

LOBBY REGULATION, TRANSPARENCY AND DEMOCRATIC GOVERNANCE IN LATIN AMERICA

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Latin America has been considered an outstanding case of endemic corruption. Surveys from institutions as Transparency International and Latinobarometer demonstrate that Latin American citizens perceive a high degree of corruption and undue influence in the decision-making process. Media and common sense always link lobbying with corruption or influence traffick, setting a perception that special interests are illegitimate, despite the fact that lobbying regulation is generally recognized as an important aspect of good governance (OECD, 2007: 17).

In this context, the virtuous role of interest groups as source of up to date information, or even the democratic requisite of a pluralist approach to public decision-making are often ignored as reasons to justify regulation. That is when citizens acquire a new level of awareness of the importance of transparency in general, and over lobbying activities specially, in order to tackle corruption (Caldas & Pereira, 2007: 73).

In February, 2010, OECD Council (OECD, 2010) approved the recommendation on principles for transparency and integrity in lobbying. In short, the OECD recommends that in order to meet public expectations for transparency and integrity, countries must adopt lobby regulations, defining lobby as “the oral or written communication with a public official to influence legislation, policy or administrative decisions”, often focuses on the legislative branch but that also takes place in the executive branch. One of the objectives of the regulation is to gain balanced perspectives on issues and lead to informed policy debate and formulation of effective policies, and allow all stakeholders, from the private sector and the public at large, fair and equitable access to participate in the development of public policies, that is crucial to protect the integrity of decisions and to safeguard the public interest by counterbalancing vocal vested interests.

Lobbying regulation is now a current challenge for policy-makers due to wide range of issues involved and the high expectations generated. Besides that, a political choice must be made in terms of the form, scope, content and instruments of the regulatory schemes according to its objectives.

In Chile, the Congress came to a decision in 2008 approving a bill under discussions for two years. With the inauguration of President Sebastian Piñera in 2010, the issue was reintroduced in the agenda. In January 2012, the government announced a new bill of law to be sent to Congress before July 2012, as part of the “Transparency Agenda”, in order do enhance citizen participation and transparency, and following the Bill of Law on Probity in Public Administration, sent to Congress in April 2011.

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In Argentina, in 1999, President de La Rúa established an Anticorruption Office. In December 2003, President Néstor Kirchner signed the Decree 1172/2003 aiming the “improvement of the quality of democracy and its institutions” (Johnson, 2008:90). The Decree regulates the right to participate in the policy-making process and, in order to guarantee the capacity of the public to do it properly, it stresses the relevance of ‘public information access’. This initiative represents an important movement made by the Argentinean government to reduce opportunities for corruption and influence trafficking. However, there is a long way for Argentinean democratic institutions to obtain sound results in terms of corruption perception among the public.

Peru was the first country in Latin America to have a law regulating lobbying. Since 2003, Law n° 28024 – the “Law on Interests Management in the Public Administration” - has established instruments and obligations as an attempt to bring more transparency to the Peruvian decision-making process, both at the Executive and the Legislative, in every layer of government. Some experts argue, though, that the Peruvian legislation is, itself, a barrier to its effectiveness: it is so comprehensive that avoids the formalization of lobby in Peru, what puts the need to simplify the requirements to justify lobby contacts (RPP, 2011) (Comisión, 2010).

In Brazil, there is not a specific legislation regulating lobbying. However, there are several rules that indirectly reach lobbyists. As far as the legislative procedure is concerned, Brazilian Federal Constitution states that the parliament committees are supposed to promote public audiences with civil society organizations. There is also, at the Legislative Branch, an internal code edited by the Low Chamber, requiring the registration of representatives of the Government and civil society. It was never enforced though. In 2007, only 146 entities had registered their representatives, most of them from the government (Santos, 2008: 416).

In the Executive Power, legislation and Presidential Decrees provide the rules for public consultation. The Presidential Decree 2.176/2001 permits the Civil House of the Presidency, the coordination body at the center of government, to decide about the submission for broad consultation to the public the drafts of proposed legislation of special political or social significance, in order to receive suggestions and contributions from public and private organizations, entities and persons.

In 1999, the Executive launched a self-regulatory code, forbidding the acceptance of gifts or hospitality, ensuring that any conflict of interest is informed, and other measures fostering the impartiality and transparency of public decision-making. Other Executive orders came afterwards, essentially dealing with proceedings within the Executive Branch to avoid ‘revolving doors’ and other inequities of lobbying activities. Congress has recently approved a bill of law that, starting on May 2013, will reframe entirely the conflict of interests regulation, increasing and expanding “cooling off” prescriptions.

Finally, it is important to mention that, historically, Latin American countries have imported institutions from different social and political contexts, not taking into account the changes and adaptations required to make them suitable to the new environment. Such mimetic institutional isomorphism is often a major cause for the failure of Latin American institutions in delivering their expected outcomes. In other words, results are yet to be seen and will be probably different according to

each local reality, since there is not a unique formula for all. Indeed, as far as lobbying regulation is concerned, and OECD stresses (OECD, 2007), no one size fits all.

Lobbying regulations bring better results when lying in a wider regulatory framework for good governance, such as rules for electoral financing, information disclosure and other measures concerning transparency and openness of decision-making process, including open access to the schedule of public agents (OECD, 2008: 19). Simple practices could sensibly improve the level of transparency and access of public decision making. For instance, any public meeting, whether in parliament committees or in executive agencies, should have their agenda disclosed, at least 24 hours in advance.

Regulation of lobby is pointed out by scholars as a symbolic indicator of governmental reaction against irregular behaviour (Lowery & Gray, 1997). Besides that, it can be said that it is a positive contribution to increase transparency. In transparent public decision-making settings, private interests are clearly identified and might be taken into account, though the strategies and resources of their advocates are necessarily revealed.

Furthermore, any regulation that respects Latin American local political culture must take into account, among other aspects, that lobbying is not appraised in the region as an inherent part of democracy. A public campaign to restore the image of lobbying must be launched. Indeed, lobbying must be controlled, not forbidden.

Considering the differences between the countries of the region, it is expected that especially Brazil, Argentina, Peru and Chile will have expressive gains developing and enforcing their regulatory framework for lobbying activities and transparency. Indeed, there will be positive gains on corruption perception and also on economic efficiency due to the reduction of transaction costs that often result from deceitful decision-making.

Finally, lobbying regulation schemes face great risks of distortion that must be avoided. First, regulations must not turn lobbyists into malign characters that must be hunted in the name of democracy. Second, there is a tendency in Latin America to build up bureaucratic controls that serve only as another barrier for public participation. Every initiative in the region must be designed taking these precautions. Otherwise, regulations will be utterly ineffective.

In the Brazilian case, the recent approval and implementation of the Law of Access to Information stresses the importance of lobby regulation by a piece of legislation constructed after the congressional debates and over premises and contributions for other's countries experiences, and as a result of a broad process of public debate and engagement of civil society and the press. This regulation must introduce a system of registration, monitoring and publicization of lobby activities fully functional and adjusted to the reality of the public administration and of the vested interests, citizen, civil society organizations and individuals in the policymaking process, avoiding bureaucratic requirements that can pose excessive barriers to the right of petition, freedom of expression or right of association, specially to those with less economical resources and, as a consequence, reduce the right of participation in public decision making.