

Protecting the People: The Latin American Approach to Ombudsmanship

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Back to Roots: Tracing the Swedish Origin of Ombudsman Institutions Friday, June 12, 2009

While the essential lineaments of the Scandinavian Ombudsman are well-preserved in Latin America, the institution has been adapted to suit the particular character and needs of countries in the region. As 'defenders of the people' ombudsmen in this region have played a key role in building public trust in relatively new democracies by fighting for greater transparency and public access to information. They also work to address the severe inequalities that exist between different populations, sometimes intervening in social conflicts; and often serve as a bridge between vulnerable people and government.

Sweden has given numerous inventions to the world. We need only mention the contributions of Jonas Wenström in the field of electronics, Lars Magnus Ericsson in the telecommunications sphere, the physicist Gustaf Dalén, and Alfred Nobel, who invented dynamite and instituted the prestigious Nobel Prize.

However, I would suggest that the Swedish invention that contributed most to the cause of defending the fundamental rights of the person was the Office of the Ombudsman.

Thus, among the many debts the world owes to Sweden, none is as great as the creation 200 years ago of the Office of the Ombudsman, which, as those of us here today are aware, is an institution whose main purpose is to protect the rights of people against potential abuses of power by administrative authorities.

Since under the Ombudsman model the institution has no powers to enforce its decisions, its purpose can only be accomplished if its societies recognise it as legitimate. Otherwise, the important mission entrusted to it will be irremediably diluted.

The 'human contradiction' is undoubtedly a distinctive trait of our species. Perhaps for that reason we need to build lighthouses that shine through the night to remind us of the values that civilise and bind human communities together.

These lighthouses, ladies and gentlemen, are institutions that, like the Ombudsman, are accorded popular recognition because they embody ultimate values shared by all human communities.¹

¹ ANGELL, Robert C. The integration of American Society.

The need for an Ombudsman in societies which pride themselves on governance based on respect for the rights and dignity of human beings derives from this ethical essence.

When an institution – in this case the Swedish Ombudsman – reaches 200 years of age, its long history brings to mind not only the liberality of its conception but also the legitimacy conferred by years of practice guided by principles that elevate the human condition, such as the defence and protection of human dignity, non-discrimination, equality and liberty.

As knowledge of its virtue and purpose grew, the institution spread beyond its frontiers – as shown today by the participation in this important event of ombudsmen from all over the world – and it eventually arrived on Latin American soil.

Although the essential character of the Scandinavian Ombudsman is well preserved in Latin America – its independence from the political system is the most important example of this – it should be pointed out that the Latin American model is rooted in the Spanish legal code.

Thus the Spanish constitution of 1978 introduced the figure of *Defensor del Pueblo* (defender of the people, or ombudsman) adopting the Swedish institutional core. This is distinguished by:²

- 1) Its parliamentary origin,
- 2) Protection of the fundamental rights of the person,
- 3) Oversight of the administration.

The Spanish Ombudsman, like his/her Swedish counterpart, is legally required to submit an annual report of his/her activities to the legislature.

In addition, the *Defensor del Pueblo* in Spain is empowered to pronounce on the constitutionality of laws which in his/her judgment violate the constitutional order.

If we are to embark on an explanation of the various adaptations undertaken by ombudsmen in Latin America, we must bear in mind that institutions are shaped and contoured by the social and political reality of the countries concerned.

It is not possible to understand and describe these institutions adequately without first referring to the main social and political phenomena which defined the historical moment when the Ombudsman first appeared as a model for Latin America.

By the end of the 1970s, the countries of the region were seeking to break with governments which, though different from one another ideologically, were essentially authoritarian regimes in which respect for fundamental human rights was non-existent.

Thus, when the institution of the Ombudsman was first established in our region, it struggled to rid itself of autocratic leaders and establish a democratic system, both in law and in the minds of its citizens.

² ESCOBAR ROCA, Guillermo. *Defensorias del Pueblo en Iberoamericana*. Madrid: Thompson-Araznadi, 2008, p. 167 y ss.

However, the transition to democracy has not been an easy task. In fact, the Latin American experience has been characterized by the propensity to shelter presidents who have contrived to establish legal orders in which inordinate powers were concentrated in their hands, to the detriment of the other powers of the state.

Regrettably, the authoritarian tradition in Latin America has adversely affected public trust in government institutions, and ultimately in the democratic system as a whole.

To better explain this idea, I will refer to data³ produced by *Latinobarometro* – literally, the barometer of Latin America – an instrument for the annual analysis of social and political life in Latin America, also used by the United Nations.

The 2008 *Latinobarometro* survey shows that only a quarter of the Latin American population believed that government was for the benefit of the people; whereas three quarters believed it was for the benefit of a few – the economic power elite.

Therefore it should not surprise us that only 37 per cent of Latin American citizens trust in democracy as a political system and that authority is met with contempt. It explains how the flouting of formal rules and regulations is socially tolerated, even approved of.

The authoritarian tendency and its consequence, the weakness of the democratic system, has been a contributing factor in the emergence of ombudsmen in our region, in the context of existing social exclusion and discrimination.

We must recognise that although Latin America has nurtured millennial civilisations, it has not succeeded in adequately dealing with the multicultural diversity that characterises its social identity. This is clearly reflected in the social conflicts that form an observable constant in our countries.

It is with deep regret that we are obliged to report that discrimination, injustice and social inequality continue to affect the life of millions of people in our region, restricting the exercise of their human rights.

Perhaps one of the most baffling characteristics of our societies is the discrimination against minorities by ethnic and/or cultural majorities in our countries.

As we see it, this inability to acknowledge ourselves as parts of a whole lies at the very heart of the institutional weaknesses of the democratic systems in our countries, with direct implications for our concept of the state and for its actions at all levels of government.

Latin America is the most unequal region in the world. Figures in the last Report of the United Nations Human Development Programme (2007–2008) reveal the deep disparities and inequalities that exist in the countries of the region.

³ http://www.latinobarometro.org/docs/INFORME_LATINOBAROMETRO_2008.pdf.
Fecha 16/2/2009, 14:30 hours.

The gap between the highest ranking country in the Human Development Index (Barbados) and lowest (Haiti) is 115 positions – out of a total of 177 countries.⁴ In this sense, all the countries of the region show common patterns of inequality and social fracture to a greater or lesser degree.

Thus, the challenges that we Latin America Ombudsmen face are significantly different to those of our European partners.

What distinguishes the Ombudsman in Latin America?

First, I should point out that we maintain the essential characteristics of this institution. These are:

- 1) Independent exercise of its functions;
- 2) Appointed by Parliament;
- 3) A real, permanent ‘tribunal’ of persuasion;
- 4) Non-binding recommendations.

With your permission, I would now like to touch on what I consider to be the properties inherent in the role of the Latin American *Defensorias del Pueblo*, and derived from the specific characteristics of our region alluded to earlier.

In view of the widespread popular distrust of public institutions, and given the relatively late development of the region’s democracies, clearly one of the fundamental roles of Latin American ombudsmen is a commitment to education in and diffusion of human rights.

In this connection, it is relevant to keep in mind the remarks by the notable former Ombudsman of Colombia, Eduardo Cifuentes, to the effect that the *Defensor del Pueblo* should “be fully engaged as an educative body, a rights-promoting body, a precautionary, reactive body dedicated to the defence of rights, and a body that influences public opinion (...)”.⁵

In our young democracies – whose citizens still lack full awareness of their rights – the Ombudsman is among those called upon to carry out this educational work, which is nothing less than the consummation of his or her constitutional role to “defend” – in this case, preventively – the fundamental rights of all persons.

In addition to this, the Latin American Ombudsman plays an important role in the consolidation of the democratic state. In this connection, efforts have been devoted to improving transparency and access to public information in the belief that only by eliminating the deeply rooted “culture of secrecy” – a part of the authoritarian tradition – can we ensure that public affairs are conducted in the public interest.

It may be said that transparency and access to public information fulfils a triple function in the democratic state. Firstly, it operates both as a primary principle within the legal system and as a fundamental right through which people can exercise all other rights recognised under the political constitution and the laws. Secondly, it helps counter corruption and government malprac-

⁴ See: http://www.pnud.org.pe/downloads/IDHG2008/hdr_20072008_sp_indictables.pdf.

⁵ CIFUENTES, Eduardo. “La defensoria del pueblo en Colombia”. En Debate Defensorial. “The Protector of the Colombian people” Revista de la Defensoria del Pueblo, No. 4, Lima: Defensoria del Pueblo, 2002, p. 37.

tice. Thirdly and finally, it bears on the very legitimacy of the rule of law and the democratic system in the eyes of the people.

Moreover, as part of their contribution to the consolidation of the democratic state, the ombudsmen of the Latin American people have played an important role with regard to oversight of the electoral process at all levels of government, guaranteeing the neutrality of public officials and citizens' right to vote.

Public distrust of institutions and the potential manipulation of electoral results compelled the participation of the ombudsman in the electoral process. It was the social legitimacy won by the ombudsmen through their actions that laid the ground for the task of overseeing the bodies in charge of ensuring that election results reliably reflect the popular will and that public funds are not diverted for propaganda purposes.

With regard to the provision of public services, we should remember that in Latin America there are still vast sections of the population that lack water and electricity. United Nations figures from 2008 reveal that approximately 45 million people in the region have no access to electricity.⁶ Here, the ombudsmen are working to promote inclusive politics that bring services to these sectors.

Similarly, as a result of inequality, exclusion, cultural tensions and the incapacity of democratic institutions to handle social conflicts, our region is constantly convulsed by social conflicts.

An institution like the Ombudsman – which is charged with a mandate to defend fundamental rights, functions as a 'bridge' between civil society and the public administration, and enjoys significant social legitimacy – could not easily remain aloof from social conflicts. It is has therefore begun to develop a role as a mediator and facilitator of dialogue.

For example, the Ombudsman of Bolivia in South America is currently involved in important mediation efforts in connection with conflicts arising as a result of government policies on the eradication of illegal crop cultivation. In another instance, the Ombudsman of Colombia has intervened in the country's internal armed conflict with initiatives of a humanitarian nature.

Regrettably, in our countries violence is perceived by people as the most effective form of resolving problems that a weak (or simply absent) government is incapable of dealing with.

Accordingly, people express dissent by disrupting communications or taking over strategic energy installations, thereby putting essential public services at grave risk and impacting the rights of the society as a whole. When problems of this kind arise, the Ombudsman can intervene, using his/her good offices to bring the opposing parties together.

In this connection, I would like to refer briefly to a recent conflict involving indigenous Peruvian Amazon populations and the State of Peru, where it fell to us to defend the rule of law and the social order.

⁶ http://hdr.undp.org/en/medial/IDH_2007-2008_Communicados_Prensa.pdf.

In April of this year, the Amazon native communities launched a protest against a series of laws introduced by the government. After 35 days had passed with no action by the government, and in response to its decision to restrict fundamental rights in the protest zones, the indigenous population announced that it no longer recognised the authority of the government and asserted its right to resist through insurgency.

A few hours after this announcement, the indigenous representatives asked to meet with our office, a request to which we of course agreed. Before doing so, however, we explained that an insurgency declared against the state seriously compromised our ability to offer assistance. The indigenous leaders accordingly dropped their call for insurgency and announced that they would continue their protest, but this time within the confines of the rule of law.

Also worth mentioning is the emphasis placed by ombudsmen on the elaboration and follow-up of public policies conceived and implemented by the State. If interventions by ombudsmen are to be translated into real improvements in terms of the protection, practical validity and enjoyment of fundamental human rights, the institution must bring its influence to bear at every stage of the political cycle.

In the first place, social problems must be given high priority on the political agenda. Secondly, we seek to contribute to the work of the public administration in formulating public policies designed to deliver solutions to these problems. Finally, it is essential to oversee implementation of such policies and to evaluate their effectiveness in solving citizens' problems.

Promoting fundamental rights, promoting transparency and access to public information, ensuring the neutrality of public officials in the electoral process, intervening in social conflicts, and overseeing public policies in the interests of the more vulnerable sectors of the population are all functions that have gradually been assumed by ombudsmen in Latin America, with the aim of consolidating the democratic order and guaranteeing the validity of the fundamental rights of citizens.

Having attempted a description of some of the characteristics of the Latin American Ombudsman – a by no means exhaustive account of the subject, but one intended to contribute to the discussion – I would like to share with you a reflection. The very nature of the ombudsman's constitutional mandate makes it more than necessary that our institutions should be adaptable in order to face the new challenges that confront us.

Social change, economic crises, new functions related to public service provision and outsourcing to private operators require new perspectives and modes of action on the part of our institutions.

As Dr Pedro de Vega recently suggested in a keynote speech at a recent human rights conference in Merida, Mexico, these new scenarios call for new adaptations to the institution of the Ombudsman as we know it, with the aim of better protecting the fundamental rights of all citizens. This is our challenge.

Finally, as a Peruvian and Latin American, I would like to add to my words those of a great poet of my country, César Vallejo. A poet committed to the dignity of man, his freedom and his creative spirit. Surrounded by soli-

tude in Paris, shortly before the beginning of World War II, Vallejo wrote in *I Am Going to Talk About Hope*:

I look at the hungry man's pain
and I see that his hunger walks
somewhere so far from my pain
that if I fasted until death,
one blade of grass at least
would always sprout from my grave.

It is my conviction that this is how the men and women of Latin America act and think. It is my conviction that hope nourishes their days and their nights. It is my conviction that their solidarity with the excluded and the discriminated will always express itself, including, as Vallejo said, with at least one blade of grass.

This is why we must work to gather all our resources and our dreams – to strengthen the dignity of the people, to consolidate their liberty, and to lay the foundations for their future.

Thank you very much.