

Public Administration and Institutions in Latin America

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Introduction

Most Latin American countries have democratic constitutions, functioning bureaucracies and professional judiciaries. However, operation is patchy. Some institutions in some countries are at least as good as those in wealthier states; others are plagued by corruption and waste. This paper concentrates on the importance of reforming public administration and the judiciary; its recommendations can complement proposals to strengthen Latin America's traditionally weak legislatures.

Reforms are often needed in three areas: the way the state deals with citizens and businesses, the professionalism and honesty of the civil service, and oversight of government operation. Few reform options have been rigorously tested in the region, and, in any case, reforms have to be designed and targeted to meet the needs of individual countries. The rest of this paper looks at regional challenges and inter-country differences and proposes appropriate responses.

The Challenge

Poorly functioning institutions lead to harmful social and economic outcomes. But cause and effect can be difficult to distinguish. For example, corruption limits growth but is itself encouraged by poor economic performance. Corruption is a symptom of underlying weaknesses in the operation of the state.

Latin American countries typically are in the middle range of per capita income, well-being, government effectiveness, and institutional quality. But there are exceptions to the general rule that better governance is correlated with higher scores in the UN Human Development Index (HDI). In terms of the HDI, Chile gains little marginal benefit from its low level of corruption compared with other high HDI countries. In contrast, Argentina performs quite well despite its relatively high corruption level. (Recall, however, that the HDI downplays income gains relative to health and education as incomes rise.)

Government competence also affects security and the effectiveness of law enforcement. Corrupt countries tend to have a high level of organized crime, although again there is no strict correlation in all cases. At a different level, corruption also tends to reduce trust in the political system.

Specific indices of government quality give a more quantitative picture than simple perception of corruption but no simple consistent picture emerges. El Salvador has a reputation for lower levels of corruption, but it ranks poorly on government effectiveness and the rule of law. Columbia, Brazil, Mexico and Argentina do comparatively well on all measures, whereas Peru appears to have a particularly ineffective government, despite corruption levels on a par with Mexico.

The World Bank has published a "Doing Business" metrics for 155 countries that outlines the costs to business of complying with the law. Latin American countries tend to fall in the mid-range, but some countries have distinct strengths or weaknesses. In a comparison between those countries having a French legal heritage, benchmarked against France, Spain, Portugal and the USA, Venezuela, Brazil, Honduras, Bolivia, Guatemala

and Ecuador come out rather poorly. Such difficulties in doing business are likely both to hamper economic growth and to encourage businesses to get round the formal rules.

For countries with very poor governance, it is clear that radical reforms are needed, but the situation is more nuanced for the majority of countries in the region, and specific policies need to take account of individual country conditions. Furthermore, simply looking at the business climate ignores the problems of ordinary people. We need to look in more detail at problems associated with public administration and the law.

Public Administration

A well-functioning bureaucracy not only facilitates economic growth, but it is also necessary if the other Copenhagen Consensus initiatives are to be properly implemented. If the state does not operate efficiently, even the most benign policy may have little effect.

There are a number of interlocking ways in which public administration can perform badly. First, it is necessary to separate a person's role as an official from that as a private citizen. Favoritism typical of family life is inappropriate for a bureaucrat but can be difficult to eradicate especially if salaries are low. However, such corruption can also occur at high levels if it is deep engrained.

Second, even a good civil service will be hampered by a vague or overly complex legal framework, and bribes may be accepted to ease the burden of work. A third reason is poor tracking and control of budgets, which can tempt officials to appropriate or misuse funds. Fourth, tasks must be allocated properly to different levels of government. Too much decentralization risks capture by local elites; excessive centralization can lead to a rigid and unresponsive hierarchy.

Private citizens, watchdog groups, the media and opposition political parties must also be able to monitor government and, where necessary, hold it to account. However, this can only be really effective if the system provides information to outsiders and has mechanisms for accepting and responding to such critiques.

Finally, it should be recognized that corruption or capture at a senior level in the administration can have particularly serious consequences, bringing the state to the brink of failure and undermining the economy. For example, senior police officials may actively collaborate with organized crime groups, and high-level politicians may favor particular businesses when they approve major contracts and concessions.

All these aspects of poor administration are essentially structural, and reform has to address the fundamental political and economic incentives that make them possible.

The Judiciary and Law Enforcement

A competent and independent judicial system enables the rule of law and supports both democratic systems and the operation of the free market. Unfortunately, between 20 and 40% of respondents in most Latin American countries expressed a lack of confidence in the judiciary, according to a Latinobarometer study. A household survey in Peru revealed that the judiciary was the most corrupt institution as perceived by citizens with the police second. The prosecutors may also be corrupt in some countries.

The Lex Mundi project looked at the workings of the legal systems in a range of countries for some routine business issues. The conclusion was that the greater the level of legal formalism, the greater the expectation of delay, the less consistency, honesty and fairness in the courts themselves, and the higher the level of corruption. However, virtually all Latin American countries have legal systems based on the (rather formal) continental European tradition; yet there are wide disparities in performance. Thus, in Latin America, it seems worthwhile to consider these inter-country differences in implementation.

Delays in the system may encourage businesses to adopt practices which limit litigation, but corruption of the judiciary and extra-legal enforcement are also possible consequences. But simply reducing delays will not be sufficient if courts are subject to political influence and judgments are not enforced. Because well-functioning courts are needed – however effectively other dispute resolution processes work for minor cases – it is clear that judicial reform ought to be given priority in most countries in the region.

Solutions

There are three components to effective reform, dealt with below: public administration, oversight and accountability, and the justice system.

Public Administration

Simplifying and streamlining regulations and encouraging competition have demonstrable benefits, but they can be difficult to implement if both the bureaucracy and the legislature are weak. An alternative is to change first the way goods and services are provided.

Revenue Collection

Latin American countries vary in the level of taxes they collect from their citizens. The countries which collect the lowest proportion of GDP as tax are Haiti, Guatemala, Venezuela, Ecuador, Mexico and Peru, and this severely hampers their effectiveness.

Simplification and better management of the tax system can have real benefits. Bolivia's proportion of VAT lost dropped from 42% to 29% in the three years after reform of the customs service, and in Peru tariff revenues rose from 23% to 35% of total revenues in a six year period.

A specific cost-effective reform was the creation of a semi-autonomous revenue authority. In Peru, for example, total tax revenues rose from 8.4% to 12.3% of GDP while many tax rates were reduced. After a program of retrenchment of existing staff and hiring new ones, 81% of people surveyed said that agency employees were substantially or much more qualified than before the reforms. 85% also considered them less corrupt.

Such reforms have a low or even negative marginal cost. However, they are not necessarily robust if other institutions are corrupt. Civil servants have eroded the autonomy of revenue agencies in a number of countries, emphasizing the need for more wide-ranging reform.

Procurement and Business Regulation

Complex and costly business regulation encourages growth of the informal sector. Streamlining the system would stimulate economic growth by bringing more businesses into the formal sector and giving them better access to capital and markets. However, even after such reforms, government procurement may continue to be a source of corruption and waste. Reforms in this area could include standardized internet procurement systems which limit opportunities for corruption.

Privatization and Contracting-Out

Many Latin American countries privatized utilities during the 1990s aiming to raise revenue and improve performance. However, results were often mixed, despite the general cost-effectiveness of such moves. In some cases, the rural population has been disadvantaged relative to city dwellers; in others latent demand has been reduced by simply raising prices.

Creating a monopoly without effective regulation has been a problem, and there is now something of a backlash against further privatizations. All this suggests that additional privatization should not be a priority in the region for the time being.

One intermediate option is to contract out services to private sector suppliers – particularly not-for-profit firms – while the government provides the funding and sets eligibility criteria. Positive results have been seen for primary healthcare and nutrition services in Bolivia and Guatemala.

Overall, given that additional, full-scale privatization does not seem to provide an appropriate way forward in the region, internal state reform becomes even more of a priority.

Civil Service Reform

Although the quality of public administration varies considerably, most Latin American democracies need to strengthen the overall capacities of their civil services. Employees need to be properly trained, and employment conditions set so as to attract high quality applicants.

Salaries do not seem to be a barrier: in most countries public sector workers are paid better than their private sector counterparts. Women also benefit from government jobs because they have fewer options in the formal private sector. Motivating and reorganizing the civil service therefore seems a higher priority than pay increases.

Brazil has been a very active reformer, with a comprehensive federal civil service program mandated in the 1988 constitution and merit-based recruiting becoming the norm. The share of civil service recruits with a degree rose from 39.2% in 1995 to 94.1% in 2001. Although this delivered few short-term benefits, reform has continued steadily. Chile has also introduced reforms including results-based evaluation and promotion on merit.

Although such reforms are important, they must first have political support. In some cases, windows of opportunity must be identified and used, and the pace of reform must not be too fast if support is to be maintained. The extent of reforms

may be tempered by political reality, but they can still have real benefits. In Mexico, for example, reform has been limited to the top level of bureaucracies, but already the tens of thousands of existing patronage positions have been reduced to a few hundred.

Oversight and Public Accountability

Such internal reforms must be complemented by oversight. The establishment of proper accountability can be a difficult balancing act, but the two broad responses are the creation of government institutions charged with oversight and public empowerment, sometimes both.

Many countries in the region have state-financed oversight bodies, whose effectiveness depends on their degree of independence and the sanctions at their disposal. Ideally, governments should make sure their actions are transparent and that citizens have simple means to lodge complaints, without encouraging groups which are merely puppets of powerful political lobbies.

The benefits of accountability are shown by a World Bank survey of public officials in Bolivia, which show that low corruption, high levels of transparency and listening to the voice of users are correlated with better performance and greater access for the poor.

Public Information and Auditing

Open governments should provide their citizens with information about budgets, legislative proceedings etc, and the financial data should be audited by an independent, credible and effective body.

Independent audits can result in real political accountability. In Brazil, results of random audits of municipal government accounts were publicized before elections; mayors overseeing problematic accounts have received reduced votes. But most auditing bodies, being part of government, are not so independent. All auditing bodies in Latin America have some weaknesses, with Argentina and Ecuador being worst. Hence, citizen oversight facilitated by freedom of information legislation also has a role to play.

Only six Latin American countries had passed Freedom of Information Acts by 2005. Such laws should encourage government agencies to organize files to make retrieval easier, and civil society pressure should encourage the collection and disclosure of data. However, the costs are not insignificant for developing countries. For example, the Mexican Federal Institute for Access employs 150 staff, with a budget of \$25 million: a considerably higher proportion of GDP than for the USA or Canada.

The Media and Public Opinion

Information from the government must be analyzed and publicly discussed by critics. This requires a properly functioning and free media--although nominal press freedom is compromised if most are associated with political parties. The media in Latin America is mostly ranked as free or partly free by Freedom House. The fall of the Fujimori regime in Peru, precipitated by a single uncorrupted cable TV station, shows the importance of the media for democratic accountability.

Private Associations and Nonprofit Organizations

Laws which facilitate the formation of non-profit organizations (NGOs) can help to improve accountability. However, it is important to avoid dependence on government funding, which limits their willingness to criticize. Latin American NGOs, though sometimes very critical of governments, play a limited role, partly because of the low income of their supporters, and partly because of political constraints. Obstacles to their formation and funding should be removed.

Grassroots Participation in Government Decision making

Participation in the political process should be open to all citizens, not dominated by organized elites. Lack of participation may be due to fear of intimidation, in which case government needs to take action to control local elites.

Many attempts have been made in Latin America to involve rural populations in the design and monitoring of agricultural development programs and city dwellers in government decision making. In the well-known case of Porto Alegre, Brazil Participatory Budgeting was found to play a part in improving services and increasing tax collection, and the initiative has been expanded to over 300 municipalities in the country.

There is no simple blueprint for grassroots participation which can be rolled out across the region. Nevertheless, if productive partnerships can be forged between government reformers and low-income people, success can be achieved.

National Policymaking

Grassroots participation can be effective locally, but participation must also be facilitated at a national level. The US Administrative Procedures Act provides one model for rules to be made via a process of notification and comment. Inevitably, such a system introduces delays, and judicial review should be a check on its use. Nevertheless, officials drafting policies ought to be influenced by the fact that they will be subject to public scrutiny.

The Judicial System

Emerging democracies need a fair, independent (but accountable) judicial system, which gives both litigants and judges incentives to behave responsibly. Currently, many judiciaries in the region suffer from important weaknesses

Selection and appointment of judges is clearly important, although even good appointees may be corrupted. Constitutional and supreme courts are nominally the most independent institutions in Latin America, but appointments are often very political. Setting up judicial councils to appoint judges should help maintain independence, but experience so far in the region has not been positive.

Prosecutors may be either part of the executive or the judiciary, but neither guarantees independence and professionalism. In Brazil, the public prosecutor is largely independent of the rest of government, with very encouraging results in terms of prestige and professionalism. However, results vary between the Brazilian states, which offer different levels of resources, but the option is worth considering.

Delay is a major problem in the courts, partly because judges must spend much of their time on non-adjudicative tasks: 70% in the case of Argentina, for example. The delays not surprisingly contribute to administrative corruption, with litigants bribing officials or judges to speed matters up. Streamlining procedures could improve this situation. A high proportion of cases are never completed in some countries: 80% in the case of Mexico. Encouraging out-of-court settlements might then be a good way forward in such cases.

For some areas of the law, disputes may be settled by alternative means. In Colombia, a system of Complaints Boards has successfully dealt with land disputes in rural areas. Their advisory rulings have been accepted by local government and land values have risen.

Costs and Benefits of Alternative Policies

There is, of course, no single solution. The problems are multi-faceted, implementation may have to overcome political rather than economic barriers, and countries in the region have differing needs. Nevertheless, I have put forward five promising areas for reform.

Option 1

Improve performance and limit corruption in regulation, revenue raising and procurement. This would help to produce robust economic growth and deliver better government services. Costs are likely to be low for technical consultants, program evaluation and cutting red tape, but there may be additional salary costs. Successful cases of procurement and revenue reform have given benefit-cost ratios as high as 100, and others are in the 3 to 10 range.

Option 2

Increase contracting out to NGOs for service delivery. There are costs involved in organizing and evaluating such programs; benefits are in the form of improved performance. Successful case studies for primary care and nutrition services in Bolivia and Guatemala show net benefits.

Option 3

Government monitoring via audit agencies etc. This should give cost savings, reduced corruption and better prioritization, for the costs of setting up and staffing agencies.

Option 4

Grassroots monitoring with assistance from government or NGOs. In addition to the opportunity cost of people's time, there are the support costs of consultants and government officials. Benefits come in the form of cost savings on existing programs (up to 400% in pilot projects), better economic performance and improved access to services by the poor.

Option 5

Improvements to judicial and prosecutorial independence and performance, together with improved methods of non-judicial dispute settlement. The benefits of less wasted time, less corruption and greater respect for outcomes would require additional expenditure on salaries and automation.