Revista Brasileira de Política Internacional
ISSN: 0034-7329
secretaria@ibri-rbpi.org
Instituto Brasileiro de Relações Internacionais
Brasil

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Revista Brasileira de Política Internacional, vol. 60, núm. 1, 2017, pp. 1-17
Instituto Brasileiro de Relações Internacionais
Brasília, Brasil

RBPI

Revista Brasileira de Política Internacional

ISSN 1983-3121

http://www.scielo.br/rbpi

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https://doi.org/10.1590/0034-73292017001017

Rev. Bras. Polít. Int., 60(1): e016, 2017

Abstract

The Law and Development literature still debates on the role of international institutions in promoting legal reforms as a means of inducing economic growth. This article takes one step further by arguing that incremental circumstances compelled such institutions to change from bilaterally-binding pressures to soft-based multilateral strategies, by analyzing the gradual rise of the World Bank's "Doing Business" initiative.

Keywords: legal reforms, international development, World Bank, Doing Business, Latin America, Asia

Received: December 13, 2016
Accepted: May 4, 2017

Introduction

What has been the role of international institutions in the promotion of legal reforms across developing countries? The debates concerning market-oriented legal reforms and their effects on economic growth have long been a central subject of interest in global development studies (World Bank 2015; Krever 2011). However, while much of the literature discusses how these efforts may have significantly changed their approach and theoretical assumptions over time, there has been less attention to how international institutions (and particularly international law) have had specific functions in order to reflect those continuous developments.

This article argues that, while the deliberate promotion of reforms in laws and judicial procedures is not a new phenomenon in development policy, the role of international institutions in this process has varied in both scope and intensity. In this context, we provide a critical assessment of the legal reform policies that gained momentum since the 1960s, by explaining the origins of the so-called "Law and Development" movement and how it evolved towards the values and attitudes that are now undertaken by most international organizations. While legal reformist agendas have become firmly established as policy in most developing countries (Davis and Trebilcock 2008), a number of criticisms by scholars and policymakers have always been present, not only due to the ambiguous justifications that were made to these policies, but also due to the controversial results that they have achieved. As a consequence, we argue that the influence and purpose of international institutions have been dynamically shaped by the experiences of success and failures of legal reforms in the countries where they have been implemented.

To achieve this objective, the article explores the evolving role of international institutions according to three main phases, each with its own distinct causes and features. At the first stage, they played a very minor role in comparison with initiatives led by the United States, which dominated most of the legal reform projects which were strongly based on bilateral actions and obligations. In the second phase, there was a rise of multilateralism as the leading approach, mostly represented by an activist World Bank and the use of international institutions as a method for achieving both legitimacy and compliance in the process of securing legal reforms. In the third stage, the World Bank adjusted its role towards a more soft-based approach focused on best practices and guidelines, under the assumption that private investments are the effective driving forces of successful reforms. To illustrate this recent trend, the article provides a critical analysis of the so-called "Doing Business" initiative, currently carried out by the World Bank, and examines how this approach has been influencing reform projects carried out in Asia and Latin America – two regions that have long been important objects of interest to the understanding of legal reforms as a process fostered by external pressures. In the concluding section, the article provides some remarks about the evolving role of international institutions and its theoretical consequences for an interdisciplinary agenda between law, economic development, and international politics.

The gradual insertion of legal reforms in the agenda of international policy

The idea of legal reforms as a self-contained form of policy making is now ubiquitously associated with the World Bank and other international organizations (Messick 1999; Tshuma 1999). However, this agenda rather has its origins in a domestic undertaking mostly carried out by the United States through bilateral relations with developing countries, represented by the emergence of the so-called "Law and Development" movement in the 1960s. During that period, several U.S. scholars and government agencies began to develop a growing interest in the relationship between the structure and history of the legal systems existing in the so-called "Third World" [1] and the level of economic development in this region (Carothers 2001).

1 That is, the group of nations that neither belonged to the Western industrialized countries, nor to the socialist bloc centered around the Warsaw Pact (Rose 1998, 125).

Most notably, the early Law and Development movement was a combination of pure scholarly work and practical policy implementation under the belief, that laws and legal systems were a significant limitation to the economic development of poorer countries. Thus, finding the specific causal relationship between law and poverty through a more analytical perspective became a central strategy for empowering and focusing the efforts of the assistance activities carried out by government agencies and private foundations (McGuire and Ruttan 1990).

A distinguishable feature of most legal reform projects carried out in that period was that they generally aimed at changing structural aspects of legal systems in developing countries. This was under the assumption that longstanding local institutions could easily be modified or removed, so that countries would become spontaneously liberated to fulfill their potentials for economic growth. The paradigm of economic liberalism that justified such attitude assumed that states always played a central and ubiquitous role in countries, that non-state forms of social ordering had little relevance, and that the gradual expansion and professionalization of the legal activity would likely result in general benefits for local societies (Trubek and Galanter 1974).

Given these assumptions, legal reform initiatives in the 1960s were driven by the conviction that a correct model of law supposedly existed in order to achieve economic growth. Consequently, various reform projects were carried out in developing countries with the simple purpose of replicating typical liberal features of the U.S. legal system, which was assumed to be a more efficient model due to its level of economic development (Golub 2006). In particular, several projects sought to disseminate a new culture of legal practice through the reform of legal education and the proliferation of law schools (Buscaglia et al. 1997).

However, instead of enabling a desired pattern of economic development after the importation of the U.S. legal model, most reforms rather resulted in the intensification of social inequalities and reduced political participation, since more formal obstacles ended up being raised to the population. At the same time, previously established elite groups remained as the only segments capable of affording the costs of legal education required to operate a complex and unfamiliar institutional system (Trubek 1972). In addition, many reforms only imported laws and institutions that ultimately favored already dominant or ruling groups. Such a selective method of legal reforms would even legitimize the eventual establishment or reinforcement of authoritarian regimes: this would be carried out by the promotion of laws that, even if conforming to certain procedural requirements for their enactment, served only to legitimize the decisions of the ruling power with little or no consultation of its citizens (Chesterman 2008; Ginsburg and Moustafa 2008). [2]

2 Other factors are specifically pointed out for the unsuccessful endeavor of U.S. policymakers in the Southern hemisphere. For instance, the belief that the state was always a dominant power in the society proved wrong, since decentralized spheres of political authority were frequently stronger (Trubek and Galanter 1974). In fact, reformers were unable to distinguish the pervasiveness of the strong social stratification existing in many societies, while believing that a legal reform could result in a top-bottom change in these structures (Gillespie 2007). Another problem was that legal reforms were often conducted without any grounds of previous empirical knowledge, so that they were often implemented without effectively understanding the characteristics of the subject-country (Dick 2007; Jensen and Heller 2003).

While the early Law and Development movement was clearly haunted by such many shortcomings and disappointing results, they have also gradually resulted in a process of multilateralization of this policy. Two factors seem to mainly have contributed to this shift.

First, the presumption that the U.S. legal model was applicable elsewhere (and, therefore, that it could be automatically exported to every country) became severely contested in developing countries who were subjected to those reforms. A common perception among scholars in these nations revolved around the skepticism about the policy motives of the U.S. government, as well as the excessive ethnocentrism of its institutional model (Tamanaha 1995). In particular, there were increasing doubts about the actual reforms that had to be implemented, since many of these recommendations often were lacking in the United States itself (Peerenboom 2003; Upham 2002).

Such skepticism became particularly voiced by the so-called Dependency Theories in Latin America. Enthusiasts of this school of thought argued that most of the reform programs promoted by U.S. agencies ultimately were oriented to reinforce the interests of Northern countries rather than the actual needs of the reformed countries, leading to a vicious circle of vulnerability and a permanent dependence (Kapoor 2002; Velasco 2002). Consequently, legal reforms never aimed at improving the welfare of developing countries, but only at securing the developed world's demands, often at the expense of the majority of the local population (Trubek and Santos 2006; Smith 1979). The influence of dependency theories among developing countries (and especially in Latin America) was such that there was an increasing reluctance from their respective governments to incorporate such reforms (Pereira 1996). In order to defuse such resistances, legal reform advocates would have to argue for another leading actor that would appear less biased than the U.S. and reinforce the multilateral character of the initiative. As a result, there has been a drastic increase of participation of intergovernmental development banks and aid agencies instead of an almost exclusive engagement of the U.S. government, universities, and private foundations (Rodrik 2006).

Second, the shift to a multilateral effort would break with the previous assumption that all poor countries shared the same problems and, consequently, had similar causes for their underdevelopment. In this context, the lack of empirical knowledge about the subject countries hindered the fact that the legal institutions in Asia, Africa, and Latin America were not only distinct from the Western developed world, but especially among themselves. Rather, the formal concept of nation-state meant little in comparison with the multiplicity of local communities and regional codes of moral and social behavior (Otto et al. 2004, 123). Therefore, even when a certain project seemed relatively successful in a country or community, it was unlikely that it could be replicated to other communities or regions of the world (Faundez 2000).

This problem of multiple causes across different regions was crucial for the shift of the legal reform movement from a bilateral U.S.-led effort to a multilateral undertaking, mainly through the emergence of the World Bank as a leading actor in this process. While the Bank's policies still were motivated by the belief that certain problems faced by many developing countries have the same nature and can be solved through a set of common general policies (World Bank 2003, xvi), the replicability of legal reforms became an issue that the World Bank had to tackle through a major shift of paradigm in the Law and Development theory.

In this context, the validity of legal reforms became subject to an intense self-assessment from the perspective of the Law and Development discipline as a whole, which began to take a different form after the crisis of the liberal paradigm of the 1960s. While scholars and policymakers remained faithful that such relationship still existed (Faundez 1996), the major shift came on the concept of "development" itself, and the role that lawyers played in comparison with economists.

Amartya Sen, in one of the most influential works regarding the redefinition of development following the liberal crisis, argued that the mere perspective of accumulation of wealth and economic growth cannot be treated as an end in itself (Sen 1999).[3] This interpretation became dominant from the 1990s with the understanding that, if policymakers regarded material satisfaction as the only goal to be attained by their development projects, then the importance of legal reforms would remain uncertain and their outcomes could not be satisfactorily measured. In contrast, if basic values such as freedom and equality became objectives together with income and economic standards, then the relevance of legal variables would become effectively tangible (Santos 2006, 292).

The view in which legal reforms were able to solve most of the developing countries' problems, therefore, could no longer dominate the discourse of both scholars and policymakers. Law and Development studies had to be liberated from a purely western debate reflecting western issues and concerns and, although the modernization of law remained necessary, this could not be seen as a sufficient condition for attaining economic development. However, different paths can (or must) be followed by each country in this process of modernization: while admitting that a "minimum" content of rule of law is important, developing countries would benefit if they were allowed to develop their own variants of the minimum content of the rule of law (Tamanaha 1995, 484).

In fact, the World Bank's approach to legal reforms seemed to have assumed a shape where the concept of "minimum rule of law" emerged at full strength, rather than adopting a stance in which a self-contained set of legal features would be a necessary and sufficient condition for attaining economic development. Such a revival of the rule of law ideology has clearly dictated much of the policies prescribed by the World Bank in the legal reforms proposed across Africa, Eastern Europe, Asia, and Latin America. While the definition of rule of law itself has remained controversial from a theoretical perspective (Pereenboom 2003; Santos 2006), in practice it has become understood as an institutional regime in which rules are publicly known, clear in meaning, of equal application among all individuals, and where the government and its officials are especially constrained by such laws in order to protect the individual rights of the citizens to which the government must be accountable (Carothers 1998, 96-97).

All these elements – transparency, accountability, and clarity – became part of the formal concept of rule of law that the World Bank progressively advocated in developing countries (Craig 1997). Moreover, given the idea of multiple institutional patterns historically followed by each country or

3 For a critique of Sen's views, see Chimni (2008).

region, it seems that the Bank also has incorporated the idea that a minimum threshold of legal reform later would demand the adoption of specific policies that would not necessarily be interchangeable between each other (Pistor 2002; Davis and Trebilcock 2008). However, even if such regional diversity existed, the World Bank seemed to believe that those local experiences still could be compared and adjusted (or even adapted) (World Bank 2003, xvi), it especially accepted that economic growth could be attained through different variations beyond such idea of "minimum rule of law."

Consolidating a soft-based approach under the "doing business" initiative

Despite the prevailing discourse of minimum rule of law that came together with the World Bank's emerging role in foreign aid activities, this organization was struggling to present a single and consistent agenda on the strategies for implementing such a concept of rule of law. In fact, while some scholars point out that the Bank has been far from being a monolithic institution, even with respect to its most fundamental principles (Santos 2006, 255), such a lack of consistency evidently reflected on how they eventually would be translated into the legal reform projects to be carried out in developing countries.

Nevertheless, the idea of rule of law within the World Bank became largely expressed through the idea of *governance*, a concept that was devised in order to define the minimum content of rule of law without implying that any intervention in the domestic political affairs of host countries would be pursued – an approach that, again, deliberately aimed to prevent possible accusations of donors' ethnocentrism. At the same time, such a concept of governance emphasized that the ultimate (if not exclusive) goal of institutional reforms would be to promote economic growth and to improve the living conditions of the population (Shihata 2000, 268).

In this context, not only "governance" but especially "good governance" became the recurrent catchphrase among the World Bank's reformers, who progressively defined it through several general features. First, governance was characterized by the existence of legal rules that are known in advance by citizens and that must effectively be in force. Likewise, any attempts to modify or remove these rules must follow procedures that are themselves established and known in advance (Santos 2006, 270). Second, the application of these legal rules must be performed in accordance with established mechanisms and procedures, while conflicts in their application and interpretation should be settled by an independent judicial body. Third, good governance means that there should be a strong stance against corruption, here understood as the misuse of public power, office, or authority, with the intent of obtaining private benefit (United Nations Development Programme 1999). In sum, the promotion of good governance according to the World Bank reform projects meant that economic development became fundamentally dependent on values such as accountability and transparency, under which government officials cannot stand above the law.

As a result of this renewed justification of foreign assistance to institutional change, the World Bank began to carry out its legal reform projects through four main practice groups. The first body, the Legal and Judicial Reform Group, has served as the official discourse of the World Bank on legal reform activities and has supervised their design and implementation throughout the different regions of the globe. The second branch, the Public Sector Unit, has been responsible for overseeing specific projects on the reform of courts and judicial institutions. Furthermore, the World Bank Institute became the unit largely responsible for promoting capacity development, mainly through learning programs and technical assistance to local governments, with an emphasis on the periodical publication of the "Governance Indicators," which have served as a high-impact reference of government quality among policymakers in developing countries.

Despite the important role that these three units have performed in the implementation of projects in developing countries, it is the World Bank's fourth practice group that provides the most interesting example of legal reforms directly targeting economic growth, given the context of the "minimum rule of law" discourse described in the previous chapter. The Private Sector Development Group, as it is best known, was formed from a cooperation between three of the main agencies of the World Bank [4] and has been responsible for coordinating policies, programs, and projects toward the development and expansion of private businesses, as well as collaborating more effectively with other international institutions on private sector projects, being ultimately responsible for advising on the design and reform of laws aimed at improving the investment climate in developing countries (World Bank 2003).

Due to such characteristics, focus on private sector development evidently becomes important for our analysis of the impact of the World Bank's legal reforms at the regional level. It not only allows the measurement of such effects over a fundamental indicator of economic growth – the health and conditions of private businesses and their role in the reduction of poverty (World Bank 2003, ix) – but also provides a clear common ground for performing a meaningful comparison between macro-regions of the world that seem oppositely different, such as Asia and Latin America. It is in this context that the measurement of the impact of legal reform projects notably has adopted a soft law-based method developed under this framework: the so-called "Doing Business" project.

The Doing Business is an initiative of the World Bank that seeks to encourage institutional reforms by providing objective benchmarks to policymakers. While such reforms can be rather comprehensive and may allow governments a wide degree of discretion in choosing the appropriate means according to their circumstances, many of such benchmarks seek to specifically address legal aspects such as legislation, judicial systems and procedures (Davis and Trebilcock 2001). These benchmarks do not only provide information about each country's historical performance compared to others, but also aim at informing how reforms should be pursued, particularly by reporting experiences and best practices that were considered effective in promoting good governance in favor of private sector development (World Bank 2009). For no other reason, a large part of the appeal of the Doing Business emerged from its capacity to mobilize the private sector to lobby for reforms, under the assumption that they were the ultimate catalyst of economic growth (Davis and Kruse 2007).

4 Namely the International Bank for Reconstruction and Development (IBRD), the Multilateral Investment Guarantee Agency (MIGA) and the International Finance Corporation (IFC).

Perhaps more interestingly, although the previous movement was criticized for disregarding the problem of institutional diversity, the Doing Business remarkably insisted on the idea that all countries can be compared, thus challenging many of the theories of relativism that gained strength during the crisis of the Law and Development scholarship. Also included in the global scope of the Doing Business' philosophy was the assumption that specific types of institutions were necessary in order to attain a successful legal reform, such as those promoting values of democracy, as well as civil and political rights. As one can note, this assumption seems problematic in the context of the intended global scope of the Doing Business methodology, as some experiences carried out in Asia suggested that soft authoritarianism may often be a contributing factor for achieving stable economic development (Tan 2004, 284).[5]

Critics to the Doing Business approach are often skeptical that a soft law model based on benchmarks would differ from the previous Law and Development methods, since all countries must conform to a given paradigm assumed to be better, in the same fashion as with the U.S. paradigm of the past. Nevertheless, these criticisms tend to ignore that the change of perspective from a U.S. paradigm was not to another single or reduced number of developed countries, but to a much larger sample of countries that would compose such a "best practices" benchmark, including various developing countries that are deemed to have adopted innovative policies in terms of institutional reform. More interestingly, under the Doing Business hypothesis, these best practices performed by developing countries may even be replicated in the developed countries, or even recommended to them (World Bank 2008, 12).

Despite the controversy concerning the global reach of the Doing Business project, the most remarkable innovation of its approach was the concept of benchmark, a change in methodology that put a greater emphasis on the empirical and quantitative aspects of institutions, many of them related to legal and judicial aspects (Jensen and Heller 2003, 361). The benchmark, in this sense, is composed of a sample that comprises the "best practices" in legal reform (Santos 2009), while all other countries that stand below the defined benchmark will aspire to reform towards those best practices. This clear-cut attitude was not only a consequence of the view that all countries are comparable, but also that any initiative to reform a local institution should conform to the empirical realities of the proposed legal model. Also linked to this philosophy is the greater emphasis that the Doing Business model placed on the periodical evaluation of impacts, as well as on the elaboration of progressive rankings that are ultimately meant to be objective in nature and reflect the dynamic comparability of countries.

Comparing the doing business approach in asia and latin america

To the extent that the World Bank introduced the idea of good governance and the attraction of private investments as the leading philosophies behind its legal reform policies, the development

5 For a critical view, see Sen (1997).

of the “Doing Business” model became a central guideline for carrying out such projects across different regions of the world. In this section, the ways in which this approach has been effectively implemented will be analyzed through a comparison between two regions: Asia and Latin America.

a) Asia

According to the data provided by the Doing Business project, Asia seems to be one of the most successful regions concerning the degree and impact of legal reforms among developing countries, together with Central European countries.[6] In fact, among the top 25 countries in the DB rankings, only seven are non-OECD members, of which four are Asian countries. [7] With regard to the reach of the reforms, Asia also stands out as one of the most active in the promotion of legal reforms especially devoted to the development of the private sector. While in 2007 about 50% of the Asian countries were engaging in some kind of reform oriented towards market-based institutions, in 2016 this figure had increased to almost two thirds of the whole continent (World Bank 2006; World Bank 2015). However, it is not only the intensity and reach of the reforms that have placed the region at the top of the rankings, but especially their continuity and regularity, which indicate a significant degree of commitment and consistent strategy in terms of long-term policymaking.

Nevertheless, it would be misleading to keep this first impression as definitive, since the size and diversity of the region conceals several difficulties faced by some Asian countries. For this reason, they have been divided into two categories: the so-called “best practices” group and the “catch-up” group.

Best practices. The Asian countries that generally are considered as following the best practices are those standing in the top quartile in the Doing Business rankings. After excluding OECD members from this tier, this group consists, by ranking order, of Singapore (1st), Hong Kong (2nd), Taiwan (11th), Malaysia (23rd) and Thailand (47th).

In general, these countries can be characterized as engaging in broad reforms especially aimed at protecting investors through market-oriented policies, such as the clarification of property rights (mainly through reliable registration mechanisms), better contract enforcement and creditor protection, as well as the facilitation of the conditions for foreign and domestic trade. Moreover, regulations regarding tax obligations were all intensively reformed in these countries by targeting the reduction in the burden for private business and procedural simplifications. These are all strategies that have long been fiercely advocated by the World Bank (Burki and Perry 1998, 41-61).

Two of the most illustrative examples of such a commitment to the World Bank´s recommendations are Thailand and Malaysia. The scale of the reforms promoted by these two countries has been so wide and impacting that it ranged from investor protection to business registration and tax system restructuring. For example, Thailand reported several reforms in the Securities and Exchange Act in order to secure investor rights, especially by enhancing the accountability of directors

6 The updated data can be found at http://www.doingbusiness.org/economyrankings.

7 As of 30 December 2016, the remaining four countries are Macedonia (11th), Georgia (17th) and Lithuania (22nd).

under civil and criminal liabilities. In Malaysia, there were major amendments to its Companies Act in order to simplify business registration and allow the use of online systems.

With regard to tax reforms, Thailand facilitated the compliance with tax obligations by eliminating a great deal of red tape and introducing online systems for filing and payments. Perhaps more importantly, it created incentives for avoiding tax evasion by reducing rates for new filing companies, as well as by exempting smaller companies. Tax burdens were also lowered for individuals, to the extent that the cost of transferring property was substantially reduced. The importance of tax reorganization, in the fashion often recommended by the World Bank (World Bank 2013, 170), has also been on the agenda of Malaysia, since this country has strongly reduced corporate income taxes and eliminated several taxes on real property gains.

All these reforms seem to have been continuously advocated by the World Bank, in part due to the previous success of a paradigm that has long been followed by one country: Singapore, which has been widely admired for its commitment to simplifying the processes for starting up new businesses (Tan 2004). Not surprisingly, this country stands at the very top of the Doing Business rankings, given its well-known commitment to market-oriented reforms that, each year, seem concerned with different sectors of its economy. For instance, in 2008 the Doing Business Report praised the Singaporean reformers for improving the economic conditions of the construction sector, by making construction permits more flexible.

Curiously, the importance given to the construction sector was also shared by another region famous for its business-oriented policies. Hong Kong, which has been assessed by the World Bank as a distinct entity from China, engaged in a strong strategy to improve the speed of permits and remove a considerable number of environmental and labor regulations required for constructing in the region – although this private sector reform might have adverse implications in terms of safety and social risks (Klein 2000, 228). Nonetheless, Hong Kong also increased its efforts of improving an aspect of its business environment that is undoubtedly beneficial: the requirements for closing a business. In this sense, Hong Kong granted trustees more power in bankruptcy proceedings, which would facilitate the liquidation of companies (World Bank 2008, 54-57). Moreover, following a steep increase in bankruptcy petitions from 2007 to 2009, a new "corporate rescue" reorganization procedure was implemented in June 2010 (World Bank 2010, 77).

Catch-up group. Although Asia has been praised for its commitment to legal reforms in comparison with other macro-regions, it is obvious that this continent cannot be seen as a monolithic group of successful experiences. Indeed, some countries have been clearly struggling in the process of legal reforms, either because they have just passed through a period of human or economic disaster – so that any institutional reform becomes meaningless in comparison with other more urgent local issues – or because their pace of reforms simply has been disappointing.

The latter explanation seems to be the case of the Philippines. Little advance has been made in this country despite its relative political stabilization and efforts to curb corruption. According to the Doing Business report, the Philippines have only improved the electronic system for customs, without any substantial reform in terms of institutional design. Similarly, Vietnam made some progress with regard to the protection of investors by giving them more information of prospective borrowers. However, in none of these countries, any judicial reform has been significantly achieved – not to mention those in which no reform has been pursued at all (Quah 1999, 80-2).

Occasionally, the difficulties in promoting legal reforms are not without reason, as the case of Indonesia illustrates. Plagued with a well-known history of corruption (Taylor 2002), the Indonesian government has succeeded fairly in making the country more business friendly in aspects that are relatively immune from corrupt activities, such as improving credit data systems. However, in areas where corruption constitutes a strong barrier, the country has notably faced problems, especially in clearing hurdles for investments and reducing the capital requirements for new businesses (Harding 2001).

Furthermore, what often seems to prevent any noticeable impact of legal reforms in some Asian countries is their long history of internal conflict and poverty, so that any degree of success or failure becomes difficult to measure. The examples of Cambodia (131st) and Mongolia (64th) are illustrative in this sense. Cambodia has remarkably engaged in numerous reforms devoted to private sector development, including the enactment of two new laws: a bankruptcy law – the first ever in its history – and a new law for creditor protection. However, none of these reforms seem to be effective enough to quickly restore Cambodia's economic climate, since the long period of internal conflict and massive violation of human rights during the rule of the Khmer Rouge suggest that other reforms are much more important than those focused on commercial laws.

Similarly, although Mongolia in principle could be regarded as an average model of legal reform according to the Doing Business criteria, the transition from a communist government to a market-based economy seems to make most of these efforts ineffective. Mongolian lawmakers promoted several reforms for facilitating international trade by reducing tax burden on companies, simplifying customs procedures, creating a system of risk management and replacing *ex ante* with *ex post* regulations. Nonetheless, Mongolia still lags in its transition to a capitalist economy, when compared to other post-communist countries in Eastern Europe.

Although these cases indicate that Asia is far from being a perfect model of legal reform, what distinguishes this region from others in the developing world is that most of its countries maintain a continuous effort to implement the recommendations of the World Bank. While in many cases these reforms seem to have played a crucial role for generating positive outcomes in the long run, they cannot fully explain why in some Asian countries they have been ineffective, thus challenging the idea that such a "best practice" actually can be defined.

b) Latin America

The analysis of the Latin American performance under the Doing Business methodology provides some understanding about the issues faced by this region, when compared to the experience of Asian countries. The best illustration of this contrast is that no single Latin American country managed to stand at the top tier of the ranking, while most of these local governments have failed to promote any significant change in their institutional structures in order to encourage private sector development (World Bank 2015). Most notable, however, is the fact that several countries seem to even have gone backwards in this effort by making private businesses much more difficult to take off, as the famous cases of Venezuela and Bolivia demonstrate.

Nevertheless, it would be unfair to generalize such a statement to the entire Latin American region, since a few countries have pursued important reforms in recent years. Perhaps the most successful example of this attitude is Colombia, currently ranked 53rdin the Doing Business list. The reforms promoted by the Colombian government have been broad and relatively significant, particularly through its concern with *ex ante* regulations. In this sense, registration requirements were substantially reduced in favor of more *ex post* regulations, together with more simplified procedures. Moreover, a major investment in electronic systems resulted in improved banking and payment services – which facilitated international trade to a greater extent – as well as in faster and more reliable social security and tax systems (World Bank 2015).

In the context of the Colombian example, it is worth noting that the few Latin American countries which succeeded in their legal reforms could be distinguished for their commitment in two specific areas: bankruptcy and tax law – choices that are not without reason in the context of the challenges faced by this region. On the one hand, agile bankruptcy procedures may allow businesses to close or reorganize quickly and inexpensively, thus reducing risks to private investors – a problem historically associated with Latin America (Araujo and Funchal 2005). In this sense, the bankruptcy legal system of Colombia also suffered a major overhaul, by prioritizing time limits for negotiating reorganization agreements, as well as by establishing mandatory liquidation in certain cases. Similarly, Mexico (47th) amended its bankruptcy law in order to facilitate reorganization between debtors and creditors at any stage of the insolvency procedure (World Bank 2013).

On the other hand, efficient tax rules not only seem to tackle the problem of *ex ante* requirements for starting new businesses, but also the continuous economic burdens that stem from a complex tributary system that typically is found in Latin America (Bird 2003). Thus, the Mexican government introduced a new law that abolished several taxes and simplified reporting rules for value-added and income taxes. The Dominican Republic (103rd) also reformed its complicated tax system by targeting procedural bottlenecks, especially by implementing an online system for filing and payment, but also by abolishing a number of taxes and substantially reducing the corporate income tax rate from 29% to 25%. Other countries that adopted this "tax-plus-bankruptcy" dual strategy were Uruguay (World Bank 2013, 144) and St. Vincent & the Grenadines (World Bank 2008, 67).

Although the efforts of these few countries cannot be neglected, they are largely overshadowed by the underachievement of most Latin American countries. As a matter of comparison, while only four Asian countries refrained from promoting any significant reform between 2013 and 2014 (about 15% of the entire region), half of the Latin American countries made absolutely no moves during the same period.

Even among those countries regarded as regional leaders in Latin America, the performance has been largely disappointing. Brazil (123rd), despite being the seventh largest economy in the world and one of the four main emerging countries together with China, India and Russia, made little progress with regard to legal reforms on the private sector. While mostly focused on the facilitation of foreign trade and on getting credit (World Bank 2012, 67), Brazilian lawmakers made no advance with other more urgent reforms such as on the country's tax and social security systems – a problem that even has been tackled by its closest neighbors (World Bank 2008, 21).

However, even the absence or slowness of legal reforms is not the worst possible scenario, as the following cases of Bolivia (149th) and Venezuela (187th) demonstrate. These countries not only failed to promote the necessary reforms for expanding private sector development, but have long mirrored the policies of the top-tiered Latin American governments in the exactly opposite direction (Khemaniand Carrasco-Martin 2008). For instance, while Colombia specifically targeted its bankruptcy laws in order to facilitate corporate reorganization, Bolivia rather suspended any remaining mechanisms that could allow such possibility, leaving a slow and costly judicial bankruptcy procedure as the only alternative for struggling companies. Likewise, while Mexico engaged in several reforms to reduce and simplify the tax burdens for private investors, Venezuela introduced several new taxes, including some focused on financial transactions (World Bank 2015).

Conclusion

By explaining the factors behind the changes in legal reform policies in the last five decades, this article provided an analysis of why international institutions increasingly have embraced a more prominent role in these initiatives. The shift from a U.S.-led to a World Bank-led approach, with the eventual consolidation of a soft-based mechanism in the Doing Business model, has been justified by a need for stronger multilateral legitimacy, as well as the need to create more effective incentives for national governments to commit to internal reforms. Moreover, the use of comparative benchmarks and best practice discourses has been able to assist international organizations in providing more focused diagnoses and, consequently, in devising tailored recommendations to national governments, especially by relying on clearer guidelines of market-oriented measures that would foster economic growth through the attraction of foreign investments. The observation of the experiences in Asia and Latin America indicates that, by being able to look at the practices of their closest neighbors, countries may have a better view of the strategies that are more likely to work – even though they have often decided not to adopt them.

While the ongoing international mechanisms mark an improvement over the attempts to use legal reforms as a method for promoting economic development, there are still some important limitations to this approach. For instance, there is little understanding of the actual factors that explain the success of certain legal reforms in one but not in another region. Furthermore, a ranking method simply based on the number of reforms promoted by each country seems to have less significance in leading to high-impact changes in the institutional climate of developing countries. In fact, a common criticism of earlier Doing Business reports was that a system based on rankings, rather than absolute scores, could undermine rewards for those countries that were reforming but remained at the bottom of rankings. For this reason, since 2012 the Doing Business has introduced the so-called "distance to frontier" measure, which assesses the level of change in each economy's regulations (rather than compared to other countries) (World Bank 2012). Therefore, international drivers may be evolving and adjusting in their effort to enhance legal reforms, but governments still bear the ultimate role in adapting and successfully incorporating them.

Acknowledgments

Funding information: Fundação de Amparo à Pesquisa do Estado de São Paulo (2010/18569-1).

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