The contribution of lobby regulation initiatives in addressing political corruption in Latin America

Luiz Alberto dos Santos¹* and Paulo Mauricio Teixeira da Costa²

¹ Executive Office of the President of Brazil, Brasília, Brazil
² Ministry of Planning, Budget and Management, Brasília, Brazil

For most of its history, Latin America has lived under authoritarian and elite rule where public decisions were often crafted in the shadows by cabinets and parliaments to the benefit of a small minority. Recently, the development of participatory political systems has brought some transparency to the policy-making process. Such scrutiny reveals evidence of the capture of aspects of policy-making by private interests that use obscure strategies to achieve their political goals. As a consequence, a widespread movement for regulating the role and tactics of interest groups emerged, which is seen as a necessary step to address the root causes of political corruption.

This article provides an overview of efforts to regulate lobbying in Latin America. It explains attempts at regulation in four countries (Argentina, Brazil, Chile, and Peru), evaluates the level of success of these efforts, and assesses prospects for the future regarding reducing corruption through the instrument of lobby regulations. The authors argue that such regulations alone cannot eliminate political corruption. However, lobby regulations can contribute to increased transparency and aid in developing an anti-corruption culture. It will be shown that lobby laws in Latin America exhibit many of the problems long identified with similar regulations across western democracies. Copyright © 2012 John Wiley & Sons, Ltd.

INTRODUCTION

As the introductory article to this issue of the Journal points out, what is encompassed under the rubric of political corruption and the forms it takes vary from country to country and partly depends on political culture. A useful shorthand definition of corruption is that of Transparency International (2011), the world’s leading NGO working to combat corruption, which views it as the ‘abuse of entrusted power for private gain’. Thus, political corruption involves using public resources for private benefit: public officials (elected and appointed) exploiting the resources of their office, usually as a *quid pro quo* for financial benefits. Chris Edwards (2006: 1) provides a more extensive definition of political corruption as a practice that:

… occurs when legislators and bureaucrats use their discretionary power over budgets, regulations, procurement, and taxation to reward themselves and private interests, while subverting the general welfare. Officials are motivated by bribes, campaign contributions, favorable investment opportunities, promises of jobs for themselves and family members, and other payoffs.

For generations, scholars have considered Latin America as a textbook case of endemic corruption of all types, including political corruption. The subcontinent seems to fulfill every ‘corruption variable’ (Caldas and Pereira, 2007: 28), including immature democratic institutions, inefficient bureaucracy and law enforcement apparatus, an over-regulated economy, cleavage between relatively low private and high public sector wages, economic reliance on natural resources, and the hangover from early colonial formation—including class divisions and elitism accompanied by a feeling of political entitlement, plus other cultural factors. These features do not necessarily lead to corruption, which, as indicated above, is perceived and practiced in each country in a specific way and could be defined accordingly.

During authoritarian times, there was no way to measure the perception of corruption, as corruption...
was considered an inherent part of the system, and its study and disclosure were often considered an act against the regime. However, with the movement toward democracy in Latin America since the early 1980s, there has been a change in political values that has challenged the culture of corruption. One instrument used to tackle the problem has been lobby regulation. In fact, as in well-established and transitional democracies alike, in Latin America, lobby regulation has been viewed by many anti-corruption advocates as a major policy approach in the fight against political corruption.

This article examines the extent to which such expectations are justified on the basis of the limited experience in Latin America with lobby regulation. The approach is to first explain the emergence of an anti-corruption culture, its particular elements, and the challenges this presents to policy-makers. Then, the experience with lobby regulation in Argentina, Brazil, Chile, and Peru are explained and evaluated. On the basis of these experiences and other elements of Latin American political culture, the article then assesses the reasons for the limited success of these laws in reducing political corruption, the lessons that this offers, and the factors that need to be considered in crafting and administering future lobby regulations as one means for helping to reduce corruption. The analysis leads to three related conclusions. First, although the main justification for lobbying regulation in Latin America is to address corruption, there is no clear evidence of sound impacts of these initiatives in reducing corruption, in part because they have been in place only a short time. There is, however, some anecdotal evidence and general impressions among scholars, political practitioners, and political observers that suggest that these laws have had some effect and will impact political behavior in the long run. Second, lobby regulations alone cannot significantly reduce corruption; such regulation must be part of an array of good government measures. Third, the enactment and implementation of lobby regulations exhibit similar limitations to such laws in dealing with corruption evidenced across many long-established western democracies.

THE EMERGENCE OF AN ANTI-CORRUPTION CULTURE IN LATIN AMERICA AND THE EXPECTATIONS OF REFORM

At the onset of a transition to some form of pluralist democracy, state institutions are exposed to public attention, which reveals widespread corruption within the government. This was particularly the case in the transition from communism to democracy in Eastern Europe in the early 1990s (Hrebenar, McBeth and Morgan, 2008). Similarly, in Latin America at the beginning of democratic transition, people shared a perception that democratic systems were more corrupt than authoritarian ones. Here, even the increase of interest representation in government, which is a clear indication of democratic consolidation, was taken as a sign of privileged access and widespread corruption. Such attitudes can, in part, be explained by inherent inequality of access to public decision-making among different types of interests, particularly the contrast between economic and non-economic interests (Greenwood and Thomas, 1998: 488).

As democracy consolidates, there are less corruption scandals, partly because anti-corruption laws are being enacted and enforced. As a result, citizens begin to value transparency in lobbying activities (Caldas and Pereira, 2007: 73; McGrath 2008). Therefore, in Latin America today, there is wide political support for placing lobby regulation on the policy agenda.

However, public expectations of what lobbying regulation can achieve are often unrealistic, especially in regard to combating corruption. In Latin America, the limited success of lobby regulations in regard to combating political corruption cannot be fully explained by the region’s historical political development. The limitations of what lobby laws can achieve have been demonstrated in some western countries with long experiences of lobby regulation (Greenwood and Thomas, 2004; Thomas 2006). Consequently, relative lack of success of lobby regulation in Latin America must be attributed to a combination of factors, both endemic to the region and those characteristic of lobby regulation in general.

After 30 years of democratic transition and varying attempts at political transparency in most of Latin America, corruption is still seen as rampant. Such public perception is partly due to ingrained public negativism toward interest groups and lobbyists and the high expectations of lobby laws coupled with their perceived failure to eliminate corruption. For instance, 58% of the population, according to Transparency International, think that the private sector bribes to influence government policies, laws, or regulations. Moreover, 61% of Latin American citizens perceive the anti-corruption measures adopted by their governments as ineffective, a rate higher than the global average of 56% (Transparency International, 2009: 40). Such public perceptions reflect an environment where every public decision-making process is apt to arouse suspicion. Plus, in less developed democracies, lobbying is often linked with corruption or influence trafficking. This creates a perception that special interests are inherently illegitimate (Thomas and Hrebenar, 2008: 6).

Thus, there is little understanding or general acceptance in Latin America of the tensions between the positive and negative roles of interest groups in a liberal democracy. Interest representation tends to be seen as a distortion of the democratic ideal, and
the valuable role of interest groups as sources of up-to-date information and their indispensability to public decision-making are either little understood or often ignored.

Lobbying regulation is generally recognized as an important aspect of good governance (OECD, 2007a), which should include a range of provisions to promote access of hitherto excluded groups and interests and to address some of the inherent biases in lobbying systems (such as financial and other resource advantages of business) and measures to promote transparency, among others. In Latin America, however, the overriding, narrowly focused rationale for lobby regulation initiatives is to tackle corruption to restore trust in government and confidence in the political system. Official recognition of corruption as a problem and the new anti-corruption culture in the region have generated an increasing demand for transparency of the activities of public officials and interests.

Clearly, a pattern of expectations of what lobby laws can achieve in terms of reducing corruption have developed across the region as these laws are becoming increasingly common. At the same time, there is a widespread belief regarding the failure of such laws to eliminate corruption. This paradoxical situation is illustrated in considering the challenges facing politicians and the experiences of four countries in the region in the rest of this article.

Attempts to regulate lobbying in Latin America: (1) The ideal set against the political challenges and choices

Having reached the political agenda in Latin America, lobbying regulation is a contemporary policy challenge throughout the region. This is in part due to the high public expectations related above and also because of the wide range of issues and choices involved in crafting and implementing such laws. From an ideal perspective, according to OECD (2008: 14), lobbying regulation must adequately address public concerns, suitably define the actors and activities covered, assure disclosing information, foster a culture of integrity, and secure compliance. In reality, as policy-makers have found in other democracies—developed, developing, consolidating, and transitional—political choices must be made regarding the objectives, form, scope (extent of coverage), content, and instruments of the regulatory scheme given local needs and political circumstances. These initial political choices very much affect the extent of the success of lobby laws and thus public perceptions of their effectiveness.

In terms of overall objectives, a major distinction must be made between corporatist systems (usually neo-corporatist but sometimes containing elements of state corporatism) and pluralist systems (Greenwood and Thomas, 1998: 498), although some regulatory systems combine the two as in a number of Latin American countries. Corporatist systems are often more concerned with the relationship of interests to government than with regulating lobbying. As such, they may intentionally or otherwise exclude certain groups from interest group intermediation processes and considerably reduce their ability to compete with those incorporated within the corporatist system.

It is essential that pluralist systems clearly define their objectives regarding lobby regulation. Failure to do so or unrealistic expectations by policy-makers of what lobby regulations can achieve is often at the root of the perceived failure of these provisions. Unlike authoritarian regimes where groups and their lobbyists can be banned, in a liberal democracy where interests are more of less free to form and operate, lobby regulations cannot make hitherto ineffective groups influential or change the laws of political power by destroying the influence of groups with major resources and political acumen.

Lobby regulations can be aimed at promoting good governance. Such objectives may include evening-up the political playing field by limiting financial contributions by groups to politicians and by conflict of interest provision; regulating certain activities by members of the bureaucracy in their relations with interest groups; and increasing public awareness of lobbying activities with the hope that this will promote more informed decisions by public officials and the public alike. Evidence clearly shows, however, that across liberal democracies, the objectives of lobby regulations are rarely approached in a comprehensive manner. They are more often the result of a reaction to a particular scandal or incident and most solutions are ad hoc. Plus, most elected officials support such laws only reluctantly and under public pressure. After all, these officials were elected under the present rules of the political game, and change introduces uncertainty into their political future (Greenwood and Thomas, 1998; Thomas, 2006).

As far as the form is concerned, lobbying regulation can be expressed through formal pieces of legislation or through less official codes of self-regulatory conduct by lobbyists or interest groups (Greenwood and Thomas, 1998: 493). Self-regulation can work in certain circumstance; but it often lacks consistent application and enforcement, and the public are often unaware of such codes.

The scope of the regulation can be broad or specific. A crucial factor here is how the regulation defines interest groups, lobbyists, and lobbying activities. Too narrow a definition may fail to capture major lobbying activities; but too broad a definition may turn the implementation and enforcement of lobby regulations into a bureaucratic nightmare and undermine the goals of the regulation. It is, for instance, reasonable to exempt some groups that are shoe-string operations where requiring them to
meet extensive regulations or reporting requirements would be unfairly burdensome to them. Whether or not to include all or certain aspects of government activity as lobbying is a major decision on scope. Beyond this, the actual regulations can be a general code covering every branch or level of government. Alternatively, it can be set up by a specific code for each branch or level of government and even be established through specific regulations for distinct public offices within the government. In other cases, rules can be directed to a specific kind of interest, such as business corporations or foreign investors.

The contents of regulations vary according to their objectives and particular focus. Some schemes regulate how groups can be formed, although less so in pluralist democracies. More common are schemes that regulate group activities—their strategies and tactics—and particularly public disclosure or transparency of these activities and group finances.

Depending on the purpose and scope of lobbying regulations, there are several instruments available to implement a regulatory scheme. The most common is registration, which provides lobbyists a ‘quasi-official’ status and, depending on its provisions, may restrict new entrants to the advocacy business (Greenwood and Thomas, 1998: 496). Another common instrument is the disclosure of lobbyist information, such as reporting their revenues and expenditure, the set of issues they deal with, the interests organizations represented, and other information about their clients.

Other types of instruments apply to elected and appointed officials, to politicians and civil servants (bureaucrats). The purpose here is to establish standards of conduct. Elected officials may be barred from or limited in receiving certain things, such as gifts, campaign contributions, or employment from those who lobby them. Civil servants may be subject to specific restrictions, such as a ‘cooling-off’ period after leaving the office, when the public official is not allowed to lobby their former agency (effectively slowing down the so-called revolving door where government officials move from government to lobbying and sometimes back again); a prohibition against the acceptance of gifts or hospitality, and strict monitoring of personal assets are all measures that foster ethical behavior among public agents.

Finally, other good governance initiatives are commonly listed as decisive for the success of any lobbying regulation. For instance, not only the disclosure of public information but also the discussion of governmental decisions at open public meetings enhances access to the decision-making process and, as a consequence, public scrutiny. The notice-and-comment procedure in the formulation of new regulations is also very relevant. In fact, every transparency measure has in itself the potential to promote a cultural change among lobbyists and public officials. In sum, the existence of an array of good governance provisions is crucial for the establishment of an efficient lobbying regulatory scheme that fosters a culture of ethics in lobbying activities.

Attempts to regulate lobbying in Latin America: (2) Four country case studies

How have these choices played out in Latin America? What is the extent of lobby laws and related provisions? And what have been the political and other factors that have shaped them? Brazil, Chile, Argentina, and Peru provide four contrasting case studies.

Brazil

Brazil has no specific legislation regulating lobbying. However, there are several rules that indirectly affect lobbyists. One is the constitutional right of petition and freedom of association, which presupposes the right to require information disclosure and the right to have collective interests represented by associations. Another is that Brazilian criminal law addresses bribery and influence trafficking and other forms of corruption. There are also legal provisions that attempt to deal with the influence of money over politics, including articles of the Electoral Law that establish an upper limit for campaign expenditures. As far as legislative procedure is concerned, the Federal Constitution states that parliamentary committees are to promote public hearings with civil society organizations. Additionally, an internal code of conduct was established by the Chamber of Deputies, the lower house of the Brazilian National Congress, requiring the registration of representatives of the government and interest groups; but this has never been enforced.

In 2007, only 146 entities registered their representatives, most of them from the government (Santos, 2008: 416). In 1999, the executive branch launched a self-regulatory code, forbidding the acceptance of gifts or hospitality, requiring that any conflict of interest be publicized, as well as other measures fostering the impartiality and transparency of public decision-making. Other executive orders followed regulating activities internal to the executive branch, including limiting ‘revolving door’ and other activities in an attempt to increase fairness in lobbying. Plus, several federal departments are legally supposed to form policy-making boards, which are required to include companies, trade unions, and civil society organizations and to conduct public proceedings. However, this array of constitutionally guaranteed legislative and executive provisions has not been properly enforced. Some argue that they bring obligations so complex that the provisions are rendered unenforceable (Farhat, 2007: 67). This might be overcome by
Lobby regulation initiatives

devolving a systematic law or code incorporating all existing lobbying regulations and to which others could be added. But, this is as yet unrealized.

In recent years, the Brazilian Congress has considered several proposals dealing with lobbying activities. The first bill was presented in 1987; but the most important recent proposal came in 2005 and would regulate lobbying in both the federal executive and legislature. The proposal includes the usual features: registration of public agents (civil servants) and professional lobbyists, restrictions on revolving doors, reports of lobbying activities, lobbyists’ financial disclosure, and several equal access provisions. Plus, it includes a compulsory training course prior to registering as a lobbyist, and the law gives lobbyists the right to participate in meetings germane to their activity.

According to the World Bank (2009: 95), the effects of recent anti-corruption measures in Brazil are minimal, with a slight improvement from 2007 to 2008. In general, Brazilians perceive corruption in the public sector to be relatively high. Transparency International (2010: 49) lists Brazil 75th among 180 countries ranked from the least corrupt to the most corrupt. In comparison with other countries in the region, Brazil is well below Chile and Uruguay, both in 25th position, and Costa Rica in 43rd place.

It is a combination of the public’s association of lobbying with political corruption, the apparent failure of the legislature and the executive to deal with such corruption, and the general stigma of lobbying that keeps lobby regulation on the political agenda in Brazil. Yet, as in most liberal democracies, there is a difference in attitude toward lobbying activities and to the major goal of regulation between members of the public and those serving in government. As a recent survey (Santos, 2007) of 60 parliamentarians and 60 bureaucrats showed. Approximately, half saw lobbying as an essential part of democracy but noted that it must be regulated and limited in order to avoid corruption, conflict of interests, and other abuses and be as comprehensive as possible. Whereas 81.5% supported regulation of all three government branches, 21.7% preferred to focus on equality of access and 71.5% emphasized public disclosure and transparency. Overall, 61.1% believed that a law regulating lobbying would decisively help to reduce corruption by enhancing transparency in the relationship among interest groups, politicians, and bureaucrats. However, 33.9% thought that lobby regulation would have little effect on the most powerful interests. Instead, it would create more barriers for those interest groups with fewer resources.

Despite the fact that Brazil has mixed attitudes among public officials toward lobby regulation, the majority agrees that some formal regulation must be in place. A combination of formal law and best practices already employed by the Brazilian government could comprise a successful step toward lobby regulation.

Chile

Among Latin American countries, Chile has had one of the lowest rates of corruption perception. As indicated above, in 2009 Transparency International (2010, 48), ranked it 25th worldwide with a score of 6.7. Nevertheless, lobbying regulation and transparency of public affairs in general are still a major political issue. To date, however, efforts to enact lobby laws have been unsuccessful.

In an attempt to make access to the decision-making process more equal and reduce the impact of private interests on decision-making, President Ricardo Lagos introduced a lobbying regulation bill in 2003 (Fisse, 2006: 65). However, the bill remained dormant in the Congress until 2008 after which President Bachelet signed the modified version into law. The bill, signed in July 2009, focused on transparency, equal access, and integrity. In this bill, registration of lobbyists and fines for non-compliance to report contributions were introduced. For instance, these fines range from $US11 000 to $US29 000, but were seen as very low by some legislators considering the high fees and salaries many lobbyists receive and the major resources of many economic interests involved (Departamento de Prensa, 2009).

Additionally, in the government’s effort to enhance good governance and transparency in public life, in November 2006, the Bachelet government launched a set of measures called ‘Integrity, Transparency, Efficiency and State Modernization Agenda’. One provision placed restrictions on revolving door activities by government officials. Another provides more transparency regarding sources of electoral funds, forbids contributions by companies allowing only individual funding, and strengthens the enforcement capacity of independent electoral agencies. A further aspect of this Agenda concerned information disclosure by government and became a law in August 2008 (Law n. 20.285).

Overall, with mixed success, Chile is attempting to move toward a comprehensive good governance regulatory framework that guarantees more transparency and control over lobbyists and interest groups. This is being carried out by means of two bills: one focusing on registration and equal access and the other emphasizing revolving door activities.

Argentina

Recent actions on lobby regulations and related provisions in Argentina contrast with both Brazil and Chile. Over the last decade, more than 20
lobbying regulation proposals containing a wide
diverse variety of provisions have been considered by the
National Congress. Yet, no consensus on any of these
proposals has been reached. The interest in the
Congress may well reflect provisions established in the
executive branch which, to date, have been the
only ones to address regulation and transparency.
Overall, the high interest in lobby regulation could
be explained by a strong perception of corruption
among the Argentinean public. Transparency Interna-
tional (2010) ranked the country 106th among the
180 nations evaluated, with a 2.9 rate in 2009.
The anti-corruption initiatives in Argentina date
back to 1999 (Basterra, 2004: 8). In 2003, President
Néstor Kirchner signed an anti-corruption decree
aimed at ‘improvement of the quality of democracy
and its institutions’ (Johnson, 2008: 90). The decree,
as an act of the President alone, is a self-regulatory
code for the executive branch (including all
agencies, government-owned companies, and other
enterprises), as it does not apply to the legislature or
sub-national governments. The Subsecretary for
Institutional Reform and Democracy Enhancement,
within the Argentinean Executive Office, was
charged with enforcement duties (Subsecretaria,
2008). There are several provisions regarding public
information disclosure and other measures to
promote transparency, such as mandatory open
meetings for regulation agencies and boards. One
peculiar aspect of the Decree is its definition of
lobbying. To be considered lobbying, the contact
must be personal (in a formal hearing called
‘audiencia de gestión de intereses’, which is a
meeting arranged with the self-declared purpose
of lobbying). Misinterpretations and enforcement
issues arise from such a narrow definition of lobby-
ing (Quaglia, 2004) as it leaves it to the discretion of
the public official to report the meeting or not. As
provided in the law, all senior officials of all
executive agencies must report lobbying activities
by keeping open public records and file an official
account of their meetings with lobbyists.
This law represents a clear attempt by the
Argentinean government to reduce opportunities
for corruption and influence trafficking. After its
implementation, other parts of government fol-
lowed with specific regulations but with less ambis-
tious goals in mind. It remains to be seen if broader
regulations will be enacted, particularly by the
Congress to deal with Argentina’s high level of
corruption perception.

Peru
Peru, the first country in Latin America to enact a law
regulating lobbying which was the most compre-
hensive in coverage in the region. In 2003, Law N.
28024 established instruments and obligations in an
attempt to bring more transparency to the Peruvian
public policy-making process. It covers both the
executive and legislative branches, and other
agencies and levels of government. Consequently,
Peru is the country most appropriate for making an
assessment of the success of lobby regulation.

Similar to other Latin American countries, under
what the Peruvian law refers to as ‘interest manage-
ment’ (lobbying), the following are included: ‘oral
or written communication from interest managers
to public officials regarding a public decision’. Also
defined are actions not considered ‘interest manage-
ment’, including statements made in speeches or
published articles, which are considered to be the
exercise of freedom of expression. The law applies
to decision-making processes, such as specific
decisions of parliamentary commissions regarding
law proposals, government contracts, and the
drawing-up of executive orders. Public officials,
covered by the law include: the President, members
of parliament, senior executive branch officials, and
other key decision-makers. All lobbyists must
register and provide information regarding their
activities every 6 months. Plus, public officials are
required to record any contact with lobbyists, and
these officials are prohibited from being lobbyists
for 12 months after leaving public office. Law N.
28024 also establishes an Administrative Special
Court to enforce the regulations.

Despite or perhaps because of all these elaborate
rules, more than 8 years after enactment, this law
has not been properly implemented. For instance,
the Special Court has not been formed, seriously
undermining the enforcement of the law. As a
consequence, in October 2008, only 37 lobbyists
registered in Peru. Of these, few have updated the
information required of them every 6 months
(SUNARP, 2010). Furthermore, no public official
has reported contacts made by Juliana Reymer, a
lady renown for her obstinacy in complying with
these lobbying regulations (Córdova, 2008).

This non-compliance with this theoretically
comprehensive law may explain why, according to
Transparency International (2009), 71% of Peruvians
see recent measures adopted by the government to
tackle corruption as ineffective. And according to
the World Bank (2009: 97), Peru’s corruption indica-
tors over the previous 5 years were more of less
stable. In 2009, the corruption perception rate
in Peru was 3.7, ranking it 75th worldwide and
along with Brazil and Colombia (Transparency
International, 2010). All this and recent scandals
involving lobbying and oil concessions benefiting a
Norwegian petroleum company have pushed the
demand to improve the enforcement of lobbying
regulations up the policy agenda in an effort to re-
duce corruption and increase transparency in the
government decision-making process (Instituto de
Defensa Legal, 2008).

Overall, Peru exhibits a different lobbying regula-
tion dynamic compared with Argentina, Brazil, or
Chile. Although Peruvian lobby regulation intends to cover the broadest ground, it fails in its implementation.

An overall assessment to date

To be sure, the results of these first years of lobby regulation in Brazil, Chile, Argentina, and Peru can, on the one hand, be considered as disappointing. This is particularly the case in Peru given the intended comprehensiveness and public expectations of Law N. 28024. No clear pattern of positive results from these regulations has emerged across the region. There are only several diverse experiences in some of the region’s countries driven by public concerns with corruption and, in many instances, adopted reluctantly by elected officials and enforced, if at all, with little enthusiasm by government officials. On the other hand, any assessment of lobby regulations in Latin American must bear in mind that both the region’s democracies and their regulatory frameworks regarding transparency and participation are, in most cases, in an experimental stage. The limited extent and mixed results of these measures are similar to those in regions such as Eastern Europe (McGrath 2008). There is evidence that regulations are having some effect on how interest groups and lobbyists deal with public officials; and greater exposure of group activities is leading some groups to be concerned about their image and the way they go about doing political business. Limited as these results are, they represent positive steps in the contribution of lobby regulation toward reducing corruption, making interest groups more acceptable, and in so doing helping to consolidate democracy. That said, clearly Latin America has a long way to go in the development and implementation of lobby regulations if these are to contribute to eliminating corruption and consolidating democracy.

Explaining the results of lobbying regulation schemes and their effects on political corruption

Although there are no empirical studies to definitively assess the reasons for the limited success of lobby regulations in Latin America to date, here we offer six explanations that in combination likely explain this situation. Of the six, the first four are products of hangovers from the Latin American political experience or a product of emerging and re-emerging democracies. The other two are common to most democracies old and new.

(1) Ingrained political practices of unofficial elite access and influence

In politics, be this an authoritarian or democratic system, the status quo is a major force. Those promoting change have to build a consensus to convince those in power that change is to their benefit. But, for most of those in power, change holds the specter of the unknown and the risk of losing influence. Major reform, particularly reorienting the focus of government to more participatory and open processes in a former authoritarian regime, requires changes in attitudes, which can take generations to achieve if this can be carried out at all. Across most of Latin America, despite recent developments in increased participation, there are political hangovers of traditions of clientelism, elite access, and influence, particularly of major economic enterprises and the upper social stratum. Much of this access is unofficial and effected far from public view. In this regard, over 50 years ago, Karl Loewenstein (1957: 16) encapsulated the challenges of regulating lobbying:

While the official, legitimate, visible power holders can be identified without difficulty in the constitution, the discovery of the invisible, non-official, and non- legitimate power holders requires, in each case, a sociological analysis of the reality of the power process. . . . Wire-pullers behind that curtain moving the marionettes on the stage are ubiquitous phenomena of the power process. . . . Sometimes their influence on the official power holder is institutionalized in an office, but more often it remains in the twilight of anonymous irresponsibility.

These comments were made just a couple of years after the US federal government enacted its first lobbying regulations, but it was not yet possible to judge their effectiveness. More than 50 years later, in the USA and across the democratic world, it is clear that transparency and openness are not easy to achieve whether through regulation or any other means. In the Latin American case, does this mean the cultural resilience of political corruption and of various forms of resistance to change, including resistance to the enactment and enforcement of lobby regulations? It most likely does and could partly explain the dragging of political feet to come to consensus on the issue (as in Chile) and, in some cases, the lack of enforcement where lobby laws do exist (as in Peru). The lack of a culture of integrity also hinders support for regulation, regardless of the form and scope of regulation (OECD, 2007: 32).

(2) The legacy of state corporatism

One of many ingrained institutionalized political practices in the region, in this case an official one, is state corporatism. Certainly, democratization since the 1980s and the effects of neo-liberalism in that decade and the following one made inroads into corporatism. The move toward pluralist democracy brought a proliferation of interests both
economic and non-economic into politics, including small business groups, professional lobbies, women’s rights, indigenous peoples’, consumer and good government groups, and many NGOs (Thomas, 2009: Johnson, 2008: 95).

Because of neo-liberal economic reforms, peak associations have faced the emergence of many smaller groups representing the same interest. As a consequence, some authors have argued that interests articulation in Latin America has become more pluralist, moving beyond the corporatist scheme that used to reserve political power to the state, corporations and unions. In fact, after the end of state monopolies in several economic fields, pressures from a larger number of distinct private interests replaced the pressure of state-owned enterprises. Plus, challenging governments for more information about public affairs and more transparent and accessible decision-making processes has worked to weaken corporatist ties.

Despite having regular elections, freedom of expression, political parties, independent electoral authorities, lobby regulations and good governance provisions, and other democratic institutions, the corporatist element that still underlies state-society relation in Latin America hinders the rise of independent interest groups (Lanna, 1999: 24). The connections formed between state and particular interests in society over the years built up privileged access to government for certain associations, such as business, giving them more relative power than they might have had otherwise. With continuing elements of such controlled political participation, the substance of public policy is still defined by the state bureaucracy and through its interaction with economic elites. This model, a bureaucratic–corporatist–elitist combination, makes it difficult to develop effective and plural political practices. The continued hangover of corporatism in various forms likely excludes certain groups from competing on a level political playing field.

(3) Adoption of less than appropriate institutions and processes

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. The presidential system is, in certain countries, a good example of such institutional transplanting that is often a major cause of the failure of Latin American institutions in delivering expected outcomes. Certainly, the lobby laws of the USA and Western Europe can be good guidelines for what might be useful in Latin America. But, they need to be adapted to the political, cultural, and social context of the region. Failure to do this may be part of the problem with their lack of success, or failure to be enacted, as in the case studies above. For instance, to cast a very wide net in terms of registration requirements may have inhibited participation by some groups in the region, particularly those with few resources.

(4) The narrow goals of existing lobby regulations

Although fighting corruption has not been the only goal of lobby regulation in Latin America, it has been seen as the major justification for these laws by the public, and this has been very much reflected in the provisions that have been enacted. However, when considered as solely or primarily an anti-corruption measure, lobbying regulation is largely ineffective. In fact, such regulation affects corruption only indirectly by addressing its likely manifestations and not its root causes. Thus, lobbying regulation alone may not influence political morality (Greenwood and Thomas, 1998: 511). Furthermore, lobby regulations have a justification beyond strict anti-corruption arguments. Ideally and practically, these provisions should be more broadly conceived and enacted and embrace provisions to open and level the chances to influence policy. But, lobby laws cannot do this alone.

(5) Combining lobby regulations with good governance provisions

As stated by OECD (2007: 37), lobbying regulation can neither be initiated nor reformed in isolation of related provisions. Nor can lobbying regulations be initiated and administered effectively without public support and monitoring, even if this is provided vicariously through the media. In fact, evidence from several developed democracies indicates that to establish, strengthen, and maintain an anti-corruption culture and confidence in government and the policy process and, as one aspect of this, the development, access, and acceptance of interest groups, it requires a range of good governance measures. These include those to insure transparency in public policy-making and perhaps provisions to even-up the political playing field, as identified earlier in this article. Eventually, information disclosure also addresses corruption, as it is clear that problems involving public officials and lobbyist flourish where information is secret or only partially disclosed (Klitgaard, 1994: 220). Only as part of this broad package of provisions can lobby laws help create this anti-corruption culture and confidence in government (Greenwood and Thomas, 1998: 503). It can do this through requiring public information concerning the political activities of interests and lobbyists and by some restrictions on their actions. For various reasons, however, in a liberal democracy, there are major legal and political constraints that hinder the success of lobby regulations; however success may be defined. Certainly, some Latin American countries, such as Chile and Brazil, have done so, but usually in an ad hoc fashion through action by the executive
branch and not in any systematic way to integrate such provisions with lobby laws.

(6) Common experiences of regulatory schemes around the world

Judging by the mixed success of lobby regulations across the established democracies, including the USA where these laws have been in place for generations, even if Latin American countries were not beset by the problems just considered, there would be many factors working to inhibit the operation of these laws and thus their success (Parliamentary Affairs, 1998). This mixed record of lobby laws is partly due to a general inability to judge their success, a lack of consensus on their purpose, unrealistic expectations of what such laws can achieve often exacerbated by a tension between the right to petition government and regulation of that activity, the crisis mode in which regulations are often enacted, and the lip-service that many politicians pay to these laws.

The question of what constitutes success or effectiveness of lobby regulation in established democracies is, in itself, extremely problematic because it is impossible to isolate the effect of lobby regulations from other good governance provisions, which to varying extents exist in all these democracies. More importantly is that there is rarely explicit agreement on the goals of such regulations among policymakers. So, Latin American policy-makers are not the only politicians bedeviled by this question. The major impetus for these laws is political scandals and the raising of public consciousness. Lobby laws are rarely developed in a systematic and comprehensive way, weighing the pros and cons of various alternatives. Plus, it costs money to administer the laws, and such agencies are not popular with politicians and their lobbyist friends as such agencies are also often responsible for administering campaign finance and conflict of interest laws. But, perhaps the major reason why such agencies and enforcement of the laws are not popular with politicians is that it is not the public that makes use of the disclosure information that is available through lobby laws but the press and candidates running against incumbents. As a result, the administering agencies are prime targets for being under-funded or even de-funded.

As explained in the first part of this article, the various aspects of the experiences with lobby laws in established democracies are also evident in Latin America. As these compound the problems in enacting and enforcing such laws stemming from the region’s transition to democracy, this raises a major question: Is there a realistic hope of the long-term success of lobby regulations and their contribution to reduce corruption by aiding in the development of a deep-rooted element of anti-corruption in the political culture, especially the political culture of those involved in public policy-making?

The implications for the success of lobby laws and anti-corruption provisions: short-term, medium-term, and long-term views

The short answer to the question posed at the end of the last section is that, even given all the challenges in Latin America, lobby laws can be made to work. To have a chance of success, however, the lessons implicit in the last section need to be taken into consideration. In particular, lobby regulation must be part of a broader package of good governance provisions, and the ideas presented in this section assume that they are. In addition, there are other factors regarding Latin American political systems, particularly regarding political culture and political socialization and institutional structure, which will help determine the success of lobby laws and anti-corruption measures.

Judging by the experiences in both established and developing democracies, such as in Eastern Europe, there are four major lessons to be learned about lobby laws as public policies and particularly in regard to aiding in reducing corruption. First, the positive effects of these laws in conjunction with other good governance provisions take a generation or more to be discernable. Second, given the lip-service paid to lobby laws by many politicians and opposition to them by others, ways must be devised not so much to force these people to comply but to show them the positive advantages in establishing and complying with such laws. Across the established democracies, this has partly been addressed by the third general lesson. This is that lobby laws cannot be all things to all people. Even in conjunction with other provisions, what they can achieve is limited given the nature of political power and the constitutional trade-off tension between representation and regulation. This does not mean having low expectations of lobby laws but realistic expectations. For instance, as Kingdon (1995: 45) observed, there will always be bridges made by ‘common values, orientations, and world views’ linking people from inside to others outside the government regardless of the extent of regulation. These relationships cannot be eliminated but to some extent can be monitored.

In terms of realistic expectations, the major effects that increased regulations have had in the established democracies have resulted from public disclosure provisions, which have led to increased transparency. This is likely the most positive, if limited, consequence of lobbying laws according to Thomas (1998: 512). It appears to have produced a culture of restraint by established influential interests and their lobbyists in dealings with public officials; greater concern for their group’s public image; and increased professionalism of lobbyists. Particularly in the USA, where lobbying is most visible, lobbyists are much less likely to use blatant strong-arm tactics. For their part, the vast majority of
public officials, elected and appointed, do not want to be associated with organizations with shady reputations. So, the public has probably benefited from this development; and arguably, the credibility of some interest groups and politicians has been enhanced, even if the latter two beneficiaries were skeptical of such regulations initially.

Fourth, an obvious fact but important to emphasize is that, assuming the self-centered nature of human beings and the vast sums of money often at stake, there will always be some form of corruption and lobbying scandals. The temptation to use bribery will always exist and it will occur. This is certainly true in established democracies such as the USA, where lobbying scandals are often in the news. But, even though no hard data exist, these scandals are likely much less than 50 years ago in relations to total lobbying activity.

Changing the political culture and reforming political institutions

As we have argued, one of the major challenges in consolidating democracy in Latin America is the acceptance of the legitimacy of interest groups and lobbyists. In part because of the past and present power of elite groups and the history of corruption by those associated with them, interest groups and lobbyists are both viewed negatively and not seen as essential to democracy. In fact, in some ways, they are viewed as a detriment to democracy. Somehow, steps must be taken to socialize Latin Americans to accept groups and lobbyists balanced with a continuing healthy skepticism of them. Regulations must not turn lobbyists into maligned characters who must be hunted in the name of democracy. Otherwise, it will be difficult to move lobby laws beyond purely restricting lobbying activities in the hope of eliminating corruption, which, as we have seen, is not feasible. A public campaign to counter the negative image of lobbying could be launched to promote an understanding that lobbying certainly needs to be controlled but not forbidden. The average citizen needs to be able to distinguish the lobbyists who rely on corruption and influence trafficking from those who, in a very professional manner, advocate for private interests and use proper and legitimate procedures that preserve the impartiality and autonomy of government.

A particularly important institutional decision regarding the future and success of lobby laws is the extent to which Latin American political systems deal with the question of the mix of corporatism and pluralism. It is the pattern of relations between state and society that will probably be the most important influence on how interest groups operate and how lobby laws will be fashioned. Some countries, such as Chile, may decide on a more neo-corporatist system, whereas others, such as Uruguay, may decide on a more pluralist system.

Other reforms needed for the consolidation of democracy and the successful operation of lobby also depend, to a large extent, on the course chosen, either officially or not, between corporatism in its various modified neo-corporatist forms and that of pluralism. These reforms include good governance provisions regarding campaign finances and conflict of interest, among others identified at several points earlier in the chapter. In particular, electoral financing reform is essential to reduce the level of clientele dependence of political parties on resourceful interest groups. Political parties themselves need to become more ideology-oriented or, at least, more issue-oriented institutions, able to openly aggregate interests and channel them into the political arena, building up an authentic partisan activism that would likely affect the number of groups organized and their more widespread acceptance. Plus, the procedures for public participation in public decision-making, through various boards and committees and in parliaments, must be clearly defined in order to enhance the scrutiny of society over bureaucrats and members of parliament.

In sum, lobby regulation can only succeed in a political cultural and institutional environment that promotes acceptance of interest groups and access channels and prevents certain interest groups from becoming an appendage of the state apparatus.

Local Latin American circumstances and the specifics of lobby regulations

As to the specifics of provisions that would aid the success of lobby laws in the region, again and even in combination with other good governance provisions, as President da Silva points out in his Foreword to this Special Issue, we should be cautious to not use a broad brush in viewing the region. This is true in the role of lobby regulations as in other areas, political and non-political. Thus, to be successful, lobby laws in each country must reflect local circumstances regarding the points we have made above. That said, the following factors are important to consider.

The concentration of political power and policymaking in the executive branch must be considered when designating the regulatory framework (Johnson, 2008: 84). Accordingly, executive orders regulating lobbying within executive agencies will be pivotal to the success of regulations and transparency. Brazil and Argentina have made first steps in this regard. Neither country, however, has a comprehensive legal framework encompassing all three branches of government, nor does any other Latin American country except Peru, and we saw the shortcomings in that country. The inclusion of all three branches of government is important for the success of lobby regulation and related provisions if they are to work even adequately as seen in established democracies.
Another factor is that lobby laws appear to be most effective—as limited as this may be in some circumstances—when they promote transparency of activities of both lobbyists and the lobbied. As noted earlier, providing public information and throwing light on various activities of government and its decision-makers can indirectly reduce corruption. Restricting certain activities, such as rules about revolving doors, may also be advantageous, as may guaranteeing access to certain groups hitherto in some way excluded from decision-making.

In Latin America, simply enforcing existing rules could improve the level of transparency and access to public decision-making. Other initiatives to enhance transparency could be tried, such as the use of ‘regulatory impact assessments’ to clearly identify potential impact and the stake-holders affected by a policy being proposed, which could lead to the identification of the various interests and public officials behind the policy proposal and the decision taken. One fine line that is difficult to walk is that of enough regulation to achieve a level of transparency and perhaps promote access and a leveler political playing field, but not over regulate and undermine the purpose of the regulations or even make them unworkable. Making decisions on questions, such as who is and who is not required to register as a lobbyist, what activities lobbyists are prohibited from engaging in, who has to report lobbying activities, and what is required in those reports, are thorny question not easy to resolve and questions still at issue in established democracies (Thomas, 1998: 510).

The challenge of these decisions is particularly difficult in developing democracies, such as those in Latin America, as without a strong enforcement agency and a culture unaccustomed to public scrutiny, an over-regulated system may encourage non-compliance, which can be practiced with impunity as appears to be the case in Peru.

For instance, the focus on registration of communication between public officials and lobbyists can be an element contributing to ineffectiveness. Provisions can result in failure to affect the behavior of those about which there was most concern. As ‘the ingenuity of the unscrupulous is inexhaustible’ (OECD, 2007: 16), provisions should not try to control the means of communication—the contacts between public officials and lobbyists. It should focus on making decision processes more transparent, allowing public assessment of the impact of every decision, and, consequently, the issues in dispute. In fact, the means used by lobbyists to reach decision-makers are impossible to strictly control, as commonly said in Latin America, ‘echa la ley, echa la trampa’ (every law has a loophole). Even technology works against the effort of controlling and registering contacts and communication. It is said in Brazil that if you lock up a decision-maker in an empty room, lobbyists will immediately develop telepathic abilities.

Then, there is the problem of too much bureaucracy, which, as we noted above, is likely one major cause of the shortcomings of compliance with and enforcement of existing laws in the region. There is a tendency in Latin America to build up bureaucratic controls that serve only as a barrier to public participation. In developing regulations, this must be avoided as far as possible; otherwise, regulations will hinder informed decisions and will foster inequity. As OECD (2007:20) has point out, a too complex regulatory, information disclosure and monitoring system can impose costs that far outweigh the benefits.

For ease of access, it might be better to cast less of a wide net in terms of those groups required to register. What is most important in Latin America at this stage of democratic development is the free and unlimited access to policy-makers who were very insulated from public influence a few years ago and many of whom still have an entrenched authoritarian culture. As democracy becomes more consolidated, it might be desirable to develop a more extensive lobby registration and reporting system. At the moment, however, new, less institutionalized and less well-resourced groups will benefit more as will the political system in general, by less regulation.

Whatever the extent of the lobby regulatory and good governance provisions, they must be backed up by effective institutions responsible for the enforcement of these provisions. Voluntary compliance schemes, particularly in an ingrained culture of political decisions made in the shadows, are often ineffective. However, the legal mandate of the administering and enforcement body, and its institutional arrangement, must fit the task of ensuring compliance including protections against political forces. Accordingly, the agency needs some form of independence, especially regarding its budget and protection of its status from the general antipathy of many public officials.

All these prescriptions may sound idealistic not only in the light of the Latin American experience in the four countries considered above but also given the experience of lobby laws in established democracies. Therefore, it is unlikely that most countries in Latin America will systematically plan lobby regulations by themselves, let alone in conjunction with other good governance provisions. Ad hoc solutions resulting from crises and public pressure, and consequently incrementalism, are likely to be the way that such laws will be enacted and reformed. Nevertheless, the suggestions above based upon past experiences in Latin America and in other countries regarding lobby laws are the ones most likely to produce the gradual movement towards curbing the worst effects of lobby and, in conjunction with other provisions, working to reduce
political corruption. How each country attempts to achieve these policy objectives, if at all, in light of the general policy atmosphere that often surrounds the enactment of such provisions is yet another challenge faced by the re-emerging and emerging democracies of the region.

CONCLUSION: THE CHALLENGE OF THE THREE-WAY TENSION OF INTEREST GROUP ACTIVITY IN LATIN AMERICA

In its limited experience with lobby regulation, at least based on the case studies presented here, Latin America illustrates a broader and often remarked-upon aspect of interest group activity in a democracy. This is the three-way tension among the indispensability of interest groups to democracy, their influence (as both a positive and negative force), and the need to regulate them to protect the public interest. Interest groups are a mixed blessing for democracy, and this fact is hard to accept by the public in many advanced democracies, let alone infant democracies as in Latin America. This is certainly evident in the somewhat dashed hopes for lobby regulation and its role in reducing political corruption in the region. Even in the absence of hard empirical evidence, the variety of sources we have used and the arguments we have presented provide strong support for the contention set out in our introduction that by themselves lobby regulations cannot eliminate political corruption as the public perception assumes.

In this regard, the experience with lobby laws in Latin America exhibits many of the problems long identified with lobby regulation across western democracies, with the limited success of these laws in the region being compounded by all the political teething troubles of re-emerging and transitional democracies. As the experience of the established democracies demonstrates, lobbying regulation brings better results when part of a broader regulatory framework for good governance (Transparency International, 2008: 4); and combination also tends to promote open access to the public officials both elected and appointed (OECD, 2008: 19).

Yet, as we have noted, looked at from another angle, even the limited success of lobby regulation and the continuing presence of the issue on the policy agenda across Latin America are a positive sign for Latin American democracy. The challenge now is to strengthen that democracy by building an understanding of the strengths and limitations of interest groups and lobbying and of lobby regulation. Most important of all is to gain the support, or at least the acquiescence of public officials, to lobby regulations and their value.

A pattern of results is yet to emerge regarding lobby regulation and related provisions in the region and probably will be different in each country. Plus, reflecting the diversity across the region, some countries will likely make good progress in this regard, and others will not. Despite this, it appears that the countries of the region, especially Brazil, Chile, Argentina, and Peru, would benefit from developing and enforcing their existing regulatory framework for lobbying activities. Indeed, there would be positive gains on corruption perception and also on economic efficiency because of the reduction of the costs that often result from back-room and unaccountable decision-making.

BIOGRAPHICAL NOTES

Luiz Alberto dos Santos holds a PhD in Social Sciences from the University of Brasília and is the author of several publications on public administration and interest groups. Since 2003, Mr Santos has been Deputy Chief of Staff of the Executive Office of the Brazilian President.

Paulo Mauricio Teixeira da Costa holds a Bachelor’s degree in Law and a Masters degree in Governance and Development from the University of Sussex, UK. Currently, he is a Public Management Specialist at the Brazilian Ministry of Planning, Budget and Management.

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