Abstract

For most of its history, Latin America has lived under authoritarian rule, where the “common good” tends to be crafted in the shadows of cabinets and parliaments. Recently, the development of more open regimes has brought some level of transparency to the policy-making process, revealing evidences of capture by private interests that make use of obscure strategies to prevail in public decision making. As a consequence, a general claim for regulating the role and method of interests groups has emerged in the region, as a necessary step to address the root causes of corruption and enhance transparency in the policymaking process.

Lobbying regulation 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 lobbying regulation 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. An old American political adage states: “transparency is a great corrective for deviating behaviour” (Key, 1964: 151). Those are important arguments for lobbying regulation as a means to tackle corruption and improve transparency and a more equitable environment in the policy making process in the search for influence.

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. Simple practices could sensibly improve the level of transparency and access of public decision making. Besides this good governance agenda, the simultaneous design of institutions responsible for the enforcement of lobbying regulation is required.

This paper tries to provide an overview of attempts to regulate lobbying in Brazil, in the light of the international experience of some north and latin american and OECD countries and what they have tried. After that, it evaluates the success of these attempts. This is followed by an assessment of prospects for the future regarding corruption, transparency and lobby regulation in Brazil and its connection with the Brazilian commitment with democratic governance and the recent country achievements in terms of transparency, as the recent approval of the Law on Access to Information, and the growth of neocorporatists institutions that provide opportunities for public participation in the policy making process.
**Introduction**

Since colonial times, both political access and influence in Latin America have been restricted to a few groups. Firstly, political elites—mainly white, wealthy upper-class families and individuals—have always enjoyed major political access with no broad-based political legitimacy. Secondly, the bureaucracy, which historically has not been chosen through a meritocratic and open process, shared those privileges. Finally, access has been afforded to unofficial power groups which had obtained access to the decision-making process through influence-trafficking and other forms of corruption.

It is important to mention that Latin America has been considered by scholars as an outstanding case of endemic corruption. Indeed, the subcontinent seems to fulfill every ‘corruption variable’ (Caldas & Pereira, 2007: 28): immature democratic institutions; inefficient bureaucracy and law enforcement apparatus; over regulated economy; cleavage between private and public sector wages; economic reliance on natural resources; colonial early formation and other cultural factors. According to the Transparency International, 58% of Latin Americans argue 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 (56%) (Transparency International, 2009: 40).

All these features set out an environment where every public decision-making process is apt to arouse suspicion. Thus, interest representation in Latin America tends to be understood as a distortion of democratic ideal. Indeed, even in recent and developing democracies, where a more hopeful approach could be expected, media and common sense always link lobbying with corruption or influence trafficking, setting a perception that special interests are inherently illegitimate (Thomas, 2008: 6), despite the fact that lobbying regulation is generally recognized as an important aspect of good governance (OECD, 2007: 17). On the other side, representation in the Legislatures tend to be biased, under the influence in the electoral processes of the wealthiest groups, that usually contribute more for political campaigns and get better access to the decision makers. Finally, transparency in Latin American countries faces the challenge of the culture of “secrecy” and the lack of legislation to assure access to information to the citizen and civil society organizations.

As a consequence, 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. As a matter of fact, the main rationale of lobby regulation initiatives in Latin America is the need to tackle corruption in order to restore trust in the government and reliance in the political system.

If the main rationale for lobby regulation in Latin America is tackling corruption, its impetus, or the reason why lobby regulation came to the agenda of several governments in the region is related to an increasing recognition of corruption as a problem and the
consequent formation of an anti-corruption culture among civil society, as a result of the recent democratization of Latin American.

At the beginning of a democratic transition, every institution seems to be completely corrupted, due to the burst of exposure produced by that first democratic friction, that brings to light corruption episodes that under authoritarian regimes where hidden. Hence, at the beginning of transition towards democracy people tend to have a perception that democratic regimes are more corrupted than authoritarian ones. Even the increase of interest representation, which is nothing but a clear indication of democracy consolidation, are taken as signs of privileged access and corruption, especially because of the inherent inequity of access to public decision-making among different types of interests, particularly between economic and non-economic interests (Thomas and Greenwood, 1998: 488).

Afterwards, with renewed institutions and practices, there are less corruption scandals and more anti-corruption laws being enforced. At that moment 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). This is the point where the region and Brazil, that is the main subject of this paper, seems to be positioned today, when lobby regulation, transparency and freedom of information can be pushed to the political agenda.

Lobby Regulation – International Lessons

Lobby regulation is still a new issue around the world in the government’s agenda. Despite the fact that the first attempts to regulate lobby started in the end of the 19th Century in some north-american states, and that the first national legislation was introduced in the USA in 1946 (followed by the 1995 and 2007 reforms), a very small number of countries have introduced lobby regulation in their integrity and transparency legal frameworks, being the more important examples Canada, Poland, Hungary, Ireland, Australia, the European Commission,

In America, United States and Canada are the oldest and well succeeded countries in terms of comprehensive – but not always effective - lobby regulation, but legislatures in other countries have considered or approved lobby regulations.

In February, 2010, OECD Council (OECD, 2010) approved, after several years of research on national experiences and consultations, a 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. So, to foster citizens’ trust in public decision making, public officials should promote fair and equitable representation of business and societal interests.

Taking into consideration the national context and constitutional principles and established democratic practices, countries should assess the potential and limitations of various policy and regulatory options and apply the lessons learned in other systems to their own context. The rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks, taking into account how the regulatory and policy framework already in place can support a culture of transparency and integrity in lobbying, including stakeholder engagement through public consultation and participation, the right to petition government, freedom of information legislation, rules on political parties and election campaign financing, codes of conduct for public officials and lobbyists, mechanisms for keeping regulatory and supervisory authorities accountable and effective provisions against illicit influencing.

In order to enhance transparency, countries should to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities, and core disclosure requirements include elicit information on in-house and consultant lobbyists, capture the objective of lobbying activity, identify its beneficiaries, in particular the ordering party, and point to those public offices that are its targets, and disclosure requirements might shed light on where lobbying pressures and funding come from. Countries should also to enable stakeholders – including civil society organizations, businesses, the media and the general public – to scrutinize lobbying activities, specially using information and communication technologies, such as the Internet, to make information accessible to the public in a cost-effective manner, and including civil society observers, or “watchdogs”, representative citizens groups and independent media to ensure proper scrutiny of lobbying activities.

Communication with lobbyists must follow principles, rules, standards and procedures that give public officials clear directions on how they are permitted to engage with lobbyists.

Finally, countries should consider establishing restrictions for public officials leaving office to prevent conflict of interest when seeking a new position, to inhibit the misuse of ‘confidential information’, and to avoid post-public service ‘switching sides’ in specific processes in which the former officials were substantially involved, including by the
imposition of a ‘cooling-off’ period that temporarily restricts former public officials from lobbying their past organizations.

OECD recommendations reflect the “state of the art” and the broad evaluation over the merits and advantages of such legislations, but is clearly a “roadmap” to be considered under local political, constitutional and cultural environments, as is the case of Latin American countries.

Attempts to regulate lobbying in Latin America

Having reached the political agenda in Latin America, lobbying regulation is now a current challenge for our 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.

As far as the form is concerned, lobbying regulation can be expressed through formal pieces of legislation or through less formal codes of self-regulatory conduct (Thomas, 1998: 493).

The scope of the regulation is defined by its coverage. It can be a general code covering every branch or layer of government, or can be set up by one specific code for each branch or layer, and even specific regulations for distinct public offices within the government. In other cases, rules can be directed to a specific kind of interest, such as constructors or foreign investors. Surely, the scope depends on how the regulation defines interest groups, lobbyists and lobbying activities.

According to their contents lobby regulation schemes can be classified as corporatists or pluralists, due to the main characteristics of their arrangements (Thomas 1998: 498). Their contents can also vary according to their focus on groups’ organization - when the scheme regulates how interest groups can be formed – or on groups’ activities – when it regulates and control their strategy and tactics.

The last consideration regarding the options presented for the formation of a regulatory scheme takes the instruments for lobby regulation into account. Depending on the form, scope and contents one decides to regulate lobby activities, there are several instruments available. Firstly, the most common instrument in any regulatory scheme is registration, which provides lobbyists a ‘quasi-official’ status and limits new entrants (Thomas, 1998: 496).

Another usual instrument is the disclosure of lobbyist information, such as the reporting of their revenues and expenditure; the set of issues they deal with; and the identification and interests of their clients, sometimes along with the requirement of a mandate to support their interventions.
Another set of instruments is applied only to the public agents, aiming to establish standards of conduct within the civil service. Specific restrictions such as a “cooling-off” period after leaving the office, when the public agent is not allowed to lobby his former agency; a prohibition against the acceptance of gifts or hospitality; and strict monitoring of personal assets are all measures that foster ethical behaviour among public agents.

Finally, other good governance initiatives are commonly listed as decisive for the success of any lobby 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. Constitutional provisions and laws of access to information play a very important role as institutions linked to the openness and transparency, avoiding or reducing the effects of the bureaucratic behaviour that uses the right to declare “secrecy” on public information as a way not only to preserve power but reduce the exposition to public accountability, and improving room to scrutinize the decision making in the policy process. The notice-and-comment procedure in the formulation of new regulations is also very relevant. In fact, every transparency measure has in itself the power to promote a cultural change among lobbyists, citizen and also public agents. In other words, good governance is crucial for the establishment of an efficient lobbying regulation and transparency scheme that fosters a culture of ethics in lobbying activities and public management.

In Chile, the Congress came to a decision in 2008 approving a bill under discussions for two years. The bill was sent to the recent elected President Michelle Bachelet, that, thirty days later, sent it back with several vetoes, arguing that the scope of the Law was not comprehensive enough. Since the two legislative chambers have not agreed on their position regarding the presidential vetoes, both Congress and the President came into terms that it was better to send a new proposal. It was sent to the Upper House in November 2008, and was approved in July 2009. Since then, it has been discussed by the Chilean Low Chamber.

At the Presidential Message that sent the new proposal, President Bachelet stated that the capture of public authorities by private interests is against democratic principles such as isonomy, equal rights and free market competition. Then, as the Presidential Message declares, the proposal is focused on transparency about whom, how and why contacts between public authorities and lobbyists happen. Of course, these contacts will still be allowed, since Chilean government recognizes that it should not be avoided, for the sake of better informed decisions. According to this, the major aim of the proposal is to level the opportunities of every interest at stake to be informed of the rationale of every public decision. Until the finish of Bachelet presidential period. Congress didn’t reach an agreement on the proposal.

As part of the governmental effort to enhance transparency, Bachelet government has launched a set of measures called “Integrity, Transparency, Efficiency and State Modernization Agenda”. Along with lobbying regulation, the Agenda brings a proposal
regarding information disclosure that became a Law in August 2008 (Law n. 20.285). Also
takes part of the Agenda more restrictions to “revolving doors” within the Executive and
rules regarding conflict of interests among members of the parliament preventing them of
dealing with issues in which they have any interest. Other restraints are proposed, such as the
participation of members of the parliament in companies featuring in public contracts. There
are also measures regarding election financing. In order to provide more transparency over
the sources of electoral funding, the proposal forbids contributions of companies - allowing
only individual funding - and strengthens enforcement capacity of independent electoral
agencies.

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.

Historically, among Latin American countries Chile presents one of the lowest rate of
corruption perception. According to Transparency International (2010), Chile presents a rate
of 7.0 - being 10 the lower corruption perception grade - and is at the 21\textsuperscript{nd} position
worldwide. Nevertheless, lobbying regulation is still a great public concern, since
transparency of public affairs is a great political issue in the country.

Hence, it is feasible that, in the short run, Chile advances towards a consistent good
governance regulatory framework that guarantees more transparency and control over
lobbyists and interest groups.

In Argentina, in 1999, President de La Rúa established an Anticorruption Office. In
2001, a corruption scandal involving members of the Senate during the discussion of labour
reform brought lobbying regulation to the fore (Basterra, 2004: 8). Two years later, 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 presents itself more like a self-regulatory code for the Executive Branch,
not being applied to legislatures or sub national governments. Within the Executive, it is due
to every governmental agency, entity, organism or company, as well as companies partially
funded by the government.

Decree 1172/03 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’. Hence, there are several provisions regarding public information
disclosure and other measures aiming transparency. For instance, according to Decree
1172/03, the board of Agencies responsible for the regulation of public service is supposed to
meet openly.
One peculiar aspect of Argentina’s Decree is its lobbying definition. To be considered lobbying the contact must have been made personally, as in a formal hearing. That is what they call *modalidad de audiencia*, which is an essential element of the concept of lobbying proclaimed by Decree 1172/03. According to Quaglia, the definition of *audiencia* as the sole act of lobbying not only narrows the scope of the regulation but also causes misinterpretation that generates enforcement problems.

The agents who must register their meetings with lobbyists are the President and the Vice-President, the Chief of the Executive Office, Ministries, Secretaries and their deputies, Federal Interventors, superior authorities of any Executive agency. All of them must control their own meeting files. There are few exceptions, such as when the main issue dealt at the meeting had been defined as secret by a Law or a Decree (Basterra, 2004: 9). The information registered must be public, have free and open access, and shall be daily updated at the internet. The agency responsible for the enforcement of the Decree 1172/03 is the Subsecretary for Institutional Reform and Democracy Enhancement, within the Argentinean Executive Office.

The Decree brings several mechanisms for participation and information disclosure within the Executive Branch, such as compulsory public hearings and open meetings. Due to the constitutional petition right, those events may be requested by any citizen, and will be mandatory if related to certain issues, such as taxation. If the authority judges the request unreasonable, it can be denied through a justified statement. At the meetings everyone shall participate – citizens or companies, private or public, individually or collectively affected, as long as their participation is pertinent to the issues at debate. The meetings can be followed by the general public and the media.

In general, Decree 1.172/03 represents an important movement made by the Argentinean government to reduce opportunities for corruption and influence trafficking. After its edition other layers of government followed it with their specific regulations, aiming the same results. Even though, Argentina remains in an uncomfortable position in terms of corruption perception, as the 105th country among the 178 nations evaluated, with a 2.9 rate (Transparency International, 2010). Hence, there is a long way for Argentinean democratic institutions – including the recent lobbying and information disclosure regulation – to obtain sound results in terms of corruption perception among the public.

Over the last decade, more than 20 lobbying regulation proposals have been presented in Argentinean Congress. Among them, it is possible to identify several distinct arrangements and mechanisms. The goal is the same though, and clearly demonstrates the importance given by the Legislative to the need of a broad and legal support for Decree 1.179/03.

Peru was the first country in Latin America to have a law regulating lobbying. Since 2003, Law nº 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. As a consequence, it is the first country that counts with an assessment of how the Law has been enforced. And the results of these first eight years are not very promising.

Just like other laws in Latin America, the Peruvian one brings the definition of ‘interest management’: “oral or written communication from interest managers towards public agents, aiming a specific public decision”. It also defines acts that are not ‘interest management’, such as declarations made through speeches or published articles that are merely the exercise of freedom of expression, not aiming a specific public decision.

The Law innovates when states which decision-making processes can be object of ‘interest management’. They are processes related to specific decisions, such as positions of parliamentary commissions regarding law proposals; contracts celebration; formation of executive orders and others.

The public agents whose decisions can be targeted by lobby are also defined. They are the President, members of the parliament and, in general, every agent as stated so by the Law regulation. Those agents are supposed to record any contact with lobbyists and cannot work as interest managers before twelve months after leaving the public office.

The main obligation of interest managers is to register themselves as such at the ‘public registry of interest management’, sending information regarding their activities every six months. The public agents are also supposed to send to the registry briefings of contacts made by lobbyists.

Finally, the Law creates the ‘Administrative Special Court’ that should work as an appealing court for the sanctions prescribed by the Law.

Nowadays, more than eighth years after the enactment of the law, several voices have been heard stating that the Law n° 28024 has not been obeyed nor enforced properly. Since 2004 there were only 25 lobbyists registration. Among these 25, only one has updated the information every six months. No public agent has informed contacts made by lobbyists and there are cases of congressmen denying to sign the report made by the then one and only registered lobbyist, whose name is known in all Peru – Juliana Reymer, a lady who has become famous because of her obstinacy to follow the rule of law (Córdova, 2008). Some experts argue 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) (Comision, 2010).

According to the World Bank (2009: 97), Peru has kept similar records of corruption indicators over the last five years. In 2010 corruption perception rate in Peru was 3.5 - similar to countries like Colombia, Mexico or China. Nevertheless, according to Transparency International (2010), for 85% of Peruvians recent measures adopted by the government to tackle corruption are ineffective.
In Brazil, there is not a specific legislation regulating lobbying. However, there are several rules that indirectly reach lobbyists. Brazilian Constitution sets out the right of petition and freedom of association. Consequently, the right to require information disclosure and also the right to have collective interests represented by associations are guaranteed by the Constitution. Furthermore, Brazilian criminal law deals with bribery, influence trafficking and other forms of corruption. There are also legal provisions trying to tackle the influence of money over politics, like the articles of the Brazilian Electoral Law that establish an upper limit for campaign expenditures both for individuals and enterprises and forbid contributions from private sources as unions, social and political organizations, government contractors and anonymous contributors, and also foreign sources.

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. Other legislations, specially concerning regulatory agencies, provide rules about notice-and-comment processes and public hearings regarding proposed regulation to be issued in sectors as telecommunications, electricity, oil and gas, transportation and health surveillance.

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. In April 2012, the Chamber of Deputies approved a bill of law that, when approved by the Senate, will reframe entirely the conflict of interests regulation, increasing and expanding “cooling off” prescriptions.

It is also important to mention that, as an enduring consequence of 1930’s state corporatism, several Brazilian Executive departments are legally supposed to form policy-making boards that are open and compulsorily include companies, trade unions and civil
society organizations. At the Federal level of government, about 90 National Councils and Committees with the participation of civil society organizations provide access to policy formulation and evaluation to about 1,500 representatives of institutions both for government, civic organizations, unions, businesses representations and minority groups. In general, 59% of the representatives are from civil society organizations. Other important instrument of democratic governance and civil society participation in policy formulation are the National Conferences: from 2003 to 2010, 74 National Conferences were promoted; in 2011, 8 National Conferences were concluded, with the participation of 10,000 delegates and a total mobilization of 2 million participants in all the preparatory events. In 2012, other 5 Conferences are scheduled.

Regarding lobbying activities, a regulatory framework that put all the provisions into a more systematized scheme is still on the agenda of both Executive and Legislative. There are several proposals dealing with lobbying activities at the Brazilian parliament. The first bill was presented in 1987, but the most relevant was presented in 2005 and intends to regulate Lobbying within both Executive and Legislative, at the federal level. The proposal presents the usual features: registration of public agents and professional lobbyists, ‘cooling-off’ schemes, reports of lobbying activities and lobbyists financial disclosure. There are also original initiatives, such as the provision of a compulsory training course for lobbyists requiring registration. It also gives the lobbyists the right to request their participation on audiences when decisions related to their mandates are taken. It can be stated that the most inventive features of the proposal are concerned to guarantee fair and equitable access to the public in the decision-making process.

In recent years, public institutions responsible for anti-corruption strategies have officially required the Executive to adopt new rules regarding integrity in public administration, as in terms of conflict of interest and revolving doors, access of information, and lobby regulation and harder punishment for enterprises involved in corruption of public officers.

In November 2011, after 36 months of discussions, the Congress approved the Law on Access to Information, to be effective from May 16, 2012 following a short six month vacatio legis period.

The procedures provided in the Law are intended to ensure the fundamental right of access to information and must be executed in accordance with the basic principles of public administration, specially the publicity of public decisions, the notion of secrecy as the exception, disclosure of information of public interest regardless of requests, the use of information technology, promotion of a culture of transparency and development of social accountability of public administration.

The Law consolidates the legal framework to assure the exercise of the constitutional rights on access to information, amplifies the scope of the right reducing the possibilities of secrecy on public documents and information, reduces the number of authorities with powers
to declare secrecy, establishes procedures and terms to get public information and access to public documents and promotes active transparency. The law provides rules for all levels of government of the Brazilian Federation, including states and municipalities. It is also applicable to all the governmental bodies, including state owned enterprises, and to every private entities that receive public resources directly from the budget or through social grants, management contracts, partnerships, agreements, or other similar instruments.

Governmental bodies and agencies must ensure transparent management of information, providing broad access to it and its dissemination, protection of information, ensuring its availability, authenticity and integrity, and protection of confidential and personal information, subject to its availability, authenticity, integrity and possible restriction of access. The law also assures the right to the public to obtain guidance on the procedures for access and where the desired information may be found or obtained, information contained in records or documents produced or accumulated by their agencies or entities, collected or not in the public archives, information produced or guarded by a private person or entity arising from any relationship with their agencies or entities, primary, genuine, authentic and updated information, information on activities carried out by bodies and agencies, including those relating to policy, organization and services, information relevant to the administration of public property, use of public resources, procurement, contract administration, and information relating to implementation, monitoring and results of programs, projects and actions by public agencies and entities, and proposed targets and indicators, the results of inspections, audits, accounting services and decision made by the organs of internal and external control, including statements of account relating to previous years.

It is the duty of public bodies and agencies to promote, regardless of requirements, the disclosure in an easily accessible location, within its competence, of information of collective or general interest produced by them or in their custody. The access to public information shall be provided by the creation of information services for citizens, organizations and entities of government with appropriate conditions to meet and guide the public on access to information, report on the processing of documents in their respective units, protocol documents and docket information access requirements, and hearings or public consultations, encouraging public participation or other forms of disclosure. Applications for access to information must be answered in a 20 day period, except if express justification is present for extension for more 10 days.

The information held by public agencies and entities, given its content’s indispensability to the security of the society or State, can be classified top secret, secret or reserved, and the maximum period for restricting access to information are of 25 years (for top secret information), 15 years (secret), or 5 years (reserved), renewable for only one more equal period. The top secret classification is restricted to the President and Vice-President, the Ministers, the Commanders of Navy, Army and Air Force, and the Heads of Diplomatic
Missions abroad. The secret classification can be applicable also by the heads of local authorities, agencies or state owned enterprises. The reserved classification can also be declared by senior civil servants in charge of management and advisory responsibilities.

However, government has not sent to Congress a proposal on lobbying regulation yet, despite the political scandals that often bring lobbying control to the agenda. As a matter of fact, the general view of lobbying as a source of corruption reinforces lobbying stigma, though keeps it on the agenda.

A recent survey (Santos, 2007) that questioned 60 members of the parliament and 60 senior bureaucrats, showed that among them lobbying activities are less stigmatized. For 49.2% of the interviewed, lobbying is part of democracy and must be regulated and limited in order to avoid corruption, conflict of interests and abuses. For 81.5% lobbying regulation must cover the Executive, Legislative and Judiciary. As far as the contents of regulation is concerned, 71.5% thinks that transparency and control should be the focus. 21.7% points out that equity on decision-making access should be the main issue of a regulatory framework.

Regarding the expected results of a lobbying regulation, the answers revealed a great sense of hope and optimism: 61.1% believe that a law regulating lobbying would decisively help to reduce corruption and enhance transparency on the relationship among interest groups, politicians and bureaucrats. However, for 33.9% such law wouldn’t be effective tackling the causes of corruption. For those, a law wouldn’t reach the most powerful interests. Otherwise, it would only create more barriers for interest groups with fewer resources.

It is also important to mention that Brazil still presents a high level of corruption perception. According to the Transparency International (2010), the country is on the 69th position among 178 countries, presenting a 3.7 grade. According to the World Bank (2009: 95), corruption controlling in Brazil is stable, with a minor improvement from 2007 to 2008. However, the country is still in an uncomfortable position if compared to other nations of the subcontinent, such as Chile or Colombia.

Enforcement problems, cultural resilience or simply a failure of the proposed regulatory schemes? The next section will check if a clear outcome of lobbying regulation experiences is already feasible and, if so, what are the results and perspectives for the future.

**Reasons for success and failure of lobbying regulation schemes**

Legal reforms are necessary but not sufficient when socially embedded practices are to be changed. Indeed, the effectiveness of formal legal provisions against corruption is usually hindered by the lack of enforcement capacity. Also the lack of access to information
can harm the integrity framework, excluding from public scrutiny the behaviour of public officials and creating room for privileged access in the policy process.

According to this, when considered as a simple anti-corruption measure, having the mere goal of addressing corruption, lobbying regulation is doomed. In fact, lobbying regulation affects corruption only indirectly. It is certain that regulation might level the access to decision-making letting anyone to participate regardless their economic status. However, the better off will always find easier doors if bribery remains an option. Hence, lobbying regulation might build up a culture of transparency and integrity. However, in order to properly results in less corruption perception, it needs to be sided by other forms of corruption control and accountability. In other words, lobby regulation alone may not influence political morality (Thomas, 1998: 511).

In this sense, lobbying regulation must be justified not only by strict anti-corruption arguments, but also as an effort to open and level the chances to influence. In order to do so, lobbying regulation must come along with the rules for the disclosure of public information, which is a pre-condition to ‘even-up the political playing field’ (Thomas and Greenwood, 1998: 503). In fact, information disclosure is crucial to address corruption, since it is clear that the principal-agent problem flourishes in asymmetric information (Klitgaard, 1994: 220).

However, the current high level of social participation is shadowed by public institutions still susceptible to powerful groups that manage to influence using their economic strength through hidden connections or clientelism. As a consequence, there is such a strong resistance, often hidden, to enact and carry out an efficient control of lobbying.

Several independent variables affect the degree of success of lobbying regulation to overcome enforcement challenges. For instance, the regulatory scheme must suit local cultural patterns, such as the degree of respect of fundamental values of democracy. Institutional structure is also pivotal for the outcome of lobbying regulation. In Latin America, for example, the concentration of political power and policy-making in the Executive branch must be considered when designing the regulatory framework (Johnson, 2008: 84). Accordingly, executive orders regulating lobbying within executive agencies turn to be pivotal - as it is in Brazilian and Argentinean examples – while there is still no broad legal framework.

Another independent variable, the influence of state corporatism, is still evident in Latin America years after the decline of authoritarian regimes in the region. The connections formed between state and society over the years built up privileged access to associations giving them more relative power than other independent forms of organization. Recently, after the 1980’s broad redemocratization, more independent civic organizations are emerging, challenging governments for more information about public affairs and more transparent and accessible decision-making schemes.
Some features of regulation that result from the independent variables listed above can be named as the dependent variables to influence the effectiveness of lobbying regulation. For instance, the inclusiveness of the regulatory scheme, which depends on who is and who is not required to register as a lobbyist; what activities are lobbyists prohibited from engaging in; who has to report lobbying activities and what is required in those reports. (Thomas, 1998: 510). Finally, the stringency of the regulatory scheme – compatibility of the enforcement authority to the complex task of ensuring compliance - is also a dependent variable.

After some considerations about what can influence the effectiveness of lobbying regulation, it is also important to set some indicators for lobbying regulation in order to assess its impact on addressing corruption.

The first one is the perception of transparency, which is enhanced by public disclosure - the major possible achievement of lobbying laws according to Thomas (1998: 512).

This perception must be compared to a set of information: (1) who has benefited most from public disclosure of lobbying; (2) the actual impact of regulations on the conduct of business by established interest groups and lobbyists and (3) how elected officials and political appointees have been affected by these regulations (Thomas, 1998: 511).

Although there are no empiric studies about the direct impact of the recent attempts of lobbying regulation on corruption perception, it can be said that the ineffectiveness of the schemes adopted in Latin America might be an enforcement issue. Otherwise, lobbying rules might be inherently ineffective in a democratic setting due to the necessary fluidity of any decision-making process that intends to be as open as is required by a proper democratic regime. As stated by Loewenstein (1957: 357), lobbying registration and control tends to be ineffective if the activity is considered an inherent part of democracy. If it is truly the case, lobbying regulation schemes would be mere instruments to provide political legitimacy to governmental anti-corruption efforts.

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.

Prospects for the future regarding corruption and lobbying in Latin America

Any assessment of prospects for Latin American regulations must bear in mind that not only Latin American democracies but also their regulatory framework regarding transparency and participation are in an experimental stage. 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.

In Latin America, and in Brazil specially, there have been significant changes in interest group articulation since the reestablishment of democracy, especially regarding a transition towards a more pluralistic society due to the recent proliferation of interest groups (Johnson, 2008: 95). Indeed, due to neoliberal economic reforms, peak associations have faced the emergence of many smaller groups representing the same interest. As a consequence, some authors have been arguing that interests articulation in Latin America has become more pluralist, leaving behind the corporatist scheme that used to share political power only among state/corporations/unions. The increasing pressures from a larger number of distinct private interests was the main driver force to the emergence and increase of democratic governance instances, including several interests groups as participants in the inherited corporatist schemes, as in the Brazilian case.

These statements regarding a transition from corporatism to pluralism are relevant to understand the future of lobbying regulation in Latin America. Indeed, it is the pattern of relation between state and society, including its more corporatist or pluralist profile, which will probably be the most important influence on how interest groups play their game.

Despite having regular elections, freedom of expression, political parties, independent electoral authorities and other democratic institutions, the corporatist trend that still underlies state/society relation in Latin America hinders the raise of independent interest groups (Lanna, 1999: 24). In this context of such an over controlled political participation, the substance of public policy used to be defined within state bureaucracy and at the interaction of it with economic elites. This model, at the same time bureaucratic, corporatist and elitist, would make impossible the development of effective and plural political practices.

In fact, besides lobbying regulation Latin American political systems require other reforms, in order to turn the political parties into more ideology-oriented institutions, able to aggregate interests, not being driven by them. For instance, electoral financing reform is essential to reduce the level of clientelist dependence of political parties to interest groups. In the same path, the subsidy arrangements that resulted from legal and formal relationships among the government and engaged interest groups must be replaced by a civic, politic and economic activism, less oriented to the gain of governmental grants.

According to the Argentinean example and the current practice in countries like the United States, lobbying regulation must be followed by other measures that build up access channels to interest groups preventing them to become an appendix of the state apparatus. Democratic access would avoid the capture of public decision-making processes by particular interests at stake, assuring the transparent and plural definition of the “common interest”, which indeed have to be crafted, not existing as a previous decision of a “semi-mystic entity” that could determine a common good discernible to all (Schumpeter, 1942: 252).
Finally, the design of lobbying regulatory framework will be able to improve information access and to scale down interest conflicts if it results in the clear definition of the procedures for public participation on public decision-making, enhancing the scrutiny of society over bureaucrats and members of parliament.

**Conclusion**

Lobbying regulation might help to increase transparency and public scrutiny over interaction among interest groups, politicians and bureaucrats. However, it is not sufficient. In fact, information floats from and to the government through networks of people – epistemic communities – regardless their formal positions. As stated by Kingdon (1995: 45), there will always be bridges made by ‘common values, orientations, and world views’ linking people from inside to others outside the government.

Lobbying regulations bring better results when lying in a wider regulatory framework for good governance, such as rules for electoral financing (Transparency International, 2007: 4), 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. Moreover, late changes on this agenda should not be allowed, neither agendas made of a too extensive set of issues. Another initiative to enhance transparency would be the use of “regulatory impact assessments” to clearly identify potential impacts and the stakeholders affected by a policy being proposed. Besides this good governance agenda, the simultaneous design of institutions responsible for the enforcement of lobbying regulation is required.

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. An old American political adage states: “transparency is a great corrective for deviating behaviour” (Key, 1964: 151). Shedding light to lobbies, and to who, how and with which objectives is lobbying, lobby regulation translates in practice what the Justice Louis Brandeis, one of the most proheminents and progressists members of the USA Supreme Court, stated in 1914: “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”

Those are important arguments for lobbying regulation as a means to tackle corruption and improve transparency.
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. It must be feasible for the public to distinguish the lobbyist who relies on corruption and influence-trafficking and who professionally advocates private but legitimate interests, preserving the impartiality and autonomy of government.

Their differences considered we believe that the countries of the region, 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. Further, as long as enforcement conditions are fulfilled, we can expect a relative levelling of antagonist interests.

The institutional learning is particularly relevant, and the experience of countries such as Canada and the United States should not be ignored. Even being sure that copying models that are still being improved – such as the North-American – is not enough, experiences from abroad will certainly help to create effective institutions to overcome current problems detected in most parts of Latin America.

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.

However, there is an extensive research field to be explored. First, almost nothing has been said about lobbying at the Judiciary and the role of lawyers. Second, the meaning of sub national lobbying regulation, considering the federalism adopted in each country is also an neglected issue. Third, there is room for investigation regarding the dimension of interest groups and lobbyists in each country, their power resources and interactions within the political system and policy communities. Finally, the influence of corporatist culture on the interests’ representation in Latin America would be a very promising field of study.

As a matter of fact, it is an old issue at a very early stage of investigation, requiring great efforts from the academic community and the policy-makers responsible for the design of transparency and anti-corruption strategies.

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.

Acknowledgements

We wish to thank Professor Clive Thomas for the support and inspiration and Paulo Mauricio Teixeira da Costa for the valuable collaboration on previous versions of this paper.

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