

Central Bank Autonomy in Latin America: A Survey and Case Studies

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There is no subtler, no surer means of overturning the existing basis of society than to debauch the currency. The process engages all the hidden forces of economic law on the side of destruction, and does it in a manner which not one man in a million is able to diagnose.

– John Maynard Keynes¹

INTRODUCTION

Beads of sweat forming on his furrowed brow, an uncharacteristically anxious Hugo Chavez appeared on television from the Miraflores Palace early in the morning of December 3, 2007.² For a nation accustomed to seeing its bombastic president sing the praises of his “Bolivarian” Revolution, Chavez struck the pose of a leader under siege. Though many experts had speculated that the sweeping constitutional amendments he had proposed a mere two months earlier might fail, amendments which would have wrought far-reaching changes on Venezuela, few were prepared for the political theatre which ensued when they actually did.³ Given Chavez’s seeming grasp on all the levers of Venezuelan power, many observers noted that the proposed amendments, collectively referred to as the *Reforma de la Constitución de la República Bolivariana de Venezuela* (the *Reforma*), would all but make him the latest in a long line of Latin American *caudillos* that litter the region’s history.⁴

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¹ JOHN MAYNARD KEYNES, *THE ECONOMIC CONSEQUENCES OF PEACE* 236 (1920).

² See Simon Romero, *Venezuela Vote Sets Roadblocks on Chávez Path*, N.Y. TIMES, Dec. 4, 2007, at A1.

³ Editorial, *Not so Fast, Venezuelans Warn Chavez*, ST. PETERSBURG TIMES, Dec. 8, 2007, at 16A.

⁴ See Roger Cohen, Op-Ed, *Democracy In the Americas*, N.Y. TIMES, Dec. 6, 2007, at A41. See also ANDRÉS OPPENHEIMER, *CUENTOS CHINOS* 223–63 (2005); Mario Garcia-Serra, *The “Enabling Law”: The Demise of the Separation of Powers in Hugo Chavez’s Venezuela*, 32 U. MIAMI INTER-AM. L. REV. 265, 266 (2001). A caudillo is defined as:

In its coverage of the referendum, the media largely focused on the abandonment of term limits for the president, which many suggested would result in Chavez becoming a president for life.⁵ In addition to term limits, the *Reforma* also included sweeping changes to several important governmental institutions, such as the military and the central bank, the *Banco Central de Venezuela*.⁶ Indeed, the *Reforma* explicitly provided for the abolition of central bank independence.⁷ Had the *Reforma* passed, proposed Article 318 would have provided the following, in part: The National Executive authority, through the *Banco Central de Venezuela*, acting in strict and obligatory coordination, will determine the monetary policies and will exert the monetary authority of the National Power.⁸

While the scope of this effort is not limited to the “Bolivarian” travails of Mr. Chavez, this episode makes one fact plain: the independence of central banking authorities in the various Latin American states is frequently the subject of great political upheaval. Indeed, the drastic political turmoil that has long been endemic to the region has also led to frequent and radical policy changes in this central state function.⁹ Whether labeled “neoliberal” or “Washington Consensus,” many of the policies advocated for in this paper are not without precedent in the region—and they certainly are capable of arousing significant passion and controversy at the hands of populist leaders. Indeed, Professor Felipe Larrain of the *Pontificia Universidad Catolica*

A Latin American military dictator. In the wake of the Latin American independence movement in the early 19th century, politically unstable conditions and the long experience of armed conflict led to the emergence in many of the new countries of strongmen who were often charismatic and whose hold on power depended on control over armed followers, patronage, and vigilance. Because their power was based on violence and personal relations, the legitimacy of the caudillos' rule was always in doubt, and few could withstand the challenges of new leaders who emerged among their own followers and wealthy patrons.

ENCYCLOPÆDIA BRITANNICA ONLINE (2009), available at <http://www.britannica.com/EBchecked/topic/100372/caudillo>.

⁵ Chris Kraul, *Venezuelan Voters Reject Bid by Chavez to Extend Powers*, L.A. TIMES, Dec. 3, 2007, at A1.

⁶ *Id.*

⁷ It must be noted that the terms central bank “autonomy” and “independence” are used interchangeably throughout this paper.

⁸ La Reforma de la Constitución de la República Bolivariana de Venezuela (2007) [hereinafter “La Reforma”]. Article 318 of *La Reforma* reads as follows: “El Poder Ejecutivo Nacional, a través del Banco Central de Venezuela, en estricta y obligatoria coordinación, fijará las políticas monetarias y ejercerá las competencias monetarias del Poder Nacional.” All translations of Article 318 are by the author.

⁹ See, e.g., Luis Jácome H., *Legal Central Bank Independence and Inflation in Latin America During the 1990s*, 4 (IMF, Working Paper No. 01/212 2001), available at <http://www.imf.org/external/pubs/ft/wp/2001/wp01212.pdf>.

de Chile pointedly noted that while Latin America has made great strides in controlling inflation, the fact that two of the region's largest economies, Venezuela and Argentina, have returned to double-digit inflation rates of around 20% and 10%, respectively, is deeply troubling and has "led some pundits to wonder whether high inflation—and even hyperinflation—may be on its way back to Latin America."¹⁰ Further, even though the renowned Larrain noted the present absence of many of the historical causes of hyperinflation, he nevertheless seemed to strike a dark note, referring particularly to the case of Chavez's Venezuela:

The true risk of high inflation in Latin America lies in populism. It is no coincidence that Venezuela is the country with the highest rate of inflation in the region—though low by historical standards. Hugo Chavez, Venezuela's president, is the face of Latin American populism, though of a different brand; a rare mix of socialism and populism for export which can be sustained without an explosion of inflation as long as oil-related fiscal revenues remain generous. If that situation changes—and it will when the international cycle turns—the risk of high inflation is at the door. Hyperinflation is not dead, it is merely sleeping. Leaders such as Zimbabwe's Robert Mugabe are capable of awakening the monster.¹¹

This ominous warning is perhaps all the more terrifying given the knowledge that Larrain's expectation that energy prices would fall in the short term has indeed come to pass. Are we merely waiting at this stage for the other shoe to drop?

Central bank autonomy, most scholars agree, is a *sine qua non* of monetary or price stability.¹² Recent scholarship has divided this pillar of economic stability into two categories: *de jure* and *de facto* sovereignty.¹³ Clearly, while this study will disproportionately focus on formal legal structures that have been or may be put into place in order to provide for independent monetary judgment, such formalism often fails to truly explain the full extent of political interference in the central bank decision-making processes. A state may have a finely crafted legal structure in place that, while perfect in form, fails utterly in function. It is with this understanding that I shall consider several important case studies focusing on Latin America. Over the last two decades, reforms strengthening central bank

¹⁰ Felipe Larrain, *The Spectre of Latin American Inflation*, THE BANKER, Sept., 2007 at 176.

¹¹ *Id.*

¹² Agustín Carstens & Luis Jácome H., *Latin American Central Bank Reform: Progress and Challenges*, 6 (IMF, Working Paper No. 05/114 2005), available at <http://www.imf.org/external/pubs/ft/wp/2005/wp05114.pdf>.

¹³ See, e.g., *id.*

autonomy have been implemented throughout the region. Between the late 1980s and 1990s, for example, numerous countries in the region made such reforms, including Chile (1989), El Salvador (1991), Argentina (1992), Colombia (1992), Venezuela (1992), Ecuador (1992 and 1998), Peru (1993), Mexico (1993), Bolivia (1995), Costa Rica (1995), Uruguay (1995), Paraguay (1995), Honduras (1996) and Nicaragua (1999).¹⁴ By highlighting several of these reforms, I hope to outline the existing trends in the region.

Following this brief introduction, Section I of this study will provide a comprehensive review of the economic literature relating to the economic benefits of central bank independence, including a description of the various models and methods economists have used to analyze the issue. Section II will consist of three shorter case studies from the region, specifically addressing the central bank structures that have been adopted in Argentina, Chile, and Mexico. In each case, recent central bank policy shifts will be addressed and placed in historical context. Section III will return to the issue of the Venezuelan amendments proposed by Mr. Chavez. In addition to presenting a detailed analysis of the banking amendments that were offered and rejected by the public, this section will also discuss the aftermath of that stunning electoral rejection and the current state of affairs in Venezuela. Finally, the conclusion will place Venezuela in the broader context of the region and discuss the general trends that seem to be forming throughout Latin America.

I. CENTRAL BANK INDEPENDENCE AND PRICE STABILITY

A. The Scourge of Inflation

Prior to discussing the economic literature on the correlation between central bank autonomy and price stability, it is worth stepping back for a moment and discussing inflation as a phenomenon in itself. I will soon discuss the trade-off faced by monetary decision makers between short-term growth and longer-term inflation, and the balance that central bankers or monetary authorities must seek to achieve between these two. However, pointing to the destructive capacity of this economic phenomenon, the eminent economist Milton Friedman noted, "inflation is a disease, a dangerous and sometimes fatal disease, a disease that, if not checked in time, can destroy a society."¹⁵

¹⁴ Jácome, *supra* note 9, at 6.

¹⁵ MILTON FRIEDMAN, MONEY MISCHIEF: EPISODES IN MONETARY HISTORY 191 (1994).

Indeed, referring to Bolivia, Brazil, and Argentina, Friedman noted that Latin America is hardly a stranger to catastrophic hyperinflation in the modern era.¹⁶ Looking over the history of the region, he noted that hyperinflations in Chile, Brazil, and Argentina imposed broad political and social costs, including the establishment of military governments in the mid-twentieth century.¹⁷ More recently, Friedman asserted, “repeated inflations in Brazil . . . in the 1980s have led to the repeated unsuccessful ‘reforms,’ the replacement of governments, flights of capital, and heightened economic instability.”¹⁸

As to the proximate cause of inflation, Friedman noted that “[t]here is probably no other proposition in economics that is as well established as” the principle that “[i]nflation occurs when the quantity of money rises appreciably more rapidly than output, and the more rapid the rise in quantity of money per unit of output, the greater the rate of inflation.”¹⁹ The fundamental challenge embedded in this dilemma, however, is the fact that “[o]utput is limited by the physical and human resources available and by the degree of knowledge and capacity for using those resources,” whereas “modern forms of money—paper and bookkeeping entries—are subject to no such physical limits.”²⁰

Pointing to the Brazilian experience between 1965 and 1989 during which the quantity of money per unit of output correlated quite closely with the high rate of inflation, Friedman noted that “the price level at the end [was] nearly 6 million times the level at the beginning—an average of 86.5 percent a year.”²¹ Considering the Brazilian dilemma, Friedman predicted that the country would not be able to operate at such “hyperinflationary rates without abandoning its national currency and adopting a substitute.”²² Indeed, in the subsequent years, the government would adopt several substitutes in its long and painful journey back to price stability.²³

B. The Centrality of Central Bank Independence

B.W. Fraser, the former Governor of the Reserve Bank of Australia, perhaps summed up the importance of central bank independence most effectively when he noted, “price stability is

¹⁶ *Id.*

¹⁷ *Id.* at 192.

¹⁸ *Id.*

¹⁹ *Id.* at 193.

²⁰ *Id.* at 193–94.

²¹ *Id.* at 199.

²² *Id.* at 200.

²³ *Id.*

generally considered a good thing, and . . . an independent central bank can help to achieve it. I do not need to dwell on the desirability of price stability. Economies work better if investment and wage decisions are not confused and thwarted by high inflation.”²⁴ Further emphasizing the importance of mitigating inflation, Fraser added, “some people see price stability as an anchor not only for the economy, but also for society at large.”²⁵ He emphasized, however, that keeping prices stable is “*not* the natural order of things in a modern economy.”²⁶

Several centuries earlier, the eminent British economist David Ricardo advocated for greater independence for monetary authorities.²⁷ In his *Plan for the Establishment of a National Bank*, Ricardo made plain his lack of confidence in political decision-making in the arena of monetary policy:

It is said that Government could not be safely entrusted with the power of issuing paper money; that it would most certainly abuse it; and that, on any occasion when it was pressed for money to carry on a war, it would cease to pay coin, on demand, for its notes; and from that moment the currency would become a forced Government paper. There would, I confess, be great danger of this, if Government—as that is to say, the Ministers—were themselves to be entrusted with the power of issuing paper money. But I propose to place this trust in the hands of Commissioners, not removable from their official situation but by a vote of one or both Houses of Parliament. I propose also to prevent all intercourse between these Commissioners and Ministers, by forbidding every species of money transaction between them. The Commissioners should never, on any pretence, lend money to Government, nor be in the slightest degree under its control or influence. Over Commissioners so entirely independent of them, the Ministers would have much less power than they now possess over the Bank Directors. Experience shows how little this latter body have been able to withstand the cajolings of Ministers; and how frequently they have been induced to increase their advances on exchequer bills and treasury bills, at the very moment they were themselves declaring that it would be attended with the greatest risk to the stability of their establishment, and to the public interest. . . . I ask, then, whether the country would not possess a greater security against all such influence, over the minds of the issuers of paper, as would induce them to swerve from the strict line of their duty, if the paper money of the country were issued by Commissioners, on the plan I have proposed, rather than by the Bank of England, as at

²⁴ B.W. Fraser, *Central Bank Independence: What Does It Mean?*, RES. BANK OF AUSTRAL. BULL. 1, 2 (1994), available at http://www.rba.gov.au/PublicationsAndResearch/Bulletin/bu_dec94/bu_1294_1.pdf.

²⁵ *Id.*

²⁶ *Id.* (emphasis in original).

²⁷ *Id.* at 1.

present constituted? If Government wanted money, it should be obliged to raise it in the legitimate way; by taxing the people; by the issue and sale of exchequer bills, by funded loans, or by borrowing from any of the numerous banks which might exist in the country; but in no case should it be allowed to borrow from those who have the power of creating money.²⁸

Other economists, including John Maynard Keynes, later adopted similar views to Ricardo's as to the benefits of central bank independence.²⁹ Further, modern empirical analysis has largely affirmed Ricardo's prescience. Such analysis has shed much light on the real, measurable impact of a central bank beholden to politically motivated actors.

Echoing Ricardo, Federal Reserve Board Chairman Ben Bernanke explained "[t]hat central bank independence promotes lower inflation in developed countries is well-established by the economic literature."³⁰ An insufficiently independent central bank, he added, "may be forced to ease policy inappropriately to reduce the financing costs of government debt or to help re-elect incumbents."³¹ Pointing to Latin America in particular, Bernanke noted that "[i]n the late 1980s and early 1990s, several countries took steps to enhance central bank independence, both through constitutional provisions, and through changes in the central bank law."³² It must be noted, however, that he added the following caveat: "Although the evidence for developing countries is more mixed, several studies have found that central bank independence promotes low inflation in those countries as well, especially when *de facto* rather than *de jure* measures of independence are used."³³ Indeed, Bernanke noted that this distinction is particularly important in Latin America and to convey his point more effectively, he gave the example of Brazil:

[A]lthough a number of features of Brazilian law promote the independence of the nation's central bank, the bank's *de facto* independence may be limited by the power of the president to remove members of the Monetary Policy Committee. However, the fact that the left-of-center Lula administration in Brazil has been able to support disciplined monetary and fiscal policies without significant

²⁸ DAVID RICARDO, PLAN FOR THE ESTABLISHMENT OF A NATIONAL BANK (1824), reprinted in THE WORKS OF DAVID RICARDO 506–07 (J.R. McCulloch ed., 1871).

²⁹ Fraser, *supra* note 24 at 1.

³⁰ Ben S. Bernanke, Chairman, Fed. Reserve Sys., *Inflation in Latin America: A New Era?*, Remarks at the Stanford Institute for Economic Policy Research Economic Summit, (Feb. 11, 2005) (*transcript available at* <http://www.federalreserve.gov/BoardDocs/Speeches/2005/20050211/default.htm>).

³¹ *Id.*

³² *Id.*

³³ *Id.* See *infra* Part I.D for a discussion of the use of *de facto* and *de jure* measures of independence.

loss of popularity is itself testimony to the degree that such policies are becoming more widely accepted in the region.³⁴

Generally, however, Bernanke's overt endorsement of broad central bank independence, coupled with his lauding of the Lula administration's monetary policy, follows to a large degree from his broader conclusion that policies such as this were largely responsible for the achievement of price stability in Latin America during the 1990s.³⁵

Scholars have summarized the theoretical economic literature as essentially asserting three broad arguments to explain why greater independence in monetary decision making yields lower inflation rates.³⁶ First, is the premise that government financial decision makers will tend to exert "pressure on monetary authorities to relax monetary conditions."³⁷ This is largely due to the fact that "[r]estrictive monetary policy worsens the fiscal position of the government through a reduction in seigniorage revenue, increase in the interest burden of the debt, and lower tax receipts because of the temporary economic slowdown."³⁸ The second argument is based on the premise that "a central bank enjoying economic independence will force the government to reduce the deficit" rather than being "forced to finance government deficits by printing money."³⁹ The third and perhaps most influential line of argument is quite different as it relates to time-inconsistency issues.⁴⁰ Governments, it asserts, have short-term objectives which are frequently inconsistent with longer-term objectives.

A timely example follows: In the event that a government attempts to stimulate the economy through a monetary expansion, the likely future cost is higher inflation.⁴¹ The argument continues by noting that a "[l]ack of credibility in the government commitment to the announced inflation objective leads rational economic agents to demand a risk premium to compensate for this inflationary bias."⁴² After all, it was reasonably assumed that "governments facing a trade-off

³⁴ *Id.*

³⁵ *See id.*

³⁶ Eva Gutiérrez, *Inflation Performance and Constitutional Central Bank Independence: Evidence From Latin America and the Caribbean* 1, 4 (IMF, Working Paper No. 03/53, 2003), available at <https://www.imf.org/external/pubs/ft/wp/2003/wp0353.pdf> (discussion drawing from the work of Eijffinger & de Haan).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 5.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

between inflation and unemployment are tempted to choose higher-than-optimal inflation rates.”⁴³ The policy response to this is clear: by delegating monetary policy to a conservative central bank, independent of more politically sensitive decision makers, the risk premium can be mitigated through a more credible commitment to future inflation objectives.⁴⁴

Others are far more willing to ascribe less benevolent motives to political actors. Fraser noted that “cynics,” whose skepticism he did not equally share, might also blame the inflation bias on the political process itself.⁴⁵ Such “cynics” would assert that “politicians have short time horizons, stretching only as far as the next election.”⁴⁶ Indeed, Fraser outlined the “treadmill of a political business cycle” as follows:

[W]here interest rates are eased prior to an election to generate strong growth around election time, and the inflation does not surface until after the election. After the election, interest rates are raised, thereby perpetuating a boom/bust cycle. In this story, even politicians who understand that there is no long-term trade-off between inflation and economic activity are drawn irresistibly to the short-term trade-off. Independent and longsighted central bankers are needed to rescue politicians from this temptation.⁴⁷

This view of politicians as “single-minded seekers of reelection” has received a significant amount of attention in political science scholarship.⁴⁸ While Fraser disclaims this view, noting that he is “less cynical about politicians generally,” he nevertheless adds, as others have concluded, that “there is an inherent bias in policy making which pushes policy makers towards a trade-off point which is soft on inflation.”⁴⁹ Explaining this phenomenon, Fraser noted that “policy is determined and implemented under conditions of great uncertainty,” and “[i]t is this uncertainty . . . which can inject an inflationary bias into the policy making process.”⁵⁰ He colorfully notes, “[t]hey may be reluctant to take away the punchbowl just when the party gets going—that unpopular task which the Governor of the U.S. Fed from 1951 to

43 Luis I. Jácome & Francisco Vázquez, *Any Link Between Legal Central Bank Independence and Inflation? Evidence from Latin America and the Caribbean* 1, 3 (IMF, Working Paper No. 05/75, 2005), available at <http://www.imf.org/external/pubs/ft/wp/2005/wp0575.pdf>.

44 *Id.*

45 See Fraser, *supra* note 24 at 2–3.

46 *Id.* at 2.

47 *Id.* at 3.

48 See, e.g., DAVID R. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION 17 (2d ed. 1974).

49 Fraser, *supra* note 24 at 3.

50 *Id.*

1970, William McChesney Martin, said was the duty of central bankers.”⁵¹

Interestingly, many scholars have also noted that while an independent central bank must, to some degree, be willing to say “no” to political actors in order to maintain its integrity and freedom, it nevertheless derives its independence from a willing delegation by the people’s representatives.⁵² Indeed, Jeffrey Fuhrer, the former Vice President of the Federal Reserve Bank of Boston, noted that the integral question is not whether there should or should not be *any* political influence on central banking decisions, but what constitutes “undue” political pressure.⁵³ Pointing to prior research, Fuhrer cogently added that “a central bank cannot and should not maintain long-term independence from political pressure if it consistently acts contrary to the will of the electorate.”⁵⁴ This balance is a complex one to achieve and not without significant drawbacks. Fuhrer illustrates the time inconsistency problem through an effective illustration: “The situation is analogous to the lenient parent who, observing that the misbehaving child’s misdeed is done and cannot be undone, decides not to punish the child. The result might be that the child misbehaves more often than the parent would like.”⁵⁵ Perhaps surprisingly, and adding to the complexity of this issue, studies have shown that the “median voter” would prefer a “central banker more inflation averse than himself,” while also preferring to remain “time inconsistent.”⁵⁶

Empirical research on the relationship between independence and price stability has yielded a complex but fairly consistent correlation. Lawrence Summers and Alberto Alesina’s research demonstrated a “strong negative relationship between inflation variability and central bank independence.”⁵⁷ Another study, published by the Federal Reserve Bank of Cleveland identified central bank independence as a “key factor” in

⁵¹ *Id.*

⁵² Gutiérrez, *supra* note 36 at 5; *see also generally* Sylvester C. W. Eijffinger & Jakob de Haan, *The Political Economy of Central-Bank Independence*, 19 PRINCETON INT’L FIN. SEC. (1996) (referring to a pithy quote from *The Economist* which noted that “[t]he only good central bank is one that can say no to politicians”).

⁵³ Jeffrey C. Fuhrer, *Central Bank Independence and Inflation Targeting: Monetary Policy Paradigms for the Next Millennium?*, NEW ENG. ECON. REV. 19, 20 (Jan./Feb. 1997).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Alberto Alesina & Lawrence H. Summers, *Central Bank Independence and Macroeconomic Performance: Some Comparative Evidence*, 25 J. MONEY, CREDIT & BANKING 151, 151–52 (1993).

⁵⁷ *Id.* at 154. The research, however, also showed that there was no demonstrable correlation between central bank independence and the level of variability of economic growth. *Id.*

maintaining price stability.⁵⁸ Pointing to the case of New Zealand's extraordinary success in curbing inflation in the latter half of the twentieth century, the authors asserted that the passage of the Reserve Bank of New Zealand Act in 1989 was the key turning point in accomplishing this because it incorporated two fundamental reforms: "First, it gave the Reserve Bank greater independence from the central government. Second, it established an explicit inflation target, becoming the first of many countries to do so. Once considered the least independent of central banks, New Zealand's now ranks among the more independent ones."⁵⁹ Extrapolating based on the experience of New Zealand, the authors assert that because other nations followed New Zealand's example, "increased independence is, perhaps, responsible for a decline of nearly two percentage points in the average inflation rate for the industrialized nations as a whole."⁶⁰ The empirical results that the study provides are quite striking and clearly argue in favor of greater independence. Attempting to estimate what prior level inflation would have been had the New Zealand central bank been more independent earlier in the century, the authors noted, "holding all else equal, if New Zealand in the earlier time period had an independence score as high as today's, then the annual inflation rate would have been 3.4% instead of the 7.6% that actually occurred" during the period from 1955–1988.⁶¹ During that earlier period, the Reserve Bank of New Zealand was essentially an arm of the financial ministry, and the country's monetary policy was largely at the finance minister's discretion.⁶²

Taking a broader perspective, the authors also draw the sweeping conclusion "that holding everything else equal, the increase in central banks' independence would have lowered the average inflation rate worldwide from 5.6% to 3.8%."⁶³ While the authors concede that independence was not the only factor at play in these reductions of inflation rates and that the impact of central bank independence is more mercurial in the case of developing nations, they nevertheless conclude that "[a]n independent central bank is a government's most effective way to ensure delivery of a low inflation rate. Furthermore, nearly 2 percentage points of developed countries' average decline in

⁵⁸ Charles T. Carlstrom & Timothy S. Fuerst, *Central Bank Independence: The Key to Price Stability?*, ECON. COMMENT. (Fed. Res. Bank of Clev., Cleveland, Ohio), Sept. 1, 2006.

⁵⁹ *Id.* at 1.

⁶⁰ *Id.*

⁶¹ *Id.* at 2.

⁶² *Id.*

⁶³ *Id.*

inflation over time is the direct results [sic] of their central banks' increased independence."⁶⁴

C. The Arguments Against Central Bank Autonomy

While the arguments, both theoretical and empirical, in favor of central bank autonomy have largely won the day among economists, several factions still stand in stark opposition to what they label the "neoliberal" economic agenda, which they assert incorporates central bank autonomy as one of its central tenets.⁶⁵ That the term "neoliberalism" has attained near-pejorative status in certain Latin American quarters is undeniable. Indeed, to a large degree it has become a rallying cry for aspiring despots, self-styled anti-imperialists, and populists throughout the region.⁶⁶ This backlash has, to some extent, been the result of failed or poorly executed economic reforms put in place by various Latin American states over the last half-century. It has also provided a ready basis upon which populist leaders have manipulated the bleak economic disparities endemic in the region. Few Latin American leaders have been quite as successful at this sort of bluster as Hugo Chavez.

In an intense critique of the "neoliberal" economic order, Dean Timothy Canova pointedly asserts that "[c]entral bank autonomy is a particularly sacrosanct foundation of today's global economic order that undermines peace and stability."⁶⁷ In a line of argument familiar to Latin America observers, he goes on to say, "[i]n reality, central bank autonomy is a euphemism for the capture of monetary policy by interested private banking and financial interests—it is a capture intentionally designed by law."⁶⁸ Indeed, it is based on this perceived oligarchic conspiracy that Canova makes the following dire prediction:

The Neoliberal State is destined to fail in providing peace and prosperity for all precisely because central bank autonomy ensures that monetary and economic policies will favor the few over the many. The empirical evidence bears this out. Real interest rates remain at the highest sustained level of the century, and this remains one of the least recognized causes of today's top heavy distribution of wealth and income both directly, by redistributing income from debtors to creditors, and indirectly, by keeping down the real wage rate in many

⁶⁴ *Id.* at 3.

⁶⁵ See, e.g., Timothy A. Canova, *Financial Liberalization, International Monetary Dis/order, and the Neoliberal State*, 15 AM. U. INT'L L. REV. 1279 (2000).

⁶⁶ PLINIO APULEYO MENDOZA, CARLOS ALBERTO MONTANER & ALVARO VARGAS LLOSA, *GUIDE TO THE PERFECT LATIN AMERICAN IDIOT* 66–71 (Michael Lajda Ames trans., 2001).

⁶⁷ See Canova, *supra* note 65, at 1294.

⁶⁸ *Id.*

industries, thereby reinforcing the hierarchies of power that dominate the modern corporation The neoliberal state is one that dashes hopes and dreams on a mass scale, and silently impoverishes the public sector, while delivering great wealth to a small minority of global citizens.⁶⁹

As was mentioned above, however, such arguments are hardly unusual in modern era Latin American politics. Their near-ubiquity is underscored in Plinio Apuleyo Mendoza, Carlos Alberto Montaner and Alvaro Vargas Llosa's groundbreaking study of Latin American populism, *The Guide to the Perfect Latin American Idiot*.⁷⁰

According to the authors, the *perfect idiot* "resorts to the old dichotomy of the left against the right, trusting that a purely semantic or emotional factor can tilt the scale in his favor. His is the old scholastic stratagem of vilifying anyone who questions his dogma. Neoliberalism is an anathema the idiot is trying to lodge into the public conscience through frenzied repetition, as was done in the Middle Ages with heresies."⁷¹ Describing the mindset of their *perfect idiot*, the authors add, "in the subsurface of his feeble political training (a mixture of Marxist Vulgate and populism), has remained the idea that a businessman is an exploiter, getting rich off the labor of others."⁷²

Referring specifically to the *perfect idiot's* view of monetary policy and judgment, Mendoza, Montaner and Llosa note that the *idiot* "believes that [monetary issuance as a way of reactivating demand and making up for the shortage of resources] is also a means not only of development but of what he defines, with grandiloquent pomposity, as social investment. He's a friend of the great money-printing machine. And he considers the policies dedicated to assuring sound money as reactionary, neoliberal, and contrary to popular interests."⁷³ As we shall see, *infra*, these are the very goals that Mr. Chavez outlined for his "reformed" central bank.⁷⁴ Indeed, the authors note, the *idiot's* policies have been "catastrophic"⁷⁵ for the region. They add, "[i]n this case, the fox in the henhouse is not the businessman but the state, which is plucking the chickens mercilessly."⁷⁶

⁶⁹ *Id.* at 1301–04.

⁷⁰ See generally MENDOZA, MONTANER & VARGAS LLOSA, *supra* note 66.

⁷¹ *Id.* at 67.

⁷² *Id.* at 68–69.

⁷³ *Id.* at 69.

⁷⁴ See *infra* Part III.B.

⁷⁵ See MENDOZA, MONTANER & VARGAS LLOSA, *supra* note 66, at 69.

⁷⁶ *Id.*

Along these lines, Milton Friedman offered the following scathing critique of the populist view of neoliberal reforms, especially the protection of central bank independence from political interference:

No government willingly accepts the responsibility for producing inflation even in moderate degree, let alone at hyperinflationary rates. Government officials always find some excuse—greedy businessmen, grasping trade unions, spendthrift consumers, Arab sheikhs, bad weather, or anything else that seems remotely plausible. No doubt businessmen are greedy, trade unions are grasping, consumers are spendthrifts, Arab sheikhs have raised the price of oil, and the weather is often bad. Any of these can produce high prices for individual items; they cannot produce rising prices for goods in general. . . . [T]hey cannot produce continuing inflation, for a very simple reason: not one of the alleged culprits possesses a printing press on which it can legally turn out those pieces of paper we carry in our pockets and call money.⁷⁷

While later scholars such as Summers and Alesina asserted that this broad confidence in the power of the monetary was somewhat misplaced,⁷⁸ the essential truth behind Friedman's assertion is undeniable: none of the conspirators that populist demagogues would blame for all their countries' ills can actually print their own money, of which engaging in excessively, whether it be in the context of military conflict or economic upheaval, is most often the true cause of massive, debilitating inflation.

Indeed, given the collective Latin American experience over the last half-century, what is perhaps *most* striking about the sorts of arguments advanced by Professor Canova is their dogged persistence. It is, in part, this challenge that caused Fed Chairman Ben Bernanke to strike a more cautious note when he stated the following about the recent progress in Latin America:

Worldviews tend to evolve slowly, and it is far too soon to claim that ideas and politics in Latin America have changed fundamentally or irrevocably. Nevertheless, during the past fifteen years or so, both the political elites and the broader public in the region have, for the most part, shown an increased willingness to abandon the failed economic models of earlier decades in favor of new approaches that emphasize improved fiscal discipline, the benefits of free trade and free markets, and the vital importance of building strong economic institutions.⁷⁹

There can be little doubt that Bernanke's caution was amply justified and to a large degree the economic policies advanced by Mr. Chavez and his allies in the region (including Bolivian

⁷⁷ See FRIEDMAN, *supra* note 15, at 192.

⁷⁸ See generally Alesina & Summers, *supra* note 56.

⁷⁹ See Bernanke, *supra* note 30.

President Evo Morales, Ecuadorian President Rafael Correa, and Nicaraguan President Daniel Ortega) underscore the lack of consensus around free-market oriented policies, including central bank autonomy.

D. Paradigms of Analysis

In order to more effectively study the issue of central bank independence, scholars have divided the topic into several categories that can be separated from one another to allow for better comparison and analysis. Understanding these categories allows for a more precise definition of specifically what is meant by the term *independence* in the legal context. To a large degree, much of the modern analysis of central bank autonomy has accepted the fact that not all independence, as the expression goes, is equal.⁸⁰ Even the most perfect legal structure can fail utterly in delivering the policy objectives it was crafted to achieve. Perhaps no region has stood in testament to this fact to a greater degree than Latin America. Thus, merely considering formal legal structures in order to determine the extent of a central bank's independent judgment is sorely inadequate. In order to recognize this fundamental distinction, economists have divided the broader concept of central bank independence into two categories: *de jure* and *de facto* independence.⁸¹

Underscoring this distinction, as we shall see in the subsequent section, central banks need not operate within the high walls of a complex legal framework in order to be substantively independent. Beyond the more intuitive distinction between *de jure* and *de facto* independence, scholars have also divided the scope of a central bank's actions into two categories: goal and instrument independence.⁸² This distinction addresses the scope of the bank's responsibilities. Though one can relate it, in a broader sense to the *de jure* and *de facto* distinction, it ultimately rests on the explicit authority vested in the institution itself. As we shall note, the goals of a national central bank or monetary authority are frequently outlined within the authorizing laws of that institution. That, for example, a central bank is guided by elected officials to dedicate itself to the maintenance of a low rate of inflation, or perhaps conversely, a lower rate of unemployment, does not mean that the political actors may affect the actual decision making conducted by the institution in order to achieve that end. The

⁸⁰ See, e.g., Jácome, *supra* note 9.

⁸¹ See *infra* Part I.D.1 for a detailed look at *de jure* and *de facto* independence.

⁸² See *infra* Part I.D.2 for a detailed look at goal and instrument independence.

following sections shall provide a more detailed look at these two sets of distinctions.

1. *De Jure vs. De Facto* Independence

The distinction between *de jure* and *de facto* independence essentially rests upon the recognition that “central banks are institutions that operate within government and not apart from it . . . any attempt at legislating autonomy can never entirely eliminate all potential sources of tension between the political and monetary authorities.”⁸³ The former Governor of the Reserve Bank of Australia, B.W. Fraser, notes that in order to account for the full complexities of central bank independence, studies must account for this distinction.⁸⁴ Citing to his experience in Australia, Fraser asserts:

[L]egal independence, which is what the empirical studies seek to measure, can be very different from practical independence. In Australia, the legislation provides that in the event of a dispute over monetary policy, the government can override the Reserve Bank by tabling its objections before both houses of parliament. While this is the legal position (which scores a negative on the index of independence), such a situation has never arisen in practice; and indexes of legal independence cannot capture the role of personalities (such as the Governor and the Treasurer/Finance Minister) who fill in the operational gaps in the relevant legislation. Nor can they capture the changing policy-making environment. For example, the greater reliance on market-based policies (rather than controls) in Australia over the past decade has significantly enhanced the degree of independence of the Reserve Bank, without any change in the Bank’s charter.⁸⁵

Fraser’s two examples underscore an important distinction that has also arisen in Latin America. Very often, as in the case of Brazil, a central bank may be able to act with a greater degree of independence than otherwise provided for by the bank’s founding legislation.⁸⁶ On the other hand, however, there are also clear instances, for example in Venezuela, where a bank lacks the real, political authority to perform its responsibilities as specifically outlined in such legislation.⁸⁷ Luis Jácome provides a more detailed explanation of the Brazil/Venezuela comparison:

[T]he Central Bank of Brazil (CBB) enjoys more effective than legal independence as oppose [sic] to the Central Bank of Venezuela (CBV),

⁸³ PIERRE L. SIKLOS, *THE CHANGING FACE OF CENTRAL BANKING: EVOLUTIONARY TRENDS SINCE WORLD WAR II* 301 (2002).

⁸⁴ Fraser, *supra* note 24, at 3.

⁸⁵ *Id.* at 5.

⁸⁶ See Jácome, *supra* note 9, at 20.

⁸⁷ *See id.*

which on many aspects is legally rather than effectively independent. Regardless of the lack of legal clarity of the policy objective of the CBB and of having no political independence—the government maintains a majority in the National Monetary Council (presided by the Minister of Finance) and the Executive branch carries legal support to directly remove the President of the CBB—the government has granted the CBB effective independence, which has been articulated through the inflation targeting scheme in practice since 1999. On the other hand, the CBV has been the subject of episodes of political interference that have limited its legally assigned economic independence. In particular, the government imposed capital controls in the midst of the banking crisis and obtained financing for the deposit insurance fund, which adversely affected the conduct of monetary policy. In addition, financial independence established by law has not been followed in practice . . . while simultaneously the CBV has been required to transfer to the government unrealized profits.⁸⁸

To a large degree, Jácome's comparison of the Brazilian and Venezuelan experiences highlights the difficulty in capturing the true extent to which a central bank is independent. Indeed, what is all the more troubling about his example is that the degree to which political actors have interfered with monetary policy-making since his study has only gotten worse in the case of Venezuela and, some would argue, in Brazil as well.⁸⁹

2. Goal Independence vs. Instrument Independence

In their article, *How Independent Should a Central Bank Be?*, Debelle and Fischer noted that “it is useful to draw a distinction between *goal independence* and *instrument independence*.”⁹⁰ Goal independence, which the authors relate to Grilli, Masciandaro, and Tabellini's earlier concept of political independence, exists when the central bank is free to set the final goals of monetary policy.⁹¹ Along these lines, a central bank would be acting independently in this regard if it could, “for instance, decide that price stability was less important than output stability and act accordingly.”⁹² On the other hand, the authors assert, “[a] bank that has instrument independence is

⁸⁸ See *id.* at 20–22.

⁸⁹ See, e.g., Iuri Dantas, *Banco do Brasil Insists on Independence; Cheap Loans*, BLOOMBERG.COM, Apr. 28, 2009, http://www.bloomberg.com/apps/news?pid=20601086&sid=axCOPPNzm1o8&refer=latin_america; John Fitzpatrick, *Brazil: Lula Starts to Throw His Weight Around*, GRINGOES.COM, Apr. 15, 2009, http://www.gringoes.com/articles.asp?ID_Noticia=2272.

⁹⁰ Guy Debelle & Stanley Fischer, *How Independent Should a Central Bank Be?*, in GOALS, GUIDELINES, AND CONSTRAINTS FACING MONETARY POLICYMAKERS 197 (Jeffrey C. Fuhrer ed., 1994).

⁹¹ *Id.*

⁹² *Id.*

free to choose the means by which it seeks to achieve its goals.”⁹³ By way of a previous example, which DeBelle and Fischer also cite, the Reserve Bank of New Zealand, “whose goals are precisely described in a contract with the government, has no goal independence; however, it has instrument independence since it chooses the method by which it tries to achieve the pre-assigned goals.”⁹⁴

Jeffrey Fuhrer of the Federal Reserve Bank of Boston briefly outlines the two concepts, noting that “[g]oal independence allows the central bank to set its own ultimate goals (price stability, stable employment, and so on) and instrument independence allows the central bank to decide how best to achieve those goals.”⁹⁵ Professor Carl Walsh provides a more expansive summary of this distinction in *The New Palgrave Dictionary of Economics*:

Goal independence refers to the central bank’s ability to determine the goals of policy without the direct influence of the fiscal authority. In the United Kingdom, the Bank of England lacks goal independence since its inflation target is set by the government. In the United States, the Federal Reserve’s goals are set in its legal charter, but these goals are described in vague terms (for example, maximum employment), leaving it to the Fed to translate these into operational goals. Thus, the Fed has a high level of goal independence. Price stability is mandated as the goal of the European Central Bank (ECB), but the ECB can choose how to interpret this goal in terms of a specific price index and definition of price stability.

Instrument independence refers only to the central bank’s ability to freely adjust its policy tools in pursuit of the goals of monetary policy. The Bank of England, while lacking goal independence, has instrument independence; given the inflation goal mandated by the government, it is able to set its instruments without influence from the government. Similarly, the inflation target range for the Reserve Bank of New Zealand is set in its Policy Targets Agreement (PTA) with the government, but, given the PTA, the Reserve Bank has the authority to sets [sic] its instruments without interference. The Federal Reserve and the ECB have complete instrument independence.⁹⁶

Understanding this distinction is necessary to fully grasp the extent of a monetary authority’s independence. Indeed, to a

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Jeffrey Fuhrer, *Central Bank Independence and Inflation Targeting: Monetary Policy Paradigms for the Next Millennium?*, NEW ENG. ECON. REV. 19, 22 (Jan.–Feb. 1997).

⁹⁶ Carl E. Walsh, *Central Bank Independence*, in 1 THE NEW PALGRAVE DICTIONARY OF ECONOMICS 729 (Steven N. Durlauf & Lawrence E. Blume eds., 2d ed. 2008).

large degree it is more susceptible to legal analysis than *de jure* and *de facto* independence to the extent that it can be more readily determined by considering the legal framework and founding documents of the central bank as an institution. The murkiness of determining the extent of *de jure* and *de facto* independence presents a variety of challenges that go far beyond the scope of legal and statutory analysis. However, this is not to say that determining the extent of goal independence, for example, is without significant complexity and ambiguity.

Eggertsson and Le Borgne explored this topic at length in their study, *A Political Agency Theory of Central Bank Independence*,⁹⁷ and though they drew strikingly novel conclusions, they did not alter the basic distinction between these two forms of independence. Specifically, the authors focused on the following question: “Why would an office-motivated politician spontaneously decide to delegate his monetary policy prerogative to an independent but accountable central bank?”⁹⁸ The great novelty of their study, though, is in their refusal to rely on the inflation bias to support their conclusion of lower interest rates, noting that “all agents have the same (imperfect) information.”⁹⁹ Indeed, they propose that a politician’s delegation of monetary policy to an independent central banker with certain minimum assurance of job security, including job tenure, “enables the central banker to commit more effort into the conduct of monetary policy than an elected politician could ever afford to. This extra effort translates in expectations, in better forecasts and fewer policy mistakes, which increases social welfare.”¹⁰⁰ Thus, they assert, it is in a politician’s “private” interest to make such a delegation that is both instrument and goal independent.¹⁰¹

However, the authors conclude that while “instrument independence is welfare enhancing for society, goal independence is not” as it “benefits the current majority of the population at the expense of the future majority.”¹⁰² Considering the case of the United States Federal Reserve, the authors note that the Fed combines both instrument and goal independence. They continue that the Board is clearly instrument independent and, given that its “mandate is cast in very broad terms and covers conflicting

⁹⁷ Gauti Eggertsson & Eric Le Borgne, *A Political Agency Theory of Central Bank Independence* (IMF, Working Paper No. 03/144, 2003), available at <http://www.imf.org/external/pubs/ft/wp/2003/wp03144.pdf>.

⁹⁸ *Id.* at 38.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 39.

tasks (to pursue [sic] both ‘maximum employment’ and ‘stable prices’),” its governing body interprets and assigns relative weight among these objectives: *i.e.*, it is goal independent.¹⁰³

By using the example of the Federal Reserve, Eggertsson and Le Borgne reveal the essence of the distinction. The Federal Reserve is instrument independent in that it has complete discretion over when and to what extent to make open market operations and other decisions. Further, however, the authors note that the malleability of the Federal Reserve’s mandate is so broad that it can also be said to have goal independence.

III. CASE STUDIES

The following case studies are intended to illustrate several of the factors described above. While not intended to be a comprehensive analysis of the central banking structures implemented in the analyzed countries, they are intended to give the reader an overview of the central bank policies that have been adopted in the region in order to get a sense of the larger trends that have been in play in Latin America. Specifically, as noted above, I will focus on specific constitutional or legislative measures that outline the scope of the central banks’ *de jure* sovereignty. In particular, I will focus on the distinction between instrument and goal independence in analyzing the various national central banking frameworks and the historical contexts in which they have operated.¹⁰⁴

A. Argentina

The *Banco Central de la Republica Argentina* (“BCRA”) was founded in 1935.¹⁰⁵ The new institution replaced the existing currency board system, which had been in place in 1899.¹⁰⁶ Article 3 of the bank’s originating Charter Act No. 24,144, provides that the bank “shall primarily and essentially preserve the value of currency,” and continues by noting that “[t]he authorities of the [BCRA] shall involve, to this effect, the regulation of the amount of money and lending within the

¹⁰³ *Id.* at 6.

¹⁰⁴ To this end, Luis Jácome’s breakdown of Central Bank Autonomy in Annex II of his paper, *supra* note 9, was very helpful.

¹⁰⁵ Banco Central de la Republica Argentina, *Former Governors and the Executive Branch*, http://www.bcr.gov.ar/index_i.htm (follow “Institutional” hyperlink; then follow “History and Heritage” hyperlink; then follow “Former Governors and the Executive Branch” hyperlink) (last visited Nov. 1, 2009).

¹⁰⁶ Banco Central de la Republica Argentina, *The BCRA and its History*, http://www.bcr.gov.ar/index_i.htm (follow “Institutional” hyperlink; then follow “History and Heritage” hyperlink; then follow “The BCRA and its history” hyperlink) (last visited Nov. 1, 2009).

economic system and the formulation of monetary, financial and exchange rules under the legislation in force.”¹⁰⁷ Indeed, Article 3 goes on to explicitly announce that the bank shall act independently of the Argentine President, noting, “[a]s regards the preparation and implementation of a monetary and financial policy, the [BCRA] shall not be subject to any order, recommendation or instruction given by the National Executive Power.”¹⁰⁸

Chapter III of Charter Act No. 24,144 specifically addresses issues relating to the tenure and compensation of members of the Board of Directors. Article 7 provides that “[t]he president, vice president and directors shall be appointed by the National Executive Power in agreement with the Senate of the Nation; they shall hold office for six (6) years and may be reappointed.”¹⁰⁹ Further, the President may appoint members of the Board on an interim basis awaiting the consent of the Argentine Senate.¹¹⁰ As to the compensation paid to members of the Board, the Charter Act provides that this shall be left to the Board, noting, “[t]he fees of the president, vice president and directors shall be determined according to the [BCRA] budget.”¹¹¹ Though the budget must be published at regular intervals and members of the Board can be punished for failing to meet this announcement requirement, the Board is left with the discretion of how to control the BCRA’s budget.¹¹²

Finally, Article 9 of the Charter Act provides for the process under which members of the Board may be removed.¹¹³ The process is specifically outlined as follows:

The National Executive Power shall decree, after consultation with a committee set up by the Honourable National Congress, the dismissal of any member of the Board of directors on account of misconduct or non-compliance with his duties as public servant. The Committee shall be chaired by the President of the Senate and shall be composed of both the president of the Budget and Treasury Committee and the president of the Economy Committee of the Senate and of both the president of the Budget and Treasury Committee and the president of the Finance Committee of the Lower House.¹¹⁴

¹⁰⁷ Carta Orgánica del Banco de la República Argentina, Ley 24.144, art. 3 (1992), available at http://www.bkra.gov.ar/pdfs/marco/Carta_Organica.PDF (Spanish version).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at art. 7.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at art. 3.

¹¹³ *Id.* at art. 9.

¹¹⁴ *Id.*

The removal power retained by the Argentine Senate and President would seem to be quite broad, given that it merely takes a decree issued by the executive and approval by the Senate. Further, the specific scope of what constitutes a removable offense was left extremely broad. However, there is not much evidence of abuse in the past. Even during the tumultuous economic collapse experienced by Argentina in 2001, only one member of the Board, Dr. Pedro Pou, was removed.¹¹⁵

B. Chile

The *Banco Central de Chile* (“BCC”) was founded in 1925, eight years prior to the BCRA, on the basis of recommendations made by a commission headed by Edwin Walter Kemmerer, professor of economics at the University of Princeton.¹¹⁶ The projects proposed by the Kemmerer Commission included the monetary law “which sought to stabilize the value of Chile’s currency and the gold standard as the basis of the country’s monetary unit, the creation of the Central Bank of Chile, the passing of the general banking law and the general budget law.”¹¹⁷

Title I, Section 3 of Law 18,840, titled the Basic Constitutional Act of the Central Bank of Chile (“Basic Constitutional Act”), defines the scope of the BCC’s objectives.¹¹⁸ Similar to the BCRA, the Basic Constitutional Act provides that “[t]he Bank shall have as its purposes to look after the stability of the currency.”¹¹⁹ However, in addition to the basic anti-inflationary authority that the BCC shares with the BCRA, the BCRA also has the responsibility of overseeing “the normal functioning of internal and external payments.”¹²⁰ The Basic Constitutional Act also provides that, in striving to achieve these objectives, “[t]he authority of the Bank . . . shall include that of regulating the amount of currency and credit in circulation, the performance of credit transactions and foreign exchange, as well as the issuance of regulatory provisions regarding monetary, credit, financing and foreign exchange matters.”¹²¹

¹¹⁵ David Fuhr & Zachary Klughaupt, *The IMF and AGOA: A Comparative Analysis of Conditionality*, 14 DUKE J. COMP. INT’L L. 125, 130 (2004).

¹¹⁶ Banco Central de Chile, Origin of the Central Bank of Chile, <http://www.bcentral.cl/eng/about/functions/index.htm> (last visited Nov. 1, 2009).

¹¹⁷ *Id.*

¹¹⁸ Ley Orgánica Constitucional del Banco Central de Chile, *as amended*, Diario Oficial, art. 3, sec. 3, 5 de enero de 2006 (Chile), available at <http://www.bcentral.cl/publicaciones/normativas/pdf/leyorganica102006.pdf>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

In terms of the degree of oversight by the Legislative and Executive branches of Chile, the Basic Constitutional Act requires that the BCC “inform” the political branches of a range of decisions.¹²² In particular, Section 4 provides the following:

The Bank shall inform the President of the Republic and the Senate with regard to the policies and regulations of general applicability issued by the Bank in the performance of its duties. Likewise, it shall advise the President of the Republic, upon his request, in all matters within the scope of its duties.¹²³

Interestingly, under Section 6 of the Basic Constitutional Act “the supervision and administration of the Bank shall be vested in the Board of the Central Bank, which shall be responsible for the exercise of the authority and the carrying out of the duties entrusted to the Bank by law.”¹²⁴ However, Section 6 continues with a seemingly important caveat: “When passing its resolutions, the Board shall consider the general orientation of the Government’s economic policies.”¹²⁵ Depending on the scope of its application, this caveat would seemingly limit the extent of the bank’s independence, especially when compared to the more absolute bar on executive interference provided in the Argentine case.

The appointment of members of the Board, governed by Section 7 of the Basic Constitutional Act, occurs with “the prior approval of the Senate, by means of an executive decree issued through the Ministry of Finance.”¹²⁶ Unlike the Argentine case, the Chilean Basic Constitution does not provide for interim appointments, through which the Executive could, though temporarily, expand his or her influence on the Board. Section 8 provides that members’ terms shall last 10 years, and are renewable.¹²⁷ The Chairman of the Bank, whose term as Chair lasts five years (or the remainder of his term on the Board, if shorter) is appointed at the sole discretion of the Chilean President.¹²⁸ Another notable difference with the BCRA’s structure appears in Section 10, and relates to compensation of board members.¹²⁹ Whereas in the Argentine case, the Board of the BCRA establishes its own compensation levels, which it must publish, the Basic Constitutional Act provides the following:

¹²² *Id.* at sec. 4.

¹²³ *Id.*

¹²⁴ *Id.* at sec. 6.

¹²⁵ *Id.*

¹²⁶ *Id.* at sec. 7.

¹²⁷ *Id.* at sec. 8.

¹²⁸ *Id.*

¹²⁹ *Id.* at sec. 10.

Compensation for the Governor, the Vice-Governor and the Board Members shall be set forth by the President of the Republic for periods not to exceed two years. For such purposes, the President of the Republic shall appoint, with the anticipation as may be necessary, a Committee formed by three persons who are former Governors and Vice-Governors of the Bank, who shall present a compensation proposal based upon the salaries being paid by the private sector banking institutions to their top executives.¹³⁰

Though the Basic Constitutional Act leaves a wide degree of discretion in the hands of the Chilean President in terms of the compensation of board members, it simultaneously attempts to make the process somewhat more objective through the requirement that the President institute a commission to make compensation proposals.

As opposed to the Argentine case, however, the BCC's requirements for the dismissal of board members is somewhat, though marginally, more stringent. Section 17 of the Basic Constitutional Act provides that "[t]he President of the Republic by justified reason and the prior approval of the Senate may remove any or all of the Board Members."¹³¹ The requirement that the President's actions be justified is more clearly defined subsequently:

The dismissal may only be based upon the grounds that the concerned Board Member has voted in favor of Bank resolutions representing a material and clear breach of the purposes of the Bank as specified in the first paragraph of Section 3, and provided that said resolution has been the main and direct cause of a material damage to the economy of the country.¹³²

Clearly, the primary distinction between this and the Argentine case is the high bar set for the seriousness of the offenses that the member of the board must be charged with by the President. Additionally, and interestingly not specified in the Argentine case, the Chilean Basic Constitutional Act also requires that "[t]he Board Member or Members concerned shall have the right of a hearing before the Senate."¹³³ The seemingly higher and more specific requirements for the alleged act, in addition to the right of a hearing before the Senate would seem to make the task of removing a member from the Board somewhat more challenging for Chilean political officers.

¹³⁰ *Id.*

¹³¹ *Id.* at sec. 17.

¹³² *Id.*

¹³³ *Id.*

C. Mexico

The *Banco de Mexico*, Mexico's central bank, was also founded in 1925, and finds its underpinnings in the Mexican Constitution.¹³⁴ It was not until 1931 that the *Ley Monetaria de los Estados Unidos de Mexicanos* was passed which provided much greater guidance in the actual operations of the bank, rather than the general terms of the Mexican Constitution.¹³⁵ Nevertheless, Article 28 of the Constitution specifies many, if not most, of the basic governing principles for the Bank, including its central objective and several limitations.¹³⁶ First, Article 28 begins with an explicit call for the creation of the central bank and the requirement that it be independent: "The State shall have a central bank, which shall be autonomous in exercising its function and management."¹³⁷ Later in Article 28, there appears the specific proviso that "No authority shall order the central bank to grant financing."¹³⁸

Article 28 then defines the scope of the *Banco de Mexico's* objective, noting that it "will be to foster the stability of the national currency's purchasing power, therefore strengthening the State's role in guiding the country's development."¹³⁹ Comparing this provision of Article 28 to the previous examples we have considered can be quite revealing. For example, neither the Argentine nor the Chilean central banks are specifically given the additional objective of "guiding the country's development."¹⁴⁰ Indeed, in both of the earlier cases, the authorizing legislation focused on the objective of price stability. Although, based on the text of the Article, the "development" objective would seem to be secondary to the primary objective of price stability, its inclusion is nevertheless notable. One might draw a comparison to the vague terms used to outline the objectives of the United States Federal Reserve. It was noted earlier that these vague terms, and the additional discretion that they imparted on the Federal Reserve, have enhanced its

¹³⁴ Banco de Mexico, *History of the Mexican Banknote*, <http://www.banxico.org.mx/sitioingles/billetesymonedas/didactico/notesManufactFeaturesHistory/historyMexicanNotes.html> (last visited, Nov. 1, 2009).

¹³⁵ *Ley Monetaria de los Estados Unidos de Mexicanos*, Diario Oficial de la Federación [D.O.], 27 de julio de 1931 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/152.pdf>.

¹³⁶ Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Diario Oficial de la Federación [D.O.], art. 28, 5 de febrero de 1917 (Mex.) [hereinafter Constitución Política de los Estados Unidos Mexicanos].

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ For a discussion on the banking policies of Argentina see *supra* Part III. A. For a discussion on the banking policies of Chile see *supra* Part III.B.

independence from political actors by increasing its goal of independence.¹⁴¹ While the terms of the Mexican Constitution would seem not to be subject to as broad an interpretation, they nevertheless would presumably allow for a broader range of action than either the Argentine or Chilean cases.

As is the case in both Chile and Argentina, the members of the bank's board are appointed by the President, subject to confirmation "by the Senate or, should it be the case, by the Permanent Commission."¹⁴² Addressing the tenure of board members, Article 28 provides that "[t]hey shall discharge their office by periods, in line with the autonomous exercise of their functions."¹⁴³ On this point, Article 40 of the *Ley de Banco de Mexico* provides much clarification and specificity:

The Governor will be appointed for a term of six years and Deputy Governors for eight years. The term of the Governor will start on the first of January of the fourth year of the President of the Republic's term. The terms of the Deputy Governors will be staggered, with one starting every other year on the first of January of the first, third and fifth years of the President's term. The individuals occupying these posts may be appointed members of the Board of Governors for more than one term.¹⁴⁴

Thus, although the Governor of the *Banco de Mexico* is appointed from among the existing members of the board at the sole discretion of the Mexican President, the terms of the board's members are staggered to end every other year throughout the President's term. As the President of Mexico is limited to a single 6-year term, he or she would be limited to appointing no more than three members of the 5-member board, barring retirements.

Interestingly, the Mexican Constitution and *Ley de Banco de Mexico* establish a very high bar for the removal of members of the board. The Constitution provides the following:

They shall only be removed by grave causes and they cannot hold any other position or job, except those in which they act on behalf of the bank or those honorary related with teaching, scientific, cultural, or charity associations. The people in charge of the direction of the central bank may be subject to impeachment in accordance with the provisions set forth in Article 110 of this Constitution.¹⁴⁵

¹⁴¹ See *supra* note 103 and accompanying text.

¹⁴² Constitución Política de los Estados Unidos Mexicanos, *supra* note 136, at art. 28.

¹⁴³ *Id.*

¹⁴⁴ Ley de Banco de Mexico, *as amended*, Diario Oficial de la Federación [D.O.], art. 40, 23 de diciembre de 1993 (Mex.) [hereinafter *Ley de Banco de Mexico*].

¹⁴⁵ Constitución Política de los Estados Unidos Mexicanos, *supra* note 136, at art. 28.

Article 43 of the *Ley de Banco de Mexico*, provides the following list of actions which would be sufficient to justify removal:

- I. Mental illness, as well as physical affliction preventing the adequate fulfillment of their functions for more than six months;
- II. Performing any job, position or commission other than those provided for in Article 28 Paragraph Seven of the Constitution;
- III. Stop being a Mexican citizen or fulfilling any of the requirements set forth under Article 39 Section III;
- IV. Failure to observe the agreements sanctioned by the Board of Governors or deliberately acting in excess or in dereliction of his duties;
- V. Using the confidential information available to him or her as a result of his or her position in his or her own benefit or that of third parties, or disclosing said information without the consent of the Board of Governors;
- VI. Knowingly submitting false information for the consideration of the Board of Governors, and
- VII. Leaving his or her post without authorization from the Board of Governors or without justified motive, baring force majeure. The Board of Governors cannot authorize leave of absence for more than six months.¹⁴⁶

It should be noted that this list of possible offenses is far more specific than any of the others, and would seemingly make removal of a board member more difficult. This is especially true, however, when one considers the complexity of the process which must also be undergone in order to facilitate this removal. This process, outlined beginning in Article 44 of the *Ley de Banco de Mexico*, involves several steps before even the impeachment stage may be reached. First, a majority of the Board, excluding the member in question, must come to a verdict that at least one of the conditions outlined in Article 43 have been met.¹⁴⁷ The accused member must be accorded a hearing in this process.¹⁴⁸ Once such a verdict has been issued, it must be sent to the President, along with “the documentary evidence supporting it and the written argumentation the affected party may have presented in his or her own defense.”¹⁴⁹ Article 44 then requires that “[t]he Federal Executive shall in turn send it, together with the aforementioned documentation and the President’s considerations on the admissibility or inadmissibility of the removal, to the Senate or, should the latter not be in session, to

¹⁴⁶ Ley de Banco de Mexico, *supra* note 144, at art. 43.

¹⁴⁷ *Id.* at art. 44.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

the Permanent Commission, for a final judgment.”¹⁵⁰ This final judgment must follow the ordinary, more rigorous (though arguably not as rigorous as in the United States), process for impeachment provided for in the Constitution.¹⁵¹

III. THE CASE OF VENEZUELA

A. The *Banco Central de Venezuela*

First established in 1939, the last of the central bank institutions that we will discuss in greater detail, the *Banco Central de Venezuela* (“BCV”), was created in the wake of the twenty-seven year dictatorship of Juan Vicente Gomez.¹⁵² As part of the general upheaval of that era in Venezuelan history, the new government adopted a novel national economic plan called the February Program, which implemented a wide range of economic reforms, including the foundation of the Central Bank.¹⁵³ The first major reforms to this new system were put in place in the 1960s and were followed by additional reforms in the 1990s, the latter of which gave the BCV administrative autonomy.¹⁵⁴ The most recent reforms to the BCV were implemented in 2001.¹⁵⁵

The primary legal framework for the BCV is derived from the Venezuelan Constitution and *Ley del Banco Central de Venezuela*.¹⁵⁶ The Venezuelan Constitution, passed in 2001 with the sponsorship of Hugo Chavez, only briefly addresses the establishment of a central bank, though it does note that “the monetary competence of National Power shall necessarily be exercised exclusively by the Venezuelan Central Bank.”¹⁵⁷ Though this would appear to be a fairly comprehensive statement of the scope of the BCV’s power, several caveats are subsequently added. These provisos are largely veiled references to various aspects of Mr. Chavez’s socialist Bolivarian agenda. For example, while it is repeated later in Article 318 that the BCV “is a public-law juridical person with autonomy to formulate and implement policies within its sphere of competence,” the

¹⁵⁰ *Id.*

¹⁵¹ Constitución Política de los Estados Unidos Mexicanos, *supra* note 136, at art. 28.

¹⁵² Banco Central de Venezuela, *History of the BCV*, <http://www.bcv.org.ve/EnglishVersion/c3/index.asp?secc=history> (last visited Nov. 1, 2009).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Ley del Banco Central de Venezuela [Law on the Central Bank of Venezuela], *as amended*, Publicada en Gaceta Oficial, 3 de octubre de 2001(Ven.) [hereinafter *Ley del Banco Central de Venezuela*].

¹⁵⁷ Constitución de la República Bolivariana de Venezuela, [Const.], *as amended*, Publicada en Gaceta Oficial, art. 318, 30 de Diciembre de 1999 (Ven.).

Constitution includes the additional requirement that the bank “perform its functions in coordination with general economic policy, in the interest of attaining the higher objectives of the State and the Nation.”¹⁵⁸ What exactly would be included among these “higher objectives” is, not surprisingly, left deeply unclear, though one might fairly assume that it is a reference to Mr. Chavez’s “Bolivarian” Revolution. Interestingly, and undoubtedly in concession to the monetary policy implications of his regional agenda, Article 318 includes the following, highly unusual caveat: “In the event a common currency is instituted within the framework of Latin American and Caribbean integration, it shall be permissible to adopt the currency provided for by a treaty signed by the Republic.”¹⁵⁹ Mr. Chavez’s populism frequently incorporates a marked emphasis on regional cooperation against the perceived hegemony of the United States, which he labels “imperial.”¹⁶⁰

As to the responsibilities of the BCV and scope of its purpose, Article 318 provides that “[t]he fundamental objective of the Venezuelan Central Bank is to achieve price stability and preserve the internal and foreign exchange value of the monetary unit.”¹⁶¹ In order to achieve these objectives, Article 318 continues, the functions of the BCV “shall include those of formulating and implementing monetary policy, participating in the design of and implementing foreign exchange policy, currency regulation, credit and interest rate, administrating international reserves and any others established by law.”¹⁶²

As to the selection of the board of the BCV, Article 16 of the *Ley del Banco Central de Venezuela* provides that the Executive “shall be responsible for the designation of the President and four (4) Directors of the Bank.”¹⁶³ Only the nomination of the President must be approved by the Venezuelan Senate, not the nomination of the other four directors.¹⁶⁴ Further, one of the President’s nominees must be a “Minister of the economic cabinet,” though it cannot be the Finance Minister.¹⁶⁵ In addition, the National Assembly must designate the two (2) remaining Directors by a majority vote.¹⁶⁶ In order to remove a member from the Board, similar to the process provided for in

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Watch Venezuela*, WASH. POST, Nov.24, 2008, at A18.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Ley del Banco Central de Venezuela*, *supra* note 156, at art. 16.

¹⁶⁴ *Id.* at art. 9.

¹⁶⁵ *Id.* at art. 15.

¹⁶⁶ *Id.* at art. 16.

Mexico, either the President or two members of the Board must initiate a removal proceeding.¹⁶⁷ However, in Venezuela, a two-thirds majority of the National Assembly of Representatives is required to remove the Board member.¹⁶⁸

B. The Terms of the Amendment and its Implications

As noted above, the *Reforma* proposed by Hugo Chavez in 2007 would have caused a substantial change in way the nation conducted its monetary policy. While many observers had questioned the *de facto* independence of the BCV, one can only wonder what the complete abandonment of nearly all *de jure* standards of independence would have entailed. Indeed, the proposed amendments did not even seek to maintain the appearance of independence for the BCV; they sought to make the institution utterly subservient to the national executive.

From its very opening, the proposed revision to Article 318 required that the “national monetary system must incline to the benefit of the essential objectives of the Socialist State and the well-being of the people, over any other consideration.”¹⁶⁹ The

¹⁶⁷ *Id.* at art. 26.

¹⁶⁸ *Id.*

¹⁶⁹ La Reforma, *supra* note 8. The original text, in Spanish, of Article 318 of *La Reforma* reads as follows:

Artículo 318. El sistema monetario nacional debe propender al logro de los fines esenciales del Estado Socialista y el bienestar del pueblo, por encima de cualquier otra consideración.

El Poder Ejecutivo Nacional, a través del Banco Central de Venezuela, en estricta y obligatoria coordinación, fijará las políticas monetarias y ejercerá las competencias monetarias del Poder Nacional. El objetivo específico del Banco Central de Venezuela, como ente del Poder Ejecutivo Nacional, es lograr las condiciones monetarias, cambiarias y financieras necesarias para promover el crecimiento y el desarrollo económico y social de la Nación. La unidad monetaria de la República Bolivariana de Venezuela es el bolívar. En caso de que se instituya una moneda común en el marco de la integración latinoamericana y caribeña, podrá adoptarse la moneda que sea objeto de los tratados que suscriba la República.

El Banco Central de Venezuela es persona de derecho público sin autonomía para la formulación y el ejercicio de las políticas correspondientes, y sus funciones estarán supeditadas a la política económica general y al Plan de Desarrollo Integral de la Nación para alcanzar los objetivos superiores del Estado Socialista y la mayor suma de felicidad posible para todo el pueblo.

Para el adecuado cumplimiento de su objetivo específico, el Banco Central de Venezuela tendrá entre sus funciones, compartidas con el Poder Ejecutivo Nacional, las de participar en la formulación y ejecución de la política monetaria, en el diseño y ejecución de la política cambiaria, en la regulación de la moneda, el crédito y fijación de las tasas de interés.

Las reservas internacionales de la República serán manejadas por el Banco Central de Venezuela bajo la administración y dirección del Presidente o Presidenta de la República, como administrador o administradora de la Hacienda Pública Nacional.

very next sentence would have put the final nail in the coffin of central bank independence in Venezuela: “The National Executive Power, through *Banco Central de Venezuela*, acting in strict and obligatory coordination, will determine the monetary policies and will exert the monetary authority of the National Power.”¹⁷⁰ This remarkable sentence would have converted the autonomous BCV into nothing more than a mere mechanism of Venezuelan Presidential power. Requiring “strict and obligatory coordination” of the BCV would have likely stripped the long-standing institution of nearly all discretion.

Indeed, Mr. Chavez did not stop his complete restructuring of the BCV at a redefinition of its instrumental independence, he also significantly changed the objectives that the institution was organized to achieve. Recall that the BCV, under Mr. Chavez’s own 2001 Constitution, was charged with the usual Central Bank objective of price stability.¹⁷¹ The Revised Article 318 reflected in *La Reforma* was as follows: “The specific objective of the BCV, just as that of the National Executive Power, is to obtain the monetary, exchange and financial conditions necessary to promote the growth and the economic and social development of the Nation.”¹⁷² That this statement is at once inconsistent with the objectives usually assigned to central banks and deeply populist in tenor does not come as a surprise given Mr. Chavez’s idiosyncratic style. As if to remove any doubt from the equation, the Revised Article 318 continued as follows:

The BCV is person of public right without autonomy for the formulation and the exercise of the corresponding policies, and its functions will be submitted to the general economic policy and the Plan of Integral Development of the Nation to reach the greater objectives of the Socialist State and the greater sum of possible happiness after all the people.¹⁷³

Finally, and perhaps tying all of the various pieces of this “reform” together, the Revised Article 318 would have provided that “[t]he international reserves of the Republic shall be managed by the Central Bank of Venezuela under the administration and direction of the President of the Republic, as administrator of the National Public Treasury.”¹⁷⁴ It is arguably in light of this final provision that one might begin to grasp the full breadth of Mr. Chavez’s intentions. Many observers noted

¹⁷⁰ *Id.*

¹⁷¹ *See supra* note 161 and accompanying text.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

that this amendment would essentially “allow the president to use the country’s reserves as he saw fit.”¹⁷⁵

The stakes were ultimately much higher than the mere question of central bank independence—they related to the very nature of the BCV. Mr. Chavez’s amendments so broadly defined the scope of the nation’s monetary policy, essentially conflating the BCV’s objectives with the advancement of his “Bolivarian” Revolution, such that the BCV would cease to be merely a monetary authority. It would become at once, a slush fund for Mr. Chavez’s regional, political, and military ambitions, not to mention his domestic development goals. A central bank that transforms into a development and relief agency has ceased to be a central bank.

Indeed, there is precedent for this in Venezuela. Such an instance of mixed purposes and the use of a state entity geared towards other purposes can be found in the case of Venezuela’s national oil company, *Petroleos de Venezuela* (“PDVSA”). Since becoming President of Venezuela, Mr. Chavez has used PDVSA’s resources as personal political capital. He has brokered regional energy and pipeline arrangements with allies such as Argentina’s Nestor and Cristina Kirchner.¹⁷⁶ In fact, months before facing his own election, Chavez was embroiled in a scandal when a Venezuelan-American businessman was caught entering Argentina on a private flight with PDVSA officials and \$800,000 hidden in a suitcase, which was allegedly to be used to illegally support the campaign of Cristina Fernandez de Kirchner Wilson.¹⁷⁷ Beyond the regional political motives towards which Mr. Chavez has employed PDVSA’s assets, he has also used billions of dollars of the company’s resources to fund vast social programs.¹⁷⁸ All the while, the once-heralded company has been crumbling due to the fact that basic investments on maintenance have floundered, resulting in inactive oil rigs and falling production.¹⁷⁹

While PDVSA’s example over the last decade is hardly one that merits emulation, the fundamental madness of Mr. Chavez’s proposals to take over the nation’s central bank was in the fact

¹⁷⁵ Editorial, *Saying No to Chávez*, N.Y. TIMES, December 1, 2007, at A14.

¹⁷⁶ Jack Chang, *Chavez Uses Oil Revenue to Win Support in Latin America*, CENTRE DAILY TIMES (State College, PA), March 12, 2006, at A12.

¹⁷⁷ Chris Carlson, *Argentina Seeks Extradition in Case of Briefcase Scandal*, VENEZUELANALYSIS.COM, Aug. 30, 2007, available at <http://www.venezuelanalysis.com/news/2575>.

¹⁷⁸ Cesar J. Alvarez, *Venezuela’s Oil-Based Economy*, COUNCIL ON FOREIGN REL., Feb. 9, 2009, available at <http://www.cfr.org/publication/12089>.

¹⁷⁹ Editorial, *Chavez: A Decade of Disaster*, LATIN BUS. CHRON., Feb. 9, 2009, available at <http://www.latinbusinesschronicle.com/app/article.aspx?id=3138>.

that his intentions seemed to have been to baldly duplicate the PVDSA experiment, writ-large.

C. Aftershocks

As illustrated earlier, although Mr. Chavez's 2007 Amendments ultimately failed to pass, the history of this episode did not end there.¹⁸⁰ While in the euphoria of the moment, one of the leaders of the opposition to Chavez, Manuel Rosales, celebrated "a new path, a democratic path," there can be no doubt that much has changed in the following year.¹⁸¹ Indeed, in his press conference immediately after the results were announced, he noted that the 51 percent to 49 percent defeat was "microscopic."¹⁸² He added, perhaps ominously at the time, though perceptively, "[t]o use a phrase from February 1992, we've fallen short for now."¹⁸³ It was only days after the election before news sources began to report that speculation was beginning to mount about how and when Chavez will attempt to push some of the failed reforms into law, whether unilaterally by decree or through the National Assembly, which he dominates.¹⁸⁴ In the year since, much of this has come to pass. By August 2008, Mr. Chavez had implemented many of the Amendments he had sought to pass the previous year by invoking a sweeping new decree power that had been granted to him by the National Assembly.¹⁸⁵ At the time, he seemed to allude to this new method of implementing his established (and rejected) ideas: "At this point, I'm thinking of presenting a new formula, to expand and launch a new perspective, to raise the speed of the process," Chavez noted.¹⁸⁶ Perhaps most famously, however, in February 2009 Mr. Chavez won a referendum to amend the constitution that lifts the previous two-term limit and ensures he will be able to continue his "socialist revolution" for as long as he retains the support of the electorate.¹⁸⁷ Arguably, given his success in accomplishing much of his rejected reforms, it is only a matter of time before he once again raises the issue of his access to

¹⁸⁰ See *supra* Part III.B.

¹⁸¹ John Otis, *Chavez Power Play Defeated: Opposition Leader Says Nation is on 'a New Path, a Democratic Path'*, HOUSTON CHRON., Dec. 3, 2007, at A1.

¹⁸² Jonathan Gurwitz, *Despot's Loss Doesn't Mean he Won't Try Again Soon*, SAN ANTONIO EXPRESS-NEWS, Dec. 5, 2007, at 11B.

¹⁸³ *Id.*

¹⁸⁴ Daniel Cancel, *Venezuela's Chávez Presses on Undaunted*, CHRISTIAN SCI. MONITOR, Dec. 6, 2007, at 10.

¹⁸⁵ Editorial, *Chavez's Way*, LOS ANGELES TIMES, August 9, 2008, at A18.

¹⁸⁶ *Id.*

¹⁸⁷ Jeremy McDermott, *Chávez Wins Right to Rule Again*, DAILY TELEGRAPH (London), Feb. 17, 2009, at 18.

national reserves and the independence of his nation's central bank.

CONCLUSION

The issue of central bank independence has figured very prominently in Latin America's economic policy debates over the last several decades. While it seemed for some time, especially during the 1990s that the momentum had finally swung in favor of greater autonomy in monetary decision making in this region which had for so long suffered from intermittent hyperinflationary contagion, it now seems that the opposing camp has once again pitched its tents and is preparing for battle. Though the populist forces, most clearly represented by Venezuela's Hugo Chavez, have thus far been unable to do away with central bank autonomy due to resistance on the part of their populace, this has not been for a lack of trying and there is reason to believe they will try again.

Indeed, for a region that has repeatedly suffered the consequences of destructive economic policy, it would seem that once again the barbarians are at the gate. As Professor Larrain warned, "[t]he true risk of high inflation in Latin America lies in populism. . . . Hyperinflation is not dead, it is merely sleeping."¹⁸⁸

The unanswered question before us is whether the region's polities will follow the wisdom of Ulysses and tie themselves to the mast of independent monetary decision making in order to avoid the populist temptations of Latin America's modern-day Sirens or whether the great Latin American ships of state will once again crash into the rocky shoals of hyperinflation.

¹⁸⁸ Larrain, *supra* note 10.