

Chapter 9

National Human Rights Institutions in Latin America: Politics and Institutionalization

THOMAS PEGRAM

Introduction

This chapter offers an indepth study of the institutionalization of National Human Rights Institutions (NHRIs) in Latin America. Often created under adverse political conditions, the analysis demonstrates the variable institutionalization of the Iberian model of the NHRI – the Defensoría del Pueblo – and its distinctive political accountability function as a potential bridge between state and society.¹ More specifically, relying on extensive primary material, including interviews with key participants, the analysis disaggregates the formal and political dimensions that shape NHRI institutionalization within Latin America. The empirical evidence assembled here indicates that development of formal design principles is important in explaining Defensoría institutionalization. However, the political dimensions of the Defensoría’s interactions with organized state and social actors are often decisive.

The chapter adopts a distinct understanding of institutionalization, one that incorporates not only formal design principles but also the ability of informal rules, norms and practices to decisively shape behavior and outcomes. Investigation into the political significance of informal rules, norms and practices animate some of the most promising contemporary scholarship on democracy.² The analytical framework for evaluating the development of NHRIs in Latin America’s democratic regimes focuses on three interrelated, but distinct, features of institutionalization: formal design principles, relations with organized state and social actors, and rules of access across institutional arenas. This framework draws upon political accountability theory to locate the position of the Defensoría in relation to three significant clusters of actors: vertical (executive branch), horizontal (state checks and balances) and social (organized civil society).³

Despite the prominence of these organizations in political systems throughout Latin America, political and institutional scholarship has largely neglected NHRIs as a subject of analysis. A principal objective of this chapter and the volume more generally is to address such theoretical and empirical deficits, exposing limitations in conventional approaches toward understanding the political accountability function of an institution that generally lacks coercive faculties. Through case study analysis, what emerges is a highly contextualized picture of an

¹ This chapter uses the generic Spanish title Defensoría del Pueblo (“Human Rights Ombudsman”), or Defensoría for short, to refer to the organization in Latin America and Defensor or Defensora to refer to the individual throughout. Other titles for these entities in the region include Procuraduría de los Derechos Humanos (“Human Rights Attorney”) and Comisiones de los Derechos Humanos (“Human Rights Commissions”).

² Steven Levitsky and María Victoria Murillo, “Variation in Institutional Strength,” *Annual Review of Political Science* vol. 12 (2009), 115-133.

³ See Guillermo O’Donnell, “Horizontal Accountability in New Democracies,” *Journal of Democracy* 9 (1998), 112-126. Also E. Peruzzotti and C. Smulovitz (eds.), *Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies* (Pittsburgh: University of Pittsburgh, 2006). A remaining category of relations is external. Without denying their significance and evolution in recent years, external relations are generally a secondary consideration for the local activity of Latin American Defensorías and not directly addressed in this chapter. See Chris Sidoti in this volume, “National Human Rights Institutions and the International Human Rights System.”

institution sometimes capable of bridging an often problematic state-society divide characterized by the failure of democratic regimes to meet social needs and demands. However, this chapter also demonstrates that the institutionalization of the Defensoría can be compromised by volatile processes of democratization in Latin America, reflected in unstable rights frameworks, political conflict and insistent demands for more responsive government.

The chapter begins by with a review of Defensoría formal design features and their modification. This is followed by an evaluation of the office's interaction with organized state and social actors. The third section analyses the Defensoría's access to formal and informal accountability arenas within and outside state structures. The chapter concludes by reflecting on the implications of this study for understanding how the experience of Defensorías and institutional development more broadly is informed by the complex interplay of actors based within and outside of state structures.