traditions, the *Defensoría* occupies a distinctive, possibly unique position within the political system, enabled to access vertical, horizontal and social domains of accountability. This is evident in its broad scope of intervention, with oversight over questions of legality as well as an expansive human rights brief. It is also apparent in the political status of the institution, deriving dual authority from its standing as a state body, as well as vertical interaction with the citizenry. The *Defensoría* parts company from its

⁴¹ For a discussion of different NHRIs see Reif (2012).

⁴² The prototype of this model can be found in France (created in 1948) and has been emulated in Francophone Africa. Europe also displays a varied mix of other institutional forms, including classical ombudsmen and specialized equality and anti-discrimination bodies.

⁴³ The prototype Swedish office has prosecutorial authority. However, the Danish ombudsman, widely regarded as the modern ombudsman paradigm, cannot issue binding decisions.

⁴⁴ The paradigm models are the Swedish (created in 1809) and Danish (1955) ombudsman offices.

⁴⁵ Human rights ombudsmen can be traced to Portugal (created in 1975), Spain (1978), Guatemala (1985), and Poland (1987). See Reif (2000: 5-13).

⁴⁶ Przeworski 1999, 29 suggests the ombudsman can be understood as a ‘fire alarm’ form of oversight, possibly offering a solution to the agency problem inherent in the presidential system of delegation to a bureaucracy.

historical archetypes in two key ways: it performs its function without instruction from higher vertical authority and is unencumbered by the restrictive jurisdiction generally associated with horizontal checks and balances. As a result, the institution combines the formal autonomy and robust powers of the classical ombudsman with the novel doctrinal and proactive rights function of the human rights commission. The resulting structural form empowers the office to assume multiple vertical and horizontal accountability roles within state structures, variably identified in the literature as ‘fire alarm’ or ‘watchdog’ forms of oversight.

However, rooted in a process of institutional adaptation to contexts defined by unstable rights frameworks, low-quality democracy and insistent demands for more responsive government, *Defensorías* throughout Latin America have exercised an often impactful social accountability function. Indeed, one of the more novel features of *Defensorías* in Latin America is their extensive access to, and use of, social accountability mechanisms. Peruzzotti and Smulovitz identify three core accountability strategies for social actors which *Defensorías* have also adopted; judicial activism, popular mobilisation, and media exposure.⁴⁷ *Defensorías* have recognised the mutual benefits that may be derived from association with credible social actors who bring with them mobilisation strength and publicity. In turn, reflecting their nomenclature, these ‘Defenders of the People’ generally serve as custodians of expansive formal constitutional protections for individual rights. Many *Defensorías* have the power to submit habeas corpus, habeas data, amparo, and, most significantly, constitutional review petitions to Constitutional Tribunals.⁴⁸ The ability of the office to activate such formal structures to constrain powerful actors is a potentially significant resource for victims of rights violations. Significantly, such a social accountability function goes beyond a regulative fire alarm or watchdog form of oversight to the more transformative realm of rule entrepreneurialism and social activism.

The chapters in this book examine the transformative potential of *Defensorías* in their formal and informal relations with other vertical, horizontal and social accountability actors located within and outside the state apparatus. A central question posed is how NHRIs can achieve state compliance within these three domains of action, identifying the distinctive mechanisms of accountability, behavioural logics and forms of influence at their disposal. More broadly, in assessing whether these institutions are willing and able to perform a vertical, horizontal and/or social accountability function, the study sheds light on the formidable democratic challenge of bridging state and society in variably stable political and institutional settings.

Generalising across cases in Latin America, Table 1.1 find instances of reasonably institutionalised *Defensorías* within the state apparatus as well as *Defensorías* with strong ties to highly organised social actors. Reflecting a major concern of this study, this basic two-by-two schema further illustrates the impact of powerful domestic forces on NHRIs within their political systems. Optimally, the *Defensoría* complies with the formal expectations attached to these institutions of assuming an institutional bridge between state and society. However, under adverse conditions NHRIs may succumb to powerful countervailing forces, leaving the institution structurally intact but with a normatively undesirable profile – in the worst cases, serving as institutional cover for rights abuses.

⁴⁷ Peruzzotti and Smulovitz, *Enforcing the Rule of Law*, p. 19.

⁴⁸ Amparos are emergency writs for the protection of constitutional rights. Habeas corpus refers to protection from unlawful detention and habeas data to freedom of information petitions.

On the right-left dimension, the table distinguishes between those NHRIs which perform a vertical and horizontal function within state structures and those that do not. More specifically, this assessment is based on two criteria: firstly that the NHRI in question is willing and able to perform such a function in a consistent manner, and secondly, that the NHRI is perceived as being reasonably responsive to the demands and expectations of governmental and state actors. The first criterion reflects the concern of this study for formal rules and the ability and willingness of NHRIs to access accountability domains within state structures. If an NHRI lacks the requisite formal mandate then it will be unable to exercise one or other, or both, roles. For instance, it was only in 2006 that the Mexican NHRI was given constitutional review powers. In turn, this presupposes a functioning apparatus of state checks and balances. Rule of law institutions in Latin America are notoriously dysfunctional. This reality is compounded by widespread mistrust and hostility of elected officials in the region toward horizontal accountability actors in general, often pitting institutional checks and balances against their claims of democratic legitimacy. In extreme instances, such as the dismantling of judicial institutions under Fujimori in Peru, NHRIs may find access to horizontal domains abruptly terminated.

Table 1.1 A typology of *Defensorías* in Latin America

		State Domains	
		Cell A No	Yes Cell B
Social Domain	No	Argentina (1993-2012) Ecuador (1997-2007) El Salvador (1998-2001) Guatemala (1987-1989) Paraguay (2001-2012)	Honduras (2009-2012) Mexico (1990-2012) Nicaragua (2004-2012) Venezuela (1999-2012)
	Yes	Colombia (1991-2003) Costa Rica (2001-2009) Guatemala (1989-1993) Honduras (1990-2002) Ecuador (2007-2012) El Salvador (1995-1998) Peru (1996-2012)	Costa Rica (1992-2001) Guatemala (1993) Honduras (1993) Peru (2001)
		Cell C	Cell D

The second criterion speaks to this study’s concern with those informal institutions and relations that strive to influence the development of the NHRI over time. In turn, it acknowledges the effects of power hierarchies within state structures with the executive at its apex. For the NHRI to perform a vertical and horizontal accountability role within state structures there must be minimal consent on the part of powerful actors within both domains. It is important to emphasise that NHRIs are often created as political acts of good faith to an international and domestic audience. *Defensorías* appeal to regime discourses of democratic obligation and commitment to human rights, as well as modernisation agendas such as administrative efficiency and promoting a public service culture. In practice, however, there may be little understanding or tolerance of an independent agency seeking to transform rhetoric into action – especially if it is viewed as irrelevant or threatening to core regime interests. In turn, NHRIs may also confront resistance from within the judicial branch rooted

in a conservative legal culture, a jealously guarded autonomy, and reluctance to adjudicate on constitutional rights. In Costa Rica, for instance, the judiciary vigorously opposed (unsuccessfully) any oversight provision of judicial administration in the *Defensorías* establishing law.

On the upper-lower dimension of the table, the lens shifts to the social accountability role of the NHRI. Reflecting the above schema, this assessment is based on two criteria: firstly that the NHRI in question is willing and able to perform such a function, and secondly, that the NHRI is perceived as being reasonably responsive to the demands and expectations of non-governmental actors. A *Defensoría* with limited or no access to social accountability mechanisms will clearly be unable to perform this role. In some contexts, non-governmental actors may actively oppose the mandate of the office. In turn, some NHRIs may be hampered by design omissions. The Argentinean *Defensoría*, for example, lacks *habeas corpus* or constitutional review powers, has no explicit rights promotion mandate or oversight of state-level and military authorities and, as a result, has been met largely by indifference among civil society actors. However, even in this case, experience demonstrates that such formal design omissions may limit, but does not entirely preclude, the office from performing a social accountability role. Much more problematic in this regard is the Chilean office's lack of complaint-handling powers. The Chilean structure stands alone, with all other *Defensorías* able to act on complaints received in written or verbal form, in a variety of indigenous languages, and, importantly, at no cost to the complainant.

It is important to note that almost all NHRIs in Latin America are formally independent (i.e. do not receive instruction from any higher authority) and are elected by the legislature. Nevertheless, there are degrees of independence, and this speaks to the second criterion of responsiveness to the interests of non-governmental actors. The extent to which social actors are engaged in appointment procedures is significant for future relations. In Colombia the *Defensor* is appointed by the legislature, but from a shortlist proposed by the President. In contrast, the Ecuadorian *Defensor* is appointed by a hybrid body of state and civil society representatives, following an open call for nominations and a series of public audiences. Similar to *Defensoría* insertion within state structures, the NHRI can also enable, displace or undermine actors within social accountability arenas. Crowding out of social actors is a concern and may lead to competition for resources. Conversely, *Defensorías* may cultivate good relations by using resources, coupled with official recognition, to legitimate the claims of social actors. The quality of relations varies considerably across cases, informed by the challenge of bridging a state-society divide that is often characterised by confrontation and mistrust.

Table 1.1 above serves a heuristic purpose. It does not attempt to capture all of the fluidities observed in practice. Indeed, most realities, as represented by empirical examples drawn from this study, flow between the four ideal types generated in this exercise.

Cell A: Institutional façade

NHRIs found in the upper left-hand cell (Cell A) do not exercise in any consistent manner a vertical, horizontal or social accountability function. This category of NHRIs conforms most closely to the sceptical predictions of formalist observers who claim that far from making a positive impact on the ground, these institutions serve largely as democratic window-dressing or status symbols intended to play well to the international gallery. Over time, perhaps as many as a third of *Defensorías* in Latin America have taken on the characteristics of a façade.

It is important to acknowledge the ability of NHRIs to escape their origins and indeed, in the case of Ecuador, emerging from a decade of extreme political instability, the *Defensoría* has moved closer to the centre of the figure and slipped into Cell C. As such, the study provides evidence of how formal, even if shallow, commitments by political elites to international Defensoría norms have been translated into meaningful change by motivated domestic actors.⁴⁹ Inevitably, as NHRIs move centre-stage as a possible ‘missing link’ in the transnational human rights regime, increasing attention will be paid to their effects.⁵⁰ This debate in the NHRI literature mirrors a more general concern with the effectiveness and impact of international human rights instruments.⁵¹

Within the state domain, an NHRI may slide into obsolescence as a result of either indifference or hostility on the part of vertical and/or horizontal actors. In Paraguay, the *Defensoría* was effectively paralysed by partisan negotiations within Congress for nine years. Formal design principles may provide little protection against interference in practice when confronted by entrenched hostility and informal political practices. Most egregiously, a highly effective El Salvadorian *Defensoría* was assailed and undermined by the political class in 1998 through the appointment of an individual under investigation for human rights abuses. In turn, perhaps most evident in the Argentinean case, formal design omissions may undermine the ability of the office to perform a social accountability role. Such design omissions may diminish its appeal to organised actors as a viable framework through which to achieve their political ends. Notably, the office has been widely criticised among NGOs for neglecting to fulfil its human rights mandate. Broadly speaking, the experience of NHRIs in this cell affirms that processes underpinning institutionalisation may, moving forward, equally give rise to deinstitutionalisation or reinstitutionalisation.⁵²

Cell B: Regime proxy

NHRIs are vulnerable to political capture by domestic governing elites. The NHRIs found in the upper-right hand cell (Cell B) fit this description. These *Defensorías*, despite formal safeguards, in practice receive instruction from executive authorities. As such, they are responsive to vertical demands and are willing and able to perform a vertical and horizontal accountability role in the service of their political masters. One important indicator of capture is the extent to which the NHRI holds the executive accountable through vertical channels. In this regard, the Venezuelan *Defensoría* is notable for its unmitigated support for executive policy, with official reports reduced to a litany of official achievements. In the worst case scenario, such regime proxies may serve to undermine local democratic and human rights frameworks. In the wake of the 2009 military coup in Honduras, the NHRI not only endorsed the interim coup government, it also stands accused of failing to provide assistance to victims of military aggression. Capture *Defensorías* reflect the influence of political elites within often highly vertical command and control state structures. Such outcomes may endure from point of origin (as in Mexico), or reflect abrupt deceleration, even

⁴⁹ This corresponds to what Jon Elster calls the ‘civilizing force of hypocrisy’. See John Elster (ed.), *Deliberative Democracy*, (New York: Cambridge University Press, 1998), pp. 109-112.

⁵⁰ ICHRP 2005

⁵¹ Hathaway 2002

⁵² Scott describes de-institutionalisation as ‘processes by which institutions weaken and disappear...some analysts emphasize primarily the regulative systems, noting enfeebled laws, diluted sanctions, and increasing noncompliance. Others stress eroding norms and evidence of the diminished force of obligatory expectations...The possible causes of deinstitutionalisation are multiple’. R. W. Scott, *Institutions and Organizations: Ideas and Interests*, (London: Sage Publications Ltd., 2008), p. 196.

reversal, of processes of democratisation, as in Nicaragua under the Ortega administration. In such settings, horizontal relations are also likely to be defined by executive acquiescence.

Unsurprisingly, regime proxy NHRIs do not exercise a social accountability role. Relations with civil society are generally defined by mistrust, hostility and frequently conflict. One indicator of this is critical reporting of NHRI performance by country-level NGOs. The Mexican office was the subject of a damning Human Rights Watch report in 2008. Another indicator is public attacks on civil society actors by *Defensorías* themselves. The Nicaraguan *Defensor* has repeatedly called for measures to be taken against NGOs and media outlets critical of the government. Reflecting the heterogeneity of the social sphere, captured NHRIs may have access to the mechanics of social accountability (i.e. captured social actors and arenas) but with the objective of suppressing criticism of the regime as opposed to denouncing and exposing unlawful state behaviour. This study gauges the prevalence of these effects in Latin America and the success of efforts to overcome them. However, the evidence suggests it is extremely difficult to escape executive capture once established. Executive control is compounded by a severe breakdown of trust between the NHRI and civil society. In examining this category of NHRIs, this book provides cautionary insight into why rights-violating states may commit voluntarily to the institutionalisation of human rights. It also raises the thorny question of whether it is always better to have an NHRI than not, given that under adverse conditions the institution may yield normatively unattractive results.

Cell C: Human rights defender

Throughout Latin America, organised social actors outside state structures, especially watchdog media, human rights organisations and civic associations, constitute an influential force in domestic politics and a key relationship for many NHRIs. This study highlights how in contexts of deficient formal structures, *Defensorías* found in the lower-left cell (Cell C) have assumed a novel social accountability role not foreseen by their designers and different, often controversially so, from that of their more legalised contemporaries in highly institutionalised settings. This doctrinal function does not preclude the NHRI from performing a vertical and horizontal accountability function. However, the ability and willingness of a *Defensoría* to appeal to the ‘court of public opinion’ unimpeded by partisan instruction often results in fraught relations with elected officials. NHRIs in this category have directly challenged executive authority in core arenas of political competition. In such scenarios, the responsiveness of elected officials to the work of the NHRI generally hinges on material consequences generated through non-state accountability channels. Along horizontal lines, of particular note is the relationship between *Defensorías* and Constitutional Tribunals as doctrinal custodians of the Constitution. However, as demonstrated in this study, the receptiveness of regional courts to judicial activism by NHRIs varies markedly.

This group of NHRIs seek to effectuate compliance through social accountability mechanisms, building relationships with external civil society actors and creating platforms for citizens and NGOs to meaningfully engage the state system. Human rights defender NHRIs may exert their most powerful influence in fostering – as opposed to hindering – social mobilisation. Under certain conditions, a virtuous circle can unfold. Under highly adverse conditions, the Peruvian *Defensoría* lent authority to social mobilisation against the excesses of the Fujimori regime. The mobilising forces, in turn, provided the NHRI with crucial ballast against hostile state actors. Perhaps most unsettling for political elites is the high public standing of the *Defensorías* populating Cell C. Reflecting recent scholarship on the importance of domestic politics in transforming international treaty obligations into

credible commitments,⁵³ this study suggests that the crucial additive for realizing positive NHRI impact is robust design combined with enabling local conditions. In turn, analysis of this class of NHRI as social change agent provides insight into sources of power outside legal enforcement authority. The formalist portrayal of NHRIs as ‘toothless’ fails to account for alternative political bases of influence and behavioural logics underpinning their compliance effects. This outcome is far from unique to Latin America; as a respected Malaysian Human Rights Commissioner puts it: “we may be a toothless tiger, but the fact that a tiger can still roar is enough.”⁵⁴

Cell D: Institutional bridge

Central to this study is the ability of the Iberian NHRI to employ its distinctive non-binding accountability function as a potential bridge between state and society. However, the ability and willingness of the office to assume such an ideal point of intersection across the state-society divide is often subverted by broader cross-pressures within their social systems. In this regard, while unconstrained formal design is important, it is the second criterion of responsiveness to the demands and expectations of diverse state and non-state constituencies which is decisive. The *Defensoría* optimally serves a broadly consensual bridging function; managing popular demands and expectations downwards and channelling social grievances upwards into governance structures, in the process enabling significant accountability gains. However, as Cell D demonstrates, in practice no *Defensoría* has assumed a position of institutional bridge, at least in general terms. Rather, they have gravitated toward one of three alternative types in partial or non-compliance with this optimal design function. The shifting orientation of *Defensorías* within Table 1.1 has been driven primarily by external, cross-cutting pressures and the incompatible demands and expectations placed upon the office. Simply put, attempts to control and curb the *Defensoría*'s actions from inside the state are pitted against the inflated expectations within society that the office deliver what the state is incapable of delivering.

In contexts with a recent history of authoritarian government, human rights abuse, and generally deficient representative institutions, the challenge of bridging the state-society divide is particularly acute. That said, the challenge of binding state and society through institutional channels is also a pressing concern in relatively stable institutional settings. As Table 1.1 shows, only the Costa Rican office has occupied this position for any significant length of time. However, even in such a relatively highly structured setting, the *Defensoría* has been unable to sustain such a role as surrounding political conditions have deteriorated. In other instances, NHRIs have assumed a transient point of intersection as competing interests momentarily align. When Guatemala's fragile democracy was imperilled by a coup attempt in 1993, politicians and civil society alike looked to the *Defensor* to assume the Presidency. The Peruvian transitional government of 2001 turned to the *Defensoría* for guidance on transition priorities. However, within a few months these brief ‘democratic springs’ were lost. Such experiences draw attention to how NHRIs occupy institutional space and effect, enable, displace or undermine other actors in loose institutional frameworks. Various cases highlight the fate of *Defensorías* to be undermined by broader turf wars within their institutional settings. More broadly, in assessing how NHRIs may operate as bridging venues and agents for coordinated action the study advocates calibrating often inflated expectations in light of the prevailing institutional environment.

⁵³ Dai 2007; Simmons 2009

⁵⁴ Quoted by Forum-Asia NGO activist, in interview with author, Amman, Jordan, 5 November 2012.

The results summarised in Table 1.1 demonstrate the explanatory power of the analytical approach developed by this book. The impact of *Defensorías* in Latin America is shaped not so much by formal rules but rather the complex interplay of powerful forces within and outside state structures. This does not deny the potential for formal properties to influence outcomes. However, from a political science perspective, interaction within broader institutional settings is crucial. In contrast to the formalist ideal of an institutional bridge, the findings point to no core cases of institutional bridge. Rather, the observable outcome is an array of three alternative types of NHRI. An important caveat to this heuristic exercise is raised by more fine-grained empirical observation which may complicate the location of individual *Defensorías* within this typological framework. Few cases display stability or linearity over time; rather it is a picture of change. However, such instability may manifest itself in both abrupt movements across the typology but also gradual shifts within individual cells that may eventually spill-over. For instance, Costa Rica is likely best located to the upper-right of Cell C in contrast to Peru which generally occupies a space to the lower-left of the quadrant.

Another important caveat is the potential for back-sliding. This refers to the eventuality that a *Defensoría*, widely perceived to be a rights defender, is in fact a covert regime proxy or façade intended to de-radicalize and pacify social mobilisation. Some concerns have arisen surrounding the alleged suppression of human rights violations by the Guatemalan office, as well as institutionalised racism.⁵⁵ In turn, the Early Warning Unit of the Colombian NHRI is widely regarded as an expert and authoritative referent point for observers of social conflict in the country, frequently issuing detailed risk reports directly to political authorities and the media. However, under the two-term incumbency of *Defensor* Volmar Pérez (2003-2012), the office has been criticised for not holding the executive to account for alleged human rights crimes or engaging civil society on such high-profile human rights issues.⁵⁶ Such cautionary provisos underline the importance of careful attention to the individual experience of *Defensorías* beyond the general typology mapped out in Table 1.1. While the Colombian office is likely located in Cell C, in recent years the trend line has been towards the centre of the figure. Such ambiguities highlight the complexity of an organisation which rather than being monolithic is composed of variably effective individual actors located within internal hierarchies.

Beyond the intricacies of any one case, the findings presented in Table 1.1 open up a series of questions which inform the analysis, such as identifying what are the principal obstacles faced by NHRIs operating in contexts of political and institutional instability and how these might differ from more highly structured and stable settings. To what extent do the structural features – and impediments – of NHRIs explain the puzzling origins of these institutions and, despite often inhospitable conditions, their ability to make important contributions to political accountability? Are the rights strategies pursued by NHRIs and other horizontal and social agencies mutually reinforcing or prone to tension? How can analytical tools drawn from political science approaches to accountability serve to more accurately frame the activity of these institutions both for descriptive and prescriptive purposes?

Setting the agenda

⁵⁵ See Chapter 5, p. 200.

⁵⁶ The conspicuous absence of the *Defensor* in the controversy generated by the ‘false positives’ scandal in 2011 was widely denounced. See *La Silla Vacía*, ‘Primera tarea de Otálora: Acabar con el silencio de Volmar Pérez’, 22 August 2012.

The previous discussion ended by linking the empirical insights generated by this study as to why some Latin American *Defensorias* are more able and willing to promote accountability with a set of questions concerning the determinants of NHRI impact. In this section, we turn to the theoretical frames which inform this study's evaluation of the impact of NHRIs. Particular attention is given to questions of formal design and political function as well as mechanisms of influence that NHRIs might deploy beyond legal enforcement measures.

Formal design and political function

The first UN Secretary General Report on NHRIs released in 2009 reflected on a crucial role 'in the effective implementation of international human rights standards at the national level' and their ability to 'translat[e] international human rights norms in a way that reflects national contexts and specificities'.⁵⁷ However, the question remains: once activated, how effective are NHRIs in protecting and promoting human rights? A parallel line of inquiry has addressed this question. A practitioner-oriented literature forms the bulk of the work on NHRIs, with particular regard for questions of NHRI origins, institutional effectiveness and descriptive accounts of their activity.⁵⁸ The effectiveness of NHRIs in protecting and promoting human rights frameworks also forms the basis of an increasingly interdisciplinary body of NHRI research.⁵⁹ Contributions have further shown that while some NHRIs are effective, others are also effective at undermining rights frameworks or may simply be rendered inactive. As such, if inquiry into NHRI diffusion has generated significant insights into why and under what conditions such agencies have initially been created by states, less is known about those factors that underlie why certain NHRI are more effective than others in fulfilling a rights mandate.

A principal objective of this book is to address this empirical deficit. Without attempting to offer a definitive answer, this research contributes to existing knowledge on NHRIs by examining two key questions. First, what institutional features make NHRIs effective? This research acknowledges the relevance of a range of processes extrinsic to NHRI formal properties to contextualizing the challenge of organizational effectiveness. Nevertheless, a traditional concern for robust formal design is found within much of the literature on NHRIs. In particular, this literature has advocated in general terms, that formal design, as prescribed by the UN-endorsed Paris Principles, is a necessary, if not sufficient, precondition to the effective functioning of these organizations.⁶⁰ A contrasting body of work has exposed the sometimes stark disparities between ideal structures and actual performance, suggesting that the near consensus in the literature on formal design rests on shaky empirical ground.⁶¹

⁵⁷ SG Report, UN Doc. A/64/320, 24 August 2009, 4

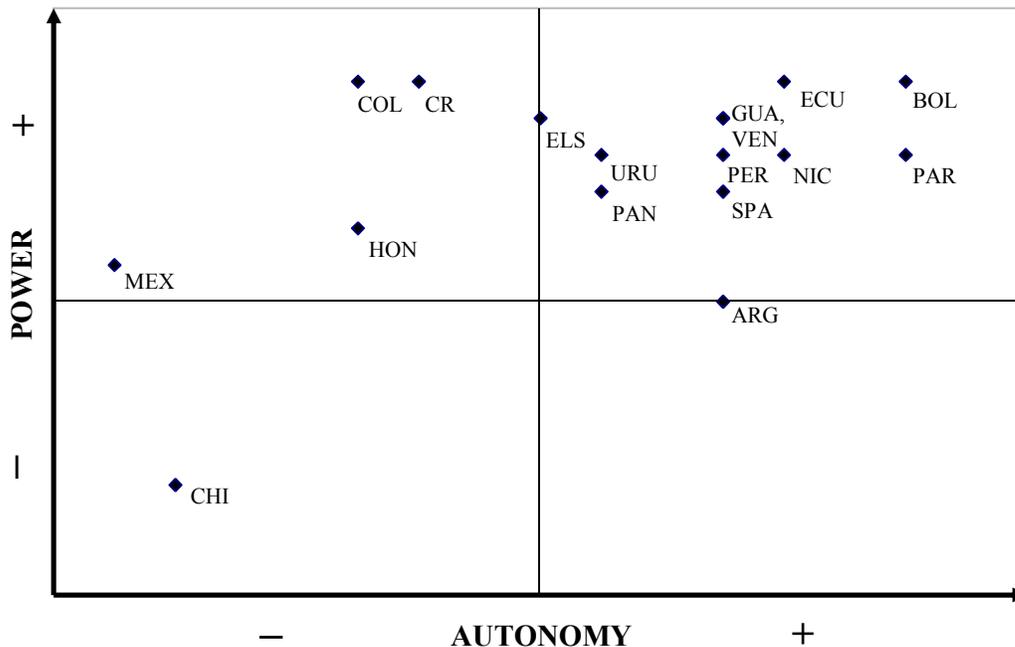
⁵⁸ Hossain 2000; Gregory and Giddings 2000; Lindsnaes et al. 2001; Volio 2003; Burdekin with Naum 2007

⁵⁹ ICHRP 2000; 2005; Okafor 2002; Reif 2004; Uggla 2004; Pegram 2008; 2011; 2012; Finkel 2011; Finkel 2012.

⁶⁰ For instance, scholars have argued constitutional enactment is an 'essential condition', granting the NHRI enhanced independence due to the elevated cost of repealing constitutional reform. Additional safeguards include plurality in appointment and recruitment and autonomy in operational and budgetary procedures. Similarly, scholars consider a wide-ranging human rights mandate and unrestricted investigative jurisdiction to be essential to the power of the office. See Aguilar and Elizondo 2001: 213. Also see ICHRP 2000 and 2005.

⁶¹ Human Rights Watch 2008; ANNI 2009

Figure 1.4: Formal institutional strength of Defensorías in Latin America at point of origin⁶²



To build on these observations, Figure 1.4 presents a scatter plot of design principles along the dimensions of formal autonomy and power. It also includes the Spanish *Defensor* for reference. The data refers to formal design features at point of creation and each variable is weighted in accordance with its impact on the dimension in question. This weighting corresponds to a survey of the literature and identification of those factors that recur in discussions on basic structural standards. For example, a large literature suggests that constitutional entrenchment of the NHRI at point of origin is optimal for NHRI independence.⁶³ In terms of powers, the ability of an NHRI to initiate legal proceedings in human rights matters is generally regarded as an important predictor of organisational effectiveness.⁶⁴ Other safeguards of autonomy such as long, fixed terms for NHRI commissioners and the possibility of their reappointment are widely regarded as important, but not fundamental, to organisational integrity. Similarly, powers to issue annual reports to Parliament, to provide courts with amicus curiae briefs, and access all places of deprivation of liberty are often weakly recommended in NHRI design guidelines.

Figure 1.4 clearly distinguishes between formally constrained and unconstrained models. In terms of optimal structural form, the *Defensoría* in Bolivia presents the highest values along each axis.⁶⁵ Other models display high values along one axis but fall short on the other. For

⁶² ARG: Argentina, BOL: Bolivia, COL: Colombia, CHI: Chile, CR: Costa Rica, ECU: Ecuador, ELS: El Salvador, GUAT: Guatemala, HON: Honduras, MEX: Mexico, NIC: Nicaragua, PAN: Panama, PARA: Paraguay, SPA: Spain, VEN: Venezuela.

⁶³ 'Incorporating NHRIs in national constitutions is the single legal measure most likely to guarantee public legitimacy'. See ICHRP 2000: 111.

⁶⁴ ICHRP 2000: 109

⁶⁵ It is important to note that certain formal attributions may be variably explicit or emphatic across cases. For example, in terms of an education mandate, the Nicaraguan Procurador is 'obligated' by law to be an active

example, Spain displays high autonomy but lacks habeas corpus powers common to Latin American *Defensorías*. The autonomy of the El Salvadorian models is lessened by its inclusion within the Public Prosecutor's Office. Conversely, Costa Rica displays relatively robust powers but is undermined by its lack of constitutional status. The diagram also exposes a number of extreme cases. The Colombian office is stripped of many of the formal autonomy provisions, most visible in a hybrid Presidential appointment process. This situation is further exacerbated in the Honduran and Mexican cases where the offices were created by Presidential decree. At the other end of the spectrum is Argentina, with a design that provides reasonable autonomy but few of the powers associated with these offices. The recently created Chilean National Institute bears little structural resemblance to the Iberian *Defensoría* model.

This exercise provides a baseline indication of the relative formal strength of Latin American *Defensorías* at point of origin. Central to the argument presented in this thesis is the assertion that formal design principles are important in explaining the impact of *Defensorías* as they may have significant material implications. However, as Figure 1.4 suggests, formal design alone shed, at best, partial light on the actual experience of *Defensorías* in variably stable institutional settings as presented in Table 1.1 above. In light of the cross-national evidence presented in this study, there is little support for the widespread assumption that institutional performance will correlate with structural form. Rather, it is the interaction between formal and informal factors which ultimately determines NHRI success or failure.

By empirically testing longstanding formalist claims, this book generates a number of provocative insights into the significance of formal baselines for understanding NHRI effectiveness. Accounts of NHRI effectiveness have tended to over-focus on institutional attributes and, in turn, extrapolate from related performance indicators to evaluate institutional efficacy. The paper builds on a growing recognition among observers that descriptive claims based on formal characteristics are not enough, it is necessary to also yield data about the actual effectiveness of NHRIs on the ground.⁶⁶ Drawing on a wealth of empirical material, the findings presented here serve to confirm some long-held intuitions concerning the underlying fundamentals of an effective NHRI. On the other hand, some of the findings aim to expose gaps in current thinking as well as suggest possible respecification of conventional analytical frameworks. For instance, the findings of this paper speak directly to key debates surrounding enforcement powers,⁶⁷ as well as more recent areas of contention such as the impact of independence safeguards and heightened NHRI engagement within international human rights instruments.⁶⁸ This theoretically-informed study is, as such, in dialogue with a diverse body of interdisciplinary and expert literature on NHRI effectiveness.

Accountability politics in theory and practice

How, if at all, do national human rights institutions (NHRIs) or *Defensorías del Pueblo* in Latin America, influence state behaviour and affect the outcome of political processes? As their adoption has accelerated globally, the empirical question of how they actually work, and

protagonist in the education and promotion of human rights. For an extensive review of such nuances, see Santistevan, 'El Defensor del Pueblo en Iberoamérica', pp. 27-106.

⁶⁶ Cardenas 2001; Murray 2007.

⁶⁷ As Carver put it in 2000 'the questions to be resolved are: how far should a NHRI itself have the power to enforce remedies for the violation of human rights; and how far should it have the capacity to initiate judicial proceedings.' See ICHRP 2000: 92.

⁶⁸ Linos and Pegram 2013, forthcoming

crucially when and why they matter has taken on additional salience. Do *Defensorías* make a positive contribution to accountability for rights violations or are they just institutional façades intended to play to the international gallery? Is it always better to have a *Defensoría* than not, when in the worst case scenario, they may serve as institutional cover for rights abuses? Conversely, might *Defensorías*, under certain conditions, encourage meaningful changes in official behaviour, or even state preferences? Might they help promote a governance commitment to political accountability and respect for human rights?

These are central questions for students and practitioners of political accountability and human rights because the design of effective local accountability and rights agencies requires an appreciation of the varied ways in which they can influence state behaviour (and other relevant actors). In turn, democratic and rights advocates must confront the challenge of transforming the ideal of an NHRI into an organisation with an effective political agenda and programmatic vision. NHRIs may be the product of a global norm cascade. However, it is domestic politics which largely govern the outcome of reform. In order to develop an account of NHRI impact focused not so much formal design as relations with state and non-state accountability actors the book is heavily informed by the extensive literature on political accountability and democratic governance. The field of comparative politics is vast, with the subjects of democratisation, rule of law and accountability prominent among its many research sub-fields. One of the hallmarks of early research carried out in these sub-fields, however, has been a concentration on neo-functional accounts of political regimes that prioritised formal structures and coordination above questions of power relations and conflict, with rules and procedures held to be the prime explanatory variable of political outcomes.⁶⁹

In recent decades, however, the focus on formal structures has been challenged within comparative research on political institutions and democratic regimes, especially in relation to the developing world. Simply put, while formal rules are important, formal incentives rarely map straightforwardly onto outcomes. A wide range of intervening variables has been identified, as well as causal mechanisms, to explain the disjuncture between expected and actual outcomes of liberal institutional reform within new democracies.⁷⁰ In particular, emphasis has been placed on the ability of informal rules, norms and practices to shape political behaviour and outcomes.⁷¹ This empirical observation manifests itself most starkly in recent scholarship on ‘illusions about consolidation’⁷² and a specific concern for the quality of democratic regimes.⁷³ The significance of this gap between democratic theory and practice for regime legitimacy and effectiveness is also informing policy, evident in increasingly sophisticated data-intensive projects tracking the success or failure of ‘democratic transformation.’⁷⁴

The analytical approach of this book reflects in particular new scholarship in the social sciences on accountability theory. An accountability gap in Latin America where formal rules often bear little relation to widely accepted informal practices has been identified as a defining feature of regional democracies.⁷⁵ Scholars have highlighted the acute weakness of

⁶⁹ Przeworski fire alarms here

⁷⁰ Fox 2006; Mahoney & Thelen 2010; Peruzzotti & Smulovitz 2006

⁷¹ Levitsky & Murillo 2009; Rueschemeyer 2010

⁷² O’Donnell 1996

⁷³ Linz and Stepan 1996; O’Donnell 2005; 2010; Whitehead 2002; Diamond & Morlino 2005; Morlino 2010

⁷⁴ See in particular the Bertelsmann Transformation Index undertaken annually by the Bertelsmann Foundation: <http://www.bti-project.org/home/index>

⁷⁵ See O’Donnell, ‘On the State, Democratization and some Conceptual Problems’, p. 10.

state checks and balances, as well as the often abrupt and wholesale nature of institutional transformation.⁷⁶ This reality has prompted a search for drivers of political behaviour and outcomes beyond coercive enforcement. The literature has highlighted the impact of cognitive pressure, informal norms created by solidarist groups, as well as social accountability mechanisms – such as activist litigation, popular mobilisation and media exposure that may entail material consequences.⁷⁷ More broadly, this scholarship suggests that a static institutional incentive model focused solely on material rewards and sanctions is unlikely to explain political outcomes defined by complex interdependencies and cause-effect relations. In some instances, formal rules may matter more while in others informal practices prevail. In all cases it is the interaction that is crucial. However, to date, there has been limited attention to the powerful – and, at times, systematic – effects of *particular types* of informal institutional features on accountability outcomes,⁷⁸ and no single authored comparative study exists on the topic.

This study addresses this deficit by highlighting how contexts of variably stable and enforced rules impact upon the ability of formal human rights structures to advance a political accountability and rights protection mandate. In particular, it examines how socio-institutional environments of variably stable and enforced formal rules shape political behaviour and inform the performance of NHRIs in Latin America. In so doing, the study brings us closer to the real dimensions of the ‘accountability gap’ – between codified rules and widely accepted informal practice – and the ways in which it shapes accountability politics in the region.

The book makes a significant conceptual, theoretical and empirical contribution to existing research. It advances a nuanced conceptualisation of NHRIs and their ability to forge accountability through channels outside legal enforcement authority.⁷⁹ This conceptual approach draws on a growing body of research which points to other sources of institutional restraint and forms of accountability beyond binding authority. *Defensorías* are exemplars of a new class of quasi-judicial institutions intended to enhance citizen scrutiny, participation and state democratic obligations. The study also engages a significant body of NHRI research critical of longstanding formalist claims that link ideal structures to actual performance.⁸⁰ This study emphasises the relevance of a range of processes extrinsic to NHRI design to contextualising the challenge of organisational effectiveness. Understanding the structural features – and impediments – of NHRIs carries two important lessons for social science scholars. Firstly, these insights underscore the importance of investigating diverse modes of institutional influence in promoting democratic and human rights norms. Secondly, a fuller understanding of the mechanism of social influence would help to explain the puzzling origins of these institutions and, despite often inhospitable political and institutional settings, their ability to make important contributions to political accountability at the domestic level.

⁷⁶ Juan Mendez, ‘Fundamental Rights as a Limitation to the Democratic Principle of Majority Will’, in Guillermo O’Donnell et al. (eds.), *The Quality of Democracy: Theory and Applications*, (Notre Dame: University of Notre Dame Press, 2004), p. 202; Levitsky & Murillo 2012.

⁷⁷ Lily Tsai 2007; E. Peruzzotti and C. Smulovitz (eds.), *Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies*, (Pittsburgh: University of Pittsburgh, 2006); Peruzzotti 2012 Polity article

⁷⁸ A notable exception is Helmke and Levitsky 2006

⁷⁹ Significantly, *Defensorías* do not have legally-binding powers but enjoy a range of quasi-judicial faculties, including robust investigative powers.

⁸⁰ See ICHRP 2000; 2005; Goodman and Pegram 2012; Pegram 2008; 2011; 2012; Reif 2004; Ugglá 2004; Mertus 2009; Agbakwa & Okafor 2002

Theoretically, the book contributes to existing research in the area of democratization studies and in particular the growing field of institution-building and accountability in low quality democratic regimes. While these areas of research provide the fundamental coordinates guiding this work, none on their own have addressed the central theoretical question posed here, nor have they provided a fine-grained theoretical framework for understanding the dynamics of organisational impact in institutional contexts defined by variably powerful informal institutions. The book makes a theoretical contribution by identifying a specific set of informal mechanisms and institutional features which shape accountability politics. It further offers an insightful comparative angle of vision on the multi-dimensional quality of democracy in Latin America.⁸¹ What emerges from the analysis is the institutionalisation of a kind of democracy in these societies which, while addressing accountability gaps to some extent, cannot fully and routinely overcome them. Better theorising of the accountability gap is important to the extent that it drives political behaviour, shapes citizens' demands and expectations, and exposes the ability and willingness of democratic structures to fulfil their function. Recognition of such gaps, even in highly-functioning democracies, also serves as an important corrective to those who would deny the need for an NHRI in such contexts.

Finally, the empirical contribution of the book is to study a critical dependent variable that has received little attention. To date, studies of diffusion have focused on convergence of levels of democracy and rights protections across neighbours.⁸² Others have inquired into the mechanisms driving diffusion of election monitoring, constitutionally enshrined rights, constitutional review, and family policy choices.⁸³ These studies, valuably, provide greater precision on the mechanisms of diffusion and the conditions under which international norms become influential. However, they offer little insight into the positive or negative impact of diffused norms and structures on democratic practice. This study evaluates the impact of a central intervening variable: the adoption of national administrative structures to monitor and improve democratic performance. To do so, the book presents substantial empirical evidence to examine the action and effects of NHRIs within a defined regional referent group. It primarily uses case-study techniques to explore a multivariate analysis of NHRI activity across regions and in three cases, those of Colombia, Costa Rica and Peru, presenting theoretically driven narratives of the central political developments in each.

The study provides exciting empirical insights into why some NHRIs are more able and willing to promote human rights, and the empirical components of the book will in turn inform theories on political accountability and democratization. The following section outlines in greater detail the research design used to carry out the study and the extensive original data that underpins the empirical analysis.

Research design and methods

An adequate explanatory model of institutional change and impact in Latin America must engage with both formal and informal influences upon institutional development. Empirical real world regularities tell us that instead of conceiving of institutionalisation as the creation of predictably stable, credible and routinised internal practices, formal structures are often subject to abrupt change due to a range of cross-pressures, from tampering by powerful social forces, to executive dictat or legislative reform, endogenous change agents and institutional

⁸¹ Morlino 2009

⁸² Francisco O. Ramírez et al. (1997); Brinks and Coppedge (2006)

⁸³ Hyde (2009; 2011); Goderis & Versteeg (2011); Linos (2011); Ginsburg (2012)

decay.⁸⁴ Historical institutionalist analysis emphasises the need to develop causal propositions to explain institutional change which go beyond simply exogenous shock or environmental shifts to also inquire into sources of endogenous institutional change.⁸⁵ Such insights draw attention to the likelihood of outcomes in Latin America to be regulated by informal mechanisms in a loose institutional framework. Identifying the specific causal mechanisms involved represents a key challenge in explaining political outcomes, and requires explicit attention at the research design stage. In particular, informal rules are by their nature difficult to observe and measure. However, despite persisting epistemological differences, it is widely held that their existence and effects merit careful attention.⁸⁶

In attempting to isolate the causal mechanisms in the cases I examine here, I employ the technique of process-tracing and mechanism-based theorising. Process tracing is an approach that draws on a range of sources and evidence to identify the intervening causal process between independent and dependent variables.⁸⁷ By rigorously tracing the causal chain and mechanisms connecting cause and outcome, the study provides a firmer basis for attributing causal significance. As such, extensive empirical substantiation of causal claims is intended to increase the confidence of the general and specialist reader in the robustness of the findings presented here. In instances of organisational impact on political outcomes, shifting boundaries between formal structures and informal sources of influence often become blurred. But by using the process tracing method it is at least possible to identify where political developments are generated principally by formal rules or informal practice, and their interaction.

The book also provides a richer understanding of micro-level institutional processes which, in turn, facilitates a more fine-grained, mechanism-based theorising about these institutions.⁸⁸ Mechanism-based theorising, distinct from correlation-based analysis, reflects this volume's intent to carefully develop and elaborate a set of institutional proxies capable of more accurately capturing the impact of NHRIs. A mechanism-based approach emphasises causal processes, as opposed to the covariation of various observed phenomena, to explain the processes by which NHRIs are able to produce changes in state behaviour. This is done with particular regard to alternative means of holding powerful actors accountable as well as interactive effects of distinct mechanisms of social accountability. Existing works in this area typically do not emphasise, and often disregard, these less visible processes.

The prevalence of NHRIs in Latin America provides the backdrop to the comparative and original single case studies through which the book provides a deeper understanding of the transformative potential of these institutions. To assist in this task, NHRI development is examined in light of political accountability theory and its specification of actors, arenas and modalities of action across state and social domains. Beyond change-permitting formal properties, the central empirical focus of the book is the formal and informal relations of NHRIs across vertical (direct electoral channels), horizontal (state checks and balances) and social (non-governmental) arenas of accountability. The rationale for this focus lies in the

⁸⁴ See Richard W. Scott, 'Approaching adulthood: the maturing of institutional theory', *Theory and Society*, vol. 37, no. 5, October 2008, p. 431.

⁸⁵ Mahoney & Thelen 2010

⁸⁶ D. Rueschemeyer, *Usable Theory: Analytical Tools for Social and Political Research*, (NJ: Princeton University Press, 2009), p. 210.

⁸⁷ Alexander and Bennett 2005

⁸⁸ Charles Tilly, 'Mechanisms in Political Processes', *Annual Review of Political Science*, vol. 4, June 2001, pp. 21-41.

observation that an NHRI may serve as a potential point of intersection between state and society. This framework takes into account the complex accountability impact of an organisation capable of interlinking distinct rights arenas and promoting state compliance across institutional domains. It also makes possible the systematic accumulation of comparable data, identifying mechanisms and processes that play significant parts across diverse settings, but result in varying outcomes depending on their combination, sequence and context.

The analytical framework is therefore a heuristic device and should not be reified. It serves as the basis for comparing from the within-case analyses using a structured, focused approach to explore the various groups of causally relevant actors and processes that explain NHRI institutional development. I also develop a basic typology of the roles that NHRIs can play and use it to structure the discussion of the enormous empirical diversity that characterises their experience over time and across countries.⁸⁹ This approach is intended to develop meaningful explanations as to how NHRIs actually work in practice, and why and when they matter, as well as draw out theoretical inferences for comparative political research. I compare NHRI development across the region as well as in three specific cases with broadly analogous formal structures, but operating in diverse socio-institutional settings which pose multiple challenges to overcoming the gap between formal commitments by states and actual practices on the ground. Each case is evaluated with reference to a set of similar theoretically-guided questions intended to expose the influence of endogenous and external forces on processes of organisational impact across arenas of accountability.

On case selection, beyond a region-wide comparative chapter, the book examines in depth the experience of the Colombian, Costa Rican and Peruvian NHRIs operating in Latin American democratic regimes which display significant variation in terms of the stability and enforcement of formal rules within broader socio-institutional and political settings. Although there are 15 NHRIs currently in operation in Latin America,⁹⁰ this set of three cases makes for an appropriate selection for a number of reasons. First, these three national institutions operate in diverse settings where the fit over time between liberal formal rules and behaviour and expectations has been variably tight, loose or practically nonexistent. It is this study's contention that the challenge faced by NHRIs in contexts where formal rules are widely contested, routinely violated, and frequently changed takes on a particular character. The magnitude of this challenge is particularly acute in the Colombian case which combines a nominally democratic state structure with massive human rights violations. Identified as one of the world's most unstable electoral democracies, Peru presents a challenging but relatively more hospitable institutional setting. Costa Rica, in contrast, displays high values on democratic and rights-based indicators. As such, the cases represent a good test of how variably stable and enforced formal rules shape both the impact of formal human rights institutions and the demands and expectations placed upon these structures.

Second, and related to the first point, these cases also represent clear examples of international diffusion and local adaptation over time. All three NHRIs were established during the circumscribed timeframe of 1990 to 1993 by variably liberal or authoritarian regimes, the period during which the global and regional cascade of NHRIs took hold and

⁸⁹ George and Bennett 2005, Ch

⁹⁰ Exceptions include Uruguay where legislation has been passed but the NHRI is yet to be activated and Brazil which lacks a national-level human rights structure.

accelerated.⁹¹ All three offices share largely analogous institutional features reflective of influential NHRI templates at the global and regional level. They also have continued to function without interruption since activation. This is not the case across the region. Many NHRIs were effectively left dormant or inactive for extended periods of time following legislative enactment.⁹² Others have only recently been established in law and thus provide little insight into organisational development.⁹³ NHRIs in El Salvador and Honduras were created in post-conflict situations under the auspices of internationally brokered peace agreements. Furthermore, not all NHRIs enjoy a broad and unrestrictive rights mandate and jurisdiction. Idiosyncratic design features due to external factors, such as federal state structures, pose significant limitations in terms of drawing comparisons across cases.⁹⁴ Nevertheless, the book does reflect on the experience of all 15 active *Defensorías* in the region.

Two further points are worth highlighting. Firstly, the three cases all display variation on the primary dependent variable, the impact of the NHRI over time. The pitfalls of case selection on the dependent variable have been widely discussed,⁹⁵ and the three in-depth case studies presented here reflect the book's central research focus on the impact of sharply contrasting political and institutional conditions on the NHRI. Secondly, the logic for case selection is broadly consistent with the objectives of qualitative social science research, namely, to locate smaller populations of cases that exhibit sufficient similarity to be meaningfully compared to one another.⁹⁶ The book presents a highly contextualised picture of the Latin American NHRI, albeit one with comparative intent. More broadly, it seeks to approach questions of democratic quality in a grounded and empirical manner that attempts to avoid reduction. As such, this is a story of international diffusion, but also, and more significantly, local adaptation. To the extent that a focus on Latin America provides some basic control of variation in political and legal systems, history and regional culture, it also cautions against overextension of the comparative scope of the study beyond this regional context.

Finally, given the evidentiary demands of the process tracing method, a substantial amount of primary and secondary data is compiled. Primary sources include government records, archival documents, interview transcripts, contemporary news accounts, biographies and memoirs. Extensive semi-structured interviews have also been conducted with over 120 participants within NHRIs, branches of government, including the executive, legislature, the judiciary and other horizontal agencies, as well as non-governmental organisations, policy think tanks, and universities. Due attention has been paid to the potential informational biases of each source.⁹⁷ Despite this cautionary proviso, interviews constitute an indispensable source of data collection, the validity of which may be further strengthened by their integration into the analysis in conjunction with process tracing and corroborating data.

⁹¹ According to one observer, only eight NHRIs existed in 1990 compared to 28 by 1993 (Kjaerum 2003). As of 2012, there exist an estimated 108 NHRIs (Linos and Pegram, in press, forthcoming 2013).

⁹² This is the case for Bolivia (six years), Ecuador (eight years), Nicaragua (four years), and Paraguay (nine years).

⁹³ Recently created NHRIs include Venezuela (1999), Panama (1998), Uruguay (2009), and Chile (2009).

⁹⁴ For instance the federal-level Argentine NHRI is restricted in terms of jurisdiction over the military and state-level authorities.

⁹⁵ See Barbara Geddes 1990

⁹⁶ James Mahoney, 'Qualitative Methodology and Comparative Politics', *Comparative Political Studies*, vol. 40, no. 2, February 2007, p. 129.

⁹⁷ Oisín Tansey, 'Process Tracing and Elite Interviewing: A Case for Non-probability Sampling', *Political Science and Politics*, vol. 40, no. 4, October 2007, pp. 765-772.