

LAW, POLITICS, GLOBAL GOVERNANCE AND LATIN AMERICAN SOCIETY*

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Abstract

The relationship among law, politics and global governance in Latin America has deepened. In recent years, the region has undergone important transformations, which include the expansion of democracy, difficulty to control over populism, corruption, drug traffic and the greater integration of the region in the international legal framework.

There was an important maturity in politics and law, albeit often fragile and insufficient in the context of the region. Debates such as the right to development, participatory democracy, the new constitutionalism and the greater presence of the countries in international regimes of the global governance region contributed to the advance of the Latin American society. This study analyzes in the past ten years the major advances that Latin American society got among law, politics and global governance.

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Resumen

La relación entre derecho, política y gobernabilidad global en América Latina se ha profundizado. En los últimos años, la región ha sufrido transformaciones importantes, que incluyen la expansión de la democracia, la dificultad de control sobre el populismo, la corrupción, el tráfico de drogas y la mayor integración de la región en el marco jurídico internacional.

Hubo una madurez importante en la política y el derecho, aunque frecuentemente frágil e insuficiente en el contexto de la región. Debates como el derecho al desarrollo, la democracia participativa, el nuevo constitucionalismo y la mayor presencia de los países en los regímenes internacionales de la región de gobierno global contribuyeron para el avance de la sociedad latinoamericana. Este estudio presenta un análisis de los grandes avances que la sociedad de América Latina ya ha recibido entre el derecho, la política y la gobernabilidad global en los últimos diez años.

Key Words:

Latin America, Law, Politics, Global Governance.

Palabras Clave:

Latinoamérica, Derecho, Política, Gobernanza Global.

I. Introduction

The relationship among law, politics and global governance in Latin America has deepened. The region in recent years has undergone important transformations, which include the expansion of democracy, although it is difficult to control over populism, social inequality, corruption, drug traffic and the integration of the region in the international legal framework.

There was an important maturity in politics and law, albeit often fragile and insufficient in the context of the region. Debates such as the right to development, participatory democracy, the new constitutionalism and the greater presence of the Latin American countries in international regimes of global governance contributed to the advance of the Latin American society, although it is still not enough to promote more social equality in the region. This study analyzes the major advances that Latin American society got among law, politics and global governance in the past twenty years.

Regarding the approach, have three theoretical and methodological lines, which can be combined with each other or with other parts: dogmatic or instrumental research; socio-legal research; epistemological research. The study uses dogmatic doctrine; socio-legal and epistemological research. It aims to verify the consistency of law, politics and global governance and its elements in Latin America society.

In recent years, most Latin American countries, with the exception of Cuba, updated their constitutions and their ordinary laws. In addition, most of them are signatory countries to the main international human rights treaties and are integrated to political structures such as the United Nations (UN), the Organization of American States (OAS), the South American Union of Nations (UNASUR) among others that defend democratic values, human rights and the search for peaceful conflict solutions.

In the political point of view, there is more stability. Over the past 20 years, 14 presidents were elected. In 10 out of 34 countries, the president left office by resignation or removal, namely: Argentina in 1989 and 2001, Brazil in 1992, Venezuela and Guatemala in 1993, Dominican Republic in 1996, Ecuador in 1997, 2000 and 2003, Paraguay in 1999, Peru in 2000, Bolivia in 2003 and 2005, Haiti in 2004. Furthermore, there was a failed coup attempt in Venezuela in 2002 with instability that persists until now. In no case, however, we had exceptional regimes. Even with deviant attempts as Fujimori in Peru and the coup in Venezuela, the succession in power has been done by the institutional channels. Countries such as Bolivia, Haiti and Ecuador with long-term governability crisis accommodate up to legal rules. Ecuador had seven presidents between 1997 and 2005 and Bolivia four between 2001 and 2005. In all cases, however, they have tried to address the issues of authority through elections and constitutional means.¹

Although economic growth in the region in recent years has not been enough to change the reality of inequality and to generate more equality of all social groups in the countries, there have been important advances.²

¹ D'Araujo, 2006.

² According to the Economic Commission for Latin America there has been an increase of GDP in the region in the last 20 years, but this increase has not had the desired reflection in the reduction of social inequalities, although there has been an improvement.

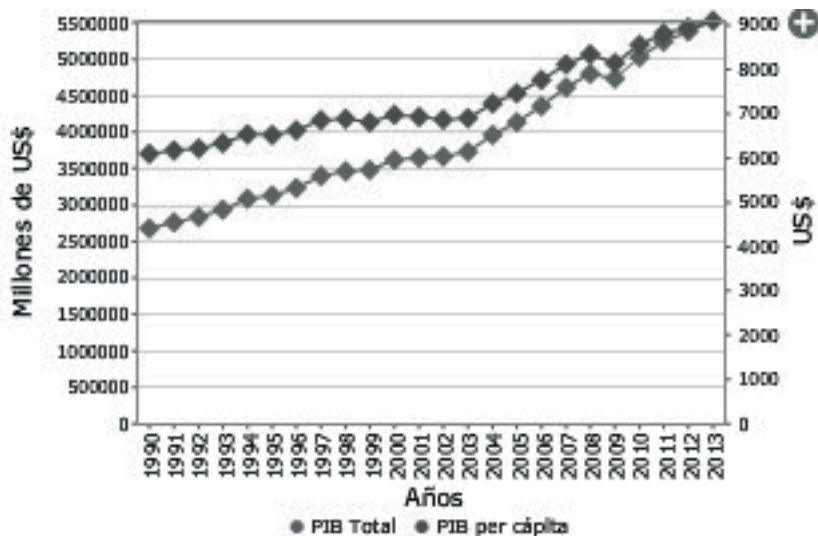


Figure 1 - Advances of total GDP per capita in Latin America and the Caribbean in the last 20 years (CEPAL).

Fonte: Barcena, 2010.

According to the Economic Commission for Latin America there has been an increase of GDP in the region in the last 20 years, but this increase does not have the desired reflection in reducing social inequalities.

Globalization, as a broad international tendency toward greater interaction of people across national boundaries of all types, such as economic, cultural, natural and others, is associated with free flows of trade and communication among nations, but we can already see that it is a much broader phenomenon. The informational revolution has made it possible to promote extraordinary changes in the production of goods and services in the global economy. Latin America was not paralyzed with all those changes that occurred as a consequence of globalization. Good or bad, the region had to adapt to global governance and to what it brought to Latin American society.

When most political scientists and political leaders in North America speak of democracy they mean something like Robert Dahl's conception of polyarchy. Given the brutality and atrocities committed by the military dictatorships that rule most of Latin America in the 1970's, few people who live in that region would take lightly the rights they have under polyarchy. However, we should bear in mind that polyarchies have not yet delivered the kinds of social and economic basic changes that might re-

verberate positively in the lives of most Latin Americans. However, some political scientists believe that globalization works against a lapse back into nurtured social and economic conditions favorable to democracy. Critics of liberal democracy and polyarchy stress participation and equality as democratic hallmarks and urge us to keep an open mind about alternative forms of democracy.³

Latin America might be seen as a museum of politics, having experienced just about every form of state categorized by political scientists. Military governments, electoral democracies, revolutionary regimes, charismatic dictatorships, and even monarchies have existed, sometimes side by side in their history. There are several features of Latin American political culture and its social structure that have been visible in just about all types of regimes in the region.

The region progressed to varying degrees in the task of building legitimate, representative, and effective democratic and political institutions. The political and institutional reforms adopted across the region have pursued different and sometimes conflicting purposes. If reforms are to be adopted into law, they must be compatible with the interests of leading political and social groups. Thus, reform processes are inevitably driven, or at least constrained, by the narrow motives of power and privilege. In some instances such motives are more transparent than in others, though proponents of reforms inevitably portray reforms as a means to enhance democratic governance in one way or another.⁴

But reforms of political institutions are at times also prompted—especially during a political crisis or dramatic shifts in the status of political groups—by demands from citizens and civil society organizations for more effective and representative democratic governance, very common in Latin America.⁵ At least for brief periods of time, such demands change politicians' calculus of the costs and benefits of reform in the region. This, in turn, makes it possible to pass reforms with the prospect of producing more general benefits for the democratic system and its citizens.

Several factors complicate an analysis of the effects of political reforms and the task of developing reform recommendations. First, there is limited agreement on the ultimate objectives of reform and on how those objectives should be prioritized. Considering them separately, most analysts and citizens would agree on the merits of several objectives, including the

³ Hellinger, 2011.

⁴ Payne, 2002.

⁵ Brazil and Argentina, for example, spend that time with a reflection on the need to reform their institutions. The two countries live at the same time crises with different characteristics, demanding the need for reflection and change.

following: political stability, political freedom, decision-making efficiency, inclusive political participation, law and order, responsive and equitable representation, political legitimacy, transparency, and accountability.

But it is more difficult to obtain agreement on the main deficiencies of democratic functioning in a given country and on how the above objectives should be ranked. Second, given the inherent trade-offs —such as between more inclusive representation and decision-making efficiency— one must calibrate the reform so that correcting one perceived deficiency does not harm other aspects of the democratic system. Third, designing reforms and predicting their effects are factors which are impeded by inadequate theory related to the interactions among different institutional factors as well as contextual ones, such as socioeconomic structure, political culture, and history.⁶

The importance of narrow political interests and customary practices (or political culture), the trade-offs among competing reform objectives, and the uncertainty surrounding the effects of reform help explain not only the frequent and sometimes contradictory nature of reform efforts in the region, but also the limited number of reforms that succeed in producing broad benefits for the democratic system and the frequent slippages and backslides in reform implementation. In addition, these factors complicate the task of evaluating the effects of political reforms in the region and setting forth recommendations.

One of the major achievements of the process of democratic consolidation in Latin America has been the establishment of horizontal accountability agencies, such as audit institutions, public prosecutor's offices, and human rights ombudsmen. Several semi-autonomous agencies overseeing the exercise of public authority have been developed in Latin American democracies, in part due to the ineffectiveness of more traditional sources of accountability, such as elections and representative institutions. Reforms have aimed to improve the functioning of these institutions in relation to others and to develop their independence, capabilities, and legitimacy. In order for them to gain legitimacy, the citizens must see that investigations eventually lead to clear findings of fact, prosecution where appropriate, and sanctions. In each case, the agency must possess the authority and capability to exercise its functions autonomously in order to earn the respect of citizens and successfully carry out its constitutional mission.

In general, the record in most cases in Latin America gives little indication that the arrangements for direct democracy have had the desired impact on the expansion of representativeness or participation. Nor is it evident that these arrangements have helped to reduce discontent with

⁶ IDB, 2006.

politics and parties; rather, in many cases they have served as channels, separate from regular elections, to express public disenchantment. The record of referendums, “popular consultations,” and other such schemes has been one of little substantial impact, for good or for bad, on political stability. As with any component of the electoral structure, these mechanisms are part of a larger framework, and their function in practice has to be considered as such.⁷

In terms of the state’s relationship with its citizens, the fundamental requirements for establishing an effective rule of law are still absent in many countries. Justice is neither impartial nor trusted, access is impeded or denied to large portions of the population, and the judicial system is incapable of providing legal protections such as safeguarding the exercise of rights and obligations and controlling illegal behavior enough to limit growing incidents of crime and threats to public safety. The limited redistributive capacity of the state is witnessed in the inadequate provision of basic social services, including those that would enable citizens to productively take part in both the economic and political system.

It is clear that politics matters in the process of creating, implementing, and sustaining sound institutions and adopting public policies that work for the benefit of all citizens. More precisely, however, it is the quality of democracy that matters. Not only is the exercise of democratic freedom and civil rights intrinsically valuable in expanding the range of possibilities and choices open to citizens, it is also instrumental in identifying and conceptualizing citizen needs and building the policies and institutions that will most effectively address them.⁸

The traditional concept of democratic accountability includes the supervision and control of public authority both by citizens (through elections) and other branches of government. Though important, elections have long been recognized as insufficient in the provision of full accountability. Where representative institutions are inadequately developed and the legislator’s accountability mechanisms poorly configured, there is a particular need for additional layers of protection against the abuse of public authority.⁹

In hopes of increasing government accountability, over the past two decades countries in the region have adopted constitutional and institutional reforms affecting both traditional instruments and innovative institutions. In addition, far-reaching judicial reforms in the region have helped redefine the role of the judicial system. Though the process is ongoing and the changes required profound, rules and codes —as well as the administra-

⁷ Iglesias, 2004.

⁸ Sen, 1999.

⁹ O’Donnell, 1994.

tion and management of the system itself— have been reformed in many countries. Such reforms have been necessary to respond to the need for more secure and legally predictable property rights, greater citizen access to and trust in the judicial system, and the improved efficiency and quality of judicial decisions. Legal system reform has been seen as an essential part of the broader processes of democratic consolidation and economic reform.¹⁰

An important objective of many of the judicial reforms that have been carried out in the region has been to establish a more independent judiciary that can better exercise legal accountability and ensure adherence to constitutional precepts and universal protection of civil rights. An independent and effective judiciary is necessary to protect against public authority infringement of the constitution and other laws, to provide for evenhanded interpretation and enforcement of laws, and to administer criminal justice in an unbiased fashion. As is evident in still-lagging perceptions of judicial independence, this is an area where ongoing and long-term efforts are needed.¹¹

Even though there were significant reforms, democratization and liberalization were not sufficient to overcome difficulties against the implementation of the rule of law. Many Latin American countries have failed to improve in a more forceful way the distribution of resources and break the strong hierarchical tissue that prevented the law from fulfilling its role in society.

According to Guillermo O`Donnell¹² most Latin American countries failed to consolidate the rule of law system after the transition to democracy. O`Donnell argues that extreme inequality throughout the region is one of the obstacles.

II. Social Justice

In Latin America, the moderate left has pursued distinct strategies. One main reason why the moderate left has acquiesced in the fundamental framework of the market system and has sought economic reforms inside these confines has been the hope to stimulate lasting economic development and thereby to lay a sustainable foundation for social progress—directly by boosting employment and income growth among poorer sectors, and indirectly by increasing tax revenues. The growth in fiscal resources can fund upgrades

¹⁰ Hammergren, 1998.

¹¹ Domingo, 1999.

¹² O`Donnell, 1998.

in existing social programs and new initiatives to increase human capital and provide some degree of income security to poorer segments. In these ways, the moderate left has hoped to alleviate one of the major gulfs in Latin American societies, namely to allow more and more people to move from the informal sector of precarious, often low-paying work to the formal sector of steady, well-remunerated employment coupled with social benefits.

Experiences of Brazil and Chile show this gradualist strategy has indeed produced substantial reductions in poverty (especially) impressive in Chile, important equity-enhancing extension in the coverage of social transfers and services, and a slight reduction in inequality. It is important to highlight that the expansion and reform of social programs has had a solid fiscal foundation, fairly efficient administration, and the necessary level of institutionalization to make progress sustainable. Bolivia and Ecuador also have implementing reforms that although considered radical by the economic elite of these countries brought important changes bringing more inclusion to the minorities and poor population.¹³

Our institutional systems follow elitist characteristics. Most of our founding constitutions that established the foundations of the current institutions were the product of a pact between liberal and conservative elites that organized a contra majority power structure, clearly opposed to massive intervention of citizens in policy. The role of our progressive forces in the constitutional reform process proved not to be, so far, very relevant, often due to lack of training of its members, others by their lack of knowledge of attractive institutional alternatives or lack of genuine egalitarian convictions.

Contestatory left efforts have also reduced the space for political pluralism and put pressure on liberal safeguards by strengthening the majoritarian aspects of democracy. Thus, they have run the risk of undermining rather than deepening democracy. This danger is particularly acute because these inclusionary, participatory initiatives of the contestatory left often face political opposition from actors that benefit from the status quo and that worry about the hegemonic repercussions of mobilization efforts. Concern about these tendencies has triggered a great deal of political polarization in Venezuela, for example, which has done further damage to democracy and weakened economic and social development prospects as well.

¹³ Many Latin American countries held constitutional reform processes: Nicaragua in 1987, Brazil in 1988, Colombia in 1991, Paraguay in 1992, Peru in 1993, Argentina in 1994, Venezuela in 1999, Ecuador in 2008 and Bolivia in 2009. Mexico, Costa Rica, Chile and Venezuela have also implemented important reforms.

By contrast, the moderate left is content with the predominance of representative principles and procedures, which avoid the risk of populism mass manipulation. Although citizens in many countries maintain a fairly high level of principled commitment to democracy, they are discontented with the way decisions are made and hold crucial mechanisms of representative democracy, especially political parties and parliaments, in dangerously low esteem.

III. Governance and politics

Following the work of Renate Mayntz,¹⁴ we define governance as the various institutionalized modes of social coordination to produce and implement collectively binding rules, or to provide collective goods. Thus, governance consists of both structure and process. Governance as structure relates to institutions and actor constellations. The literature usually distinguishes the state from competition systems and networks (negotiation systems). As to actor constellations, state governance involves exclusively governments, while both competition and negotiation systems consist of configurations of state and non-state actors (firms, interest groups, non-governmental organizations [NGOs], and so forth).

Governance as process pinpoints the modes of social coordination by which actors engage in rulemaking and implementation and in the provision of collective goods. Hierarchical coordination usually takes the form of authoritative decisions with claims to legitimacy (e.g. laws, administrative ordinances, court decisions; for a discussion regarding hierarchy in international relations). Hierarchies are based on institutionalized relationships of domination and subordination, which significantly constrains the autonomy of subordinate actors.

Non-hierarchical coordination, by contrast, is based on voluntary commitment and compliance. Conflicts of interest are solved by negotiation. Voluntary agreement is either achieved by negotiating a compromise and granting mutual concessions (side-payments and issue-linkage) on the basis of fixed preferences (bargaining), or actors engage in processes of non-manipulative persuasion (arguing) through which they develop common interests and change their preferences accordingly. Actors may differ with regard to their bargaining power, but no actor is subject to the commands of others. Non-hierarchical coordination can either be formalized in negotiation systems or it can be organized in informal networks. Public

¹⁴ Mayntz, 1998.

private partnerships (PPP) are a typical example of governance institutions based on non-hierarchical coordination.¹⁵

Latin America as a whole has participated more actively in global governance, specifically South America mainly through its international organizations. One example in which South American countries can contribute to global governance, being in constant contact with each other through presidential summits under the auspices of UNASUR, is the improvement of regional governance mechanisms. By getting settlement of disputes among its members and harmonizing their relationships using communication channels and its own institutional frameworks, without that any of their countries need to appeal to global multilateral forums, South America collaborates directly with global governance. As recalled by Malamud and Castro,¹⁶ “regionalism was once thought to be an intermediate step toward global governance”.¹⁷

These are the two ways in which the integration of South American countries around the UNASUR can increase the participation of the continent in global governance (on the one hand, the political coalition of its participants for the treatment of global issues in multilateral institutions and on the other the resolution of the regional controversies with the means).¹⁸ And they are present in Article 14 of the Constitutive Treaty of UNASUR, which deals with the political dialogue:

The political concertation between the Member States of UNASUR will be a factor of harmony and mutual respect, strengthening regional stability and supporting the preservation of democratic values and the promotion of human rights. Member States will reinforce the consensus-building practice as the central themes of the international agenda and promote initiatives that affirm the identity of the region as a dynamic factor in international relations.¹⁹

¹⁵ Borzel; Risse, 2010.

¹⁶ 2007, p. 111.

¹⁷ Malamud, Castro, 2007

¹⁸ Regional integration in Latin America faces unfavorable conditions, although not as harsh as in the past. The triumph of political democracy and market economy throughout the continent has turned integration feasible, although many structural restrictions remain. A major pitfall continues to be the poor level of economic interdependence, be it related to trade or investment. Although it has risen in recent years, the figures still are extremely low. A second setback is the closure of most domestic economies: integration means, by definition, tearing borders down and opening up to the neighbors. This has seldom occurred, and public opinion as well as businesspeople in many countries continue to see protectionism as a valid defense against the threat of international competition. Last but not least, the largest Latin American economies have not undergone a process of growing complementarity; on the contrary, they remain frequently competitive both regarding products and markets.

¹⁹ UNASUR, 2008, p. 9-10.

Nowadays, in Latin America, in every country there are local civil society actors who defend local or sectorial interests, as well as specific values against or beyond the formal political process. Examples of this subset of civil society include grassroots organizations, community groups, labor unions, interest groups, religious groups, and civic associations. This is a very old social practice in all societies, and some analysts, particularly even argue that this form of civic engagement is on the decline, as individualism becomes the predominant culture of our societies.

In fact, the health of these groups varies widely according to country and region. For instance, in almost every country of Latin America, community organizations have become a very important part of the social landscape. The difference between these groups in varying nations is that the sources of social organization are increasingly diversified: religion, for instance, plays a major role in Latin America, particularly non-Catholic Christian religious groups.²⁰

Besides the structural dimensions mentioned above, a series of policy factors lay behind the difficulties at promoting integration. Although in recent years macroeconomic policies have somewhat converged in key countries such as Argentina and Brazil, this was due not to policy coordination but to the unplanned simultaneity of the economic turbulence undergone in those countries. Recurrent political conflicts have not been uncommon either: Venezuela's Bolivarian revolution, Argentina's rambling foreign policy, and Bolivia's new approach to foreign investment in the energy sector have distressed even more the traditionally tumultuous regional landscape.²¹

Given the resilience of both structural and policy obstacles to integration, regional attempts at regional integration would need to produce an institutional configuration able to enforce minimum collective disciplines while accommodating to national heterogeneity and a large degree of political uncertainty. However, the institutional architecture of most Latin American blocs has failed to deliver: not only was it unable to overcome pre-existing problems, but it has even turned itself into an additional obstacle to further integration as its dysfunctionality contributed to delegitimizing the whole enterprise.

From this, we do not believe that regional integration in Latin America is doomed to failure. Our argument can be summarized in two points. First, regional attempts have been burdened with unrealistic expectations, against which any outcome would always be judged as failure. Second, they have recurrently been endowed with the wrong institutions, further diminishing their already moderate prospects. The endeavor of integrating

²⁰ Castells, 2008.

²¹ Ayerbe, 2008, p.265- 298.

countries as badly interconnected as the Latin American ones should start by fostering interdependence through simultaneous economic growth, not by feeding a common identity, creating a supranational community or establishing a joint foreign policy.

IV. Law

Regarding law, the daily practice of legal actors is deeply globalized. It proliferated regional and global networks of judges and scholars of law, whose channels are transmitted in amounts and speeds like never before. We observe a share of ideas, pedagogical models and institutional design, from the teaching method based on cases to the accusatory penal system or control constitutional laws. Social movements take at least two decades forging legal strategies across borders as indicated, for example, the central role of Latin American feminist organizations with the appearance of international law for gender justice. However the Latin American legal thought remains deeply restricted to the region.²²

In the present context of Latin America, the type of justification of the rule of law one prefers is likely to make a significant difference in terms of the policies that might be advocated. In particular, there is the danger derived from the fact that nowadays legal and judicial reforms are strongly oriented toward the perceived interests of the dominant sector basically domestic and international commercial law, some aspects of civil law, and the more purely repressive aspects of criminal law. This may be useful to foment investment, but it tends to produce a dualistic development of the justice system, centered on those aspects that concern the modernizing sectors of the economic elite in matters of an economic, business or financial nature while other areas of litigation and access to justice remain untouched, corrupted persistently lacking in infrastructure and resources. For societies that are profoundly unequal, these trends may very well reinforce the exclusion of many from the rule of law while further exaggerating the advantages that the privileged enjoy by means of laws and courts enhanced in their different interest.²³

In response to the new political, economic, and law challenges of globalization, the relevance of the nation-state has been called into question. Clearly, states are neither homogeneous nor static and the ability of state leaders to push for their agenda may vary substantially at different scales of governance (from the local to the global), from time to time, and from sector

²² Garavito, p.69, 2011.

²³ O'Donnell, 1998.

to sector. Yet, globalization is having undeniable implications for nation-states and governance systems, in their diversity of forms and structures. The integration of markets, the extension and complexity of environmental change, and the increasing homogenization of culture and the lifestyle expectations that accompany these changes have expanded the scope of what formerly were considered primarily domestic problems while creating new challenges to governance that are only now being recognized.²⁴

This examination of how nation-states of Latin America are managing their insertion into global markets and of how they are putting new governance paradigms into practice illustrates that the benefits of globalization for the adaptive capacity of national governments are unlikely to be immediate or necessarily easily obtained.

At the heart of the problem may be the inability of the reconfigured state to tackle the growing social and political inequality that is central to the vulnerability problem. As long as inequality persists, it is unlikely that the picture of increased vulnerability and low adaptive capacity among the poor in Latin America will change. While the pressure increases for states to manifest the concrete actions they have taken towards adaptation, the persistent high human and material losses to climate hazards around the globe reveals disturbing deficiencies in national capacities to address the underlying drivers of vulnerability. Efforts to facilitate adaptation to climate change cannot be divorced from the processes of policy reform that have long been underway in both developing and industrialized countries.

While the prediction of the “withering away” of the nation-state during this latest phase of global economic integration may have been exaggerated, it is clear that globalization has had important effects on what is considered the responsibilities of nation-states, their institutional form and their scope and capacity for action. The wide diffusion of new ideas about governance, participation, environmental management and human rights and welfare has contributed to change the ways policies are conceived and implemented. In relatively short timeframes, across Latin America, the landscape of government institutions has been transformed.

At the heart of the problem may be the inability of the reconfigured state to tackle the growing social and political inequality that is central to the vulnerability problem. As long as inequality persists, it is unlikely that the picture of increased vulnerability and low adaptive capacity among the poor in Latin America will change. While the pressure increases for states to manifest the concrete actions they have taken towards adaptation, the persistent high human and material losses to climate hazards around the globe reveals dis-

²⁴ Hurrell, 2000, p. 337.

turbing deficiencies in national capacities to address the underlying drivers of vulnerability.

Efforts to facilitate adaptation to global governance cannot be divorced from the processes of policy reform that have long been underway in both developing and industrialized countries. It is clear that part of the source of the problem of capacity deficiency is tied to its proposed solution: the ways in which administrative and policy reforms have been implemented over the last decade in the name of “good governance” and institutional efficiency.²⁵

Latin America can contribute to the formation of global governance and, therefore, have greater influence in international relations. On the one hand, from the debate between their countries on these issues in the international political agenda, the continent can form a positioning set to be adopted in global multilateral arenas where the rules of global governance are formed in each subject area. On the other hand, from the institutionalization of regional integration, the Latin American countries can increase their ability to resolve these disputes in the region with their means - namely maintaining peace and political stability in the region, regardless of the call for global Forums.²⁶

Over the past two decades, a scholarly consensus has emerged around the centrality of political institutions. In Latin America, recent research on executive-legislative relations, electoral and party systems, judicial politics, bureaucracies and federalism has shed new light on how institutional design affects the stability and quality of democracy.

Nevertheless, persistent problems of corruption, clientelism, execution legislative conflict, and the unrule of law cast doubt on whether an exclusive focus on parchment institutions is sufficient to understand what drives politics in the region. Informal institutions or rules and procedures that are created, communicated and enforced outside the officially sanctioned channels are often as important as their formal counterparts in structuring the rules of the game. In parts of Bolivia, Ecuador, Mexico, Peru and Guatemala, where state judicial institutions are often absent or ineffective, local communities solve conflict through indigenous law and other informal justice systems.²⁷

²⁵ Hallie, 2006.

²⁶ Desiderá Neto, 2011.

²⁷ Helmke; Levittky, 2006.

V. Final considerations

While the prediction of the “withering away” of the nation-state during this latest phase of global economic integration may have been exaggerated, it is clear that globalization has had important effects on what is considered the responsibilities of nation-states, their institutional form and their scope and capacity for action. The wide diffusion of new ideas about governance, participation, environmental management and human rights and welfare has contributed to change the ways policies are conceived and implemented in Latin America.

In relatively short timeframes, across Latin America, the landscape of government institutions has been transformed. Public agencies have been slimmed and state-owned enterprises have disappeared, new institutions have arisen, and the language of sustainability and shared governance is now permeating public discourse, media reports, and policy.

At the heart of the problem may be the inability of the reconfigured state to tackle the growing social and political inequality that is central to the vulnerability problem. As long as inequality persists, it is unlikely that the picture of increased vulnerability and low adaptive capacity among the poor in Latin America will change. While the pressure increases for states to manifest the concrete actions they have taken towards adaptation, the persistent high human and material losses to climate hazards around the globe reveals disturbing deficiencies in national capacities to address the underlying drivers of vulnerability.

Efforts to facilitate adaptation to climate change and human rights cannot be divorced from the processes of policy reform that have long been underway in both developing and industrialized countries. It is clear that part of the source of the problem of capacity deficiency is tied to its proposed solution: the ways in which administrative and policy reforms have been implemented over the last decade in the name of “good governance” and institutional efficiency.

While there is much to advance towards the relation law, politics and global governance in Latin America, society has changed a lot in the last twenty years. A share of ideas, pedagogical models and institutional design, debates on the control of constitutional laws and, social movements take at least two decades forging legal strategies across borders. The most important role for the region is to set its own path from a democratic discussion of what is better for its future.

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