Political finance regulation in Latin America: Which way now?

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Over the past few years, political finance has become a feature of public debates all over Latin America. In country after country, there is increasing evidence of the multiple ways in which the unchecked role of money can subvert pivotal democratic values, such as political equality, electoral fairness, and the policymakers' ability to protect the public interest. Most of all, the issue repeatedly has made it to the headlines, as a component of high level corruption scandals, often with devastating effects for the credibility of political institutions.

These pages offer a glimpse of the state of political finance debates in Latin America and of the ways in which the region's democracies can deal more effectively with the role of money in politics. As is the case elsewhere, how to credibly enforce the existing political finance norms emerges as a critical challenge for the quality of democracy.

Where are we coming from?

For all the intensity of the current discussion, it is worth acknowledging that the issue of political finance has been around for a long time in Latin America. Accusing opponents of receiving funding from foreign interests—be it the old Soviet Union, US multinationals or the Taiwanese Government—has been a well-rehearsed part of the repertoire deployed in Latin American campaigns for decades. Also, the pervasive presence of drug trafficking and other forms of organized crime in the region has long spawned well-founded concerns about the role of criminal networks in bankrolling parties and candidates (Casas-Zamora, 2010). These concerns have been at the base of the region's often pioneering role in regulating political finance. Latin American countries were among the first to adopt state funding schemes, in some cases (such as Uruguay in 1928) decades before they became part of the regulatory framework in the advanced democracies of North America and Western Europe.

Over the course of many years, the region has created a significant normative corpus to regulate political finance. In general terms, existing laws in Latin America compare well with regulations elsewhere. While it is impossible to do justice to the variations in the normative landscape in the region, for now it suffices to say that most Latin American countries ban foreign and anonymous contributions, while imposing limits on private donations. With one exception, Venezuela, all have enacted public funding systems of varying generosity; many have introduced different kinds of electoral spending caps, including draconian rules with regards to media outlays; all impose taxing transparency obligations for parties and candidates, while entrusting electoral authorities with the task of monitoring political finance; and all back the extant controls with sanctions that range from minor fines to harsh electoral penalties (see Casas-Zamora & Zovatto, 2016). The fact that this regulatory corpus exists should count as progress and is much better than the alternative of political finance laissez-faire.

Unfortunately, and often, this extensive regulatory framework is shining with noncompliance. With the possible exception of Mexico, whose powerful electoral authority has vigorously asserted its prerogative to punish parties for political finance violations, no country in the region has a track

record of enforcing compliance with the extant laws. The effective enforcement of regulatory frameworks remains the single most important challenge in the political finance realm in Latin America. The plain truth is that, despite plentiful legislation, very little is known about who finances politics in the region.

Such a void of information is reason enough to tackle political finance regulation with a sense of urgency. But this urgency stems not only from the recognition of grave risks, but also of possibilities. After a generation of democratic practice, the region's polities are in a much better position to tackle truly vexing issues for democracy, such as the regulation of political finance. Both the press and civil society have become more assertive and independent. While the need to create a more transparent political finance environment in Latin America is greater than ever, the opportunities to take positive action have also increased.

What has happened lately?

The past few years have dramatically highlighted the perils of political finance for democracy in Latin America, but also brought renewed interest in its regulation. Four emerging phenomena deserve to be mentioned:

- The **first** is the proliferation of high-level corruption schemes in which political finance irregularities feature prominently. The most conspicuous of those is the Odebrecht affair, i.e. the remarkable network set up by one of Brazil's construction giants to secure public works contracts all over Latin America and parts of sub-Saharan Africa by bribing public officials and illegally financing political campaigns. So far, the case has left a trail of accusations and prosecutions in Argentina, Brazil, Colombia, Ecuador, Dominican Republic, El Salvador, Mexico, Panama, Peru and Venezuela. Odebrecht is, in turn, a spin-off of the massive *Lava Jato* (Car Wash) case, a complex story of collusion and corruption at the highest levels of Brazilian business and politics that was discovered in 2014. Among its many plots and sub-plots, the *Lava Jato* scandal involved efforts by construction companies to set up a cartel to secure contracts Petrobras (Brazil's state-owned oil firm) through bribes, and to divert 3% of their value to slush funds that finance parties across the political spectrum. Other political finance shenanigans uncovered in the region in the past few years include the embezzlement of the Honduran Social Security Institute in 2010-14, where $94 million allegedly wound up in the coffers of the ruling national party. Perhaps most surprising of all were the *Penta* and *Soquimich* scandals in Chile, schemes which combined illicit campaign financing with tax fraud in a country long considered a by-word for low corruption levels in the region (on these cases see: Casas-Zamora & Carter, 2017).

  At a minimum, these cases –which have led to massive and continuing political fallout, notably in Brazil—are clear examples of the pervasive presence of illicit funding in Latin American elections, despite the existence of legal controls. The ban on foreign contributions that nearly every country in the region has enacted quite clearly proved no match to Oderbrecht's generosity.

- The **second** trend is the increased awareness of the particularly problematic nature of political finance practices at the local level. As shown in several Latin American cases, at the local level the risk of organized crime penetrating the electoral process is most serious (Casas-Zamora, 2013). Perhaps the most interesting document on political finance to come

out of Latin America recently is the July 2015 report published by the UN-sponsored International Commission against Corruption and Impunity (CICIG) in Guatemala. The report offers a remarkable reconstruction of the dense links between local politicians, construction firms and criminal syndicates, which are the lifeblood of the funding of political parties in Guatemala. According to the report, up to 75 per cent of the money spent in Guatemalan elections may well come from state contractors and criminal structures (CICIG, 2015). Other studies have found similar links in Brazil, Colombia and Mexico (Speck 2013; Casas-Zamora & Falguera 2016; Curzio 2013).

- The **third** trend concerns recent far-reaching reforms of political finance laws in several Latin American countries, including Brazil, Chile, El Salvador, Guatemala, Honduras, Mexico, Paraguay, and Peru (see Casas-Zamora, 2016). Recurring themes in these legislative efforts include:

    - Reinforced controls over private donations (including bans on corporate contributions);
    - Rules to individualize accountability for political finance violations;
    - More severe penalties against transgressions, including harsh electoral sanctions;
    - New rules geared towards creating a more level playing field with regards to media access during campaigns; and
    - Efforts to connect political finance controls to other types of transparency-enhancing rules.

  While interesting and valuable, these normative efforts have failed to address the problem that lies at the heart of the region's political finance predicament: the limited interest in enforcing existing legislation and the correspondingly weak institutional capacity to do so. Tellingly, the political finance scandals described above have not been uncovered by the authorities in charge of monitoring the parties' financial affairs, but by other oversight bodies—including judicial and tax authorities—as well as investigative journalists.

- The **fourth** and most recent addition to the political finance landscape in the region is the growing attention that international actors and civil society groups are devoting to political finance, in the context of the fight against corruption and impunity. The role of international actors is most visible in two Central American countries: Guatemala and Honduras. While Guatemala's 2015 CICIG report laid the groundwork for an overhaul of political finance laws in 2016, in Honduras it was the OAS-sponsored Mission Against Corruption and Impunity in Honduras (MACCIH) that proved instrumental in drafting and pushing for the new political finance legislation introduced in 2017.

  These internationally-driven initiatives in favour of political finance transparency and regulation have been complemented by growing activism on the part of civil society groups. Perhaps the most successful example of this modality is the development in Colombia of the digital application *Cuentas Claras* (Clear Accounts) by Transparency International's national chapter, *Transparencia por Colombia*, with the support of the United States-based National Democratic Institute (NDI). The application allows parties and candidates to report, in a standardized digital format, their income sources and expenses, generating in the process an online database that citizens can easily consult. *Cuentas Claras* was donated to Colombia's National Election Council (CNE), which adopted the application as its official

disclosure tool in 2010. In 2013, the CNE made its use by parties and candidates compulsory. Currently, its use among political actors in Colombia is nearly universal. Other civil society-based initiatives in the region include Uruguay's digital portal, *¿Quién paga?* (Who pays?), and the reports detailing the media expenses incurred by Guatemalan parties and candidates disseminated since 2012 by the civil society organization *Acción Ciudadana* (Citizen's Action). In some ways, the combined actions of international organizations and domestic civil society groups are having a greater impact on increasing political finance transparency in Latin America than the route—well-worn by now—of enacting new legislation devoid of any enforcement mechanism.

What is to be done?

The region's unprecedented interest in political finance has a lot to do with the consolidation of its democratic systems. But this is only one part of the story. The other part is far less positive, and concerns the series of high-level corruption cases that have shaken the region's political institutions in the past few years. These developments suggest that political actors, international institutions and civil society groups would do well to channel this newly found interest in political finance issues in four directions:

- **Increasing institutional capacity to monitor and enforce political finance.** Tightening controls over private funding—including by banning corporate donations—and strengthening sanctions against legal violations are among the most visible normative trends in Latin American political finance. The emphasis on creating robust and varied penalties is a particularly welcome change in the region's regulatory discussion. This adds power to the very extensive normative corpus that Latin America has built over the past generation. However, it is time to start paying more attention to the effective enforcement of the political finance controls in place. This calls for a renewed effort to increase the legal, human and financial resources at the disposal of overseeing authorities for the task of enforcing political finance rules. Honduras' recent decision to create a specialized unit within the electoral authority in order to monitor political finance—a model that other countries, such as Costa Rica and Mexico, have employed for some time—is a step in the right direction.

- **Paying attention to the local level.** There is now enough evidence showing that the local level of politics is the weakest link in terms of political finance corruption and, in particular, of the penetration of organized crime into campaigns in Latin America. Yet, partly as a result of the weak institutional capabilities to enforce laws, the local level has remained largely unregulated from the standpoint of political finance. Moreover, this is an electoral arena that is rarely considered a priority for media coverage, with the exception of the local press, which has limited investigative capacities. Making sure that political finance controls—notably reporting and auditing rules—cover local candidates and are effectively applied to them is essential. In some cases, the parties' central organizations may be required to establish robust internal reporting mechanisms. Yet, in large federal countries (e.g. Brazil or Mexico) or in countries where party organizations have been all but eviscerated (e.g. Guatemala or Peru), asking the parties' headquarters to control the finances of their local representatives may be too much to ask. In these cases, financial oversight should simply

be handled by the electoral authorities. Paying attention to the local dimension of political finance is critical.

- **Developing applications to simplify access to political finance information.** The experience of digital applications such as *Cuentas Claras* and *¿Quién Paga?*, and of *Acción Ciudadana'*s database on media outlays, offers a very promising avenue for watchdog groups to have an impact on improving political finance transparency levels in Latin America. With the new technologies available, developing these and other kinds of digital applications is a low-cost affair. This being so, spreading the development and adoption of these applications also offers a potentially rewarding route for international cooperation agencies.

- **Embracing a holistic approach to political finance regulation.** Latin America's recent corruption scandals are highly complex schemes, in which political finance fraud is only one element in a larger story of malfeasance. This explains Chile's recent decision to embed political finance reform in a broader set of integrity-enhancing reforms, and Guatemala's recently introduced reforms that oblige banking and telecommunications authorities to share relevant financial information with electoral authorities. Guatemala's CICIG report even calls for the relaxing of bank secrecy rules when it comes to political finance, a principle that has already been adopted in countries such as Mexico and Costa Rica. If political finance rules are to be effective in protecting democratic institutions, their connections to other norms that lie in the periphery of political finance must be understood. Effective campaign finance regulation is a part of an 'ecosystem' of integrity-enhancing rules, which also includes rules against conflicts of interest, regulations for lobbying activities, provisions for asset declaration, reforms to bank and fiscal secrecy rules, changes to rationalize parliamentary immunity norms, protections for whistleblowers, and freedom of the press. If fighting impunity and preserving the integrity of public institutions are the ultimate goals, all these variegated rules must be designed and enforced in a concerted manner.

It is crucial that social and political actors in Latin America tackle this agenda seriously and urgently, particularly with regards to the enforcement of political finance controls. The role of money in politics must be effectively regulated. As Michael Ignatieff has pointed out, "(n)o matter what the justices may say, money is not speech. It's power" (Ignatieff, 2013). And power needs to be subject to limits if a democracy is to remain a democracy.

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