

Routledge Studies in Latin American Politics

LATIN AMERICA IN TIMES OF TURBULENCE

PRESIDENTIALISM UNDER STRESS

Edited by
Mariana Llanos and Leiv Marsteintredet



Latin America in Times of Turbulence

This book accounts for and analyses the latest developments in Latin American presidential democracies, with a special focus on political institutions.

The stellar line-up of renowned scholars of Latin American politics and institutions from Latin America, Europe, and the United States offers new insights into how democratic institutions have operated within the critical context that marked the political and social life of the region in the last few years: the eruption of popular protest and discontent, the widespread distrust of political institutions, and, of course, the COVID-19 pandemic. Combining different methodological approaches, including cross-national studies, small-N studies, case studies, and quantitative and qualitative data, the contributions cluster around three themes: the problem with fixed terms and other features of presidentialism, inter-institutional relations and executive accountability, and old and new threats to democracy in these times of turmoil. The volume concludes with an assessment of the political consequences of the COVID-19 pandemic in Latin America.

Beyond current scholars and students of comparative political scientists, *Latin America in Times of Turbulence* will be of great interest to a wide spectrum of readers interested in comparative systems of government, democracy studies, and Latin American politics more generally.

Mariana Llanos is Lead Research Fellow at the German Institute for Global and Area Studies and Extraordinary Professor of Democratic Institutions in the Global South at the University of Erfurt, Germany. In her research, she compares Latin American political institutions, with a particular focus on the presidency, presidential impeachments, and courts–executive relations.

Leiv Marsteintredet is Professor at the Department of Comparative Politics, University of Bergen, where he also currently holds the position as Chair. Marsteintredet has mainly worked on political institutions and democracy in Latin America focusing on critical events such as coups, presidential breakdowns, and presidential impeachments.

Routledge Studies in Latin American Politics

- 37. Regional and International Cooperation in South America After COVID**
Challenges and Opportunities for the Post-pandemic
Melisa Deciancio and Cintia Quiliconi
- 38. The Latin American Military and Politics in the Twenty-First Century**
A Cross-National Analysis
Kees Koonings and Dirk Kruijt
- 39. The Consequences of Brazilian Social Movements in Historical Perspective**
Edited by Valesca Lima, Rafaela N. Pannain and Gabriela Pereira Martins
- 40. Geopolitical Landscapes of Donald Trump**
International Politics and Institutional Characteristics of Mexico-Guatemala Relations
Edited by Carlos Heredia-Zubieta
- 41. Crime, Violence, and Justice in Latin America**
Edited by Carlos Solar & Carlos A. Pérez Ricart
- 42. Dominican Politics in the Twenty First Century**
Continuity and Change
Edited by Jacqueline Jiménez Polanco & Ernesto Sagás
- 43. Mano Dura Policies in Latin America**
Sebastián A. Cutrona and Jonathan D. Rosen
- 44. Latin America in Times of Turbulence**
Presidentialism under Stress
Mariana Llanos and Leiv Marsteintredet

Latin America in Times of Turbulence

Presidentialism under Stress

Edited by

**Mariana Llanos and
Leiv Marsteintredet**



Routledge
Taylor & Francis Group
NEW YORK AND LONDON

First published 2023
by Routledge
605 Third Avenue, New York, NY 10158

and by Routledge
4 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2023 selection and editorial matter, Mariana Llanos and Leiv Marsteintredet;
individual chapters, the contributors

The right of Mariana Llanos and Leiv Marsteintredet to be identified as the
authors of the editorial material, and of the authors for their individual chapters,
has been asserted in accordance with sections 77 and 78 of the Copyright,
Designs and Patents Act 1988.

The Open Access version of this book, available at www.taylorfrancis.com, has been made
available under a Creative Commons Attribution-Non Commercial-No Derivatives 4.0 license.

Trademark notice: Product or corporate names may be trademarks or registered trademarks,
and are used only for identification and explanation without intent to infringe.

Library of Congress Cataloging-in-Publication Data

Names: Llanos, Mariana, editor. | Marsteintredet, Leiv, editor.

Title: Latin America in times of turbulence : presidentialism under stress /
edited by Mariana Llanos and Leiv Marsteintredet.

Description: New York, NY : Routledge, 2023. |

Series: Routledge studies in Latin American politics ; Volume 43 |

Includes bibliographical references and index. |

Identifiers: LCCN 2023001328 (print) | LCCN 2023001329 (ebook) |

ISBN 9781032322612 (hardback) | ISBN 9781032348728 (paperback) |

ISBN 9781003324249 (ebook) | ISBN 9781000904338 (adobe pdf) |

ISBN 9781000904369 (epub)

Subjects: LCSH: Political stability--Latin America. | Democracy--Latin America. |

Presidents--Latin America. | Executive power--Latin America. |

Interagency cooperation--Latin America. | Government accountability--Latin America. |

Latin America--Politics and government--21st century.

Classification: LCC JL960 .L37155 2023 (print) | LCC JL960 (ebook) |

DDC 320.01/1098--dc23/eng/20230223

LC record available at <https://lcn.loc.gov/2023001328>

LC ebook record available at <https://lcn.loc.gov/2023001329>

ISBN: 978-1-032-32261-2 (hbk)

ISBN: 978-1-032-34872-8 (pbk)

ISBN: 978-1-003-32424-9 (ebk)

DOI: 10.4324/9781003324249

Typeset in Times New Roman
by Newgen Publishing UK

The Open Access version of this book was funded by German Institute for
Global and Area Studies (GIGA); University of Bergen

Contents

<i>List of Figures</i>	vii
<i>List of Tables</i>	viii
<i>List of Contributors</i>	ix
<i>Preface</i>	xiii
1 Introduction: Latin American Presidential Democracies in Times of Turbulence	1
MARIANA LLANOS AND LEIV MARSTEINTREDET	
2 The Limits of Presidential Impeachment: Lessons from Latin America	17
MARIANA LLANOS AND LEIV MARSTEINTREDET	
3 Referendums about Presidential Mandates: Deviations or Correctives?	36
YANINA WELP AND LAURENCE WHITEHEAD	
4 Hyper-Presidentialism under Question: Evidence from Chile	54
CHRISTOPHER A. MARTÍNEZ AND ANDRÉS DOCKENDORFF	
5 The Power of the Administrative Decisions of Latin American Presidents	75
MAGNA INÁCIO, FILIPE RECCH AND CAROLINA GUERRERO VALENCIA	
6 Latin American Legislatures during the Pandemic	106
MANUEL ALCÁNTARA, MÉLANY BARRAGÁN AND MERCEDES GARCÍA MONTERO	

7	Court–Executive Relations during the COVID-19 Pandemic: Business as Usual or Democratic Backsliding?	128
	MARIANA LLANOS AND CORDULA TIBI WEBER	
8	Democracy, Electoral Institutions, and Digital Platforms in Latin America	148
	GASPARD ESTRADA	
9	Dynasties, Double-Dealings, and Delinquencies: Some Entangled Features of Subnational Politics in Mexico	167
	JACQUELINE BEHREND AND LAURENCE WHITEHEAD	
10	Civil–Military Relations and Democracy in Latin America in the 2020s	188
	JOHN POLGA-HECIMOVICH	
11	Conclusion	206
	LEONARDO MORLINO, MARIANA LLANOS AND LEIV MARSTEINTREDET	
	<i>Index</i>	221

Figures

4.1	Legislative powers in Latin American presidents (2016)	60
4.2	Constraints on the executive in Chile and Latin America (1900–2019)	61
4.3	Party institutionalisation in Latin America (2017)	64
5.1	Highest word probability by topic	88
5.2	Overall topic prevalence across documents for the whole corpus	89
5.3	Average topic prevalence by topic and country	90
5.4	Average topic prevalence by topics related to “individual decisions” and country	91
5.5	Average topic prevalence by topics related to “groups decisions” and country	92
5.6	Average topic prevalence by topics related to “budgetary decisions” and country	92
5.7a	Average topic prevalence by topics and country	93
5.7b	Average topic prevalence by topics and country	94
5.7c	Average topic prevalence by topics and country	95
5.8	Average topic prevalence by topics related to “individual decisions” and country	96
5.9	Average topic prevalence by topics related to “groups decisions” and country	97
5.10	Average topic prevalence by topics related to “budgetary decisions” and country	98
5.11	Percentage of COVID-19-related decrees by year and type – Brazil, 2020–2022	101
9.1	Number of dynastic governors after 1989 by state in Mexico	175
10.1	Reliance on military for regime survival (2015–2020)	198
10.2	Democracy in Latin America (2010–2021)	201

Tables

2.1	Presidential breakdowns during the third wave of democratisation	20
2.2	Problems and dilemmas of impeachment	24
3.1	Referendums/recall elections addressed to presidential terms (1990–2022)	43
5.1	Institutional regulation of president’s administrative powers by country	80
5.2	Total presidential decrees issued by country	84
5.3	Residential decrees issued by each president	85
5.4	Total presidential decrees issues by year	86
6.1	Declarations of state of emergency following the outbreak of the pandemic	110
6.2	Legislative production in 2020	114
6.3	Organization of the legislative work during the pandemic	117
6.4	Majorities by presidential parties in the legislature	119
6.5	Executive–legislative relations	122
6.6	Presidential approval (%)	123
7.1	Executive reactions to bold control by courts, and the effects hereof, compilation by the authors	131
7.2	Executive reactions to courts’ pandemic-related decisions, compilation by the authors	138
10.1	Military responses to significant anti-government demonstrations (2019)	192

Contributors

Manuel Alcántara is Professor Emeritus of Political Science at the University of Salamanca. He has researched extensively on parliamentary elites; elections; parliamentary performance; organisation and internal structure of political parties; and professionalisation of politicians in Latin America. *El oficio de político* (2020, 2nd edition) is among his most recent books.

Mélany Barragán is Professor at the University of Valencia. She holds a PhD in Political Science from the University of Salamanca. Her research focuses on elites and political careers, comparative politics, and methodology. She has conducted fieldwork in El Salvador, Honduras, Panama, Costa Rica, Ecuador, and Uruguay, and has been a visiting scholar at several universities in Latin America, Europe, and the United States. Currently, she is working on political careers in federal systems, cabinets, and Latin American former presidents.

Jacqueline Behrend is Professor of Comparative Politics at the School of Politics and Government of the Universidad Nacional de San Martín in Argentina, where she is also Vice-Dean for Academic Affairs, and a CONICET Researcher at the Instituto de Investigaciones Políticas, CONICET-Universidad Nacional de San Martín. Her research focuses on subnational comparative politics.

Andrés Dockendorff holds a PhD in Government and is Assistant Professor at the Institute of International Studies, University of Chile. His research on legislative politics and interest groups has been published in journals such as *Parliamentary Affairs*, *The British Journal of Politics and International Relations*, and *The Journal of Legislative Studies*.

Gaspard Estrada is a political scientist and the Executive Director of the Political Observatory of Latin America and the Caribbean at Sciences Po, Paris. He is the co-chair of the United Nations Development Program's high-level working group on inequalities in Latin America, and an OpEd contributor for *The New York Times*.

Mercedes García Montero is a full professor in the Area of Political Science and Administration and a researcher at the Institute of Ibero-America of the University of Salamanca. She has participated in different research projects that have had in common the interest of advancing the study of political institutions, especially parliaments, as well as understanding their indicators for Latin American democracies, topics on which their publications are focused.

Carolina Guerrero Valencia is a research associate at GIGA Institute for Latin American Studies. She has a PhD in Political Science from the University of Hamburg, Germany. Her research interests focus on comparative politics, executives, first lady, institutions, and women in politics in Latin America.

Magna Inácio is Associate Professor of Political Science at the Universidade Federal de Minas Gerais. She has conducted extensive comparative research on political institutions, coalition politics, and Executive–Legislative relations. She has published in journals such as *Presidential Studies Quarterly*, *America Latina Hoy*, *Journal of Politics in Latin America*, and *Brazilian Political Science Review*.

Mariana Llanos is Lead Research Fellow at the GIGA Institute for Latin American Studies and Professor of Democratic Institutions in the Global South at the University of Erfurt, Germany. She was the President of the RedGob between 2020 and 2022. She has published extensively on comparative political institutions in Latin America. Her current research focuses on presidential impeachments, courts–executive relations, and the personalisation of power.

Leiv Marsteintredet is Professor at the Department of Comparative Politics, University of Bergen, where he also currently holds the position as Chair. Marsteintredet has mainly worked on political institutions and democracy in Latin America focusing on critical events such as coups, presidential breakdowns, and presidential impeachments.

Christopher A. Martínez holds a PhD in Political Science and is Associate Professor at the Department of Public Administration and Political Science, University of Concepción. His research on presidentialism and government instability has been published in scientific journals such as *Government and Opposition*, *International Political Science Review*, and *Polity*.

Leonardo Morlino is Professor Emeritus of Political Science at LUISS, Rome, and former President of International Political Science Association. He has extensively published on empirical democratic theory. His most recent books include: *Disuguaglianza e Democrazia* (2022), *Equality, Freedom, and Democracy. Europe After the Great Recession* (2020), *The Impact of Economic Crisis on South European Democracies* (2017), and *La Calidad de la Democracia en America Latina* (2016).

John Polga-Hecimovich is Associate Professor of Political Science at the United States Naval Academy, where he is also the Director of the Forum for Latin American Studies. John's research studies the effects of political institutions on democratic stability, policymaking, and governance, with a focus on Latin America.

Filipe Recch holds a PhD in International Comparative Education and a Master's degree in Political Science, both completed at Stanford University. Currently, he is a postdoctoral research and policy associate for the Lemann Foundation Programme at the Blavatnik School of Government. He is a comparative policy researcher whose work is focused on Brazilian educational policies, developing state capacity, and fostering collaboration.

Cordula Tibi Weber holds a PhD in Political Science from the University of Hamburg. She has been working as a research fellow at the GIGA Institute for Latin American Studies since 2011. Her research focuses on Latin American high courts, judicial independence, institutional legitimacy, informal institutions, and institutional change.

Yanina Welp is a research fellow at the Albert Hirschman Centre on Democracy, Graduate Institute (Geneva). Between 2008 and 2018 she has been a principal researcher at the Centre for Democracy Studies and co-director of the Zurich Latin American Centre (2016–2019), both at the University of Zurich.

Laurence Whitehead is a senior research fellow at Nuffield College Oxford, and Chairman of the Board of the Oxford Institute of Energy Studies. He also Chairs IPSA Research Committee 51 (IPE of the Global South) and serves as Vice-President (to Jacqui Behrend) of the RedGob 2022/2023.



Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>

Preface

This volume brings together renowned scholars on Latin American politics and political institutions. It is the result of several rounds of lively discussions within the RedGob – the *Red Euro-Latinoamericana de Gobernabilidad para el Desarrollo* (www.red-gob.org/), of which Mariana Llanos and Leiv Marsteintredet held the presidency and vice-presidency, respectively, between 2020 and 2022. RedGob is a network composed of European and Latin American research institutions that aims to generate a space for the exchange of knowledge on the subjects of governability, public policy, institutional reform, and development in Latin America.

In the last two years, we were concerned with the COVID-19 pandemic and its potential impact on democracy in this region. This topic framed the annual meetings of the RedGob that were held during these years. Due to the pandemic restrictions, the first meeting took place as an online workshop in December 2021. There, we presented and discussed the first ideas that would later give form to this volume's chapters. A second, in-person, workshop was held at the University of Erfurt, Germany, between 23 and 24 June 2022. On this occasion, we discussed the drafts of the full chapters that would later be revised and prepared for publication.

The preparation of this volume brought together two projects led by the editors. The Democratic Institutions in the Global South (DEMINGS) project, which is led by Mariana Llanos and funded by the Leibniz Foundation in Germany (project number P72/2018) and the TERMEX project (project number 294746), led by Leiv Marsteintredet and funded by the Norwegian Research Council and the Deutscher Akademischer Austauschdienst. The editors want to acknowledge the support of these funding institutions without which the in-person meeting of such a varied group of scholars from Europe and Latin America would not have been possible.

Many institutions and people contributed to the preparation of this volume. First, the University of Erfurt provided the premises and the necessary assistance for the two-day in-person workshop in June 2022. Second, the German Institute for Global and Area Studies assisted the editors with the meeting's preparations, travelling as well as along the writing process. Third, the EU-LAC Foundation's Executive Director, Adrián Bonilla, and

Senior Program Manager, Anna Barrera Vivero, actively supported and participated in the two abovementioned workshops. Third, the authors benefited with the intelligent inputs of a group of discussants who not only came to meet us in person in Erfurt but also carefully read several versions of the chapters' drafts: Bert Hoffmann, Jayane Maya, Eduardo Tamaki, Pedro Costa, and José Zurita. The editors also want to thank Emma Gyllander at the Department of Comparative Politics and Fynn Schmidt at the GIGA Institute for Latin American Studies for research assistance. Fourth, this volume received a final impulse from the GIGA, the University of Bergen and the Leibniz Foundation, which made possible that the digital version was open access.

Finally, a special acknowledgement goes to Leonardo Morlino for his wise guidance throughout the process of writing and assembling this book as well as to all the authors for their hard work, patience, and reliability until the very last moment of the manuscript's preparation.

1 Introduction

Latin American Presidential Democracies in Times of Turbulence

Mariana Llanos and Leiv Marsteintredet

Context matters for the functioning of political institutions. When enjoying high levels of legitimacy, institutions and the elites that inhabit them, can make and implement hard and unpopular decisions facing a crisis, and expect that a large majority of the population abides by them. In contrast, when institutions are by and large distrusted and unpopular, decision-making and the implementation of public policies become much more complicated and may even put such institutions at risk.

This volume is about political institutions in Latin America, as they find themselves in turbulent times. By turbulent times we mean the set of interlinked factors that featured as part of the political and social life of the region in the last few years: especially, the eruption of popular protest and discontent, the widespread distrust of political institutions and a crisis of representation, and, of course, the COVID-19 pandemic. This volume analyses how presidential democracies and their, often weak, political institutions have functioned under these circumstances, responding to the many challenges they have faced.

Highly visible signals of such turbulent times began to take shape in 2019, when a wave of discontent and violent protest spread across the continent, extending throughout Bolivia, Ecuador, Colombia, Peru and especially Chile, which had been until then the region's poster child for both its economic and political performance. These protests built on previous ones in Haiti, Honduras, Nicaragua and Venezuela, and further back in time in Brazil and Guatemala, where they had led to the removal of presidents. Despite the onset of the COVID-19 pandemic in 2020, the protests never receded entirely – continuing to expand geographically to other countries where they have been rare, such as Panama and even authoritarian Cuba. In Brazil, levels of protest increased considerably during the pandemic, and the left and centre-right joined forces in 2021 to protest Jair Bolsonaro's handling of the latter. At the time of writing, November 2022, the streets had again become a witness to violence in Bolivia.

Protests have occurred in a context that survey data consistently reveal to be one of the public discrediting of democratic institutions, a decline in public support for democracy as the best form of government and of dissatisfaction with what democracies are delivering – namely, economic

DOI: 10.4324/9781003324249-1

This chapter has been made available under a CC-BY-NC-ND license.

decline, increasing inequality, personal insecurity and extensive corruption (Latinobarómetro, 2022). In 2020, the pandemic-related crisis intensified in the face of such myriad of factors, thus strengthening the mentioned trends. In fact, the pandemic deepened economic privations and nurtured increasing public discontent and anti-political sentiment through exposés of corruption in contracts, privileges in vaccination processes, collapsed health systems and stunted educations for millions of children and youth. In June 2022, *The Economist* (2022) reported how economic stagnation, popular discontent and social polarisation had fuelled democratic decay in the region. Likewise, a survey showed that, despite a recent slight increase in the public's support for democracy, in a range of countries a majority would be willing to give up holding elections in exchange for guaranteed income and services (Lupu et al., 2021: 19).

Certainly, these trends are not spread equally across the region. There are important differences among these democratic countries – extending, for example, from well-performing Uruguay to the highly unstable Peru, which has been in permanent turmoil in the last few years. Even though the vast majority of Latin American countries remain electoral democracies, the region that gave impulse to the third wave of democratisation in the 1970s and 1980s has evolved over the last decade, from regimes possessing a variety of democratic qualities to include settings in which we can now see democratic backsliding and, indeed, outright autocratisation.

As most Latin American democracies are neither very old nor very strong, it is worth exploring how their institutions passed one of the greatest stress tests faced since the beginning of the third wave. The various chapters of this volume deal with how key democratic institutions confronted, in a context that many have described as a “crisis of representation”, challenges from the street, the COVID-19 pandemic, as well as inter-institutional challenges and conflicts. We refer here above all to the elective institutions, presidents and congresses, but also include analyses on other institutions essential to the functioning of democracies, like high courts, electoral regulatory entities, subnational governments, the military and constitutional bodies.

We hence ask: To what extent has the pandemic increased the concentration of power as well as led to the further abuse of it? Have courts and parliaments been able to provide effective checks on presidential power during the course of the turmoil of the last few years? Have such controls gone too far, leading to weak and ineffective presidents unable to attend to social demands? Were (already weak) democratic institutions able to resist the attacks of old and new actors, ones with the potential to further weaken and even subvert democratic processes and the rule of law? Would presidents increasingly lean on the military during the 2019 protests and the COVID-19 lockdowns, thus setting the stage for its return to politics?

Democratic institutions not only worked within this climate of undermined legitimacy and social unrest and later under the acute challenges posed by the pandemic. They also responded to these threats. Both perspectives are present in this volume's contributions.

Institutions Operating under Stress

The decline in popular trust in institutions in Latin America, which in some cases clearly constitutes a crisis of representation, is nothing new. More than 15 years ago, Mainwaring et al. (2006) published an edited volume entitled *The Crisis of Democratic Representation in the Andes*. Luna (2016), for his part, discussed the crisis of representation in Chile three years before the *estallido social* (“mass protests”). Today, low partisan allegiance and social polarisation have come to constitute concerns regarding the principled defence of democracy in turbulent times (Cameron and Jaramillo, 2022; Singer, 2021).

There can be no doubt that the performance of the institutions in question is at the root of existing low levels of trust, legitimacy and of satisfaction therewith. Be it corruption (Morris and Klesner, 2010), economic performance (Memoli and Di Pastena, 2019), inequality (Zmerli and Castillo, 2015) or other factors, it is difficult to separate out the general distrust and widespread protests from the same institutions set to handle and mediate with the discontented masses. Institutional weakness – understood as institutional instability, insignificance or non-compliance – is often a common denominator that helps explain their poor performance (Brinks et al., 2020). There is sufficient evidence to indicate that low levels of trust in institutions are caused by institutional performance in some way or another, while at the same time this distrust also influences government performance and the perception thereof (on corruption and trust, see, e.g. Morris and Klesner, 2010).

In fact, this crisis of representation influences, for example, who wins the presidency, how legislatures are composed, inter-institutional relations and cooperation, as well as the bond between institutions and society at large. For instance, even though political parties remain the primary vehicles through which politicians gain access to state power (Mainwaring, 2018: 3), they fail to provide organic ties to citizens and only act as electoral instruments (Munck and Luna, 2022: 239). Parties being mere electoral vehicles has important consequences for institutional functioning. On the one hand, parties do not provide for strong horizontal coordination between the executive and the legislative branches, and, consequently, for a cohesive decision-making process and a coordinated vote in Congress – thus hindering political outputs and outcomes. On the other, as new political parties tend to appear when the traditional ones fail to demonstrate their responsiveness to key social demands (Cyr and Liendo, 2020: 90), the likely consequence here is excessive party fragmentation. This translates into fragmented representation in the legislature, poses challenges to finding compromises and endangers consensus-building. Between 2005 and 2021, on average the number of effective legislative parties increased in Latin America; in some countries (Brazil, Chile, Guatemala and Peru), it increased significantly (OECD et al., 2021: 174). A fragmented legislature is also a challenge for presidential stability, something often highlighted

by the literature on impeachments and presidential breakdowns (e.g. Martínez, 2021).

In addition, surveys have not only shown that trust in institutions has mostly dwindled over time but also that trust in representatives in Congress and the executive oscillates wildly. During the wave of presidential elections held in Latin America since 2018, anti-incumbent sentiment has in fact prevailed, leading to governments losing elections to opposition parties – the last in a long line being Bolsonaro losing to Lula in the 2022 Brazilian elections. The “pendulum swings” and electoral punishment of ruling parties have favoured both right and left in this recent period, showing above all voter dissatisfaction with government performance regardless of ideology further with the lack of economic prospects – particularly in light of the pandemic.

Moreover, presidents often find it difficult to sustain the support won on election day for longer than a few honeymoon months. Chile’s left-wing president Gabriel Boric (2022–), who represented a generational change and came to power on the back of promises of a break with erstwhile dictator Augusto Pinochet’s constitutional and neoliberal legacy and of a more equal and inclusive country, suffered a pronounced drop in popularity already a few weeks after having assumed office. In Peru, left-wing president Pedro Castillo (2021–), also a newcomer, saw his popularity in free fall amid soaring inflation and mass unrest a couple of months after his election. In Castillo’s case, the rate of presidential disapproval never dropped below 60 per cent according to polls, while he faced several impeachment threats already during his first year in power. He had won the elections in a context of, and most likely due to, political instability, extreme party fragmentation and ideological polarisation, but the same factors that brought him to power also constituted severe impediments to delivering on his electoral promises.

The assuming of the presidency by extreme candidates, populists or outsiders, arguably not a new phenomenon in the region, deserves special note here. When voters face so much disruption in the political offer, moderate candidates gain little traction and consequently are punished at the polls. General distrust in political parties may become the breeding ground for populist discourses (Cyr and Liendo, 2020) and open the door to extreme candidates or ones who position themselves as political outsiders – individuals who come to power based on promises to reset the whole political system. Often, they first get a seat in Congress or at a subnational executive position, but one day they may reach the presidency itself.

The election of Andrés Manuel Obrador in Mexico (2018), Nayib Bukele in El Salvador (2019) and Bolsonaro in Brazil (2018) would reflect citizens’ frustration with corruption, insecurity and lack of economic opportunities. López Obrador, who had run in 2006 and 2012 as the presidential candidate of the left-leaning Party of the Democratic Revolution and lost – in 2006 by the narrow margin of 0.56 per cent – and both times had refused to accept the results due to allegations of vote-buying and

other irregularities, eventually founded his own party (the Movement for National Regeneration). With it, in 2018 he won Mexico's presidential elections by landslide. In El Salvador, the victory of Bukele with his conservative Grand Alliance for National Unity party ended the country's almost 30 years of upholding a two-party system. In Brazil, Bolsonaro, a right-wing backbencher who liked to praise the military dictatorship in his country as well as in others too, won the presidential run-off in 2018 – beating the whole party establishment with promises to fight corruption and to undo the progressive policies of the Workers Party's years in government.

Even though the triumph of populist candidates or outsiders could in principle be interpreted as a democratising force in electoral competition – one that enhances participation and reaches out to under-represented sectors of society, thus helping heal the damaged representation link – it usually encompasses the potential for a democratic setback, too. Sooner or later, the strong personalist character of these political movements as well as the incumbents' critical stance on democratic institutions leads to clashes with institutional checks on their executive authority – and hence to the suffocation of democracy (Weyland, 2020). Corrales (2008) holds, meanwhile, that outsiders (and the return of ex-presidents) increase polarisation and de-institutionalisation.

A growing literature has also pointed to tensions between populist forces and liberal democracy (see, e.g. Mudde and Rovira Kaltwasser, 2012), which may lead to forms of autocratic legalism (Scheppele, 2018). Even if they do not seek to abolish courts and constitutions, such incumbents may bend these institutional controls in ways that subordinate the latter (Ginsburg, 2018). This undermines both horizontal checks (O'Donnell, 1998), as well as protections for minority groups who are left outside of their definition of “the people” (Landau, 2013), as was so clearly demonstrated under Bolsonaro in Brazil. In other words, extreme candidates, outsiders or populist leaders are prone to institutional rigging and, in the context of external crises such as the COVID-19 pandemic, may find more easily the desired opportunities regarding the concentration of power.

Yet, crises require state management and consensus-building. As such, they may publicly expose these leaders' incapacity to solve serious problems, ones that are not remediable by the “magical” or radical solutions they had promised. Crises as well as periods of social turmoil, such as the ones large parts of Latin America have experienced since 2019, may, then, demonstrate the precarious nature of their leadership and potentially oversee their defeat and early removal from office (Weyland, 2021). Yet, while the ouster of an outsider or extreme president may relieve pressure on political institutions and stop democratic decay it will not be enough per se to improve confidence in those democratic institutions, particularly in weak democracies where party systems have since come to collapse.

The challenges that these institutions have faced in Latin America since 2019 would constitute a huge stress test for any democratic system. The

region's institutions, however, have recently been deemed weak (see, Brinks et al., 2020). While the type and level of institutional weakness vary across countries, this phenomenon only adds to the complexities of dealing with the social and political turbulence seen in the region over the last few years. Therefore, recent times have raised concerns about the viability of democracy and its institutions in Latin America. The next section looks at the institutional responses to this acute political turmoil.

Institutional Responses to Socio-political Turbulence

During the last few years, Latin American democratic institutions not only worked in a climate of distrust and social unrest but also under the unprecedented challenge of a global pandemic. Nonetheless, despite being discredited and often weak, they also responded to these external challenges. In this section, we aim to systematise some of these responses as they are later detailed in the various chapters of this volume. The first (and most extensive) one consists of executive attempts or strategies to concentrate greater power in their own hands, something today often linked to the risk of democratic backsliding (e.g. Bermeo, 2016). The second response refers to institutional innovation and institutional change answering popular demands in an attempt to alleviate external pressure. The third, labelled symbolic or incomplete institutional action, is recognised as being one type of institutional weakness (Brinks et al., 2020). Note that these responses do not refer here to specific policies, but to institutional decisions and manoeuvres to deal with the external pressure and turmoil. Obviously, these reactions not only have an impact for the solution of the problem(s) at hand but also for the performance of the political regime, and so should be assessed at these two levels.

The first response sees executives, in times of crisis, demand more power to take so-called effective measures. The pandemic was an external shock with the potential to impact the balance of political power within polities worldwide. It is widely known that triggering events or external shocks deepen power asymmetries in favour of the incumbent (Capoccia, 2016). Crises are “the hour of the executive” (Lodge and Wegrich, 2012: 2) because the latter have the necessary information and resources to deal with the former. Such power-concentration initiatives may be short-lived and constrained by the existing institutional framework, or they may contrariwise initiate a process of lasting institutional change. Indeed, an important corpus developing over the last few years has deemed that the concentration of power is probably a quick and efficient response to a given crisis. But it also involves the serious risk of democratic backsliding, defined as “the incremental erosion of democratic institutions, rules and norms that results from the actions of duly elected governments” (Haggard and Kaufman, 2021: 1).¹

Not only events like the pandemic entail this risk. If social turmoil and street protest are met with violent crackdowns and mass arrests, the

president's concentration of power and emergency unilateral actions, democratic backsliding is a likely outcome even if the political regime does not cross the threshold to full autocracy. Yet, despite generating conflicts, opposition to the executive organised in Congress as well as courts acting independently are key to prevent backsliding (Gamboa, 2017; Ginsburg, 2018). There are regional variations in terms of institutional strength and opposition strategies, so the question remains whether and how institutions can or wish to withstand executive abuses in order to avoid democratic erosion. Chapter 5 on executives' administrative powers, Chapter 6 on legislatures and Chapter 7 on court–executive relations all deal with these problems.

The second possible response to critical circumstances is to embark on institutional reform. Critical junctures or contingent events (Capoccia and Kelemen, 2007; Mahoney, 2000; Pierson, 2000), such as enduring street protests, can be potential triggers of change that disturb long-standing equilibrium. Attempts at appeasing protesters in the street or the convening of organised opposition in Congress by seeking to attend to, mediate and convert their demands into institutional reforms is a reasonable strategy and response, albeit a difficult one in the context of a crisis of representation. Institutional reform must at least be initiated, and often carried through, by the same actors and institutions that the majority of the people, including those protesting in the streets, distrust and are demonstrating against. If large parts of the population, especially the mobilised, do not view political parties, congresses and presidents as legitimate representatives how can they represent and channel credible institutional change?

The implementation of deep policy or institutional reform to appease demands may require the rewriting of the political and social contract altogether. We witnessed such an attempt in Chile between 2019 and 2022 with a bottom-up process to write a new constitution, as led by strong anti-party sentiment and as giving a crucial role to independent figures within the Constitutional Convention. The process came to a standstill when the constitutional draft was soundly rejected in a referendum in September 2022. Chapter 3 refers to institutional innovations in comparative terms while Chapter 4 addresses specifically the Chilean case.

The third possible response is marked by symbolic institutional actions. We use the term “symbolic” here because their reach is ultimately no more than a pretence of change rather than a solution per se (see also Brinks et al., 2020). These actions involve the use of institutional arenas (such as the legislature) and tools (such as impeachment), often staging dramatic and grandiose political movements that, in essence, only cover executive incapacity or political deadlock. They can shake up the political scene, but are unlikely to alter the material reality, respond to urgent needs or repair the bond with the public – risking instead only leading, indeed, to the latter's eventual greater distrust in democratic institutions.

With the political use of an instrument of accountability like impeachment, the replacement of the executive is presented as the solution to popular

malaise – often, in fact, being among the core demands of protesters themselves. However, an executive changeover under conditions of widespread institutional discredit will not unlock the political situation. It will rather engender further political instability, which in the end may pave the way for the election of political outsiders or autocratic leaders holding the view that institutions themselves are the origin of all problems. Chapter 2 deals with the political use of impeachments in the current context.

We do not propose that these three possible responses are mutually exclusive or one-offs. They are rather iterative choices and may be combined. A president may promote institutional reform that is self-serving and increases their control over Congress and courts; if unsuccessful the first time around, the incumbent may try again later. Symbolic institutional action against elites may backfire and trigger material institutional reform down the road. If political elites are deadlocked and unable to respond in any meaningful way to massive street mobilisation (or the COVID-19 pandemic), then protests are unlikely to die out and they may face hard choices again later – but choosing differently this time. Nevertheless, as the volume's respective chapters will detail, the institutional responses to the last few years of political turbulence in Latin America can be argued to have taken the form of these three types of possible responses.

Analysing Institutions in Turbulent Times

Distrust in institutions and widespread protests, the attitudinal and behavioural aspects of the existing crisis of representation (Mainwaring, 2006), as well as the COVID-19 pandemic's effects constitute the background contexts for the study of Latin American democratic institutions in this volume. In focusing on democratic institutions, a long-term perspective is maintained here. It starts with the initial years of democratisation as an obligatory reference point, but particularly questions how democratic institutions have functioned under the challenging and increasingly critical conditions of the last few years. The respective chapters are clustered around three core thematic areas. A conclusion follows, in which we summarise the lessons learnt.

Fixed Terms and Presidentialism

The first theme refers to the tensions between personal power and institutions, which is particularly prevalent concerning presidential power. We first tackle these tensions through a classic topic of analysis in the region: mandate constraints or term limits (Carey, 2003; Marsteintredet, 2019), one of the essential features of presidentialism. This is an obvious entry point for discussing institutions in Latin America, as the region has hosted presidential regimes since the nineteenth century, while personal power and interests have interfered with political stability for decades now and caused much institutional stress and disruption – not least after

re-democratisation in the 1980s. Illiberal presidents have always been on the menu in Latin America as elsewhere, albeit under different ideological orientations, but so have been those whose political support vanished both in Congress and in the streets soon after election.

The volume's subsequent three chapters thus account for the tensions between powerful and popular presidents who seek to change the rules of the game to prolong their stay in power and those who on the opposite side struggle to see out their mandates. Both outcomes call into question the institution of fixed terms, and are ones that have acquired, we argue, novel manifestations very recently. On the one hand, popular disaffection and frustration have led to increasing political fragmentation and to frequent clashes between the executive and legislative branches, with presidential impeachment often appearing to be a viable, concrete measure to bring a country out of crisis.

However, as Llanos and Marsteintredet show (Chapter 2), this institutional tool is a limited solution to crises that can hardly be reduced to executive misconduct. Thus, it rather contributes to fuelling than solving the crisis at hand, as well as to deepened political instability and popular distrust of institutions. On the other hand, the crisis of representation has long spurred demands for the adoption of more deliberative and direct forms of democratic expression, ones that are expected to work as correctives to the perceived failings of democratic representation.

These include referendums to prolong mandates and recalls to shorten them, as well as referendums to legitimise new nominations after presidential interruptions – topics which until now the literature has dealt with only separately. Welp and Whitehead (Chapter 3), in consequence, bring these topics together and focus on how referendums reflect both civil society claims and expectations of increasing accountability and responsiveness through direct democratic practices. The authors also reveal how this practice often fails to deliver on its democratic promise due to the excessive role played by presidents in promoting referendums or because of the politicisation of recall processes.

The examination of instances of deviation from the fixed-term rule stresses their connection to some types of presidential leaderships (Arana Anaya, 2022) as well as to certain constellations of political and institutional resources around the presidential figure continuously pointed out to be key sources of turmoil (Negretto, 2022). However, actual cases of rule manipulation have evolved into general debates on weak institutions (Levitsky and Murillo, 2009; 2013). Moreover, sweeping interpretations of Latin America being a deviation of presidentialism – namely, hyper-presidentialism – or a system characterised by the disproportionate concentration of power in the person of the president have fed arguments that seek to do away with that system and to replace it with semi-presidential or parliamentary alternatives.

Although this was an old debate *en vogue* during the early days of the third wave in Latin America, it was reinvigorated with force via the public

debates around the constitution-making process that Chile formally began in 2019. Martínez and Dockendorff (Chapter 4) empirically test the latter's so-called hyper-presidentialism and analyse whether the proposed changes drafted by the Constituent Assembly between 2021 and 2022, eventually rejected in a plebiscite, would have contributed to deconcentrating power as initially claimed. The chapter again highlights the importance of assessing presidential power beyond formal, constitutional prerogatives.

Inter-institutional Relations

The second thematic area addresses the presidency in interaction with other institutions crucial to the functioning of a democratic regime, particularly in decision-making processes. The three chapters that address this topic make particular reference to the context of the COVID-19 pandemic, in which executive–legislative relations were significantly altered by the adoption of exceptional measures to deal with the health emergency at hand. The delegation of powers to the executive during this period as well as the increasing number of populist and anti-establishment figures taking office in the region have raised concerns about the use of unilateral tools to deal with or avoid legislative checks on their authority – both in times of emergency and normal ones, too. If left unchecked, executive aggrandisement may end in democratic backsliding (Haggard and Kaufmann, 2021).

Inácio, Recch and Guerrero Valencia (Chapter 5) provide the most comprehensive and comparative analysis of Latin American administrative decrees to date. The latter is a tool that has been largely overlooked by the extensive scholarly literature on presidential powers, which has instead been mostly devoted to the influence of incumbents on the legislative process. With a novel data set on administrative decrees issued by presidents in six countries over the course of 30 years, the chapter uncovers the great variety of policy areas and the different goals that drive executives' use of this tool. Presidents decide, for example, how and when to roll out public expenditure and to transfer resources across ministerial portfolios or government programmes. Incumbents can even develop strategies of retaliation or inaction by decree, doing so in response to other political actors' own moves, which the chapter illustrates with the case of Bolsonaro in Brazil during the pandemic.

Although legislatures, under certain institutional and/or contextual constellations, have carried fundamental weight in the making of political decisions in Latin America, Alcántara, Barragán and García Montero (Chapter 6) show that, within the context of the COVID-19 pandemic, they were again exposed to the challenges arising from power concentration due to the need for exceptional measures dealing swiftly with the health emergency playing out. In addition, these collective institutions were forced to adapt their work and to implement measures to avoid contagion among their members. The authors provide a comprehensive analysis of the role of 18 Latin American legislatures during the pandemic. They

show that the imbalances of power were especially manifest in those cases where the president was in a majority position. In other cases, tensions and conflicts increased between March 2020 and May 2021 as these democratic institutions had to deliver not only on the policies that the emergency dictated, but also on the topics that were already previously under discussion pre-pandemic. Within a general context of public disenchantment and of a demand for quick responses to the presenting situation, Congress had to balance the upholding of democratic control over the executive with the need for immediate action.

Examining court–executive relations in the context of the pandemic, Llanos and Tibi Weber (Chapter 7) similarly attest that the latter acted as a conflict accelerator because it demanded immediate decisions by all institutional actors. Taking an inductive approach, the authors address the cases of Argentina, Brazil, Ecuador and El Salvador, where the high courts were ready to exercise bold control over executives’ pandemic-related decisions. Their analysis stresses that courts matter in such exceptional situations for the defence of people’s rights and operate as effective limits on the executive’s excesses. However, such actions expose courts to harsh responses particularly by populist presidents, who are ready to use formal mechanisms of interference when having the legislative majority to do so. Presidential retaliations against courts normally increase the likelihood of democratic backsliding, and indeed negatively affected the democratic quality of the incumbent regime in the case of El Salvador – where democracy has quickly eroded since the election of Bukele in 2019. Arguably, court–executive relations in Latin America have remained largely unchanged throughout the pandemic, indicating that in this particular arena the latter has not eroded democracy. Yet, the combination of a populist executive and their strong institutional power in an emergency context did ultimately accelerate democratic backsliding in El Salvador.

Old and New Challenges to Democracy

The volume’s third thematic area is the diverse challenges to electoral democracy from old and new institutions and actors alike. The major threats today come from within the elected institutions, most often the executive – in the form of illiberal presidents who use their power to dismantle the institutional machinery. In the period dealt with in this book, Bolsonaro in Brazil and Bukele in El Salvador are the two most prominent examples. Yet, there are also threats to democratic institutions that are not born of the executive, although presidents may profit from or even nurture them for their own convenience. In a context of political turmoil and waning legitimacy, executives may rely on other actors and institutions to bolster support for key decisions. Such moves may increase immediate backing for the executive but also erode the latter’s own power or even democracy *per se* in the medium to long run.

Estrada (Chapter 8) studies the role of digital platforms in electoral campaigns as well as their regulation (or rather the inadequacy thereof) by electoral bodies. The latter have historically played a key role in the construction of Latin American democracies with their important prerogatives to organise, control and supervise elections (Freidenberg, 2022). In recent years, they have been faced with the challenges posed by new “political actors” having the capacity to influence the electoral game (whether in terms of the fairness of voting contests, the transparency of financing or the dissemination of information). The emergence of COVID-19 added to this predicament because the related adoption of social-distancing measures and restrictions on movement resulted in fewer rallies and campaign events taking place in the streets, and more interactions occurring over social media instead. Political parties together with the (regulated) traditional media would play the role of intermediaries between candidates and voters in years gone by. Now, though, it is digital platforms that are becoming central to this relationship. Investigating the cases of Brazil, Colombia, Mexico and Peru, the chapter shows that, so far, electoral institutions have been unable to generate a regulatory framework capable of exercising jurisdictional or merely light-touch control over these for-profit companies. These are developments that the scholarly community needs to continue observing in the coming years.

Behrend and Whitehead (Chapter 9) deal with the state of democracy at the subnational level, and the entanglement of informal and formal institutions, in the case of Mexico. In contemporary democracies, subnational variations can be so important as to be similar in scale to the differences in democratic quality that exist across countries. Although Mexico’s formal institutions have managed to ensure the fair counting of votes, political parties’ alternation in office and some respect for citizen preferences, informal processes and traditional practices have persisted from pre-democratic times or have arisen in parallel to the democratisation process, becoming in fact crucial components of the country’s democratic system – ones, indeed, that downgrade its quality, particularly in some subnational jurisdictions. The chapter studies how formal democratic institutions can become “entangled” with informal structures and practices, meaning that they cannot be fully separated. Certainly, not all states suffer from the same combination of democratic deficiencies or virtues, so these respective entanglements need to be compared and investigated empirically. Informal institutions – like institutional innovations – have the potential to rectify the crisis of representation outlined earlier, but they inadvertently end up feeding it when those attempts are dominated by interests contrary to the public’s own ones – namely, when the preferences of elites or powerful leaders are prioritised instead.

Finally, Polga-Hecimovich (Chapter 10) analyses the role of the military during the most recent period of political turmoil. During the wave of protests that hit the region in 2019, the military suddenly took centre stage – often at the invitation of the president – in attempts to show the executive’s resolve in the face of such contestation of their rule. Observers in the press

and academics suddenly turned their attention to an institution that had largely been forgotten about since the early years of democratisation. Polga-Hecimovich, however, questions whether the military in the region actually “returned” in 2019, arguing that its role within Latin America’s democracies has gone largely unaltered even through the COVID-19 pandemic. While the military long constituted a concern for democracy in Latin America, Polga-Hecimovich finds no link between militarised responses to regional crises and democratic backsliding. Neither was the politicisation of the military what led to the civilian-initiated democratic erosion occurring in countries such as Brazil and El Salvador.

Democratic Institutions and the COVID-19 Pandemic

In the concluding chapter, Morlino, Llanos and Marsteintredet (Chapter 11) look at the political consequences of the COVID-19 pandemic summarising the lessons from the preceding chapters. The authors find that the pandemic, at least so far, has not constituted a critical juncture that has set the region’s democracies on a profoundly different path than the one found before the pandemic. Rather, the effects of the pandemic can be described as a catalyst – a concept taken from chemistry – indicating that, with some exceptions, the health crisis strengthened or weakened political developments already present in the regimes in question.

In fact, considering all the factors included in our understanding of *turbulent times*, we find that the institutions of the region, despite their weaknesses, to a large extent have proven resilient to the often-overwhelming external challenges manifested through widespread popular protests, distrust in institutions, and a global pandemic with devastating consequences for public health and the economy. Although the region’s institutions, in particular the executives, may have fluctuated between costly institutional reform, concentration of power in the hands of the executive, or symbolic institutional change, the institutions have by and large weathered the storms of the last few years. In some cases, institutions such as the courts and Congress have provided effective checks on executives at least to the extent of avoiding democratic backsliding, El Salvador being the most prominent exception. In other cases, such as Brazil, it was the citizens rather than the institutions that in the end provided a check on President Bolsonaro’s mishandling of the pandemic by voting him out of office.

There should be no doubt that distrusted institutions performing badly are crisis prone. If anything, the region is clear evidence of this pattern. Yet, from this volume we learn that it is wrong to assume that weak institutions will fall when faced by socio-political turbulence.

Note

- 1 Among others, see Bermeo (2016); Mechkova et al. (2017); and Waldner and Lust (2018).

References

- Arana Araya I (2022) The “Big Five” personality traits of presidents and the relaxation of term limits in Latin America. *Democratization* 29(1): 113–32. doi:10.1080/13510347.2021.1957838
- Bermeo N (2016) On democratic backsliding. *Journal of Democracy* 27(1): 5–19.
- Brinks D, Levitsky S and Murillo MV (2020) The Political Origins of Institutional Weakness. In: Brinks D, Levitsky S and Murillo MV (Eds) *The Politics of Institutional Weakness in Latin America*. Cambridge: Cambridge University Press, 1–40.
- Cameron M and Jaramillo G (Eds, 2022) *Challenges to Democracy in the Andes: Strongmen, Broken Constitutions, and Regimes in Crisis*. Boulder: Lynne Rienner.
- Capoccia G (2016) When do institutions “Bite”? Historical institutionalism and the politics of institutional change. *Comparative Political Studies* 49(8): 1–33. <https://doi.org/10.1177/0010414015626449>
- Capoccia G and Kelemen RD (2007) The study of critical junctures: theory, narrative, and counterfactuals in historical institutionalism. *World Politics* 59(3): 341–69. doi:10.1017/S0043887100020852
- Carey J (2003) The reelection debate in Latin America. *Latin American Politics and Society* 45(1): 119–33. <https://doi.org/10.2307/3177065>
- Corrales J (2008) Latin America’s Neocaudillismo: Ex-presidents and newcomers running for president...and winning. *Latin American Politics and Society* 50(3): 1–35. doi:10.1111/j.1548-2456.2008.00020.x
- Cyr J and Liendo N (2020) Party Change and Adaptation in Latin America. In: *Oxford Research Encyclopaedia*. Oxford: Politics. <http://dx.doi.org/10.1093/acrefore/9780190228637.013.1687>
- Freidenberg F (Ed., 2022) *Reformas electorales en América Latina*. Mexico: UNAM-IIIJ-IECM.
- Gamboa L (2017) Opposition at the margins: strategies against the erosion of democracy in Colombia and Venezuela. *Comparative Politics* 49(4): 457–77. doi:10.5129/001041517821273044
- Ginsburg T (2018) Democratic backsliding and the Rule of law. *Ohio Northern University Law Review* 44: 351–69.
- Haggard S and Kaufman R (2021) *Backsliding: Democratic Regress in the Contemporary World*. Cambridge: Cambridge University Press.
- Landau DE (2013) Abusive constitutionalism. *University of California, Davis Law Review* 47: 189–260.
- Latinobarómetro (2022) *Informe 2021*. Santiago: Corporación Latinobarómetro.
- Levitsky S and Murillo MV (2009) Variation in institutional strength: causes and implications. *Annual Review of Political Science* 12: 115–33. doi:10.1146/annurev.polisci.11.091106.121756
- Levitsky S and Murillo MV (2013) Lessons from Latin America: building institutions on weak foundations. *Journal of Democracy* 24(2): 93–107.
- Lodge M and Wegrich K (2012) Introduction: Executive Politics in Times of Crisis. In: Lodge M and Wegrich K (Eds.) *Executive Politics in Times of Crisis*. Basingstoke: Palgrave MacMillan, 1–18. https://doi.org/10.1057/9781137010261_1.
- Luna JP (2016) Delegative democracy revisited: Chile’s crisis of representation. *Journal of Democracy* 27(3): 129–38. doi:10.1353/jod.2016.0046.

- Lupu N, Rodríguez M and Zechmeister EJ (Eds, 2021) *Pulse of Democracy*. Nashville: LAPOP.
- Mahoney J (2000) Path dependence in historical sociology. *Theory and Society* 29(4): 507–48.
- Mainwaring S (2006) The crisis of representation in the Andes. *Journal of Democracy* 17(3): 13–27. doi:10.1353/jod.2006.0048.
- Mainwaring S (2018) Introduction. In: Mainwaring S (Ed.) *Party Systems in Latin America: Institutionalization, Decay and Collapse*. Cambridge: Cambridge University Press, 1–13.
- Mainwaring S, Bejarano AM, and Pizzaro Leongómez E (Eds, 2006) *The Crisis of Democratic Representation in the Andes*. Stanford: Stanford University Press.
- Marsteintredet L (2019) Presidential Term Limits in Latin America, c. 1820–1985. In: Baturo A and Elgie R (Eds) *The Politics of Presidential Term Limits*. Oxford: Oxford University Press, 103–122.
- Martínez CA (2021) Presidential instability in Latin America: Why institutionalized parties matter. *Government and Opposition* 56(3): 683–704. doi:10.1017/gov.2020.18.
- Mechkova V, Lührmann A and Lindberg SI (2017) How much democratic backsliding? *Journal of Democracy* 28(4): 162–69.
- Memoli V and Di Pastena M (2019) Between perception and reality: the economy and trust in Latin American political institutions. *Italian Political Science Review/Rivista Italiana Di Scienza Politica* 49(3): 229–44. doi:10.1017/ipo.2018.19
- Morris SD and Klesner JL (2010) Corruption and trust: theoretical considerations and evidence from Mexico. *Comparative Political Studies* 43(10): 1258–85. <https://doi.org/10.1177/0010414010369072>
- Mudde C and Rovira Kaltwasser C (Eds, 2012) *Populism in Europe and the Americas: Threat or Corrective for Democracy?* Cambridge: Cambridge University Press.
- Munck G and Luna JP (2022) *Latin American Politics and Society: A Comparative and Historical Analysis*. Cambridge: Cambridge University Press.
- Negretto GL (2022) Tinkering with executive term limits: partisan imbalances and institutional legacies in Latin America. *Democratization*, 29(1): 38–56. doi:10.1080/13510347.2021.1980539
- O'Donnell G (1998) Horizontal accountability in new democracies. *Journal of Democracy* 9(3): 112–26.
- OECD et al. (2021) *Latin American Economic Outlook 2021: Working Together for a Better Recovery*. Paris: OECD Publishing. <https://doi.org/10.1787/5feda5be5-en>
- Pierson P (2000) Increasing returns, path dependence, and the study of politics. *American Political Science Review* 94(2): 251–67. <https://doi.org/10.2307/2586011>
- Scheppele KL (2018) Autocratic legalism. *The University of Chicago Law Review* 85(2): 545–83.
- Singer MM (2021) Fiddling while democracy burns: Partisan reactions to weak democracy in Latin America. *Perspectives on Politics* 1–18. <https://doi.org/10.1017/S1537592721002899>
- The Economist (2022) Latin America: a region caught between stagnation and angry street protests. *The Economist Special Report*, June 16.

- Waldner D and Lust E (2018) Unwelcome change: coming to terms with democratic backsliding. *Annual Review of Political Science* 21(1): 93–113. <https://doi.org/10.1146/annurev-polisci-050517-114628>
- Weyland K (2020) Populism's threat to democracy: comparative lessons for the United States. *Perspectives on Politics* 18(2): 389–406. <https://doi.org/10.1017/S1537592719003955>
- Weyland K (2021) How populism dies: political weaknesses of personalistic plebiscitarian leadership. *Political Science Quarterly* 137(1): 9–42. doi:10.1017/S1537592721002899
- Zmerli S and Castillo JC (2015) Income inequality, distributive fairness and political trust in Latin America. *Social Science Research* 52: 179–92. doi:10.1016/j.ssresearch.2015.02.003

2 The Limits of Presidential Impeachment

Lessons from Latin America¹

Mariana Llanos and Leiv Marsteintredet

Introduction

In the last few years, impeachment processes have again been centre stage in Latin American politics – as resulting from broad and deep sociopolitical crises, and with societies of the region engulfed in a climate of public disaffection with politics. Most of the impeachment attempts that we have seen as of the time of writing (November 2022) have been unsuccessful, such as in Chile (December 2019, November 2021), Paraguay (March 2021) and Peru (December 2017, September 2020, December 2021, March 2022). There has also been a successful impeachment in Peru (November 2020), as well as two presidential resignations in the same country: the first connected to troublesome president–Congress relations (March 2018), the second to popular protests (November 2020). These incidents, and the general social turmoil seen across many countries in Latin America since 2019, make it pertinent to analyse the merits and limits of impeachment’s use in the region.

Impeachment is an important check on executive authority in presidential democracies. It is a constitutional provision that can act as an in-between-election accountability mechanism against presidential misconduct and is therefore an indispensable tool for removing power-hungry incumbents who threaten democracy, break the law or engage in corruption or other scandalous behaviour. Further, the mere existence of impeachment as a constitutional check on presidents may deter the latter’s misconduct. Importantly, though, impeachment is decided on by congressional majorities, a feature that entails the risk that related decisions may turn out to be “regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt” – as Alexander Hamilton, one of the Founding Fathers of the United States constitution, wrote more than 200 years ago (Hamilton, Madison and Jay, 2004, No. 65). Impeachments are, therefore, first and foremost a political process under the guise of (quasi-) legal procedures.

Impeachment has existed in most Latin American presidential constitutions since their enactment in the early nineteenth century. However, it remained practically unused until the third wave of

democratisation – when military coups, the previous common way to remove unpopular presidents before their constitutionally fixed terms were up, became unjustifiable. Impeachment came to be part of a new form of presidential instability, a novelty that involved the fall of the incumbent but not that of the political regime – as used to be the case in the past. This phenomenon gave birth to a burgeoning literature that, coming out of Latin America, made important theoretical contributions on the functioning of presidential regimes. In this chapter, we revisit presidential impeachments in light of two problems that the practising of them has made apparent in the last few years in this world region. First, the fact that presidents are judged by Congress has seen impeachment processes becoming part of the tug-of-war between rival political forces rather than a process that reprimands presidential malfeasance *per se*. Second, due to the requirement for a supermajority in order to pass, impeachment may be unable to overcome a president's protection by the legislature and thus the effect of this course of action is nullified.

We assess that these problems can also be elaborated into a novel theoretical contribution to the literature. We name them Type 1 and Type 2 errors, respectively: the first marking an impeachment process that leads to the removal of a president on tenuous grounds, whereas the latter refers to the failure to impeach a president despite their apparent unlawful or undemocratic behaviour. Our analysis suggests that the early literature on presidential impeachments tended to overlook these core problems posed by the dubious practice of impeachment, thereby leading to overly optimistic assessments of the latter's potential to bring a given country out of a crisis.

Public disaffection has been present in Latin America for a while now (see the introduction to this volume) but has recently reached new heights. There are many ways in which popular disaffection and frustration have found expression: low electoral turnouts, reduced confidence in established political parties, increased political fragmentation in Congress, the weakening and even collapse of party systems, as well as outsider or extreme candidates winning presidential elections, to name but a few. Within this context, assembling stable majorities to govern has become a hard task, and clashes between the president and Congress hamper everyday business. Since chief executives occupy centre stage in presidential systems, their dismissal through impeachment is conceived of as a concrete measure to bring a country out of crisis. However, impeachment processes reproducing the Type 1 error are usually unable to provide the expected answers to broad political problems and risk ending up fuelling existing disaffection instead. The failure to bring criminal charges in time, or the Type 2 error, can, on the other hand, even put democracy at risk.

In the next section, we review the literature on presidential breakdowns in Latin America – the broader phenomenon that encompasses impeachment among other premature ways out of power for fixed-term executives during the third wave of democratisation in Latin America. We show how,

in line with political developments in the region, this literature helped to build a first, moderately optimistic view of impeachment processes, one that however tended to overlook some of the attendant major problems. Afterwards, we theorise Type 1 and Type 2 errors. We illustrate these with the cases of Peru since 2018 and Brazil since 2019, arguably extreme instances of the Type 1 and Type 2 error, respectively. As clear-cut and extreme cases, these two countries are chosen as they help highlight key problems of presidential impeachment (Gerring, 2007). We view impeachments, and the lack thereof, in these cases more as a symptom of the crisis of representation that the region is going through rather than as the solution this institutional tool was meant to provide. In our conclusion, we discuss the implications of the limits of presidential impeachment and how, in particular, their misuse may hold serious consequences for democracy. Yet, we also show that the solutions presented as alternatives to impeachment may have their own shortcomings, too.

Impeachments and Presidential Breakdowns in Latin America

In *Presidential Breakdowns in Latin America* (Llanos and Marsteintredet, 2010c), we contributed innovative research on “a new pattern of political instability” (Mainwaring and Pérez-Liñán, 2005; Pérez-Liñán, 2007). This we named “presidential breakdown”. The phenomenon in question, however, has received numerous denominations over time.² Presidential breakdown was a pervasive South or Latin American occurrence that specifically referred to the early termination of a directly elected president’s time in office (i.e., before reaching the end of their constitutionally fixed term). Even if presidential breakdowns were quite dramatic events, being connected to serious developments in the economy, social mobilisations and political scandals, they did not involve the simultaneous collapse of the democratic system, thus challenging previously accepted understandings of how presidential regimes functioned (Linz, 1994).

In fact, our book dealt with the 14 cases of presidential breakdown in Latin America that had occurred as of 2010, of which only two had been as the result of coups (Presidents Jamil Mahuad and Manuel Zelaya in Ecuador and Honduras, respectively). The vast majority of these early terminations had been prompted by legislators and/or civilian protesters rather than the military. Even in the coup cases, civilian rulers either had maintained power throughout the whole process or quickly regained it (Llanos and Marsteintredet, 2010b; Mejía Acosta and Polga-Hecimovich, 2010). Additional presidential breakdowns came later, proving that this phenomenon was here to stay – at least in Latin America.

Operationalising an instance of impeachment or quasi-impeachment as a presidential breakdown that requires a prior vote in Congress to remove the incumbent or to force their resignation, and other breakdowns as those not preceded by this kind of crucial vote in Congress, we list the respective Latin American cases in Table 2.1. Altogether, over four decades,

22 presidents were dismissed from office prematurely in the region.³ Legislators were decisive in at least ten of these episodes, delivering the votes that formally unseated the president in question. Presidents Fernando Collor de Mello, Carlos Andrés Pérez, Raúl Cubas Grau, Fernando Lugo, Otto Pérez Molina, Dilma Rousseff, Pedro Pablo Kuczynski (PPK) and Martín Vizcarra were dismissed through impeachment or resigned with the latter imminent.⁴ Presidents Abdalá Bucaram and Lucio Gutiérrez, both in Ecuador, were dismissed through impeachment-like procedures on the grounds of incapacity and by the declaration of the abandonment of the presidency.

Provisions for presidential incapacity exist in most constitutions and, like impeachment, are rarely used because they usually require a qualified majority to pass. In the Ecuadorian cases, Congress decided – with the constitution being silent on the issue – that cases of presidential incapacity and abandonment of office required only a simple majority vote to remove the incumbent. It is also interesting to observe that, with the remarkable exception of Evo Morales in Bolivia in 2019, since 2012 Latin American presidents have only been forced prematurely out of office under congressional pressure and/or following legislative votes.⁵ This indicates that impeachment is becoming a more common way to unseat the incumbent vis-à-vis other types of presidential breakdown.

A burgeoning literature accompanied the discussion of the cases presented in Table 2.1. The early scholarship was moderately optimistic about the implications of these presidential exits from power, including the authors of this chapter.⁶ There were two major reasons for such optimism, as connected to the fact that the point of departure here was the “Linzian” account of presidentialism. On the one hand a presidential breakdown is certainly a better outcome than a democratic breakdown. In this era, the expectation was that presidential democracies would not survive in times of crisis because of their essential features.⁷ Presidential regimes are defined by two aspects: the direct election of the executive and legislative branches,

Table 2.1 Presidential breakdowns during the third wave of democratisation

Impeachments or impeachment-like procedures N=10	Collor de Melo (Brazil 1992); Pérez (Venezuela 1993); Bucaram, (Ecuador 1997); Cubas (Paraguay 1999); Gutiérrez (Ecuador 2005); Lugo (Paraguay 2012); Pérez Molina (Guatemala 2015); Rousseff (Brazil 2016); Kuczynski (Peru 2018); Vizcarra (Peru 2020)
Other presidential breakdowns N=12	Siles Zuazo (Bolivia 1985); Alfonsín (Argentina 1989); Serrano (Guatemala 1993); Balaguer (Dominican Republic 1996); Fujimori (Peru 2000); Mahuad (Ecuador 2000)*; De la Rúa (Argentina 2001); Duhalde (Argentina 2002); Sánchez (Bolivia 2003); Mesa (Bolivia 2005); Zelaya (Honduras 2009)*; Morales (Bolivia 2019)*

Source: Authors’ own elaboration.

Note: *Coups.

and the fixed terms for both (Linz, 1994; Shugart and Carey, 1992). These core features can bring rigidity and pervasive deadlock to these regimes (Linz, 1978; 1990; 1994). The direct election of the executive and legislative branches gives both president and Congress direct, and dual, democratic legitimacy, thus inducing inter-branch struggles and making it unclear which would prevail when a conflict between the two arose. The likelihood of deadlock increases in the absence of majorities in Congress, which is a predictable occurrence in these regimes.

The fixed term, for its part, makes crisis and conflict resolution more difficult, standing in contrast with the flexible solutions available to parliamentary regimes. The latter include the dissolution of parliament, a vote of confidence and the possibility of calling new elections. Impeachment, the prevalent legal instrument to replace an unpopular or embattled president, was in turn regarded as an uncertain, cumbersome and time-consuming process, and thus a reason why the political opposition would be prone to looking for extra-constitutional ways to oust an unresponsive incumbent in critical moments demanding urgent responses (Linz, 1990: 65).⁸ Despite all these negative assessments, after democratisation in the 1980s struggles between presidents and congresses became less likely to destabilise regimes – even though they could still unsettle governments and lead to their downfall (Pérez-Liñán, 2003).

On the other hand, presidentialism was meant to shape the political process – or “way of ruling” (Linz, 1990: 56) – both directly and indirectly, making confrontation prevail over cooperation. This induced other problems related to regime type, such as a lack of incentives to build coalitions, polarisation during elections, weak and undisciplined parties, as well as the myth of strong leadership (see also, Linz, 1994). Due to these features, the particular combination of presidentialism with extreme party fragmentation was seen as leading to unpredictable outcomes (Mainwaring, 1993). However, a prominent literature on coalition presidentialism showed, from the late 1990s onwards, that coalitions were not necessarily short-lived or ad hoc phenomena under rule (Altman, 2000; Amorim Neto, 2006; Cheibub, Przeworski and Saiegh, 2004; Dehesa, 1997) – even in extremely fragmented settings like Brazil. The successful presidencies of Fernando Henrique Cardoso (1995–2002) and Lula da Silva (2003–2011) fed such optimistic views over the course of two decades, also beyond the latter country.

Negretto (2006) further explained that minority presidents should not necessarily experience problematic inter-branch relations, particularly if they control the median and veto vote in Congress. Despite these deep questionings of the seminal Linzian arguments, the most thorough one done by Cheibub (2007), insufficient party support in Congress continued to be regarded as an important explanatory variable for presidential breakdowns (Alvarez and Marsteintredet, 2010; Hochstetler, 2006; Kim and Bahry, 2008). Similarly, this prompted the formation of legislative shields as a necessity to protect presidents from impeachment attempts, too (Pérez-Liñán, 2007).

However, there were already some signs in that early corpus as well as in the subsequent comparative literature indicating that the use of impeachment as an accountability tool had its limits in practice. To begin with the last point, the scholarship highlighted how important the president's available tools were – especially the formation of multiparty cabinets and generous allocations of pork – to building and maintaining government coalitions. At the same time, it was observed that overcompensating for the shortcomings of separated powers with these tools produces executive-centric politics [undermining] “the capacity of legislatures to enforce horizontal accountability and to facilitate the emergence of more stable and robust party systems” (Chaisty, Cheeseman and Power, 2014: 86).

Further, when occurring, presidential breakdowns were in general linked to certain institutional deficiencies. Martinez (2017; 2021) demonstrated that partisan support and democratic stock were important to reduce the hazard of such breakdowns, and later stressed that low party institutionalisation significantly affected the risk of presidential failure – that together with a number of other variables often highlighted in the literature, too.⁹ In Llanos and Marsteintredet (2010a: 224), we were already careful to highlight that presidential breakdowns in general had different implications for different countries, being a positive instrument to remove autocratic presidents (Dominican Republic 1996) or when the process followed the constitution (Brazil 1993) but troublesome when the phenomenon failed to address the political crisis and instead generated only repeating patterns of breakdown (initially in Argentina, Bolivia and Ecuador, then also in Brazil and Paraguay).

Pérez-Liñán warned that Latin American impeachments embodied imperfect, “politicized and spasmodic [accountability]” (2007: 209). Kada (2003), in cross-regional comparative work on impeachment, went even further in suggesting that it is worse than coups – in the sense that while the coup is clearly counter to democratic principles, an impeachment is not since it lends a legal cloak to the protagonists attempting to topple a president.¹⁰ In addition, Helmke (2017) highlighted that even though checks and balances had been designed to serve primarily as a deterrent, institutional crises were recurrent in Latin America – often reflecting partisan conflicts.

Despite these indications in the literature, it was particularly with the impeachment cases of Presidents Lugo (2012) in Paraguay and Rousseff (2016) in Brazil, both pertaining to the “pink” tide, that the measure revealed its limitations as a legitimate tool to force an incumbent's resignation. The normative standards of legality, fairness and due process that should characterise the use of this means of horizontal accountability, as Perez-Liñán (2020) put it, were severely questioned – when not altogether absent – in these cases. The 24-hour express impeachment of President Lugo in Paraguay in 2012 did not correspond much to the letter and spirit of the constitution, leading left-leaning contemporary leaders to decry it as a “soft” or “institutional” coup, and even to Paraguay being suspended from international associations such as Mercosur (Marsteintredet, Llanos

and Nolte, 2013). The concept of “neo-golpismo” – a coup through new means, in this case impeachment – has been stretched to fit these and other cases since (Marsteintredet and Malamud, 2019).

In short, the literature on presidential breakdowns, and impeachments in particular, has gone from modest optimism to general scepticism about what related proceedings can achieve. Today, academics often rather highlight the potential negative and destabilising consequences of removing a president (Carey et al., 2018). Those impeachments solely pursued on partisan grounds have shown the limits of this tool of accountability, ending up having the effect of only further polarising power struggles. They do not bring political stability, as caretakers may be disliked or even rejected by the people, such as in the case of the Michel Temer presidency that followed Dilma Rousseff’s exit. Moreover, even when impeachment is on the table for sound reasons, such as the incumbent being bedevilled by political scandals and alleged misconduct, it still can fail to relieve the critical situation if the president controls a substantial share of legislative seats – protecting them from any genuine threat.

The Limits of Presidential Impeachments

In this section, we hone the previous discussion and concentrate specifically on impeachments and their limits. As shown in Table 2.1, impeachment-like procedures have become the prevalent method to dismiss presidents prematurely in Latin America. Despite the increasing institutionalisation of presidential breakdowns through the growing importance of Congress’s role, the practice of impeachment has far from solved the political conflicts they were meant to tackle and instead given rise to new concerns.

The first limit hereof derives from the fact that impeachment starts with allegations of wrongdoing against the president and/or their associates (Baumgartner, 2003: 13). In the US constitution, for example, a president may be impeached in cases involving bribery, treason and high crimes and misdemeanours (e.g. Perkins, 2003). Although the specifics vary from country to country in Latin America, there are always limits, either constitutional or statutory, to what may be put forwards as impeachable charges. From this it follows that an instance of impeachment has an investigation and a trial phase to it, and as such mimics a judicial process. In this, impeachment differs from the parliamentary vote of confidence, which is purely a political process. That said, the decisions to investigate and impeach are almost exclusively taken by elected politicians in the legislature, whereas the verdict at trial is cast by the judicial system (a Supreme Court or Constitutional Court), legislators or both.¹¹ This means that politicians and political considerations are centre stage in cases of impeachment. Impeachment thus differs from a regular court trial. It is neither a simple judicial event nor a pure political process independent of legal aspects.

If we accept that a president must be guilty of having committed a particular offence in order to be impeached, we must also logically acknowledge

Table 2.2 Problems and dilemmas of impeachment

	<i>Impeachment successful</i>	<i>Impeachment failed/no impeachment</i>
President committed impeachable offence	Constitutional impeachment	Type 2 error
President did not commit impeachable offence	Type 1 error	Constitutional protection

Source: Authors' own elaboration.

that there are presidential wrongdoings that do not constitute cause for investigating and impeaching the incumbent. From this it follows that the legislature and/or the court – that is, the institutions involved in the impeachment process – may make the wrong decision: namely, either to remove (through impeachment) a president who has not committed an impeachable offence or to not remove (or impeach) a president who beyond any reasonable doubt has indeed committed an impeachable offence. These dilemmas of impeachment are presented in Table 2.2. Legislators and/or courts may commit two errors, coined here as Type 1 (removing a president who has not committed an impeachable offence) and Type 2 (not removing a president who has committed an impeachable offence). Two *correct* outcomes are contrariwise possible: the successful impeachment of a *guilty* president and the effective constitutional (supermajority) protection against that of an *innocent* president. We assess that the Type 1 error entails an obstructionist, failed form of accountability (Schmitter, 2004), referring to the opposition's lack of responsibility in bringing the case forwards in the first place. The Type 2 error corresponds, meanwhile, to the failure of Congress to hold a president accountable for impeachable offences.

We hasten to note that we use the terms *guilty* and *innocent* loosely here to make a theoretical argument. It is not our intention to empirically investigate or judge the innocence or culpability of the presidents in question. That said, there are cases which most people agree were just and others that were highly questionable due to their lack of obvious merit. We proceed by discussing some of these.

An early illustrative case of an uncontroversial and successful impeachment was that of Fernando Collor de Melo in 1992, typically considered a positive step in Brazil's democratisation (Weyland, 1993). That of Carlos Andrés Pérez in Venezuela in 1993 was more questionable, however (Corrales, 2002; Marsteintredet, 2014) – arguably a Type 1 error, despite being largely overlooked by the literature as a problematic case.¹² Even though both presidents were similarly accused of taking advantage of their official position for private gain, investigations in Venezuela failed to produce any hard evidence and, indeed, the Supreme Court dropped the charges of embezzlement in its final ruling for lack of evidence (Kada, 2003).

In the early literature on presidential impeachments, and more broadly democratic breakdowns, the Type 1 error was in fact not considered a problem as it was compared to a vote of no confidence (Marsteintredet and Berntzen, 2008). The latter is a traditional and important means to dismiss the prime minister in parliamentary systems that ultimately was a much more preferable outcome than democratic breakdown, as explained in the previous section. Congressional supremacy was a result of democratisation in the Latin American region (Pérez-Liñán, 2005), and the use of impeachment – even with deficiencies – was therefore considered a further step in that direction – as achieved through more effective horizontal checks herewith existing on the president. Further, the potential deterrence effect of impeachment by far outweighed the potential risks entailed in lowering the bar on what should be considered impeachable offences.

In contrast, the Type 2 error received more early attention as presidents not being forced to uphold proper standards and behaviour resonated with long-running problems of presidential accountability per se. For O'Donnell (1994, 1998) and others, delegative democracies and strong presidents were the challenge and talk of the day – with incumbents who got away with corrupt and at times undemocratic behaviour meeting little to no democratic resistance in the legislative or judicial bodies meant to control them. The difficulties for a ruling party to hold their president to account (Samuels and Shugart, 2010: 108–120) is another factor that may have reduced the prevalence of impeachment proceedings within presidential systems – thus contributing to what we call the Type 2 error.

To illustrate the latter, consider the case of Colombia's President Samper in 1996. Despite credible allegations of gross misconduct connected to the illicit financing of his electoral campaign, Samper was eventually acquitted in the lower chamber. The cross-party legislative shield protecting him was built through targeted pork barrel funding (Hinojosa and Pérez-Liñán, 2003). In perspective, committing a Type 1 error seemed less problematic than a Type 2 error as the one just mentioned, and could – finally – provide a warning against undemocratic tendencies in the presidencies of a number of Latin American countries. Regarding the last – bottom-right – box of Table 2.2, the phenomenon we label “constitutional protection”, there are probably no uncontroversial cases to be found. However, Clinton's acquittance in the United States in 1998 could be mentioned here because the breach of conduct that initially launched the process – with a lawsuit accusing him of sexual harassment when he was governor – looked more like the opposition using the president's private conduct as a public wrongdoing in order to dismiss him from office.

Lately, since the impeachments of Presidents Lugo and Rousseff, Type 1 errors – impeaching and removing an ostensibly *innocent* president – seem to have become more apparent and problematic. This has occurred precisely with impeachment becoming established as the most pervasive method to dismiss incumbents vis-à-vis other forms of presidential breakdown. Of course, judging whether the accused is guilty or not, or whether

the process is due and fair, can always be a matter of controversy, particularly when those deciding are political actors. Interestingly, however, some recent cases have fallen on consensual ground among academics, probably because they stand out as extreme instances that can be readily invoked as prototypical or paradigmatic of the two types of errors (Gerring, 2007: 101).

We argue that Peru since 2018 and Brazil since 2019 represent extreme, and thus relatively clear-cut, cases of both actual impeachment based on the Type 1 error and of a lack thereof because of the Type 2 error. From the start, the frequency of related votes (both failed and successful) makes us doubt the real grounds for the series of attempted impeachments witnessed in Peru. Meanwhile, our concern with Brazil as an extreme case is rather with President Jair Bolsonaro, a radical right-wing figure and serial offender of crimes of responsibility who still managed to finish his term without his impeachment having even been tabled for consideration.

Type 1 Error: Peru

In Peru, a democracy with weak parties, minority presidents had managed to govern over the course 15 years and finished their terms through the formation of fragile but functional coalitions (Campos, 2021). Solid and relatively stable economic growth had prevailed since 2000, but public trust in politicians and political institutions in Peru has long been extremely low. The fate of presidents, however, recently changed, with the constitution establishing a unicameral system and giving the legislature important prerogatives such as the approval of ministerial appointments.¹³ In 2016, when PPK of the centre-right was narrowly elected president, 84 per cent of Peruvians thought that the country was run by a powerful group merely for its own benefit (Latinobarómetro, 2016). That same year, a mere 16.5 per cent had some or a lot of trust in Congress, and 18.7 per cent showed the same level thereof in the government. In 2018, however, the percentage of trust in Congress and the government had fallen to only 8 and 7 per cent, respectively (Latinobarómetro, 2018). If there was a crisis of representation in 2016 when PPK was elected, it had severely worsened only two years later. Self-serving politicians, corruption and a series of impeachment attempts (known as *vacancias* in Peru) that were weak in argument vis-à-vis executive misconduct dominate the story here.¹⁴

Between 2018 and 2021, both the unpopular president (PPK) and his popular successor (Martín Vizcarra) faced several impeachment attempts and were eventually dismissed from power. PPK had assumed the presidency after defeating the populist right-wing candidate Keiko Fujimori by a tight 50.1–49.9 per cent in the run-off, but Fujimori and her Fuerza Popular party obtained the undisputed leadership of the unicameral legislature of 130 members with a two-thirds majority; PPK's party only won 18 seats. PPK and Fujimori were not far apart ideologically, but the fierce opposition led by Fuerza Popular quickly fanned tensions between

the executive and Congress and led to a tug-of-war driven by short-term interests. In December 2017, a congressional investigation produced testimonies – but not evidence – linking Kuczynski to a bribery scheme with the Brazilian company Odebrecht, and Congress proceeded to accuse him of “permanent moral incapacity”. Corruption allegations affected the entire political spectrum, including Fujimori and several former presidents such as Alan García (1985–1990, 2006–2011), who committed suicide while facing related charges in 2019. The first impeachment attempt against PPK failed after he signed a deal with Fujimori’s estranged brother, Kenji, leading to the abstention of ten deputies aligned with the latter. But the deal was so controversial that Congress resumed its investigation; threats of an imminent second impeachment led the president to resign a couple of months later.

PPK’s successor, Vizcarra, inherited the same difficult political situation: namely, an overwhelming opposing majority in Congress and continued stalemate. He undertook a bold, anti-corruption drive that made him popular with the general public but only fuelled the feud with Congress. He would actually be the most popular president of the democratic era, praised for the swift and extensive measures that his government would take to fight the COVID-19 pandemic. But cornered by conflict and stalemate, Vizcarra eventually ordered the dissolution of Congress and called new elections.¹⁵ Neither the new (very fragmented) congressional composition that reduced the disruptive Fuerza Popular to only 15 seats nor the emergency context of the pandemic had protected the president against a first (failed) impeachment attempt and his eventual removal by a second one under accusations of corruption during his time as governor of Moquegua.

The 2021 presidential elections took place amid this unstable context. After a first round in which electoral abstention rates reached 30 per cent and no candidate got more than 19 per cent of the vote, two extreme candidates moved to the run-off: left-wing candidate Pedro Castillo and right-wing Fujimori. Fujimori lost again by a very narrow margin (50.13 per cent versus 49.87 per cent), and immediately claimed that the election outcome was illegitimate and the result of ballot-rigging. Castillo assumed power without previous political experience and on the basis of an extreme position of weakness within Congress. At the end of his first year, his approval rating had plummeted to 26 per cent, he had lost four prime ministers, survived two impeachment attempts and was facing five criminal investigations – thus casting serious doubts on his chances of surviving the remaining years of his mandate.

Peru’s series of impeachment attempts have been unstable solutions only serving to escalate conflict and increase public disenchantment, failing to reduce the political turmoil prior to Vizcarra’s eventual removal from office. In 2020, only 7 per cent of the populace showed some or a lot of trust in political parties and parliament, the lowest of all Latin American countries (Latinobarómetro, 2021). Impeach proceedings here certainly

resemble votes of no confidence given the weak grounds on which they are based, but such votes coming from a distrusted Congress and accumulating in such short period of time constitute an extreme case of the Type 1 error. As such, they are not a solution but rather a symptom of Peru's ongoing crisis of representation.

Type 2 Error: Brazil

A couple of months before the presidential elections of 2022, Bolsonaro, who was seeking re-election, invited foreign diplomats to the presidential palace to hear his repeated allegations about the upcoming polls' lack of integrity as well as his attacks on Brazil's judges and electoral authorities. There were renewed strong reactions to these unfounded claims, including the submission of a new impeachment request: the 145th since Bolsonaro assumed power in 2018. It is not uncommon for Brazilian legislators and citizens to submit impeachment requests to call out the government's incompetence and wrongdoings (Llanos and Pérez-Liñán, 2021). Before Bolsonaro, President Rousseff, impeached and dismissed in 2016, held the previous record of 68 impeachment attempts made – less than half the number of her successor. A spree of requests does not necessarily correlate with the gravity of the claims that eventually lead to the trial against the president – Dilma's impeachment was highly questionable given the feeble grounds offered, arguably fitting the Type 1 error. But Bolsonaro would reach the end of his term unscathed despite, in contrast to his predecessor, facing serious accusations that directly pointed to criminal responsibility – particularly since the beginning of the COVID-19 pandemic.

A former army captain and long-term backbencher in Congress, Bolsonaro was always a questionable figure due to his anti-establishment stance, disrespect for democratic institutions and open defence of past dictatorships. During the pandemic, he added a negationist and anti-scientific worldview to his already-controversial stance regarding democratic institutions. Bolsonaro's denialism not only left pandemic-control measures in the hands of other government institutions (namely, Congress and regional/local authorities) but he also actively contradicted the containment measures they pursued (e.g. social distancing) and even promoted unproven remedies such as hydroxychloroquine (Bertholini, 2022). This position was so explicit and his actions so coherent that it is difficult to separate any assessment of the pandemic from the president's abdication of responsibility here. Already in March 2020, two dozen impeachment requests accused the president's denialism of "crimes against public health" and assigned his attacks on democratic institutions to the "criminal responsibility" foreseen by the law regulating such impeachment processes (Law 1079/1950).

In spite of all this, Brazilian politics prevented impeachment from occurring in what we qualify as an extreme instance of the Type 2 error. The president, who came to power on the back of anti-establishment sentiment

as well as promises to end entrenched corruption in politics, initially refused to form government coalitions with congressional parties – as had been the rule under previous presidents. But when the calls for his impeachment were revived in January 2021, he changed course. With a death toll at that time exceeding 212,000 people and a succession of COVID-19-related scandals – such as the shortage of oxygen and consequent surge of deaths in Manaus, closely pointing to the president's and his health minister's errors – Bolsonaro understood that he needed to tighten his leverage in Congress. He thus secured the presidencies of the two chambers and further political support from the *centrão*, a fluid group of opportunistic and power-hungry congressional parties, through the generous handing out of pork funds and ministerial positions, openly contradicting his electoral promises. Moreover, criminal charges against incumbents can only be brought by the attorney general, who was appointed by Bolsonaro in 2019 and confirmed by the Senate in 2021 – thus ensuring that the president would not face a criminal lawsuit while in office.

Bolsonaro did not go through his presidency completely unchecked (see for example Llanos and Tibi Weber, this volume). In fact, he can be considered to have been a weak president in terms of the gap between what he would have liked to do and what he was allowed to do in policy terms (Werneck Arguelhes, 2022). However, he did manage to see out his time in office, overseeing further threats and attacks in the meantime – and even becoming a danger to democracy itself.

Conclusion

Impeachment is a type of presidential breakdown, and since 2012 it has become the predominant manner of removing incumbents between elections in Latin America. With the exception of the coup against Morales in Bolivia in 2019, all cases of presidential removal in the last ten years have been impeachments or quasi-impeachments in which the incumbent has been voted out by members of Congress. We have no clear answer as to why we observe this development, but since impeachments now seem to be considered in some countries a valid instrument for solving political struggles, this chapter addressed some problems therewith that have been not analysed systematically or simply overlooked in the literature on presidential breakdowns.

As a heuristic or theoretical tool, the chapter identified two problematic issues with impeachment. The Type 1 error is a highly political impeachment in which the accused arguably could claim to not have committed an impeachable offence. The Type 2 error – harder to identify, but arguably the prevalent type in the region until the 1990s – is the failure to impeach a president who had committed impeachable offences. In discussing these inherent problems, we analysed two extreme or clear-cut cases of the Type 1 and type 2 errors: namely, Peru and Brazil, respectively. Lessons drawn from the Peruvian case are that Type 1 errors may, instead of helping

to solve political problems by removing the chief executive, fuel distrust towards the political system and its elites and thus discredit what, as we argued, is an important tool of accountability and an important deterrent to the president engaging in undesirable behaviour. As in other country cases, too, Type 1 errors help pave the way for the election of political outsiders.

Lessons drawn from the Brazilian case, meanwhile, are that failing to check presidential power – the Type 2 error – may endanger democracy and lead to executive-driven related backsliding. At the time of writing, ex-president Lula da Silva had just won the run-off against Bolsonaro by a narrow margin, putting an end to the very polarised and contentious climate that characterised the most competitive elections in Brazil's history. Eventually, it was the ballot box that stopped presidential overreach.

The problems with impeachment have become clear to many observers in connection with questionable cases thereof, such as against Lugo (Paraguay), Rousseff (Brazil) and PPK and Vizcarra (both Peru). It has also proven to be an ineffective tool (as Linz claimed it to be based on his analysis of presidential systems in Latin America up until 1990) in the face of power-hungry and ostensibly undemocratic presidents in Brazil (Bolsonaro) as well as other countries such as Honduras, Nicaragua and Venezuela. The question is, then, whether impeachment as a constitutional mechanism should be reformed, and if so how? Welp and Whitehead (this volume) discuss, for example, the requirement of a popular vote to confirm or reject the congressional one. Another option could be to raise the costs of impeachment for legislators, through a mechanism of *muerte cruzada* – or similar procedures that open the possibility of dissolving Congress and calling for new polls vis-à-vis all elected authorities in the case of impeachment. The discrediting of the impeachment mechanism itself may also increase demands to remove it from the constitution.

Despite the serious problems with impeachment, and in particular its creative – read dubious – use by legislators, we think it is an important – albeit imperfect – constitutional instrument critical to any presidential democracy. Popular recalls, now included in several Latin American constitutions, have proven feeble and non-effective instruments of vertical accountability in the cases where they were put to use, and very susceptible to manipulation by the very president who is meant to be held to account herewith (Welp and Whitehead, this volume). We believe that resorting to a referendum to uphold or reject an incumbent's impeachment may be susceptible to the same problems popular recalls are, may risk further polarisation and may deepen the political and social conflicts that potentially spurred legislators to go down the impeachment route in the first place. Finally, introducing a type of *muerte cruzada* that also dissolves Congress in case of impeachment may definitely reduce Type 1 errors, but it may also make the costs of impeachment so high as to render this constitutional tool as useless as it was prior to the 1990s. Therefore, we do not deem the alternative proposals

to impeachment to be valid quick fixes to the problems described above, or more viable/less risky.

Impeachment is indeed an imperfect instrument of accountability and one highly susceptible to political manipulation. While the dangers of not holding presidents to account – the Type 2 error – have been known in Latin America for a long time now, we hope that this chapter has shown that the obstructionist use of impeachment – the Type 1 error – also entails its own clear dangers for presidential democracies. Despite the limits of impeachment, abandonment of this constitutional tool is not the answer. Rather, it is clearly one that is ultimately best used in moderation.

Notes

- 1 The authors thank Christopher Martínez and the other participants at the workshop “Democratic Institutions in Latin America: Challenges, Processes Remedies” (University of Erfurt, 23–24 June 2022), as well as the participants in the panel “Too weak or too strong? Curbing presidential power in Latin America” at the ECPR General Conference (Innsbruck, 22–26 August 2022), for their valuable comments on previous versions of the manuscript.
- 2 We indistinctly refer to presidential breakdowns and presidential interruptions in these pages, as we have used these terms interchangeably previously. Other examples are “presidential removal” (Pérez-Liñán 2007), “presidential failure” (Hochstetler and Edwards, 2009), “presidential fall” (Hochstetler, 2006) or “interrupted presidency” (Kim and Bahry, 2008; Marsteintredet and Berntzen, 2008; Negretto, 2006; Valenzuela, 2004).
- 3 The count omits three presidents – Rosalía Arteaga (Ecuador 1997), Adolfo Rodríguez Saá (Argentina 2001) and Manuel Merino (Peru 2020) – because they only assumed the presidency for a few days.
- 4 One can argue that congressional votes were decisive in the breakdown of Carlos Mesa’s presidency in Bolivia in 2005 as well, but in this case he decided to resign despite being under no constitutional obligation to do so.
- 5 The last presidential breakdown in the region not provoked by impeachment or impeachment-like procedures occurred in 2005.
- 6 For an excellent review of this early body of work, see Hochstetler and Samuels (2011).
- 7 Valenzuela (2004: 18), however, interpreted the many presidential breakdowns as a confirmation of Linz’s critique of presidentialism.
- 8 Linz did not consider other constitutional instruments to remove a president, but only discussed and doubted the use of impeachment in presidential systems. Yet, other instruments do exist in many Latin American constitutions, such as declaration of incapacity, abandonment of office but also popular recalls – an instrument that has been introduced in several regional constitutions since 1999 (see Welp and Whitehead, this volume), and indeed used in both Mexico and Venezuela.
- 9 These variables were the lack of legislative support, anti-government demonstrations, presidential scandals and low economic growth.
- 10 This early observation by Kada (2003) has been at the heart of more recent academic and public debates about the coup concept itself, its definition and use (Marsteintredet and Malamud, 2019; Pérez-Liñán, 2020).

- 11 See Pérez-Liñán (2007: 140–141) for an overview of impeachment rules in Latin America and the United States, wherein Pérez-Liñán distinguishes between a judicial, congressional and mixed model thereof.
- 12 Contributing to the downplaying of the Pérez case as a Type 1 error was also his vilification after Hugo Chávez won the presidency in Venezuela in 1999. Pérez’s impeachment took place in a violent context and was even preceded by two attempted military coups (that had Chávez as protagonist). The urgency of Congress to get rid of this unpopular president is further apparent in the fact that it did not need to hear the court’s sentence to proceed with the trial and instead voted in a joint session to declare the “permanent leave of the president”, a decision that only required 50 per cent of the votes. Pérez called the decision “a coup against the Venezuelan constitution” (Kada, 2003: 127). See also Pérez-Liñán (2007).
- 13 Peru has been considered a semi-presidential system because the prime minister and cabinet are responsible to the legislature (Elgie, 2015), but the accuracy of this is a matter of discussion in the literature.
- 14 Article 113 of the Peruvian constitution lists the causes for presidential vacancy, one of which is if the incumbent is impeached for having committed the violations listed in Article 117 thereof: high treason, preventing elections (at all levels), preventing the operation of Congress or electoral bodies, and dissolving Congress (except when this is legally allowed).
- 15 “The president of Peru can dissolve Congress if it has censured or upheld no-confidence votes against two cabinets” (Article 134). Vizcarra’s decision to dissolve Congress, however, was highly controversial and arguably made on shaky legal grounds. He was under heavy pressure at the time, threatened by impeachment and by Congress’s attempts to elect a new Constitutional Court.

References

- Altman D (2000) The Politics of Coalition Formation and Survival in Multi-party Presidential Democracies: The Case of Uruguay, 1989–1999. *Party Politics* 6 (3): 259–283.
- Alvarez M A, and L Marsteintredet (2010) Presidential and Democratic Breakdowns in Latin America: Similar Causes, Different Outcomes. In: M Llanos and L Marsteintredet (eds.) *Presidential Breakdowns in Latin America. Causes and Outcomes of Executive Instability in Developing Democracies*. New York, London: Palgrave Macmillan, pp. 33–54.
- Amorim Neto O (2006) The Presidential Calculus: Executive Policy Making and Cabinet Formation in the Americas. *Comparative Political Studies* 39 (4): 415–440.
- Baumgartner J C (2003) Introduction: Comparative Presidential Impeachment in Comparative Perspective. In: J C Baumgartner and N Kada (eds.) *Checking Executive Power: Presidential Impeachment*. Westport: Praeger, pp. 1–20.
- Bertholini F (2022) We Are All Going to Die One Day. In: N Ringe and L Rennó (eds.) *Populists and the Pandemic: How Populists around the World Responded to COVID-19*. London: Routledge, pp. 44–56.
- Campos M (2021) Peru: Crisis política en pandemia. *Iberoamericana* 21 (78): 219–233.
- Carey J M, J Corrales, M Llanos, L Marsteintredet and A Pérez-Liñán (2018) The Threat of Impeachment Can Push Presidents Out the Door. But There’s a

- Catch. *The Washington Post: Monkey Cage*. Retrieved from www.washingtonpost.com/news/monkey-cage/wp/2018/04/11/the-threat-of-impeachment-can-push-presidents-out-the-door-but-theres-a-catch/?noredirect=on&utm_term=.e22e6c26a22b
- Chaisty P, N Cheeseman and T Power (2014) Rethinking the 'Presidentialism Debate': Conceptualizing Coalitional Politics in Cross-Regional Perspective. *Democratization* 21 (1): 72–94. <https://doi.org/10.1080/13510347.2012.710604>.
- Cheibub J A (2007). *Presidentialism, Parliamentarism, and Democracy*. Cambridge: Cambridge University Press.
- Cheibub J A, A Przeworski and S Saiegh (2004) Government Coalitions and Legislative Success under Presidentialism and Parliamentarism. *British Journal of Political Science* 34: 565–587.
- Corrales J (2002) *Presidents without Parties. The Politics of Economic Reform in Argentina and Venezuela in the 1990s*. University Park: The Pennsylvania State University Press.
- Dehesa G I (1997) *Gobiernos De Coalición En El Sistema Presidencial: América Del Sur*. PhD, European University Institute.
- Elgie R (2015) *List of Presidential, Semi-Presidential, and Parliamentary Countries*. <https://presidential-power.net/?p=1740>
- Gerring J (2007) *Case Study Research: Principles and Practices*. Cambridge: Cambridge University Press.
- Hamilton A, J Madison and J Jay (2004) *The Federalist Papers*. New York: Pocket Books.
- Helmke G (2017) *Institutions on the Edge. The Origins and Consequences of Inter-branch Crises in Latin America*. Cambridge: Cambridge University Press.
- Hinojosa V and A Pérez-Liñán (2003) Presidential Impeachment and the Politics of Survival: The Case of Colombia. In: J C Baumgartner and N Kada (eds.) *Checking Executive Power: Presidential Impeachment in Comparative Perspective*. Westport: Greenwood Press, pp. 65–79.
- Hochstetler K (2006) Rethinking Presidentialism: Challenges and Presidential Falls in South America. *Comparative Politics*, 38 (4): 401–418.
- Hochstetler K and M E Edwards (2009) Failed Presidencies: Identifying and Explaining a South American Anomaly. *Journal of Politics in Latin America* 1 (2): 31–57.
- Hochstetler K and D Samuels (2011) Crisis and Rapid Reequilibration: The Consequences of Presidential Challenge and Failure in Latin America. *Comparative Politics* 43: 127–145.
- Kada N (2003) Impeachment as a Punishment for Corruption? The Cases of Brazil and Venezuela. In: J C Baumgartner and N Kada (eds.) *Checking Executive Power: Presidential Impeachment in Comparative Perspective*. Westport: Praeger, pp. 113–136.
- Kim Y H and D Bahry (2008) Interrupted Presidencies in Third Wave Democracies. *The Journal of Politics*, 70 (3): 807–822.
- Latinobarómetro (2016) Informe 2016. Santiago de Chile: Corporación Latinobarómetro.
- Latinobarómetro (2018) Informe 2018. Santiago de Chile: Corporación Latinobarómetro.
- Latinobarómetro (2021) Informe 2021. Santiago de Chile: Corporación Latinobarómetro.

- Linz J (1978) *The Breakdown of Democratic Regimes: Crisis, Breakdown & Reequilibration*. Baltimore: Johns Hopkins University Press.
- Linz J J (1990) The Perils of Presidentialism. *Journal of Democracy* 1 (1): 51–69.
- Linz J J (1994) Presidential or Parliamentary Democracy: Does It Make a Difference? In: J J Linz and A Valenzuela (eds.) *The Failure of Presidential Democracy*. Baltimore: Johns Hopkins University Press, pp. 3–90.
- Llanos M and L Marsteintredet (2010a) Conclusions: Presidential Breakdowns Revisited. In: M Llanos and L Marsteintredet (eds.) *Presidential Breakdowns in Latin America: Causes and Outcomes of Executive Instability in Developing Democracies*. New York, London: Palgrave Macmillan, pp. 213–228.
- Llanos M and L Marsteintredet (2010b) Ruptura y continuidad: la caída de “Mel” Zelaya en perspectiva comparada. *América Latina Hoy* (55): 173–197.
- Llanos M and L Marsteintredet (eds.) (2010c) *Presidential Breakdowns in Latin America. Causes and Outcomes of Executive Instability in Developing Democracies*. New York and London: Palgrave Macmillan.
- Llanos M and A Pérez-Liñán (2021) Oversight or Representation? Public Opinion and Impeachment Resolutions in Argentina and Brazil. *Legislative Studies Quarterly* 46: 357–389. <https://doi.org/10.1111/lsq.12281>
- Mainwaring S (1993) Presidentialism, Multipartism, and Democracy: The Difficult Combination. *Comparative Political Studies* 26 (2): 198–228.
- Mainwaring S and A Pérez-Liñán A (2005) Latin American Democratization since 1978: Democratic Transitions, Breakdowns, and Erosions. In: F Hagopian and S Mainwaring (eds.) *The Third Wave of Democratization in Latin America: Advances and Setbacks*. Cambridge: Cambridge University Press, pp. 14–63.
- Marsteintredet L (2014) Explaining Executive Instability in Presidential Regimes. Types of Presidential Interruptions in Latin America. *International Political Science Review* 35 (2): 223–242.
- Marsteintredet L and A Malamud (2019) Coup with Adjectives: Conceptual Stretching or Innovation in Comparative Research? *Political Studies* 1 (22). doi:10.1177/0032321719888857
- Marsteintredet L and E Berntzen (2008) Reducing the Perils of Presidentialism in Latin America through Presidential Interruptions. *Comparative Politics* 41 (1): 83–101.
- Marsteintredet L, M Llanos and D Nolte (2013). The Politics of Impeachment: The Fall of President Lugo in Comparative Perspective. *Journal of Democracy* 24 (4): 110–123.
- Martínez C A (2017) Presidential Survival in South America: Rethinking the Role of Democracy. *International Political Science Review* 38 (1): 40–55. doi.org/10.1177/0192512115604904
- Martínez C A (2021) Presidential Instability in Latin America: Why Institutionalized Parties Matter. *Government and Opposition* 56 (4): 683–704. doi:doi:10.1017/gov.2020.18.
- Mejía Acosta A and J Polga-Hecimovich (2010) Parliamentary Solutions to Presidential Crises in Ecuador. In M Llanos and L Marsteintredet (eds.) *Presidential Breakdowns in Latin America. Causes and Outcomes of Executive Instability in Developing Democracies*. New York, London: Palgrave Macmillan, pp. 73–90.
- Negretto G L (2006) Minority Presidents and Types of Government in Latin America. *Latin American Politics and Society* 48 (3): 63–92.
- O’Donnell G (1994) Delegative Democracy. *Journal of Democracy* 5 (1): 55–69.

- O'Donnell G (1998) Horizontal Accountability in New Democracies. *Journal of Democracy* 9 (3): 112–126.
- Pérez-Liñán A (2003) Pugna de Poderes y Crisis de Gobernabilidad. *Latin American Research Review* 38 (3): 149–164.
- Pérez-Liñán A (2005) Democratization and Constitutional Crises in Presidential Regimes – Toward Congressional Supremacy? *Comparative Political Studies* 38 (1): 51–74.
- Pérez-Liñán A (2007) *Presidential Impeachment and the New Political Instability in Latin America*. Cambridge: Cambridge University Press.
- Pérez-Liñán A (2020) Narratives of Executive Downfall: Recall, Impeachment, or Coup? In: Y Welp and L Whitehead (eds.) *The Politics of Recall Elections*. Cham, Switzerland: Palgrave Macmillan, pp. 201–228.
- Perkins W B (2003) The Political Nature of Presidential Impeachment in the United States. In: J C Baumgartner and N Kada (eds.) *Checking Executive Power: Presidential Impeachment in Comparative Perspective*. Westport and London: Praeger, pp. 21–44.
- Samuels D J and M S Shugart (2010) *Presidents, Parties, Prime Ministers: How the Separation of Powers Affects Party Organization and Behaviour*. Cambridge: Cambridge University Press.
- Schmitter P C (2004) The Ambiguous Virtues of Accountability. *Journal of Democracy* 15 (4): 47–60.
- Shugart M S and Carey J M (1992) *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*. Cambridge: Cambridge University Press.
- Valenzuela A (2004) Latin American Presidencies Interrupted. *Journal of Democracy* 15 (4): 5–19.
- Werneck Arguelhes D (2022) Weak, but (Very) Dangerous: The Bolsonaro Paradox. Verfassungsblog on Constitutional Matters. Available at: <https://verfassungsblog.de/weak-but-very-dangerous/>
- Weyland K (1993) The Rise and Fall of President Collor and Its Impact on Brazilian Democracy. *Journal of Interamerican Studies and World Affairs* 35 (1): 1–37.

3 Referendums about Presidential Mandates

Deviations or Correctives?

Yanina Welp and Laurence Whitehead

Introduction

Traditional constitutional theory, and proceduralist conceptions of democracy, are preoccupied with insulating civil authorities from direct exposure to the unfiltered pressures of fickle public opinion and avoiding the dangers of ‘mob rule’. The Federalist Papers have been treated as a canonical text precisely because the US Founders made these concerns so explicit, notably in opposition to ‘anti-federalist’ arguments that had gained traction during the American War of Independence and that they aimed to counter. A succession of subsequent controversies raged across the Americas throughout the nineteenth century, generally resulting in ‘rules of the game’ to stabilise political hierarchies and to marginalise demands from below perceived as dangerous for the status quo. Bottom-up Mechanisms of Direct Democracy (MDDs) were accordingly rendered suspect, and presidential authority was legally privileged (although coups, assassinations, and elite conspiracies were all too common anyway). Plebiscites from above were also perceived as dangerous but for the opposite reason, as triggers of power concentration by one man. The resulting models of constitutional presidentialism granted that rulership should be term limited, and accepted the need for structures of alternation and accountability that would leave some space for legitimate criticism and dissent. However, these deviations from hereditary rule and *lèse-majesté* were carefully limited and channelled into approved pathways, for fear that otherwise the entire project of republican government founded on the theory of popular sovereignty would be destroyed either by anarchy and disorder or by dictatorship.

After the 1970s most Latin American presidential regimes developed (or reconfigured) more or less structured party systems (Mainwaring and Scully 1995; Alcántara and Freidenberg 2001) that provided organised intermediation between the popular impulses of the masses and the elite intrigues and bargains that largely characterised routine presidential palace politics. Occasional eruptions from below (the 1989 Caracazo, various other Andean outbursts, and the 2002 ‘Que se vayan todos’ in Buenos Aires) punctuated this formula, and other sources of instability (sovereign defaults, geopolitical intrusions, etc.) also interrupted the regular flow of

periodic political adjustments governed by the calendar of each electoral representation system. But it was only quite recently that MDDs spread and gained traction, modifying prior understandings of the role of the people in political affairs. It was still more recently that diverse referendums, citizen initiatives, and recall votes have spread so widely (Ruth et al., 2017; Welp and Whitehead, 2020). Presidential recall elections are even more recent and incipient.

What accounts for these innovations, and have they much further still to go? The decline of traditional agriculture, the massification of education, urbanisation, and the spread of digital media and related processes of modernisation all tend to produce a more extensive and politically engaged citizenry (Inglehart and Welzel, 2005). Extended experience of electoral routines, party alternation, and parliamentary deliberation also school the bulk of the population into a participatory political mind-set. Public policies concerning health, housing, transport and so forth cumulatively engage ever-larger sectors of the community and elicit organised responses from below. All these slow but persistent extensions of governmentality tend to stimulate mass citizen engagement and the desire for collective voice on matters of public concern, creating demands for more direct avenues of political expression by the people as a whole. These very broad and general social trends advance at various rhythms and in diverse forms across the western hemisphere. Each political system responds in accordance with its own history and structure.

Since the turn of the century, clear evidence has also emerged of a widespread crisis of representation. This phenomenon has gained momentum in mature as well as in more recent democracies. It has become particularly pronounced in many parts of Latin America, spurring demands for political reform, notably for more deliberative and direct forms of democratic expression. One recurrent feature has been low and declining trust in key democratic political institutions of representation such as parties and legislatures. Another common pattern has been the growing success of ‘populist’ candidates and ‘outsider’ challengers. Pressures for decentralisation have also intensified, bringing decisions about politically relevant public policies closer to the people, and prompting claims for more direct access to decision-making (e.g. through participatory budgeting). Despite the diversity of these responses a common feature has been the growing embrace of a variety of MDDs that are expected to work as correctives to the perceived failings of standard democratic representation. There is a longstanding regional tradition of resort to referendums to validate changes in the fundamental rules regulating political competition (usually ratifying new, or amendment of, constitutional texts). More recently the crisis of representation has reinforced this tendency.

In this chapter, we study all MDDs initiatives aimed at altering the (constitutionally fixed) presidential mandate between 1990 and 2022. These include referendums to prolong the mandates, and recalls to shorten them as well as referendums to legitimise new nominations after interruptions.

Thus, for example, the 2016 Colombian referendum on the Peace Accord, or the 2022 Uruguayan referendum on the scope of governmental policy reforms are not addressed here. Our concern is solely with referendums that affect the tenure of a country's head of state and chief executive.

With the strengthening of constitutionalism and of electoral procedures and monitoring, the disorderly and often violent premature ousting of past presidents have been replaced by more institutionalised processes, e.g. impeachments, voluntary departures ahead of schedule, other legal procedures. There is also a strand of constitutionalism allowing for carefully controlled recourse to an early recall election, in which a challenged officeholder has the chance to reaffirm the mandate and thus complete the existing term of office. There has been a marked increase in the availability of such recall processes at the subnational level since the beginning of the present century (see Whitehead, 2018; Welp and Whitehead, 2020). As the drive for MDDs and recall processes has gained momentum and spread across more countries it began to produce a higher level of impact, and even to be considered at the national leadership level in a few cases.

This chapter focuses on a precise and sensitive issue that reflects both civil society claims and expectations of increasing accountability and responsiveness, together with the claims of senior incumbent officeholders to serve out their mandates. Remaining in power is invariably a highly contentious political topic, made more provocative in much of Latin America by the *de facto* unpredictability of presidential terms. This instability shows up both in attempts to displace authorities before the end of their term ('interrupted presidencies'), and in recurrent presidential bids to remain in power beyond the constitutionally established term limits, mostly by authorising one extra term for the incumbent, but also – in extremis – through 'indefinite re-election'.

So, the crisis of representation has stimulated a wide variety of procedural revisions intended to provide orderly means of either extending or curtailing the terms of elected officeholders (including presidents) and thus averting the more disruptive possibilities of violent ousters and institutional breakdowns. Surprisingly, however, until now the literature has dealt with the two variants (i.e. referendums on term limits and on presidential recall) in separate silos. For example, the major compendium on presidential term limits (Baturio and Elgie, 2019) contains extensive coverage of Latin America (including separate chapters on Bolivia and Mexico), but makes no reference to any provisions for the recall of elected officeholders. By contrast this chapter draws attention to the clear commonalities between these two variants, and the consequent importance of considering them jointly when introducing proposals for improved institutional design. It reviews all episodes since 1990 (including unsuccessful attempts (failed or blocked) intended to interrupt and/or change the terms of a presidential mandate. These include votes solely concerned with presidential term rules, but also reform packages in which the issue of the presidential term was at stake, even if other features were more prominent. For

each case, it identifies the actors concerned, the processes involved and the eventual outcomes. Under what conditions have these attempts succeeded, and with what consequences? Are there common patterns? Do variations arise according to who triggers the popular consultation process? Among the range of options considered, we draw attention to the potentialities of *indirect* recall referendums. These arise when, although it is the Congress that votes through the removal of a President, the decision requires ratification by the whole electorate. This could in principle provide the legitimacy that a purely legislative political impeachment may lack.

In what follows, we first provide our analytical framing, then offer an overview of the cases selected, after which we move to the more specific study of recall referendums. Direct democracy practices in Latin America are often faulted for the excessive role played by presidents in promoting referendums (Ruth et al., 2017). The main criticism is that this perverts the citizenry's agency in the steering of public affairs. The remarkable Mexican recall process of April 2022 receives special attention. This was the most exemplary of the recalls considered here, not only because Mexico is more influential than Bolivia, Ecuador, or even Venezuela, but also because there was no background political emergency prompting its activation. Instead, the procedure was calmly adopted as an extension of the precedent set by the Mexico City constitution, and was implemented more or less as pre-announced in the programme of reforms billed as the republic's 'Fourth Transformation'. From an official standpoint this constitutional reform sets a standard for leadership accountability to the people, and provides a bar against corrupt *partidocracia* that should stand the test of time and offer a model for all progressive presidents to consider. As regards Mexico's specific characteristics, there has been no interruption, extension or foreshortening of presidential terms for over 80 years, but the single six-year tenure might benefit from a validity check after the first half. So in principle this might have proved a reassuringly meliorist innovation. In practice, however, as recorded below, this bold experiment served a populist agenda and did not deliver the structural improvements to accountability that some backers had anticipated. In view of this unexpected first round outcome the long run consequences of the reform must be in doubt, and meanwhile the Mexican case requires close attention, both for its own sake and because of its comparative implications.

Presidential Mandates, Presidential Breakdowns and Popular Votes

In the 1980s, during the transition to democracy in Latin America, most constitutions contained restrictions on presidential term limits, banning re-election, either entirely (as still happens in Mexico, Guatemala, Paraguay and after a brief interruption under Alvaro Uribe, also in Colombia) or consecutively (as happens in many countries excepting the ones introducing indefinite re-election, such as Venezuela, from 2009, Bolivia, from 2017 and Nicaragua, from 2014).

In principle there is a big distinction between altering the constitution to improve the rules concerning term limits for *future* presidents (as, e.g. proposed in the defeated Chilean constitutional referendum of 2022, which would not have applied to the sitting President), and the introduction of an additional term that would benefit the current incumbent (a combination of self-interest and purported public benefit adopted, e.g. by President Cardoso in Brazil in 1996). This study covering Latin America over the period 1990–2022 contains no successful revisions of the first (disinterested) type. We deal solely with attempted term limit changes affecting the chief executive. Many incumbent presidents have used this method to pursue their own re-election, often precipitating power struggles (Llanos and Heyl, 2022). According to Corrales (2016) when the incumbent is popular presidents generally succeed in expanding their terms, despite multiple forms of objection and resistance. However, Corrales also reported some exceptions in which presidents without such high approval rating managed to expand term limits, and others in which they did not manage to do so despite their popularity.

Various types of MDDs can be used to alter presidential terms. Referendums may be triggered from the top-down (quite often called plebiscites); or from the bottom-up (popular initiatives). Voters can propose to amend the constitution including re-election; while recall referendums (direct if triggered by signature collection, or indirect if invoked to ratify or reject a legislative removal) can be used to remove a chief executive before the end of her or his term. All these MDDs involve a popular vote. On the opposite side, presidential breakdowns tend to be the product of inter-elite bargains (even those that do also enjoy substantial popular support). The availability of direct democracy mechanisms provides a peaceful and orderly channel for such demands from below either for the continuation or for the removal of an incumbent chief executive (Negretto 2017, Welp 2022). The essence of such procedures is that they include the people in the decision-making process. This contrasts with most of the impeachment exercises that have become increasingly common, and quite often have the effect of eroding democratic legitimacy (e.g. in the cases against Dilma Rousseff in Brazil in 2015, and against Fernando Lugo in Paraguay in 2012). Mass discontent against an incumbent ruler can be processed and channelled through a recall procedure, perhaps resolving a potentially explosive political confrontation without open resort to a violent trial of strength – as happened in Venezuela in 2004 (Hugo Chávez was ratified in his position, see McCoy 2006).

Mandatory referendums could discourage a president with a tame parliament from forcing through an extension of mandate without popular ratification. However, Bolivia in 2016 provides a controversial case in this regard, since although the vote did not ratify Morales's proposal for re-election, and ran again for office anyway in 2019, given that in 2017 a co-opted Plurinational Constitutional Tribunal ruled that all elected officials could run for office indefinitely, regardless of constitutional prohibitions

and the negative outcome of the previous year's referendum. When an incumbent president promotes his own re-election, a referendum proposal may also open up a space for the intervention of other actors, such as a constitutional court (as in Colombia in 2009, when the Court ruled against Uribe's plan to call a referendum); or the political opposition (as in Argentina in 1993) or even a civic military *coup* – as in Honduras in 2009 (against Zelaya).

Latin America has long been characterised by recurrent presidential breakdowns, and this remains a possibility despite the frequent acceptance of term limit changes (Marsteintredet and Malamud 2020). In recent decades, presidents such as de la Rúa, Sanchez de Lozada, Zelaya and Morales have all been removed from office before the completion of their terms by extra-constitutional means that have included mass protests, elite conspiracies, and even threats of insurrection or *golpes*. Some have resigned early or fled abroad. Before the 1980s such interruptions were typically conducted by traditional *coup d'états*. In our period of analysis, they have rather been characterised by power struggles that have assumed more diverse forms, ranging from indirect versions of military intervention (Honduras 2009, Bolivia 2019); to impeachments (Paraguay 2012, Brazil 2016); also resignations forced by social and or political pressure (Argentina 1989 and 2001, Bolivia 1985, 2002; Ecuador 1995, 1999, 2005; Governor of Puerto Rico 2019). Scholarly research has tackled this pattern of 'interrupted presidencies' or 'presidential breakdown' by considering both institutional and non-institutional factors and, particularly, by focusing on the role of oppositions (and situations of divided government) and social mobilisation in contexts of crisis (Hochstetler, 2011; Pérez Liñán, 2009; Marsteintredet et al., 2013). Twenty-one governments interrupted by political crisis were registered between 1985 and 2021 in nine countries (see more on the topic in Chapter 2 of this volume).

Ecuador in 1997 is the only case in which after the congressional ousting of a president there was a popular vote providing some form of formal legitimation to the presidential removal, although this also involved the approval of some other governmental measures. In February 1997, President Bucaram was ousted when Congress declared him mentally unfit to govern, in the context of strong social protests. Bucaram's successor, interim President Alarcón, called for a referendum to amend the constitution, which also introduced recall procedures at the local level. A new constitution was approved including recall among other mechanisms of citizen control and participation – but only at the local level (Welp and Castellanos 2020, Breuer 2007).

In general (notably in the case of impeachments) after a presidential removal the successor is selected in accordance with established rules. But with the exception of Ecuador in 1997 this substitution has lacked the legitimation of a direct popular vote, so most replacements have diminished electoral legitimacy. This helps to explain the recent rise of presidential recall elections (an overview of this trend is provided in Welp

and Whitehead 2020). Although still rare, this innovation is acquiring a track record and there is now some comparative evidence from Ecuador, Venezuela, Bolivia and Mexico that begins to provide empirical evidence on the promise and pitfalls involved.

Popular Votes and Presidential Term Limits

Legal provisions to activate MDDs, including recall elections, have spread in the Latin American region over recent decades. Table 3.1 covers all proposed or actual votes since 1990 that affected presidential mandates, whether by curtailing, removing or extending the constitutional term. Such exercises have occasioned mobilisation and considerable dispute in a substantial number of Latin American presidential systems over the past three decades, even though the vote has frequently been cancelled or blocked. Such activism reflects, on the one hand, the recurrent dissatisfaction of Latin American voters with the performance and legitimacy of presidential incumbents (also demonstrated by the high incidence of impeachments and mass protests leading to resignations and ousters) and, on the other hand, the weak institutionalisation of these new mechanisms and the ability of incumbents to co-opt institutions in charge of activating such procedures (Tuesta and Welp, 2020).

In addition to their extensive constitutional powers many ruling presidents also exercise what has been called ‘meta-constitutional’ forms of authority, meaning the reinforced dominance through the governing political party, their federal capacity to intervene against subnational office holders, their ultimate authority over the judiciary, and (at least in the classic Mexican case) the absence of a Vice-Presidential alternate. Such considerations mean that to defenestrate a president during his tenure of office is to risk pitching the entire political system into a systemic crisis of unmanageable proportions.

As noted earlier, a referendum can also be used as a threat to open a process of negotiation. Far from producing a pre-determined result, the outcome may be conditioned by the strength of institutions and the ability of partisan leaders to negotiate (or not), as illustrated by Argentina 1993, Colombia 2009, and Honduras 2009. In the three cases, a controversial president enjoying considerable popular support signed a decree calling for a referendum and, in all three cases, the vote was cancelled. But this encompassed completely different outcomes. In Argentina, the senate approved the proposed constitutional reform and, in October 1993, President Menem authorised a non-binding popular consultation for citizens on the constitutional proposal to be held on November 21, 1993. Polls indicated at the time that a large majority would support the reform. However, the consultation did not take place after the president reached an agreement with the leader of the opposition, former President Alfonsín, which led to endorse a modified reform containing Menem’s re-election, among other provisions. In Colombia, popular President Uribe proposed a

Table 3.1 Referendums/recall elections addressed to presidential terms (1990–2022)

<i>Goal</i>	<i>Country/year</i>	<i>President</i>	<i>Promoter</i>	<i>Results of referendum</i>	<i>Term limits changed</i>
Ratification of a Constitutional replacement/re-election	Peru, 1993	Alberto Fujimori	President/assembly	Motion approved	Yes
Constitutional reform/Introduce re-election	Argentina, 1993	Carlos Menem	President, ad hoc	Cancelled	(Yes)
Constitutional reform/Introduce re-election	Panama, 1998	Ernesto Pérez Balladares	President	Rejected	No
Constitutional reform/Introduce re-election	Venezuela, 2007	Hugo Chávez	Mandatory referendum	Rejected	(not immediately)
Constitutional reform/Introduce re-election	Honduras, 2009	Juan Manuel Zelaya	Popular consultation, ad hoc	Cancelled	No
Introduce re-election	Bolivia, 2016	Evo Morales	Mandatory referendum	Rejected	(Yes)
Introduce re-election	Colombia, 2009	Alvaro Uribe	President	Cancelled	No
Introduce re-election	Ecuador, 1994	Sixto Durán Ballen	President	Approved	
Introduce re-election	Venezuela, 2009	Hugo Chávez	Mandatory referendum	Approved	Yes
Ratify removal/confirm in office	Ecuador, 1997	Fabian Alarcon (interin)	President	Approved	No
Confidence vote	Bolivia, 2008	Evo Morales	President	Confirmed in office	No
Presidential Recall (first attempt)	Ecuador, 2014	Rafael Correa	Civil society actor	Cancelled/blocked	No
Presidential Recall (second attempt)	Ecuador, 2014	Rafael Correa	Civil society actor	Cancelled/blocked	No
Presidential Recall	Venezuela, 2004	Hugo Chávez	Opposition/civil society	Rejected	No
Presidential Recall	Venezuela, 2016	Nicolás Maduro	Opposition/civil society	Blocked	No
Presidential Recall	Venezuela, 2022	Nicolás Maduro	Opposition/civil society	Blocked	No
Presidential recall/Ratification referendum	Mexico, 2022	Andrés Manuel López Obrador	Civil society organization connected to the president's party	Confirmed (but not valid, threshold not reached)	No
Derogate a law/Avoid re-election	Peru, 1998	Alberto Fujimori	Civil society actor	Cancelled	
Eliminate unlimited re-election	Ecuador, 2018	Lenín Moreno	Popular consultation	Approved	Yes

Source: Own dataset.

referendum to approve a constitutional reform that among other provisions would introduce the possibility of his re-election. The Constitutional Court annulled the decree and the referendum never took place (Boesten, 2022). In Honduras, the less clearly popular President Zelaya was removed from office after a military coup, prompted by the claim (or pretext) that he was seeking to amend the constitution so that he could serve for a second term.

In Peru in 1993 and Ecuador in 1994, presidents succeeded in introducing re-election through an amendment ratified by a popular vote. But not all referendums initiated by the president to introduce re-election succeed, as shown by the case of Panama in 1998, where the proposal was defeated (Giannareas 2020). In Bolivia the constitutional crisis of 2008 was resolved without the regionally divided country collapsing into a civil war when the Morales government responded by convening an impromptu referendum allowing the recall of both the president and eight of the nine regional governors. The opposition accepted this process although it was not in the constitution, and the incumbent emerged strengthened with a 67% positive vote, enabling him to promote the entirely new constitution that was adopted in 2009, and that institutionalised the ‘revocación de mandatos’. Subsequent developments enabled Morales to achieve further extensions of his term and, as mentioned earlier, even his defeat in the 2016 referendum (asking for support for a successive presidential term) did not prevent him from standing again in 2019, but may have helped to precipitate the protests that led to his ouster in 2019. However, as for a ruling of the constitutional court, since 2017 Bolivia has no legal presidential term limit. On the opposite, a civil society attempt of derogating the law allowing Fujimori of Peru to run for office again was not submitted to a vote despite having completed the procedures (signatures collected) in 1998.

Careful readers of the above summaries of presidential succession processes in Bolivia, Colombia, Ecuador, Honduras and so on can reconstruct the complexities and nuances of these episodes, but not everyone has the patience or interest to grapple with these intricacies, and it is in any case a challenge for the neutral observer to summarise such polemical and partisan processes without ambiguity or over-simplification. In other words, there are major problems of ‘coding’ each national experience according to a standardised and impartial template. These are highly contentious matters that concern core issues of popular choice and legitimate rule. Just as US society is riven by disputes over the true results of the 2020 presidential election, so also are these Latin American cases contested. We stand by the presentations in this chapter, but it is important to alert readers to the polemics and imprecisions that colour these judgements. In particular, there are still unresolved questions that may demand further revisions.

In 2004, a recall referendum was activated against President Hugo Chávez by the Democratic Coordinator (*Coordinadora Democrática*) with the support of the business sector as well as several opposition parties. After a long and controversial process, the referendum took place and Chávez was ratified with 59% of the votes. With this only one exception (Venezuela

2004), when a recall referendum is activated by opposition parties and or civil society the possibility of having a vote is quite uncertain. The procedure can be perverted if the agency in charge of evaluating the recall does not perform as a technical and therefore neutral arbiter on such questions. The most recent experience of Venezuela, where in October 2016 and January 2022 the recalls of president Nicolás Maduro were blocked by a co-opted National Electoral Council, provides a cautionary example. Also, in Ecuador the attempts to initiate two recall referendums against Correa were blocked from the very beginning (the collection of signatures was not approved by the electoral agency).

Thus, there is an agreement on the deficits of MDDs when activated top-down, by presidents, as well as a broad consensus on the potential of recall to channelise discontent and avoid violent conflicts (this would have been the case of Venezuela in 2004). The main challenge seems to be the co-optation of the institutions in charge of allowing such initiatives. Mexico offers a unique case to show that the challenges are broader than that. The Mexican Constitution has been revised to include recall referendums in a similar sense to Bolivia, Ecuador and Venezuela. Thus, by 2022 Latin America has provided the world with the first four examples of how this may operate at the presidential level (although the idea and the practice of recall is not new, see Welp and Whitehead, 2020). In this chapter we focus on the fourth of these experiments, both because it is the most important and so far least studied example of presidential recall, and because at least in its first application it provides a remarkably vivid demonstration of how the inherent pitfalls of the recall process can be magnified when extended to the level of a powerful presidency, and when thrown open to manipulation and indeed perversion by the inconstancy of the accompanying constitutional guardrails that are supposed to preserve electoral integrity.

It is important to stress at the outset that each of these experiments needs to be assessed on its own terms, since the political systems in question are each highly specific, and the functioning of a recall depends very heavily on detailed regulations. To take one critical example, whereas Venezuela and Bolivia permit the re-election of an incumbent, Mexico does not. Moreover, ever since 1913 Mexico has differed from all other presidential systems – excepting Chile – in that it makes no provision for a Vice President (Whitehead, 2011; Marsteinredet and Ugglå, 2019).

Presidential Recall in Mexico: A Model of the Pitfalls

A century after the adoption of the iconic 1917 Constitution Mexico introduced a provision for presidential recall. This modified a fundamental aspect of the ‘rules of the game’ regulating electoral politics in Mexico and grafted a mechanism that already existed in certain subnational jurisdictions (notably the governance of Mexico City) onto the nation’s most powerful and distinctive institution, the federal executive. This was essentially a leap in the dark, since over the previous century there had only

been two attempts to activate recall at the subnational level (both declared unconstitutional by the Supreme Court), and the authors of the constitutional amendment paid scant attention to the available lessons from abroad (such as Venezuela, or Bolivia, let alone California). In any case, Mexican presidentialism differed markedly from such external comparators, so any inferences drawn from other cases would have been unreliable.

Mexico's constitution contained no provision for a Vice-President, but it was founded on the virtually sacred principle of no re-election – both of these being revolutionary commitments derived from the Porfiriato and the Huerta coup. In addition, since 1934, the country had experienced an unbroken succession of one-term six-year presidencies. The sexennial calendar had become internalised as a fundamental feature of the electoral cycle. Moreover, under the one-party Partido Revolucionario Institucional (PRI) regime that prevailed up to the end of the last century, the incumbent president had accumulated an extensive range of meta-constitutional powers which had elevated his (they were all male) effective authority above the courts, the Congress, the state Governors, and the other organs of what might be termed Mexico's 'deep state' (military, public sector and regulatory agencies, etc. See Carpizo, 2002). While such executive prerogatives were subsequently curbed under multi-party competition, the legacy of hyper-presidentialism lingered on during the first three democratic *sexenios* and has proven easy to revive since 2018. Some support for the recall provision came from those seeking an additional check on excessive personalist domination of the political scene. But the bulk of the impetus for this innovation came from the new majority party (MORENA) and its founder, Andres Manuel Lopez Obrador (henceforth AMLO), who argued that recall would have countered the previous *mafia del poder* in their abuses of power. This assertion of popular accountability was driven from the presidency by a new incumbent committed to what he termed the 'Fourth Transformation' in Mexican history that purported to establish irreversible democratic control over the *res publica*. In other words, a reform that seemed on the face of it to be power-constraining was in fact embraced by a new power contender bent on advancing an irreversible agenda of structural change (an inherently power-accumulating project).

This Janus-faced nature of the provision for presidential recall went on full display by the time of the mid-term congressional elections of 2021. The constitution was amended in 2019 in accordance with MORENA's promised platform. The amendment provided for the recall of both President and state Governors half-way through their six-year terms. However, the recall of Governors would be subject to rules adopted in each state constitution, and by mid-2022 only 12 out of the 32 states had made such provisions, and the prescribed terms are highly variable. In principle federal Senators might also be subject to recall after three years had elapsed, but so far this provision has yet to be elaborated.

Presidential recall would be triggered, if requested, in a petition signed by at least 3% of the relevant electoral roll (including at least 17 states of

the federation), and once the validity of these signatures had been verified by the *Instituto Nacional Electoral*. A belated transitory law specified that in the case of the AMLO presidency the period for signature collection would begin in November 2021, and close by December 15. By that date 2,805,854 valid signatures were required – and the counting stopped once that threshold was reached (many more names remained to be checked at that stage). The delayed transitory law also specified that the resulting presidential recall vote would take place on April 8, 2022. A bare majority of votes cast would be required to affect the recall, but this would only be effective if at least 40% of the electorate (i.e. about 37 million voters) took part – a high threshold given that no other election was scheduled at the same time. A majority for recall would result in an interim 30-day presidency by the head of the Congress, during which the (MORENA dominated) legislature would elect someone to complete the sexennial term.

In the event, only 17.77% of the electorate took part (16,502,636) and 93.5% rejected the recall proposal. In other words, whereas in 2018 AMLO was elected by over 30 million votes, in 2022 barely half that number turned out to reject his recall or to actively support his ratification. In round numbers Lopez Obrador's coalition secured 30 million votes in 2018, but only 22 million in the 2021 mid-term election (when the governing coalition lost its two thirds-majority in Congress and so could no longer unilaterally amend the constitution), and under 15 and a half million votes in April 2022. Much of this fall off in support can be explained by reduced voter participation, but in any case the record is clearly one of falling enthusiasm for the incumbent (the standard pattern across all Mexican presidential terms). But even more striking was the weakness of the positive vote to have him recalled – whereas around 3 million (perhaps more) had signed the petition triggering the procedure, little more than 1 million had voted to curtail his mandate for loss of confidence in him.

In fact, there was very little interest in pressing the recall case against the President. The overwhelming preference of his critics was for him to complete his term and then leave office without demur. So, they nearly all stayed away from the polls. To participate would be to raise the turnout, making his inevitable ratification look more legitimate. In the extremely improbable case of his being recalled there would be heightened turmoil and policy uncertainty until a successor emerged, and the Congress would undoubtedly opt for a hardliner who would not only continue AMLO's policies but quite likely aggravate them. Worse still for the opposition to AMLO, with MORENA no longer overshadowed by the succession issue opponents of the dominant coalition would confront a potentially dangerous fresh incumbent who might aspire to run again in 2024.

So if the recall offered no attractions to AMLO's critics, why did the process go ahead, and who would support it, with what objectives? Contrary to the accountability case for recall the only advocates of this exercise were those ostensibly at risk of sanction from it. Indeed, from the launch of the recall process it was the presidency that took the

initiative and worked overtime to bend the exercise to its advantage. The majority in Congress took various steps to shape both the timing and the format of the consultation so that the voters would understand it not as a recall procedure but as a ratification exercise (Aristegui Noticias, April 17, 2021).

This intention was revealed by the haggling over the precise wording of the question posed to the electorate. In July 2021, the leader of MORENA in Congress formulated the question as *Está de acuerdo con que se concluya de manera anticipada el desempeño del cargo de la persona titular de la Presidencia de la República, a partir de la pérdida de confianza?* But the Presidency objected to this wording, and in August the governing party unexpectedly changed the proposal to *Está o no de acuerdo con que el presidente continúe al frente del Ejecutivo federal?* It soon became clear that this version would be contested by the opposition parties, and could be invalidated as unconstitutional by the Supreme Court (since it omitted the name of the incumbent, the positive option of revocation, or any reason why that might be called for). A leading constitutionalist argued that the correct wording should simply be *Quiere Vd destituir al Presidente de la República o no?* It was not until September 3rd that consensus was reached on *Estás de acuerdo en que a Andres Manuel Lopez Obrador, presidente de los Estados Unidos Mexicanos, se le revoque el mandato por pérdida de confianza o siga en la Presidencia de la Republica hasta que se termine su período?* (Proceso, August 15, 2021).

Even after official efforts to recast the question as a ratification had been rebuffed, the authorities continued with a systematic policy of pressure and interference that sought to undermine confidence in the electoral authorities (INE), and to present the courts with the dilemma of either turning a blind eye to unconstitutional government activities, or becoming entangled in an electoral process where they would be accused of siding with the opposition. Once the INE had validated the necessary signatures, it was confronted by the obligation to organise an additional national election for which it was not funded. As a result, it could not afford to set up the full inventory of polling places that would be opened in a regular election, and so it was attacked for undermining the recall process. In addition, although the law clearly banned partisan activity by the authorities during the campaign, both the President in person and leading members of his party continuously overstepped such limits and disregarded institutional appeals for restraint. No sooner had the result been announced than MORENA launched a ‘political reform’ agenda designed to hamper Mexico’s electoral integrity system. But since the ruling coalition does not have a two thirds majority in Congress this initiative is only likely to stir public distrust in prevailing institutions, without achieving its stated objectives. Meanwhile, the Constitution now enshrines a right to presidential recalls that can be triggered by a signature collection procedure that may cast a long shadow over future heads of state, with unpredictable and possibly highly disruptive consequences.

Variable Term Limits and Recall Experiment

Latin America's republics have operated under a variety of presidential regimes for about two centuries. The range of variation between countries and over time has been considerable, and yet as a set these presidencies also share a certain number of common features that differentiate them markedly from the monarchies, empires and parliamentary systems that have predominated in the rest of the world. In principle every president is a time-limited officeholder. Other sources of legality and public authority are supposed to operate under his (almost invariably male, until very recently) supervision. Over the past half-century these pluralist features of political organisation have generally become more stable, more authoritative and more of a counterbalance to executive arbitrariness. The citizenry has developed more elaborate forms of monitoring and even loosely 'democratic' capacity. Such developments can underpin a restrained version of presidential rule and tend to clash with the caesaristic variant.

But recently, in many republics, the initial positive aura of democratisation has faded. This is attributed to widespread corruption, unaccountable parties, the spread of public insecurity and so on. Even presidents that came to office with strong electoral mandates have frequently seen their popularity plummet to dismal levels that wreck their authority and leave them incapable of governing effectively. In such a climate, it can seem tempting to change the 'rules of the game' so that people have a voice and a vote on public matters, in particular on the duration of mandates.

However, our evidence suggests such changes operate more as deviations than as durable remedies to the problems of democratic deficits. 19 referendum attempts (only eleven of which ended in votes, the rest were cancelled or blocked) display no single path but have in common a lack of genuinely autonomous leadership from the citizenry. Regarding recall referendums, of the six attempts to use it to produce accountability only two took place (Venezuela 2004 and Mexico 2022). There was a better rate of success when presidents take the lead, but even then, the outcome is not linear or automatic. And the cancellation of the vote does not necessarily represent a failure to achieve the promoter's goals. Instead, the prospect of a referendum can be used to open a process of negotiation, as in Argentina in 1993. Sometimes a presidential initiative does get thwarted, as shown by the case of Colombia 2009, where the Constitutional Court annulled the decree and the referendum never took place. The outcome can also be a constitutional rupture, as in the case of Honduras where the result was to interrupt democracy through a military coup. With two exceptions, referendums initiated by signature collection were blocked. The exceptions were the recall in Venezuela and the Mexican recall vote of 2022. Despite being activated by signature collection, the latter was really a top-down initiative.

Presidential recalls like that of Mexico are not what they claim to be. Such exercises need to be situated within an overall analysis of executive powers and their constitutional limitations. For example, if a constitution

grants 'emergency powers' such as the proclamation of a state of siege to a president, how might that interact with parallel provisions for his/her recall? The whole debate on varieties of presidentialism (and semi-presidentialism) as well as presidential breakdowns in Latin America needs to be incorporated into the analysis of this particular procedural innovation. Recall presents a special case in which dissatisfied voters are given the chance to renew the head of state early. However, such an extension of the recall logic that has been spreading at lower levels of representation is a drastic step. It should only be contemplated as carefully orchestrated procedure, since there is no higher political authority than the head of state, and the business of the nation (including its physical security and financial stability) could be jeopardised by a vacuum of power. Indeed, the convening of a recall process inherently distracts the attention of any elected officeholder from some of the tasks inherent in their public role, and this is all the more of a danger when the highest office in the land is in question. However, if this is a concern when presidential recall is the issue, it is even more of a danger when other threats to the completion of a constitutional term (*golpes*, rebellions, forced ousters, and even impeachments) are in play. In principle, recall procedures could also serve a restraining function in situations where incumbent presidents are tempted to stay on beyond their initial terms of office, or even to *eternizarse en el poder*. But again, as the Mexico example demonstrates, this would only strengthen democratic guardrails if the incumbent could be blocked from manipulating the process to turn a recall vote into a ratification exercise.

From the standpoint of institutional stability, the best arrangement would be that all presidents serve out their prescribed terms, no more and no less. This becomes indispensable in a system such as that of the United States, where no provision exists for a referendum that might legitimise a different result. But also in much of Latin America where (i) experience provides the citizenry with far less societal confidence in the certainty of the electoral calendar, and (ii) the referendum is an established procedure for authorising a political reform. Here popular votes on presidential mandates correspond to a wider tradition – the general approach to referendums on other issues. Political elites with the power to influence legislation through the institutions of representative democracy may habitually bring the electorate into decision-making processes that regulate the rules of the political game. Framed in a positive way, this involves giving the citizens a say in the most important changes concerning their political systems. On the negative side, however, it can open the way to elite and incumbent manipulation of the popular will to serve their vested interests. Furthermore, even when MDDs do give citizens a say on highly controversial or polarising topics it cannot always be assumed that their choices will necessarily be respected (consider what happened in Bolivia following the referendum of 2016).

There are also signs that such presidential recall procedures may become more widespread. Beyond Latin America this provision is already in place

in Taiwan, and the idea has been floated elsewhere – e.g. by the left in France. In well-functioning presidential systems recall provisions may provide a useful safety valve with limited risks attached as they are more likely to attract support in a context of weak institutionality, high politicisation and a disillusioned electorate. These are precisely the conditions that could tempt political reformers to ‘relegitimise’ the system by adopting a drastic new form of political accountability. But they also provide the most perilous of settings for a successful re-stabilisation of the democratic system. It is therefore critical that such changes in institutional design are realistically assessed and carefully calibrated. It would be a dangerous error to opt for presidential recall on the basis that under ideal conditions it could work well. Only the most well-chosen provisions taking into account all available theory and comparative experience stand any chance of working out favourably. And so far the four available regional examples highlight not the benefits, but rather the destructive potential, of this drastic MDD innovation.

But balancing such dangers against the equally risky consequences of refusing institutional reforms regardless of the gravity of the crisis of representation there are some contemporary situations in the region where orderly recall provisions might serve to ward off worse forms of institutional instability and breakdown. One possibility that would bridge the divide between congressional and direct democracy mechanisms for foreshortening a presidential term would be to require that when a presidential impeachment process has succeeded in the legislature it should then be passed on to the electorate for ratification in a referendum. However, although this would improve the legitimacy of such a recall process it would also extend the period of uncertainty over the exercise of presidential authority, and it could prove disastrous if the electorate rejected the verdict of the Congress. We are reluctant to go that far for several reasons. First, the existing stock of examples is too restricted to support such a sweeping conclusion. Second, in at least a few cases (such as contemporary Peru) the performance of the fixed term system is so bad that drastic remedies are in order, and all plausible options need to be considered. Third, once recall has been constitutionalised it is most unlikely to be openly annulled. So, there is in any case a need to consider how best to improve the system in those cases where it cannot be overturned. As with other experiments with the ‘rules of the electoral game’, first movers are prone to commit errors that later practitioners can study, and therefore guard against.

Overall, the stability of presidential term limits in the Americas depends upon the frame of mind of the citizens in each nation, and as we have seen that is a social construct rather than an unquestionable certainty. Recent experiences such as the January 6, 2021 assault on the US Congress, and Mexico’s current ‘Fourth Transformation’ show that even in countries with the most rooted commitment to fixed term limits, long-embedded procedures can be disrupted and undermined. Such rules and timetables are not automatically self-enforcing. Their reproduction over time depends

upon renewing the allegiance of successive citizen cohorts. In most Latin American countries, such allegiances are more fragile, and behavioural norms include both foreshortening and extending the mandates of incumbent presidents. So, across the whole region there can be no one unique right answers equally applicable to all presidential systems. There may be a trade-off between a predictable timetable and an impotent or dysfunctional executive. Periodic experiments with altered term limits can therefore provide a safety valve, even though each innovation will itself carry risks and generate further demands for adjustments. Provisional and second-best solutions are not ideal, but they may be the lesser of evils, and can be crafted to benefit from comparative experience.

References

- Alcántara, M. and Freidenberg, F. (2001). “Los partidos políticos en América Latina,” *América Latina Hoy* 27: 17–35.
- Baturo, A. and Elgie, R. (eds.) (2019). *The Politics of Presidential Term Limits*. Oxford: Oxford UP.
- Boesten, J. (2022). *Constitutional Origin and Norm Creation in Colombia: Discursive Institutionalism and the Empowerment of the Constitutional Court*. London: Routledge.
- Breuer, A. (2007). “Institutions of Direct Democracy and Accountability in Latin America’s Presidential Democracies.” *Democratization* 14(4): 554–579.
- Carpizo, J. (2002) *El Presidencialismo Mexicano*. Mex City: Siglo XXI.
- Corrales, J. (2016). “Can Anyone Stop the President? Power Asymmetries and Term Limits in Latin America, 1984–2016.” *Latin American Politics and Society*, 58(2): 3–25. www.jstor.org/stable/24766033
- Giannareas, J. (2020). “Los demonios de la democracia panameña”, Tuesta Soldevilla, F. and Welp, Y. (eds.). *El diablo está en los detalles*. Lima: PUCP Fondo editorial.
- Inglehart, R. and Welzel, C. (2005) *Modernization, Cultural Change, and Democracy: The Human Development Sequence*. Cambridge: Cambridge University Press.
- Llanos, M. and Heyl, C. (2022). “Contested, Violated but Persistent: Presidential Term Limits in Latin America and Sub-Saharan Africa.” *Democratization* 29(1): 1–17.
- Mainwaring, S. and Scully, T. (1995) “Introduction: Party Systems in Latin America”. In Mainwaring, S. and Scully, T. (eds.), *Building Democratic Institutions: Party Systems in Latin America*. Stanford: Stanford University Press.
- Marsteintredet, L., Llanos M. and Nolte, D. (2013). “Paraguay and the Politics of Impeachment.” *Journal of Democracy* 24(4): 110–123. www.journalofdemocracy.org/article/paraguay-and-politics-impeachment
- Marsteintredet, L. and Malamud, A. (2020). “Coup with Adjectives: Conceptual Stretching or Innovation in Comparative Research?” *Political Studies* 68(4): 1014–1035.
- Marsteintredet, L. and Ugglá, F. (2019). “Allies and Traitors: Vice-presidents in Latin America.” *Journal of Latin American Studies*: 665–688.
- McCoy, J. (2006). “The 2004 Venezuelan Recall Referendum.” *Taiwan Journal of Democracy* 2(1): 61–80.

- Negretto, G. (2017). "Constitution Making in Democratic Constitutional Orders: The Challenge of Citizen Participation" in Ruth, S., Whitehead, L. and Welp, Y. (eds.) *Let the People Rule? Direct Democracy in the Twenty-First Century*. Colchester: ECPR Press.
- Pérez Liñán, A. (2009). *Presidential Impeachment and the New Political Instability in Latin America*. Cambridge: Cambridge University Press.
- Ruth, S., Whitehead, L. and Welp, Y. (eds.) (2017). *Let the People Rule? Direct Democracy in the Twenty-First Century*. Colchester: ECPR Press.
- Tuesta Soldevilla, F. and Welp, Y. (2020). *El diablo está en los detalles*. Lima: PUCP Fondo editorial.
- Welp, Y. (2022). *The Will of the People: Populism and Citizens Participation in Latin America*. Berlin: De Gruyter.
- Welp, Y. and Castellanos, A.S. (2020). "Understanding the Use of Recall Referendums: Evidence from Ecuador," *International Political Science Review* 41(3): 335–348.
- Welp, Y. and Whitehead, L. (eds.) (2020). *The Politics of Recall Elections*. Cham: Palgrave.
- Whitehead, L. (2011). "El Sistema Presidencial Mexicano en Perspectiva Comparada." *Revista Latinoamericana de Política Comparada* 5: 11–28.
- Whitehead, L. (2018). "The Recall of Elected Officeholders the Growing Incidence of a Venerable, but Overlooked, Democratic Institution." *Democratization*: 1341–1357

4 Hyper-Presidentialism under Question

Evidence from Chile

*Christopher A. Martínez and
Andrés Dockendorff*

Introduction

The president is generally seen as the main actor in the political system. Holding the most important and visible single-member office in the country certainly helps citizens quickly turn to her image. Regardless of whether people's perceptions of the president are correct or not, presidential scholars have devoted their attention to the subject of presidential power. However, determining the level of power amassed by a president has proven to be a highly complex task due to the multiple factors that make up its sources, use, and variation over the years and across countries.

Several studies have focused on the prerogatives granted to presidents by their respective constitutions. Shugart and Carey's (1992) pioneering study classified presidential powers into legislative and non-legislative, focusing on ten constitutional prerogatives. Following their lead, Metcalf (2000) expands their measure to include semi-presidential countries; whereas, Frye (1997) expands the total of presidential prerogatives to 27, Armingeon and Careja (2007) to 29, Cheibub et al. (2011) to 10, and Siaroff (2003) to 9. On the other hand, the classifications of these powers and how they are aggregated have been subject to criticism in recent years (Doyle and Elgie, 2016; Fortin, 2013), demonstrating the challenges in accurately measuring presidential power.

Conceptualising presidential power is as challenging as measuring it. Indeed, defining presidential power has been a key issue when discussing institutional design and reforms in Latin America. Due to the dominance of presidential systems in this region, the public and intellectual debates on executive power have recurrently hinged around the idea of hyper-presidentialism, a term that loosely combines the notions of presidential power and presidentialism. By and large, hyper-presidentialism has been defined as a political system in which the president concentrates excessive power.

In this chapter, we analyse whether it is correct or accurate to describe Chile's political system as hyper-presidential. Not only is this a crucial academic exercise, but also an endeavour whose implications could affect

institutional design. Like most Latin American countries, a significant share of intellectuals, politicians, and scholars in Chile depict their country as hyper-presidential, a feature that is usually negatively portrayed and, thus, in apparent need of change. This characterisation has had real-life repercussions since it influenced the public debate during the constitution-making process that Chile formally began in 2019. Indeed, one of the factors that fuelled the constitutional discussion about whether to significantly reform Chile's presidentialism or do away with it (i.e., replacing it with a semi-presidential or parliamentary system) was the alleged existence of a hyper-presidential system. Even though the constitutional draft proposed by the Constitutional Convention (CC) was rejected in a referendum in September 2022 by 62% of the voters, the case of Chile illustrates how ideas about the political system – even if mistaken or inaccurate – may significantly affect important processes of institutional design, such as writing a new constitution.

The chapter's main goal is to analyse Chile's so-called hyper-presidentialism and whether the proposed constitutional changes would have contributed to greater power deconcentration as initially expected. In addition to the introduction, the chapter is divided into four sections. In the next section, we reviewed how the hyper-presidentialism label has been used by Latin American politicians and intellectuals to critique the political system in their countries, paying special attention to Chile. Then, using historical and current statistical data from different sources, we assess whether Chile has a hyper-presidential system in which power is concentrated in the president. This section is followed by a succinct description of the path that led Chile from the social outburst (October 2019) to re-writing its Constitution and the CC's proposals regarding presidential power. Finally, we conclude with a discussion about the need to move from the term hyper-presidentialism to the notion of power concentration to assess presidential power.

Hyper-Presidentialism in the Public Debate and Its Implications for Institutional Design

Even though the CC's proposal was rejected in September 2022, at the time of writing the constitutional debate in Chile is still ongoing as political parties are deciding on how to draft a new Constitution. Therefore, it is informative to examine the beliefs and notions held by scholars, pundits, and politicians about presidential power, specifically, the notion of hyper-presidentialism. Ideas affect the way problems are defined and framed, which in turn influences the types of potential solutions (Berman, 1998). This is especially true in times of crisis and uncertainty (Arellano-González and Martínez, 2020), such as the constitution-writing process.

Hyper-presidentialism is a term widely used to characterise political systems. For instance, Google Scholar yields about 2,500 hits when searching for “*hiperpresidencialismo*,” whereas ProQuest returns 710 results.

When searching for “hyper-presidentialism,” the results sharply declined to 875 in Google Scholar and 12 in ProQuest. These differences in hits between searches in Spanish and English suggest that the discussion about hyper-presidentialism is much more alive in Latin America than in other latitudes, which is not surprising considering the world’s share of presidential systems that exist in this region.

There are no clear-cut definitions of hyper-presidentialism, but its broad use points to excessive political power – usually understood as constitutional prerogatives – in the hands of the president. In their analysis of hyper-presidentialism in Latin America, Bolonha et al. (2015: 123) emphasise “the generous constitutional powers bestowed upon the president.”¹ According to Cerbone (2021), among hyper-presidentialism’s key features are the power of the chief executive to dissolve the legislature, a state with low levels of institutionalisation, and indefinite presidential re-election. Ortiz (2018) adds to the list the president’s faculty to veto legislation that cannot be overridden even with an absolute majority and to initiate legislation on any issue or exclusively. Furthermore, Gargarella (2018: 118) conceives hyper-presidentialism as a political system in which power, as well as responsibilities and expectations, are concentrated in one single person who is in office for a fixed term. Nino (1996) also focused on the formal – constitutional – prerogatives given to the president to classify Argentina as a country with a hyper-presidential system, whereas Berensztein (2020) says that hyper-presidentialism makes Argentineans expect everything to be solved by the president, who sometimes does not even have all the ruling party’s votes.² Borges de Freitas (2020: 123) argues that, in Brazil, hyper-presidentialism is caused by the president’s broad discretionary prerogative to allocate top-level posts in the public administration. Likewise, Forero Tascón (2022) argues that Colombian presidents may choose whether to rule by using all (formal) powers guaranteed by hyper-presidentialism or by resorting to other types of strategies. Cerbone (2021: 7) defines hyper-presidentialism as an “unbalance between the functions of the State in favour of the executive.” Authors such as Chalco Salgado (2016) and Ospina Molina (2020) state that presidentialism in Latin America has evolved into a dysfunctional form of government, hyper-presidentialism, in which the president possesses prerogatives that threaten the system of checks and balances. A similar assessment is made by Rose-Ackerman et al. (2011) in their comparative analysis of hyper-presidentialism in Argentina and the Philippines, in which they outline its risks for democracy.

Like scholars and pundits, some Latin American politicians hold negative views about political systems that they deem hyper-presidential. In Peru, a country known for its high levels of presidential instability, César Ochoa Cardich (2020), a member of the Constitutional Tribunal, defines the political system as hyper-presidential based on the prerogatives bestowed by the Constitution upon the president that make him all too powerful. César Montúfar, a former legislator in Ecuador, argues that the president must lose several constitutional powers to get rid of (or to

soften) the country's hyper-presidentialism (El Universo, 2016). Other political leaders offer a more pessimistic assessment when focusing on hyper-presidentialism's alleged shortcomings. Luís Roberto Barroso, a member of Brazil's Supreme Federal Tribunal, argues that "Latin American hyper-presidentialism is a powerhouse of problems" (Alberto Bombig and Matheus Lara, 2021), whilst Argentina's former President, Eduardo Duhalde (2002–2003), states that "a solid democracy must set aside hyper-presidentialism" (Chaves Rodríguez, 2013). Likewise, Laura Chinchilla, Costa Rica's former president (2010–2014), links hyper-presidentialism to power concentration around a strong leader, which results in a form of limited democracy from which Latin American countries should move away (INE, 2022). Sharing Chinchilla's view on hyper-presidentialism as a threat to a sound democracy, Marko Cortés Mendoza, *Partido Acción Nacional's* (PAN, National Action Party) leader, criticises Mexico for having moved from a system "in which there were checks and balances ... from presidentialism to hyper-presidentialism ... from a democracy to an autocracy where just one person rules at will" (El Universal, 2022).

All in all, among those who consider that hyper-presidentialism exists in their countries, there seems to be a consensus around three general ideas: hyper-presidentialism is seen as a deviated form of presidentialism characterised by disproportionate power concentration in the president, it is a challenge to democracy or a weakness thereof, and it hampers good governance. Consequently, most of those who label a political system as hyper-presidential propose its replacement or, at the very least, the introduction of significant reforms.

The arguments made to criticise Chile's form of government do not differ from those just reviewed. Labelling Chile as hyper-presidential is not new, but it has been revived since the onset of the constitution-making process. According to former minister of Foreign Affairs, Ignacio Walker, no country in Latin America "has a system as presidentialist as the Chilean case" (Montes, 2020). Eyzaguirre et al. (2020, 63) argue that hyper-presidentialism holds sway in Chile, which they associate with an "excessive concentration of power in the executive," an institutional design that generates deadlocks, thus making it difficult for presidential governments to carry out their programs. Henríquez (2016: 161) goes even further by arguing that "in Chile, the President of the Republic largely concentrates the power of the State" and that the "National Congress appears weakened before the Government, generating an unbalanced regime of presidential hegemony with more or less authoritarian features." Similarly, Ruiz-Tagle (2006: 81) describes the Chilean system as an "authoritarian neo-presidentialism." For others, the Chilean president virtually rules without counterweights, concentrating political authority (Atria et al., 2013: 96), whereas the "National Congress is perceived as a minor and extremely useless power" (Atria et al., 2013: 78). Meanwhile, Valenzuela blames hyper-presidentialism for making Congress irrelevant because "since the President sends a bill, he decides whether to give priority to it

or not and requests the Parliament to ratify or reject it” (Muñoz, 2020). Finally, there are some who deem that, in Chile’s current hyper-presidential system, Congress is reduced to simply being “a mailbox for the Executive’s projects” (Rivera, 2020).

These statements show a relationship between a condition (hyper-presidentialism) that seems to be associated with serious problems that affect the political system (e.g., the concentration of power). As mentioned earlier, intellectuals and decision-makers conceive hyper-presidentialism mostly based on constitutional or legalistic views about presidential authority. This is problematic because it leaves out other sources and dimensions of presidential power. Not to mention that hyper-presidentialism conceptually combines the notions of presidential power, which can vary across presidents within the same country and under the same formal institutions, with a form of government (i.e., presidentialism), without further justification.

Additionally, Chile’s hyper-presidentialism is simultaneously blamed for the excessive concentration of power in the president, relegating Congress to an irrelevant role (a sort of rubber stamp) and not allowing presidents to develop their programs as a result of recurrent deadlocks with Congress. Such statements are contradictory (or mutually exclusive) since, if the first holds true, then the problem described in the second would probably not occur. This contradiction is due to an inaccurate characterisation of Chile’s political system as hyper-presidential.

The mostly legalistic view about hyper-presidentialism prevents us from accurately measuring how powerful a chief executive is. For example, Negretto (2018: 34) is careful about how the president’s power is conceived; he emphasises that it depends not only on the formal powers of legislation she holds, but also on her “authority in partisan [and] governmental matters.” According to Campos (2020), for example, “Peruvian hyper-presidentialism is a legend when there is no support from Congress,” a statement that illustrates the irrelevance of the concept when it is not supported by aspects outside the constitutional arena. Huneeus (2018) explains that it is necessary to understand presidential power within an institutional structure, whose influence can be limited by other political actors, such as the legislature, supreme court, comptroller general, constitutional tribunal, and so on. On the other hand, Basabe-Serrano (2017) provides a more comprehensive indicator of presidential power, warning us about the weaknesses of analyses focused only on constitutional capabilities.³ Pérez-Liñán et al. (2019) postulate the idea of “presidential hegemony,” a concept that is not based on the president’s formal prerogatives, but on her political influence in both the legislative and judicial branches. Similarly, Olivares et al. (2022: 215–216) use a multidimensional measure of presidential power, one that captures its formal and informal sources, as well as exogenous events. Malamud and Marsteintredet (2017) argue that presidential power is limited by structural (e.g., commodity prices), institutional (checks and balances), and social (street mobilisations) factors. Fontaine

(2021) reminds us that political practices can have as much, or even more, weight than institutional design when it comes to wielding political power. In this sense, Arellano-González and Martínez (2020) explain that the constitutional reforms in the 1860s and 1870s, which reduced formal presidential authority in Chile, were preceded by changes in the behaviour of the new parties in Congress that, in fact, limited the president's influence since the late 1850s. All these authors agree that it is insufficient to speak of presidential power only in terms of its formal and constitutional dimensions.

Is Chile's So-Called Hyper-Presidentialism Real?

Bearing in mind the precautions outlined in the preceding section, here we assess whether the so-called hyper-presidentialism actually exists in Chile. To tackle this issue, we present three hurdles that the hyper-presidentialism hypothesis must pass to strengthen its validity. In the first hurdle, we assess its formal (constitutional) dimension, specifically, in the legislative arena. The second hurdle compares the power of the executive versus other institutions in the political system. The third hurdle explores whether the president dominates the Chilean legislative process and whether parties represent an important barrier to the power of the chief executive. These tests are aimed to assess power concentration in the president by, on the one hand, isolating its formal sources and, on the other, comparing the relative strength of the chief executive vis-à-vis other political actors.

First Hurdle: The President's Constitutional Prerogatives

First of all, according to the 1980 Constitution, Chile's political system does have a formal imbalance of prerogatives in favour of the president to the detriment of Congress,⁴ a situation that deviates from the classic presidential model found in the United States. However, it is also necessary to consider that the formal constitutional tools at the president's disposal have changed since democracy returned in 1990. Certainly, the constitutional reforms of 2005 weakened the president's influence in the political system (Huneus, 2018). These reforms included the increased parliamentary control through investigative committees and the *interpelaciones* (interpellations) of ministers who are summoned to answer questions before the Chamber of Deputies, the elimination of the extraordinary session of Congress, and the shortening of the presidential term from six to four years, let alone the stronger role of the Constitutional Court.

Let us look at the president's formal legislative prerogatives. Figure 4.1 illustrates the score that Chile receives on this item along with the other Latin American countries. The legislative constitutional authority of the Chilean president is considerable; nevertheless, the country ranks fifth in Latin America, with a score of 75.14 points on a scale from zero to 100. Colombia's president has the highest legislative prerogatives, with 92.01 points, 22% higher than Chile's. Thus, if Chile has a hyper-presidential

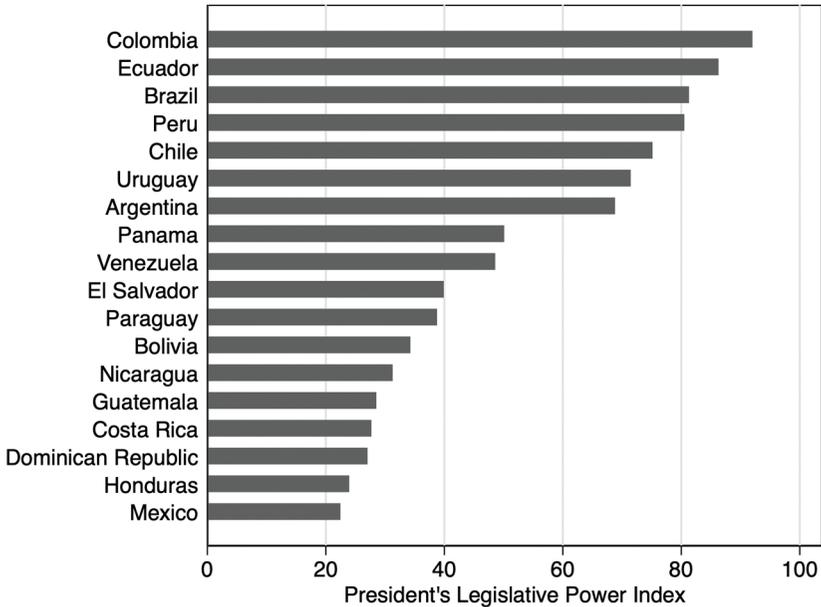


Figure 4.1 Legislative powers in Latin American presidents (2016).

Note: Higher values indicate greater president's legislative powers.

Source: Own elaboration based on Negretto's data used by Pérez-Liñán et al. (2019).

system, a statement based on the president's legislative formal prerogatives, then perhaps we would need a new category for Colombia.

Second Hurdle: Concentration of President's Powers vs. Other Democratic Institutions

As we mentioned earlier, hyper-presidentialism is a concept that is usually associated with power concentration in the president's hands. As such, presidential power must be analysed in the politico-institutional framework in which it is embedded. Hence, our analysis also considers the strengths or weaknesses of other institutions in the political system. For instance, Pérez-Liñán et al.'s (2019) data demonstrate that, regardless of temporal variations, Chile has never witnessed a high level of presidential hegemony. In fact, during the extensive period analysed (1925–2016), only in four years does Chile barely exceed the threshold of 50 points on the scale from 1 (non-existent presidential hegemony) to 100 (maximum presidential hegemony); this is below what we observe in most of the remaining 17 presidential countries in Latin America.⁵ More importantly, we do not detect any rise in presidential hegemony in Chile over time in line with the increase in formal prerogatives granted by the Constitution. In other

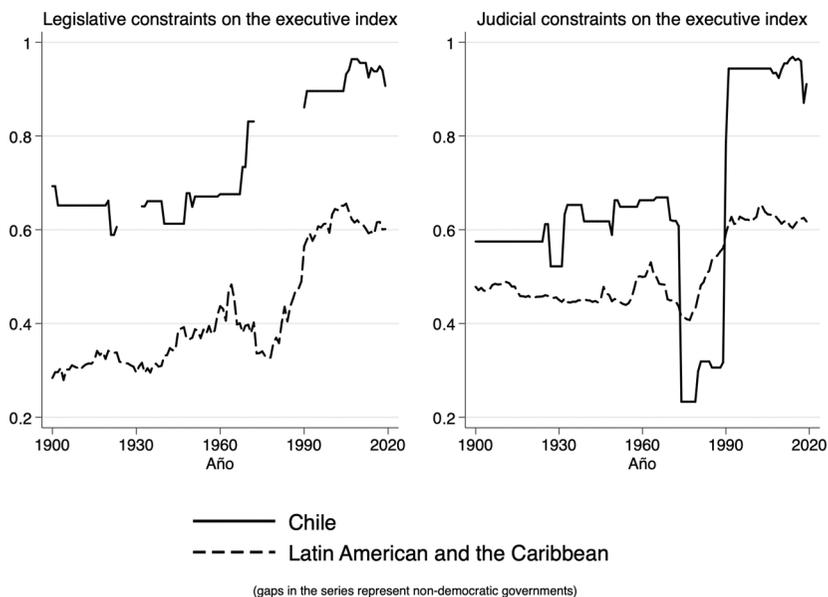


Figure 4.2 Constraints on the executive in Chile and Latin America (1900–2019).

Note: Higher values indicate greater constraints on the executive.

Source: Own elaboration based on data from *Varieties of Democracy* (Coppedge et al. 2020).

words, this comprehensive study does not show the alleged excessive concentration of power in the Chilean chief executive over the years and when compared with other countries, also questioning the hyper-presidentialism hypothesis' validity for Chile.

Let us now focus on the constraints exercised by other democratic institutions on the president. For this purpose, we consider two indices from *Varieties of Democracy*: legislative constraints and judicial constraints on the executive (Coppedge et al., 2020). Figure 4.2 illustrates Chile's evolution from 1900 to 2019 for both indices (higher values indicate greater constraints on the executive, i.e., lower power concentration in the president). Two interesting aspects immediately capture our attention. First, there is a gap between Chile's score and the average score for Latin America and the Caribbean in both dimensions throughout the period. This shows that, in Chile, the president has been more constrained by judicial and legislative institutions than in the region's other countries. Second, despite the hyper-presidentialism label attached to Chile in the post-Pinochet era, we can see that, during this period, the level of constraints and controls of other political institutions over the executive has been rising. In other words, the president's power in Chile has been decreasing in relative terms. Third, if hyper-presidentialism in Chile has actually existed, we should

observe lower values in at least one of the two dimensions; for example, values below 0.5 during 1990–2019; however, this is not the case either (with the sole exception during the Pinochet dictatorship, 1973–1990). In fact, power is not concentrated in the hands of the chief executive in Chile as it is in Ecuador and Venezuela.⁶

Supporting these observations, data from the IDEA Institute (2020) place Chile as one of the countries with the highest checks on government and executive power in Latin America: in 2018, Chile ranked second after Costa Rica, surpassing Uruguay (3rd) and Peru (4th). This is another piece of evidence that contributes to refuting the hypothesis that the Chilean president has excessive influence in the political system, the so-called hyper-presidentialism. The previous analysis suggests that presidentialism in Chile hardly falls into the “hyper” category. More importantly, the evidence provided in this sub-section does not support the Chilean hyper-presidentialism thesis; indeed, it refutes it.

Third Hurdle: The Chilean President facing National Congress and Political Parties

Finally, it is important to discuss how Congress’ structure and dynamics may affect presidential influence. Although important, the legislative power of Chile’s president has been attenuated by actors within the National Congress (e.g., presidents of the Chamber of Deputies and the Senate, permanent and conference committees, and party leaders, among others), as well as the lack of unified governments and the requirements of supermajorities to pass important bills (Alemán and Navia, 2016; Aninat, 2006; Bronfman Vargas, 2016). In fact, several studies on Chile’s executive-legislative relations have not found evidence of a merely reactive National Congress (Alemán and Navia, 2016; Visconti, 2011). For example, Mimica and Navia (2021) find that the formation of conference committees illustrates “the complexity of a bill as well as the potential obstructive power that Congress can use to delay a bill supported by the president.” Likewise, after the 2005 constitutional reforms that reinforced Congress vis-à-vis the chief executive, the success of presidential priority bills significantly decreased (Jaime-Godoy and Navia, 2022). In other words, Chile’s Congress, due to its own bureaucratic and operational procedures, and the institutional reforms that strengthened it, is an actor that can limit presidential influence in the legislative process.

Moreover, although the president has important attributions over the public budget bill, Congress has not been a passive player. Members of Congress either influence the processing of this bill into law: (i) by threatening to reject the proposal, reduce expenditures or even increase expenditures against what the Constitution allows (Arana Araya, 2013: 80; Arana Araya, 2015: 215–217), or (ii) by signing *protocolos de acuerdo* (protocol agreements) between the executive and members of Congress to facilitate negotiations between both parties (Villarroel

Cáceres, 2012). Relations between the executive and the legislature in Chile post-dictatorship have been, for the most part, marked by important levels of cooperation rather than by conflict or obsequiousness from Congress towards the president (Aninat, 2006; Toro-Maureira and Hurtado, 2016).

Since the constitutional rules do not work in a vacuum and the president does not govern alone, it is also important to consider how political parties limit the president's power. A president is more likely to be rewarded (or punished) by her own party when these are strong and institutionalised since, once she leaves office, her parties may choose to support her eventual re-election or offer her another type of political career (Alesina and Spear, 1988). Moreover, institutionalised parties are in a stronger position to present significant barriers to presidents that aim to remove limits on re-election and thus prevent their perpetuation in power (Kouba, 2016). Rhodes-Purdy and Madrid's (2020) study shows that parties with strong bureaucracies and leaders are able to counteract the personalistic urges of presidents who seek to concentrate power. In fact, in countries with strong institutionalised parties, presidents' power becomes limited, which forces them to share it and use it moderately, thus, producing higher levels of government stability (Martinez, 2021).

Although Chilean parties are currently among the most institutionalised in Latin America (Figure 4.3), this does not mean they are exempt from problems or that they are exemplary; they are not. Nevertheless, Chile's parties have played several key roles in keeping the president's influence somehow constrained. Chilean politics has mainly functioned through regular negotiations between presidents and parties. Parties' stability has encouraged the development of a cooperative dynamic of policymaking in Chile in recent decades (Aninat et al., 2006: 43). The *cuoteo*, which is a system through which presidential appointments are distributed among ruling parties, is probably the best expression of an informal institution through which governing parties restrict the president's prerogative of appointment. Moreover, during the transition, Chilean presidents have avoided overusing their formal prerogatives so as not to sour relations with their coalition partners (Siavelis, 2002). Tensions between the chief executive and parties of government coalitions have been common since the democratic restoration in 1990. In several cases, the government has desisted from moving forward on initiatives due to their intra-coalition opposition. For example, during the Patricio Aylwin and Eduardo Frei Ruiz-Tagle administrations, several initiatives on human rights were withdrawn by the government due to disagreements between the parties supporting the executive (Gamboa and Dockendorff, 2022: 65). By the same token, it is worth recalling how President Piñera was criticised by members of his own coalition when he partially vetoed the 2013 public budget bill (Martínez, 2018: 90).

It should also be considered that the president has the formal prerogative to appoint officials to trusted positions across Chile's administrative

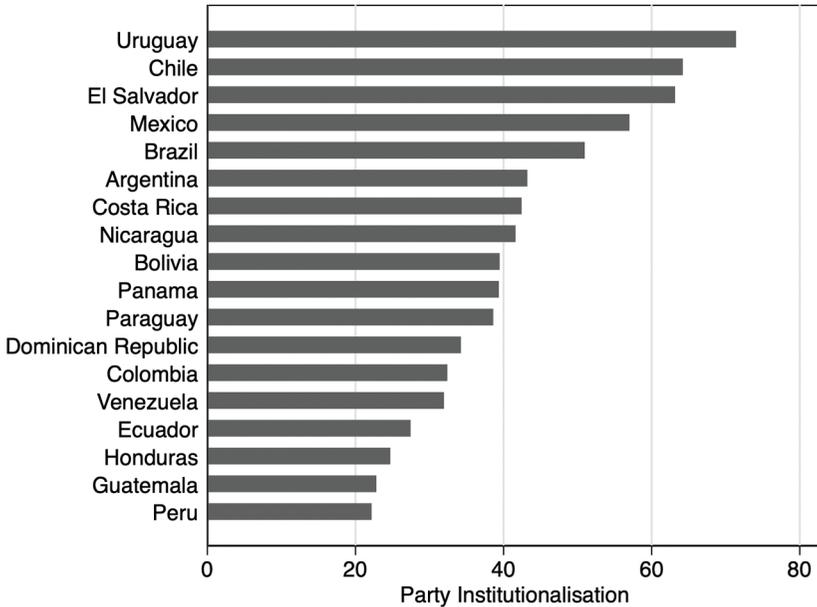


Figure 4.3 Party institutionalisation in Latin America (2017).

Note: Higher values indicate higher party institutionalisation.

Source: Elaborated by the authors based on data from *Varieties of Democracy* (Coppedge et al. 2018).

regions. Nevertheless, the ruling coalition parties have a significant bearing on these decisions, and so do the region's deputies and senators, who have increasingly turned into regional and local *caudillos* (Martínez, 2018: 98–99).

The evidence discussed in this section does not support the hypothesis of Chilean hyper-presidentialism. Although the president has considerable formal attributions in legislative matters, in practice, her influence also depends on other sources, such as partisan support in Congress, the state of the economy, the occurrence of anti-government protests, etc. (Basabe-Serrano, 2017; Olivares et al., 2022; Olivares and Medina, 2020). According to Pérez-Liñán et al.'s (2019) data, Chile is one of the countries having the lowest level of presidential hegemony from 1925 to 2016. Moreover, both the legislature and the courts have been actors that significantly constrain presidential power, as we demonstrated in the second hurdle. Furthermore, the information analysed in the third hurdle suggests that Congress is not an irrelevant actor in Chilean politics. Finally, having relatively strong parties (at least until a couple of years ago) has encouraged the development of collaborative relationships between the chief executive and parties in Congress, which has also curbed Chile's presidential authority.

Presidential Power in the Rejected Constitutional Draft: Form of Government and Congress

All these beliefs – wrong or not – about a country’s form of government are part of the pool of ideas used by political elites – politicians, intellectuals, and scholars – during times of heated debate regarding institutional design. As such, it was not surprising that the idea of Chile’s alleged hyper-presidentialism was to play a part in the public discussion surrounding the constitution-making process that started in late 2019. In the following paragraphs, we briefly discuss how the constitutional process began and changes were introduced to tame Chilean presidents’ power.

On October 18, 2019, triggered by a fare hike in the Santiago train system, a wave of intense and widespread street demonstrations, looting, and riots hit Chile, which came to be known as *estallido social* (social outburst). In the days following, thousands of protesters took to the streets in major cities. Public demonstrations, peaceful and otherwise, continued for weeks, while tensions between centre-right President Sebastián Piñera and the opposition heightened. A set of social policies offered by Piñera’s government were not enough and did not assuage protests. On November 15, most political parties with representation in the Chilean Congress signed an agreement titled “Pact for Peace and the New Constitution.”⁷⁷ The agreement’s main elements included a referendum to be held in 2020 in which the Chilean people would decide (i) whether a constitutional process would be initiated (*apruebo*; approve) or not (*rechazo*; reject), and (ii) the composition of the CC that would write a new text in case the most voted alternative to the first question was *apruebo*. The pact also stipulated that the draft written by the CC was to be voted on in a new referendum to be held on September 4, 2022. In the first referendum, held in October 2020, the *apruebo* option received 78% of the votes, showing overwhelming support for drafting a new Constitution. Almost an identical percentage voted for the CC to be formed exclusively by members elected for that purpose, rather than being formed by 50% of popularly elected members and 50% of legislators.

After a year of work, from July 2021 to July 2022, the CC’s proposal was voted in the “exit” referendum held on September 4, 2022. The result was a sound rejection of the draft by about 62% of the votes. Here, we specifically discuss the CC’s changes introduced to presidential power, how the view about hyper-presidentialism may have influenced them, and how the proposed structure of Congress could have affected power concentration.

In line with the idea of hyper-presidentialism, and how it has been conceptualised, the draft written by the CC reduced and limited presidential prerogatives. For instance, the president’s exclusive legislative initiative was replaced by *leyes de concurrencia presidencial* (necessary presidential concurrence bills). For these types of bills, members of Congress could introduce legislation on several policy issues (e.g., fiscal expenditures, revenues, taxes, unions, public salaries, social security⁸), which under the

1980 Constitution were exclusively reserved for presidential initiative, if they were accompanied by a technical report on the bill's financial feasibility and if the president sponsors it. Additionally, the power to declare a bill urgent (i.e., to speed up its passage), which in the current Constitution falls into the sole authority of the president, in the proposal, was to be shared by the chief executive and Congress. Another important reform focused on the declaration of states of constitutional exception. Under the 1980 Constitution, the president may declare a state of siege (e.g., during civil wars), assembly (e.g., when under external threat), catastrophe (e.g., to deal with natural disasters), and emergency (during severe alterations of public order or when national security is in jeopardy). The CC's proposal eliminated the latter. In another important innovation, the president's veto authority was weakened. For example, in the case of partial vetoes (or observations), these could be overridden by a simple majority of the members of the lower house, called the Congress of Deputies, and the same voting requirement applied for insisting upon the original version of the bill partially vetoed by the president. As was proposed, the draft reduced both the majority required for veto overriding and the number of chambers intervening in it.

In the specific cases outlined earlier, power or, more accurately, constitutional prerogatives were being taken out of the president's hands, which in some cases were bestowed upon the legislature. These reforms tended to agree with the idea of deconcentrating political power. Yet, one important reform of the failed constitutional text – presidential term limits – had the potential to increase presidential power under certain circumstances. Currently, Chile has non-immediate presidential re-election. That is, presidents must wait at least one term to compete for office again. The CC's proposal established that the president could be re-elected immediately at the end of her first term in office, or should she fail to win the presidency, she may try it again. In any case, according to the proposal, presidents could stay in office for a maximum of two terms, be they consecutive or non-consecutive.

Paradoxically, while the president was being stripped from some of her constitutional prerogatives (especially legislative prerogatives outlined earlier), the chief executive was also being strengthened in other areas, for example, by allowing her to run for immediate re-election. These changes acquire a new meaning when also taking into consideration the reforms introduced in the legislative branch.

The proposal determined that the legislative branch was to consist of two players: the Congress of Deputies and the Chamber of the Regions. The Congress of Deputies has the exclusive authority to oversee the government. The CC did away with the 200-year-old Senate. Not necessarily as a functional replacement, the proposal innovated with a new institution called the Chamber of the Regions, which was to be formed by members elected by Chile's politico-administrative regions. The proposal stated that the Chamber of the Regions was to participate in the debate of *leyes de*

acuerdo regional (regional agreement bills). As such, this chamber was excluded from considering bills regarding social security, labour, transportation, science and technology, military and defence matters, morality issues, and crime, to mention a few.⁹ Moreover, according to the proposal, the election of the regions' representatives would have taken place three years after the presidential (first round) and congressional elections. Regional representatives are accountable before their respective Regional Assembly.

The lower house, the Congress of Deputies, was significantly reinforced since it could decide and discuss most policy matters. In the veto override, as mentioned earlier, the proposal established that only the Congress of Deputies was to intervene. Hence, it could have been the most important player in the legislative process.¹⁰ While deputies could be elected concurrently with the president, both of whose terms last four years; members of the Chamber of the Regions, who also stay in office for a four-year term, were to be elected three years after the presidential and deputy elections. Under the current constitution, senators have an eight-year term, and the renewal of the Senate is staggered: half of the Senate is renewed every four years and its election coincides with the presidential first round and the election of deputies. Surprisingly, the proposal instituted that both members of the Congress of Deputies and the Chamber of the Regions have term limits that allow them to be re-elected only once.

Presidential authority could have been enhanced, on the one hand, by immediate presidential re-election since incumbents tend to have the upper hand against challengers, and, on the other hand, a more restrictive re-election limit on legislators may lead to a more disempowered legislature. At the same time, the president could no longer be counterbalanced by a strong upper chamber since the Senate was eliminated. Ferejohn and Pasquino (2004: 210) mention that "Constitutions are often designed to check the exercise of power, employing such devices as bicameralism." The Chamber of the Regions was designed to be weaker than the current Senate. In fact, the very existence of the Chamber of the Regions was the result of political bargaining between groups that supported a unicameral legislature and those that backed the idea of a bicameral Congress. As such, the resulting congressional structure in no way resembled strong bicameralism, but rather a weak one.

Overall, the draft proposed a hybrid design with contradictory incentives. On the one hand, it reduced the president's constitutional prerogatives in four areas: partial observations (or partial veto), agenda powers (urgency motions, for example), the exclusive initiative on financial and other important legislation, and the declaration of states of constitutional exception. On the other hand, and maybe more determinant, the draft allowed for a potential scenario where a political group (be it a party, coalition, alliance, etc.) gained control over the presidency and the new lower house with more prerogatives in one single election, thus facilitating a president to control a legislative majority more easily in the Congress of Deputies.

This would enable presidents to concentrate more power than under the current Constitution, let alone the fact that most bills may be approved by a simple majority and important matters were only to be debated in the lower house. Equally important, the draft allowed the possibility of immediate re-election for the chief executive. Adding to that, the fact that the election of the region's representatives was to be held one year before the presidential (re)election harboured the possibility that the president may spend her last two years in office preparing for her potential new term and campaigning for allies who would run for the Chamber of the Regions. Since the supporters of the idea of Chile's alleged hyper-presidentialism conceive it almost exclusively in terms of formal prerogatives bestowed upon the president, it was not surprising that the CC's draft limited and reduced them. However, the failed constitutional proposal, at the same time, incentivised the concentration of power around the chief executive when considering the changes introduced to Congress and presidential re-election.

These contradictory incentives may be derived from the two – mutually exclusive – negative assessments on the functioning of the form of government in Chile underlying the debate of the CC: the excessive concentration of power in the presidency (hyper-presidentialism), on the one hand, and the paralysis or gridlock in the political system, on the other. As we have shown, the former criticism was inaccurate. The second one deserves more attention, particularly on certain topics such as pensions (social security). However, studies have shown that Chilean presidents have approved the majority of their legislative initiatives (Gamboa and Dockendorff 2022). As it stands, the future of the constitutional debate may benefit from a careful consideration of those facts, instead of relying upon anachronistic and overly legalistic interpretations of the Chilean form of government and the democratic process.

Conclusion

The hyper-presidentialism thesis is popular in Latin America. It has pervaded academic and political circles alike. Even though its definition is blurred and, at times, internally contradictory, it is always depicted as a negative feature of the political system, one that unduly concentrates significant power on the president. Hyper-presidentialism has been associated with presidents' authoritarian behaviour and is described as a flawed form of presidential democracy. Understood in that way, it is not surprising why politicians, pundits, and scholars usually worry about and seek ways to get rid of hyper-presidentialism. However, as we discussed earlier, there are important shortcomings when defining hyper-presidentialism. We offer a simple yet important recommendation to improve upon the debate about presidential power. We suggest dropping the hyper-presidentialism label entirely. A more accurate notion, which is not conceptually distant from hyper-presidentialism, is power concentration. This concept is more adequate and precise to capture the essence of presidential power because it

does not simply rely on constitutional prerogatives as hyper-presidentialism does. Rather, it also encompasses relational aspects such as how other political institutions (congress, the courts, and the comptroller general, among others) and actors (i.e., parties) constrain presidential authority. After all, determining how powerful a player is always depends on other players' might, the socio-political structure in which they are embedded, etc. These are aspects that the hyper-presidentialism notion – with its narrow focus on constitutional and legal prerogatives – usually overlooks.

The case of Chile enables us to analyse how ideas, even if contradicted by empirical evidence, may hold sway in the national debate during key political moments, such as the writing of a new constitution, with far-reaching implications. The analysis of the three hurdles (third section) does not support the hypothesis that there is hyper-presidentialism in Chile, understood as power concentration in the executive. The only evidence in favour is not solid (as examined in the first hurdle). The data analysed in the second and third hurdles even provide evidence that could help reject the hypothesis of hyper-presidentialism in Chile. The major takeaway from these tests is that conceptualising presidential power only based on formal prerogatives bestowed upon the chief executive is an incomplete and misleading approach.

Since the discussion about presidential power in Chile has mostly focused on formal prerogatives, a view upon which the hyper-presidentialism hypothesis is mostly built, it was not surprising that the CC reduced the president's constitutional "legislative toolkit." As we show in the first hurdle, this is the only area in which the Chilean president seems to be "powerful." At the same time, the draft proposed a set of institutional devices that were not internally consistent, some of which even strengthened presidential power rather than limiting it as many CC members had initially promised. In fact, given the proposed asymmetrical structure of the legislature, should the president obtain a majority in the Congress of Deputies (the more powerful chamber), she could have wielded a considerable amount of power in the political system. We do not claim that the CC's draft would have made the president automatically dominate national politics. However, we do believe that the institutional design that was rejected offered a series of incentives that could have paved the way for a more powerful president to arise. The path toward concentration of power around the president was encouraged by allowing immediate presidential re-election, restricting legislative re-election to two terms, holding concurrent elections for the Congress of Deputies, and renovating the entire Chamber of the Regions one year before the 4-year presidential term ends.

Acknowledgements

This research has been funded by FONDECYT Regular, Grants No. 1210157 and No. 1220123; FONDECYT Iniciación, Grant No. 11190948; and Millenium Science Initiative Program, Grant No. NCS2021_063 from Chile's Agencia Nacional de Investigación y Desarrollo (ANID).

This chapter is partially based on a previous manuscript: Christopher A. Martínez (2022).

Notes

- 1 All translations of quotations are our own.
- 2 Other authors used the label “super-presidentialism” when analysing the Argentine case (Cordriero Gavier, 2019), especially after the 1994 constitutional reforms that strengthened presidential prerogatives (López Alfonsín and Schnitmann, 2016: 56).
- 3 Basabe-Serrano (2017) proposes an approach that combines the political (constitutional attributions and legislative support of the president) and contextual (presidential approval and economy status) factors when assessing how powerful Latin American leaders are. Chile occupies the seventh position in an 18-country ranking (Basabe-Serrano, 2017: 10). The political systems where the chief executive has the greatest influence are found in Ecuador and Venezuela (Basabe-Serrano, 2017). Replicating Basabe-Serrano’s (2017) approach, Olivares and Medina (2020: 318) show that, in Latin America, Chile’s president ranked fourth and fifth position in 2012 and 2019, respectively.
- 4 In addition to the president’s key role over budgetary matters, Chile’s chief executive may initiate legislation and has the freedom to choose whether to introduce it via the Chamber of Deputies or the Senate, has exclusive legislative initiative in important issues (e.g., expenditures, public servants’ salaries, altering the country’s politico-administrative structure), and may unilaterally declare some bills urgent to speed up their discussion, among others.
- 5 See Figure 1 in Pérez-Liñán et al. (2019: 613). The mean presidential hegemony for all Latin American countries in the series is 47.5, whilst Chile’s is 34.4.
- 6 In Ecuador’s case, this was observed even before the 2008 constitutional change. In Venezuela, legislative and judicial constraints on the executive started to weaken in 2000, long before the country ceased to be a democracy.
- 7 The Communist Party, and other new leftist parties, such as Social Convergence (President Gabriel Boric’s party), did not sign the pact.
- 8 The current Constitution (article 65) exhaustively determines the topics and issues on which the president has the exclusive prerogative to introduce bills to Congress, called *iniciativa legislativa exclusiva*.
- 9 The areas covered by the regional agreement clause in which the participation of the Chamber of the Region is mandatory are the following: constitutional reform, judicial system, taxes, legislative branch, health, education, housing, and budgeting, among others. Yet, this chamber had limited powers and could only discuss a handful of policy issues, which are significantly fewer than those of the current Senate.
- 10 On purpose or not, its formal name is Congress of Deputies, not *Chamber* of Deputies.

References

- Alemán E and Navia P (2016). Presidential power, legislative rules, and law-making in Chile. In: Alemán E and Tsebelis G (eds), *Legislative institutions and law-making in Latin America*. Oxford: Oxford University Press, pp. 92–121.

- Alesina A and Spear SE (1988). An overlapping generations model of electoral competition. *Journal of Public Economics*, 37(3): 359–379.
- Aninat C (2006). Balance de poderes legislativos en Chile. ¿Presidencialismo exagerado o base de un sistema político cooperativo? *Política, Revista de Ciencia Política*, 47: 128–148.
- Aninat C, Londregan J, Navia P and Vial J (2006). *Political institutions, policy-making processes and policy outcomes in Chile*. Washington, D.C.: Inter-American Bank.
- Arana Araya I (2013). Informal institutions and horizontal accountability: Protocols in the Chilean budgetary process. *Latin American Politics and Society*, 55(4): 74–94.
- Arana Araya I (2015). Budgetary negotiations: How the Chilean Congress overcomes its constitutional limitations. *The Journal of Legislative Studies*, 21(2): 213–231.
- Arellano-González JC and Martínez CA (2020). Gradual change and deconcentration of presidential powers in nineteenth century Chile: Ideas, networks, and institutional ambiguity. *Polity*, 52(4): 584–617.
- Armingeon K and Careja R (2007). *Comparative data set for 28 post-communist countries, 1989–2007*. Berne: Institute of Political Science, University of Berne.
- Atria F, Larraín G, Benavente JM, Couso J and Joignant A (2013). *El otro modelo. Del orden neoliberal al régimen de lo público*. Santiago: Debate.
- Basabe-Serrano S (2017). Las distintas caras del presidencialismo: Debate conceptual y evidencia empírica en dieciocho países de América Latina. *Revista Española de Investigaciones Sociológicas*, 157: 3–22.
- Berensztein S (2020) ¿Podrá Alberto Fernández resolver las diferencias internas de su coalición? *La Nación*, 14 February. Retrieved on October 9, 2022, from www.lanacion.com.ar/opinion/columnistas/podra-alberto-fernandez-resolver-las-diferencias-internas-de-su-coalicion-nid2333622/
- Berman S (1998) *The social democratic moment: Ideas and politics in the making of interwar Europe*. Cambridge, MA: Harvard University Press.
- Bolonha C, Rangel H and Corrêa F (2015). Hiperpresidencialismo na América Latina. *Revista da Faculdade de Direito UFPR*, 60(2): 115–140.
- Bombig A and Lara M (2021). Semipresidencialismo ganha defesa enfática de Barroso, Gilmar e Temer. *Estadão*, 7 August. Retrieved on November 2, 2022, from <https://politica.estadao.com.br/blogs/coluna-do-estadoo/semipresidencialismo-ganha-defesa-enfatica-de-barroso-gilmar-e-temer/>
- Borges de Freitas GM (2020) Constitucionalismo, hiperpresidencialismo y desequilibrio de poderes en Brasil en tiempos de la pandemia de Covid-19. *Derecho y Realidad*, 18(36): 111–137.
- Bronfman Vargas A (2016). Presidencialismo y el poder presidencial en el proceso legislativo chileno. *Revista Chilena de Derecho*, 43 (2): 369–400.
- Campos M (2020). Perú: ¿Cuatro presidentes en cinco años? *Agenda Pública*, 10 November. Retrieved on December 29, 2020, from <https://agendapublica.es/peru-cuatro-presidentes-en-cinco-anos/>
- Cerbone P (2021). El hiperpresidencialismo como resultado de la interacción entre presidencialismo fuerte y populismo. *RIPS: Revista de Investigaciones Políticas y Sociológicas*, 20(1): 1–15.
- Chalco Salgado J (2016). Hiperpresidencialismo: Hacia el blindaje presidencial. *CÁLAMO/Revista de Estudios Jurídicos*, 6: 76–84.

- Chaves Rodríguez F (2013). Eduardo Duhalde propone hacer un “retoque” a la Constitución para moderar el “hiperpresidencialismo”. *La Nación*, 4 October. Retrieved on November 2, 2022 from www.lanacion.com.ar/politica/eduardo-duhalde-propone-hacerle-un-retoque-a-la-constitucion-para-moderar-el-hiperpresidenci-nid1625591/
- Cheibub JA, Elkins Z and Ginsburg T (2011). Latin American presidentialism in comparative and historical perspective. *Texas Law Review*, 89(7): 1707–1740.
- Coppedge M, Gerring J, Knutsen CH, et al. (2018). V-Dem [Country-Year/ Country-Date] Dataset v8. Varieties of Democracy (V-Dem) Project.
- Coppedge M, Gerring J, Knutsen C, et al. (2020). V-Dem [Country-Year/ Country-Date] Dataset v10. Varieties of Democracy (V-Dem) Project.
- Cordriero Gavier ER (2019). El declive del poder legislativo y la fractura del sistema de partidos en argentina. *Cuadernos de Derecho Público*, 4: 79–94.
- Doyle D and Elgie R (2016). Maximizing the reliability of cross-national measures of presidential power. *British Journal of Political Science*, 46(4): 731–741.
- El Universal (2022). Va por México anuncia reforma para instaurar gobiernos de coalición y evitar “hiperpresidencialismo”. *El Universal*, 17 August. Retrieved on November 2, 2022, from www.eluniversal.com.mx/nacion/va-por-mexico-anuncia-reforma-para-instaurar-gobiernos-de-coalicion-y-evitar-hiperpresidencionalismo
- El Universo (2016). César Montúfar: ‘Reforma constitucional al hiperpresidencialismo’. *El Universo*, 19 December. Retrieved on November 2, 2022, from www.eluniverso.com/noticias/2016/12/19/nota/5961937/reforma-constitucional-hiperpresidencialismo/
- Eyzaguirre N, Figueroa P and Jordán T (2020). *Crisis del hiper-presidencialismo chileno y nueva Constitución: ¿Cambio al régimen político?* Santiago: Flacso-Chile.
- Ferejohn J and Pasquino P (2004) The law of the exception: A typology of emergency powers. *International Journal of Constitutional Law* 2(2): 210–239.
- Fontaine A (2021). *La pregunta por el régimen político: Conversaciones chilenas*. Santiago: Fondo de Cultura Económica Chile.
- Forero Tascón A (2022). ¿Petro gobernará con populismo o con hiperpresidencialismo? *El Espectador*, 27 June. Retrieved on November 2, 2022, from www.elespectador.com/opinion/columnistas/alvaro-forero-tascon/petro-gobernara-con-populismo-o-con-hiperpresidencialismo/
- Fortin J (2013). Measuring presidential powers: Some pitfalls of aggregate measurement. *International Political Science Review*, 34(1), 91–112.
- Frye T (1997). A politics of institutional choice: Post-communist presidencies. *Comparative Political Studies*, 30(5): 523–552.
- Gamboa R and Dockendorff A (2022). “Presidente y Partidos en la democracia Chilena, 1990–2020”. In Martínez CA (ed) *Presidencialismo. Reflexiones para el debate constitucional en Chile*. Santiago: Fondo de Cultura Económica Chile, pp. 59–73.
- Gargarella R (2018). Sobre el “nuevo constitucionalismo latinoamericano.” *Revista Uruguaya de Ciencia Política*, 27(1): 109–129.
- Henríquez M (2016). Otras propuestas sobre régimen político. In: Sierra L (ed), *Propuestas Constitucionales*. Santiago: Centro de Estudios Públicos, pp. 161–167.
- Huneus C (2018). ¿Cuán fuerte es el presidente en Chile? *Revista de Derecho Público*, 353–372.

- INE (2022). Versión estenográfica de la Conferencia Magistral Estacional de Primavera 2022, Democracia y Pandemia, impartida por la Dra. Laura Chinchilla. *Instituto Nacional Electoral*, 2 June. Retrieved on November 2nd, 2022 from <https://centralectoral.ine.mx/2022/06/02/version-estenografica-de-la-conferencia-magistral-estacional-de-primavera-2022-democracia-y-pandemia-impartida-por-la-dra-laura-chinchilla/>
- Jaime-Godoy J and Navia P (2022). A more precise way to assess the success of the President's legislative agenda: The success of Presidential priority bills in Chile, 1990–2018. *Democratization*. DOI: 10.1080/13510347.2022.2128772
- Kouba K (2016). Party institutionalization and the removal of presidential term limits in Latin America. *Revista de Ciencia Política*, 36(2): 433–457.
- López Alfonsín MA and Schnitmann A (2016). Semipresidencialismo e Hiperpresidencialismo en la Reforma Constitucional Argentina de 1994. *Resenha Eleitoral*, 20(1): 39–74.
- Malamud A and Marsteintredet L (2017). Lula, Humala y el mito del hiperpresidencialismo. *La Nación*, 18 July. Retrieved on October 29, 2020 from www.lanacion.com.ar/opinion/lula-humala-y-el-mito-del-hiperpresidencialismo-nid2044690/
- Martínez CA (2018). La presidencia en el Chile de la posdictadura. In Huneeus C and Avendaño O (eds), *El sistema político de Chile*. Santiago: LOM Ediciones, pp. 85–117.
- Martínez CA (2021). Presidential instability in Latin America: Why institutionalized parties matter. *Government and Opposition*, 56(4), 683–704.
- Martínez CA (2022). Hiperpresidencialismo y concentración de poder en Chile. In: Martínez CA (ed) *Presidencialismo: Reflexiones para el debate constitucional en Chile*. Santiago: Fondo de Cultura Económica Chile & Ediciones UCT, pp. 83–101.
- Metcalf LK (2000). Measuring presidential power. *Comparative Political Studies*, 33(5): 660–685.
- Mimica N and Navia P (2021). Determinants of bicameral conflict: The formation of conference committees in Chile, 1990–2018. *Latin American Politics and Society* 63(4): 74–95.
- Montes R (2020). Chile se distancia de Latinoamérica y enjuicia su modelo presidencialista de gobierno. *El País*, 21 October. Retrieved on October 22nd, 2020 from <https://elpais.com/internacional/2020-10-21/chile-se-distancia-de-latinoamerica-y-enjuicia-su-modelo-presidencialista-de-gobierno.html>
- Muñoz A (2020). Arturo Valenzuela: El legado más peligroso de la Constitución de Pinochet fue el hiperpresidencialismo. *La Tercera*, 3 October. Retrieved on October 4, 2020 from www.latercera.com/reconstitucion/noticia/arturo-valenzuela-el-legado-mas-peligroso-de-la-constitucion-de-pinochet-fue-el-hiperpresidencialismo/OYFJA3FXUBASFDHMBD-YPYHLOZ4/
- Negretto GL (2018). La reforma del presidencialismo en América Latina hacia un modelo híbrido. *Revista Uruguaya de Ciencia Política*, 27(1), 131–151.
- Nino CS (1996). Hyperpresidentialism and constitutional reform in Argentina. In Lijphart A and Waisman CH (eds), *Institutional design in new democracies*. New York: Routledge, pp. 161–174.
- Ochoa Cardich C (2020). Vizcarra: jefe de Estado y de Gobierno, por César Ochoa Cardich. *El Comercio*, 26 February. Retrieved on November 2nd, 2022 from <https://elcomercio.pe/opinion/colaboradores/vizcarra-jefe-de-estado-y-de-gobierno-por-cesar-ochoa-cardich-noticia/?ref=ecr>

- Olivares A, Martínez CA, Arellano-González JC, Carrasco S, Campos M, Medina P, and Lopes AV (2022). Presidencialismo en América Latina. Algunas consideraciones para el debate. *IBEROAMERICANA. América Latina – España – Portugal*, 22(79), 211–242.
- Olivares A and Medina P (2020). La persistente debilidad institucional de Ecuador: Protestas, elecciones y divisiones políticas durante el 2019. *Revista de Ciencia Política*, 40(2): 315–349.
- Ortiz Ortiz R (2018). Los problemas estructurales de la Constitución ecuatoriana de 2008 y el hiperpresidencialismo autoritario. *Estudios Constitucionales*, 16(2): 527–566.
- Ospina Molina PS (2020). Del presidencialismo al hiperpresidencialismo: Una realidad innegable en América Latina. *Criterio Libre Jurídico*, 17(2): 4–11.
- Pérez-Liñán A, Schmidt N and Vairo D (2019). Presidential hegemony and democratic backsliding in Latin America, 1925–2016. *Democratization*, 26(4): 606–625.
- Rhodes-Purdy M and Madrid RL (2020). The perils of personalism. *Democratization*, 27(2): 321–339.
- Rivera E (2020). ¿Presidencialismo parlamentario o más hiperpresidencialismo? *El Mostrador*, 18 October. Retrieved on October 24, 2020 from www.elmostrador.cl/destacado/2020/10/18/presidencialismo-parlamentario-o-mas-hiperpresidencialismo/
- Rose-Ackerman S, Desierto DA and Volosin N (2011). Hyper-presidentialism: separation of powers without checks and balances in Argentina and Philippines. *Berkeley Journal of International Law*, 29(1): 246–333.
- Ruiz-Tagle P (2006). Simposio: Reformas del año 2005 a la Constitución de la República de Chile. In: Anuario de Derechos Humanos 2006, pp. 75–106. Retrieved on October 25, 2020, from <https://anuariodh.uchile.cl/index.php/ADH/article/view/13372/13643>
- Shugart MS and Carey JM (1992). *Presidents and assemblies: Constitutional design and electoral dynamics*. Cambridge: Cambridge University Press.
- Siaroff A (2003) Comparative presidencies: The inadequacy of the presidential, semi-presidential and parliamentary distinction. *European Journal of Political Research* 42 (3): 287–312.
- Siavelis PM (2002). Exaggerated presidentialism and moderate presidents: Executive-legislative relations in Chile. In: Morgenstern S and Nacif B (eds), *Legislative politics in Latin America*. Cambridge: Cambridge University Press, pp. 79–113.
- Toro-Maureira S and Hurtado N (2016). The executive on the battlefield: Government amendments and cartel theory in the Chilean Congress. *The Journal of Legislative Studies*, 22(2): 196–215.
- Villaruel Cáceres A (2012). El protocolo de acuerdos de la Ley de presupuestos del sector público. *Revista de Derecho* (Valparaíso), 38: 617–657.
- Visconti G (2011). Comportamiento diacrónico del Congreso en Chile: ¿Crecimiento o estancamiento de su influencia? *Revista de Ciencia Política*, 31(1): 91–115.

5 The Power of the Administrative Decisions of Latin American Presidents

*Magna Inácio, Filipe Recch and
Carolina Guerrero Valencia*

Introduction

The powers of presidents and the risks of presidential unilateralism are an ever-recurring theme in Latin American politics. In recent times, emerging trends have reignited fears of executive encroachment and democratic retreat in the region. The growing number of populist, outsider, and anti-establishment presidents (Carreras, 2012; Mudde & Kaltwasser, 2013) has raised concerns about the presidential use of unilateral actions to deal with the political divergences that these governments might face. The militarisation of presidential cabinets and the executive branch in some countries has triggered alarms about the risks of an insulated presidential authority beyond the reach of democratic controls (Scharpf, 2020; Flores-Macias & Zarkin, 2021). Further, the COVID-19 pandemic revived the fear of executive aggrandisement and unilateralism in the context of national emergencies (Inácio et al., 2021).

While such apprehension is understandable, the strong powers granted to the president are a defining trait of Latin American presidentialism and a critical variable for understanding the conditions of government in both ordinary times and times of emergency. However, this feature has perhaps overshadowed the other backbone of presidential powers: the administrative prerogatives of presidents. Scholarship on Latin American presidentialism has devoted much of its attention to the influence of presidents on the legislative process, based on their legislative and appointment powers. A vast amount of literature has shown a considerable variation in these powers and how presidents and their governments use them to pursue their legislative success and policy goals (Shugart & Carey, 1992; Limongi & Figueiredo, 1998). In addition to the power to initiate legislation, ministerial appointments have been strategic for forging policy compromises and for garnering a legislative majority to approve legislation (Amorim Neto, 2006).

However, a president's policy agenda goes beyond their legislative realm (Cohen, 2012). Presidents may want to implement their policy priorities, manage cabinet or coalition conflicts, and advance their distributive

policies to benefit their voters and political supporters. Latin American presidents can do this through legislative initiatives; however, passing new legislation may be costly for minority and/or weak presidents, so presidents will use other means to attain their goals.

We argue that a substantial part of Latin American presidents' policy agenda is effectively executed through the administrative tools granted to the executive. In this chapter, we focus on the executive's administrative powers to issue decrees that regulate laws and execute autonomous decisions. Our analysis is restricted to presidents' decisions and does not consider other types of cabinet administrative decisions, such as ministerial or inter-ministerial ordinances and resolutions. The massive issuance of administrative decrees and decrees for the implementation of law by Latin American presidents indicates the strategic value of these presidents' administrative powers, even for politically powerful presidents (Inácio & Neves, 2018). However, relatively little is known about these powers and the scope of unilateral actions they allow.

A vast US literature demonstrates the relevance that the administrative presidency has for the chief executive to overcome inter-branch conflicts and policy divergence with the bureaucracies (Moe & Howell, 1999; Rudalevige, 2002; Rudalevige & Lewis, 2005; Lewis, 2008; Howell, 2003). This scholarship has provided massive evidence that the president, who in the United States has no power to initiate legislation, resorts to executive tools to influence policymaking at the beginning of the process or at its end. Recent studies have advanced our understanding of presidents' use of such tools to advance some policy proposals, with the tactical agreement of the legislative majority, and also of presidents' use of these tools to bypass a hostile Congress (Belco & Rottinghaus, 2017). Yet the story is even more puzzling, as presidents can pursue these goals using both legislative and administrative powers. This is the case for most Latin American presidents.

What are the incentives for Latin American presidents to use administrative tools to govern? How much discretion do Latin American presidents have in using these executive powers? Do these powers allow the president to implement policies that legislators do not like or on which legislators prefer to avoid leaving their fingerprints?

Answering such questions requires us to take a step back and begin by exploring what decisions are targeted through these administrative powers. This is central to advancing this new research agenda. In approaching this exploration, our research question in this chapter is the following: What is the portfolio of policy goals that Latin American presidents can pursue through unilateral administrative decisions? At this stage, we assume that the content of these administrative decisions is more important than the number of these actions. We argue that an administrative decree is a multi-targeting tool (Inácio & Recch, 2020) that allows a president to take unilateral actions in several policy areas, and at different levels of decision-making. Certainly, congress and the judiciary establish some boundaries and constraints on a president's discretion. However, this executive tool still

can be used strategically by presidents to shape their administrative policy agendas. Hence, we expect that the policy areas and types of decisions that presidents target through these unilateral actions will vary considerably across countries and governments.

In the next section, we explore to what extent the content of administrative decrees varies insofar as the presidential agendas and purposes behind these decrees. For this, we first characterise presidential decree-making in Latin American presidentialism by considering the institutional constraints and presidential policy agendas issued by the 36 presidents who ruled in six Latin American countries (Argentina, Brazil, Chile, Colombia, and Peru) between 1990 and 2017. To identify whether presidents strategically use administrative decrees for different purposes, we analyse the content of presidential decrees using an unsupervised machine learning technique: structural topic modelling (STM). We demonstrate that presidents pay attention to a wide variety of policy areas, that different objectives guide these unilateral decisions, and that the policy areas affected by administrative decrees vary across countries and presidents. Subsequently, we illustrate how presidents implemented unilateral actions under stress during the COVID-19 pandemic, highlighting the case of Brazil as an example. Finally, we discuss how the pandemic highlighted the simultaneous use of these decrees, and their potential for abuse, all over the continent as there was a proliferation of delegation. We wrap up by discussing what can be learned from the case of Bolsonaro in Brazil.

How Valuable Are Administrative Decrees for Presidential Unilateralism in Latin America?

In Latin America, the influence of presidents on the decision-making process occurs through those presidents' power to issue decrees. However, while the regional literature about presidential decree-making has extensively discussed the power to issue *legislative* decrees, there is considerably less attention devoted to decrees for *administrative actions*. This chapter aims to fill this gap by demonstrating that decree-making power encompasses legislative as well as administrative decisions, which are both valuable tools that presidents recruit in the pursuit of their policy agendas.

Therefore, there are two types of presidential decree powers. The first is the power to issue legislative decrees, which enables the executive to take part in the law-making process, on the basis of constitutional or delegated authority to issue decrees with the force of law, with the purpose of introducing or modifying laws. This is the case, for example, for provisional measures in Brazil and decrees of necessity and urgency in Argentina. The literature has analysed the effects of this decree power on law production, executive-legislative relations, and political stability (Shugart & Carey, 1992; Carey & Shugart, 1998; Figueiredo & Limongi, 1999). This distinctive feature of presidentialism in the region ensures that the president has a strategic advantage in controlling the legislative agenda. Legislative

decrees allow the president to change the status quo of policies without prior authorisation from the other branches, and to control the timing of the legislative process.

The second type of presidential decree power in this region – and the focus of this chapter – is the power to issue administrative decrees. Two main types of decisions can be implemented by these decrees. The first are regulatory decrees that define how laws will be executed. Generally, constitutional texts restrict a president's discretionary power by prohibiting both the introduction of new legal provisions and the modification of those that Congress has approved. However, such constitutional texts are silent about a president's strategic decision to regulate only a certain number of provisions of a law, which leaves space for the selective implementation of a legislative decision. The second type are strict administrative decrees that establish conditions for the organisation and functioning of the executive branch and the bureaucracies. These decrees do not depend on the law, but rather on a president's executive authority and, for that reason, are known as autonomous decrees.

Administrative decrees – both law-implementing ones and autonomous ones – constitute a largely unexplored field of presidential decree power in Latin America. The literature agrees that regulatory power is the president's faculty to unilaterally issue general or special regulations (decrees, directives, etc.) for the administration when a country's constitution has not entrusted them to the legislator or, also, to regulate the execution of laws (Bonilla, María del Mar Otero, & de Zubiría, 2016; Trejo, 2015; Vivacqua, 2013; Zúñiga Urbina, 2001). However, there is always some legal ambiguity about the limits between administrative and autonomous decrees, as happens, for example, in the Colombian case, where autonomous decrees can have characteristics of both administrative and legislative acts (Bonilla, María del Mar Otero, & de Zubiría, 2016). The same is true for the Argentine case, where the president issues autonomous decrees on matters within the “administrative reserve zone” that cannot be regulated by law (Vivacqua, 2013).

The Institutional Regulation of Administrative Decrees

How much discretion does the president have in making administrative decisions? How unilateral are these decisions and who controls them? We consider three aspects that may institutionally differentiate the presidential power to issue administrative decrees and thus indicate the opportunities and incentives for presidential unilateralism.

First, this power is constitutionally regulated in our sample of Latin American countries, in stark contrast to what occurs, for example, in the United States. The regulation varies across countries, but also over time in some of them, indicating changes in the preferences of legislators as well as in the level of tolerance of courts in relation to the president's administrative powers. Regarding the regulation of the power to issue decrees that implement law, there is no significant variation across constitutions in the

region under consideration. The main reason is that these decrees regulate the content of laws that a congress may pass. By contrast, the constitution sets narrow limits on the issuing of autonomous decrees. In some countries, constitutional provisions define which policy areas and decisions can be executed by the direct action of the executive. It is worth noting that the delegation of these powers to the executive changes over time. For example, the autonomous decree was only authorised by the Brazilian Constitution in 2001. This was a compensatory measure for the restriction of the presidential power to reissue provisional measures, which were widely used for administrative decisions. Decisions that create budgetary expenditures or create or abolish public agencies cannot be issued by autonomous decrees in Brazil; they require a law.

Second, constitutions vary with respect to the degree of unilateral power that the administrative decision grants to the executive. While in some countries presidents may issue these decrees on their own, in other countries the signature of other cabinet members, such as the minister in charge of the corresponding public policy area or the Chief of Staff, is required. Although this ministerial endorsement can be a merely ceremonial act in cabinets closely aligned with the president, it can also constrain presidential discretion when there are policy divergences and/or partisan conflicts within the cabinet.

The third aspect is the horizontal control of administrative decrees or, in other words, who can stop or annul these presidential decisions. How does controlling the legality of a presidential decree or regulatory power work? Who controls whom? The answer to this question is complex and varied, as several institutions are involved in the process in each country. Control bodies and procedures vary, not only in their names but also in their hierarchies. The formal design of this arrangement is an important aspect of the presidential calculus about the risks of having one's unilateral actions reversed. The executive's power to issue decrees is not unlimited and is subject to control by different political institutions. The literature has supported the idea that legal-administrative and political controls have a role in protecting the democratic process (Trejo, 2015). In this context, constitutional review bodies become relevant as controllers of the procedural rules established by the constitution. And this role applies not only to the availability of such review powers but also to the opportunities on which those powers can be exercised (Trejo, 2015).

In Table 5.1, we compare the constitutional basis of the powers to issue administrative decrees, the degree of presidents' discretion, and who controls such decisions across the six countries in our sample.

It is noteworthy that different institutions may carry the horizontal accountability in each country. In Argentina, it is the Auditor General of the Nation; in Brazil, the Congress and the Supreme Federal Tribunal; in Chile, the Constitutional Court; in Colombia, the Council of State; in Paraguay, the Supreme Court of Justice, and in Peru, the Constitutional Court. In addition, the process of annulling a decree issued by the president is different in each country. For example, in Argentina, autonomous

Table 5.1 Institutional regulation of president's administrative powers by country

<i>Country</i>	<i>Decree type</i>	<i>Regulation</i>	<i>Degree of unilateralism</i>	<i>Control mechanism</i>
Argentina	<i>Decreto autónomo</i>	Constitutional (Art. 99 p.1)	Unilateral Presidential decision	Auditor General of the Nation (<i>Auditoria General de la Nación</i>) (Constitution, Art. 85) Congress (<i>Congreso</i>) (Constitution, Art. 59)
	<i>Decreto Reglamentario o ejecutivo</i>	Constitutional (Art. 99 p.2)	Presidential decision endorsed by the ministerial council and the chief of staff	Auditor General of the Nation (<i>Auditoria General de la Nación</i>) (Constitution, Art. 85) Congress (<i>Congreso</i>) (Constitution, Art. 59)
Brazil	<i>Decreto Autônomo /Decreto regulamentar</i>	Constitutional (Art. 84)	Unilateral Presidential decision	Congress (<i>Congreso</i>) (Constitutional Art. 49 .p V) Supreme Court (<i>Supremo Tribunal Federal</i>) (Constitution, Art. 102)
Chile	<i>Decreto Supremo</i>	Constitutional (Art. 32. p 6; Art. 35.)	Presidential decision endorsed by a Ministry	Comptroller General of the Republic (<i>Contraloría General de la República</i>) (Constitutional Art. 99) Constitutional Court (<i>Tribunal Constitucional</i>) (Constitution, Art. 93. P 9)
	<i>Decreto Reglamentario (Reglamento)</i>	Constitutional (Art. 32. p 6; Art. 35.)	President and/or a Ministry control the decision	General Comptroller of the Republic (<i>Contraloría General de la República</i>) (Constitutional Art. 99) Constitutional Court (<i>Tribunal Constitucional</i>) (Constitution, Art. 93. P 9)

	<i>Decreto Exento</i>	Constitutional (Art. 32. p 6; Art. 35.)	President and/or a Ministry control the decision	Constitutional Court (<i>Tribunal Constitucional</i>) (Constitution, Art. 93. P 9)
Colombia	<i>Decreto Reglamentario</i>	Constitutional (Art. 189 p.11)	Unilateral Presidential decision	Council of State (<i>Consejo de Estado</i>) (Constitution, Art. 23, p. 2). Congress (<i>Congreso</i>) (Constitution, Art. 178)
Paraguay	<i>Decreto</i>	Constitutional (Art. 238 p. 5)	Presidential decision endorsed by a Ministry	Supreme Court (<i>Corte Suprema de Justicia</i>)
Peru	<i>Decreto Supremo</i>	Constitutional (Art. 118. p. 8)	Presidential decision supported by the ministerial council	Constitutional Court

Sources: Inácio and Neves, 2018; National Constitutions.

decrees can only be modified, amended, or repealed by other decrees of the same or superior legal kind (Vivacqua, 2013, p. 277). A different procedure occurs in Colombia, though, where regulatory decrees must be attacked using a simple nullity action (Urrego Ortiz, 2005, p. 129).

The institution in charge of controlling the issuing of presidential decrees matters, and so does the mechanism by which the control is triggered. In Chile, different institutions can review the legality of decrees depending on a decree's topic. On the one hand, the Comptroller General of the Republic¹ and the Constitutional Court² control the lawfulness of the supreme and regulatory decrees. The Comptroller General of the Republic makes the standard control. The court can only hear the matter at the request of any of the two congressional chambers within 30 days of the publication or notification of the contested text. In case of defects that exceed the autonomous regulatory power of the President of the Republic, a quarter of the members of the congress in office may also file such a petition. On the other hand, exempt decrees (*decretos exentos*) are only controlled by the Constitutional Court. According to Article 10 of Law 10.336 governing the Office of the Comptroller General of the Republic, one or more Ministries or Services may be exempted from the process of taking note of supreme decrees or resolutions that grant licenses, holidays, and paid leave or that refer to other matters that it does not consider essential. In the case of supreme decrees, the exemption may only relate to decrees signed "by order of the President of the Republic." This exemption may be granted for and revoked by the Comptroller General, ex officio or at the request of the President of the Republic.³

A concrete example occurred with Supreme Decree N°48 of 2007, which dealt with "National Norms on Fertility Regulation" during the first government of Michelle Bachelet, whose controversial decrees were made about the distribution of the morning after pill. At that time, 36 sitting deputies, representing more than a quarter of the Honourable Chamber of Deputies, filed and questioned the constitutionality of these decrees, totally or partially, presenting the case before the Constitutional Court, which declared them unconstitutional. This was a remarkable demonstration that the Constitutional Court has complete competence to control the form and substance of decrees issued by the president at the request of congress (Alvear Téllez & Cisterna Rojas, 2008; Bordalí Salamanca & Zúñiga Añazco, 2009; Marshall Barberán, 2008; Nogueira Alcalá, 2008).

The horizontal control of administrative decree power, either parliamentary or judicial, reinforces the point that this delegation is conditional, as it is in the more studied cases of legislative decrees. The horizontal control of presidential decrees has administrative and political implications.

The Presidential Agenda and the Varying Targets of Administrative Decrees

Presidents' policy agendas vary in terms of their targets, but also in relation to the executive tools that a given president considers most strategically

suited to implementing said targets. While some policy changes depend on the approval of legislative or constitutional decisions, others can be implemented within the existing legal apparatus and through administrative decisions. Since both the priorities of presidents and the malleability of policies for unilateral acts vary, we expect important variations in the content of administrative decrees across presidential mandates and policy areas. Additionally, presidential unilateralism is more intense during the first year in government because presidents often resort to unilateral administrative measures as a means of revoking decisions made by previous administrations and of aligning executive branch agencies with their own presidential agendas.

Importantly, the incentives for presidents to implement their agendas through unilateral measures also vary according to the type of government – that is, whether it is a one-party or multi-party government – and the degree of cohesion vs. fragmentation within the government. Inácio and Neves (2018) have shown that presidents leading multi-party cabinets issue more decrees when the coalition is less fragmented. Conversely, presidents resort less to administrative unilateralism when there are many parties – in other words, when presidents depend more on the support of their allies' legislative seats. As mentioned earlier, presidents can pursue their agendas through unilateral decisions that can be either legislative or administrative. Given that the legislative decree power has greater potential to change the status quo of policies than administrative decrees, variations in presidents' legislative powers matter. Therefore, it is important to consider whether presidents with fewer legislative powers make greater use of administrative decrees and, if so, for which types of decisions and areas of public policy.

The period from 1990 up to 2017 encompasses important variations in political-institutional environments, economic regimes, and the structures of political and party conflicts. Several studies have drawn attention to not only partisan but ideological alternation in the presidency in the Latin American region. Take, for example, the rise of right or centre-right presidential parties in the 1990s and left-wing parties in the 2000s. These changes triggered important policy shifts led by presidents. Pro-market or neo-liberal reforms dominated the government agenda in several countries in the region during the 1980s and 1990s (Llanos, 2001; Weyland, 2004). Thereafter, increasingly proliferating left-wing governments pushed state interventionism as well as redistributive policies (K. M. Roberts & Levitsky, 2011). A comparison of the policy positions of the presidents throughout the re-democratisation process broadly reiterates these oscillations (Arnold, Doyle, & Wiesehomeier, 2017). However, how presidents pursue their policy agendas varies even among ideologically close presidents (Murillo & Martínez-Gallardo, 2007). While privatisation declined with left-wing governments coming to power in Bolivia and Uruguay, something of the opposite was observed in Chile and Brazil under Ricardo Lagos and Rouseff, respectively. Both of these presidents issued a large volume of

decrees aimed at outsourcing to the private sector, especially in their first terms in office (Polga-Hecimovich, 2016).

Presidents' policy agendas are also sensitive to political moods and oscillate throughout the presidential term. Changes in legislators' preferences (Arnold, Doyle, & Wiesehomeier, 2017) and exogenous shocks (Carlin, Love, & Martínez-Gallardo, 2015a; 2015b) may provoke policy shifts and calibrations of a president's policy agenda. For instance, such changes could impel presidents to use more administrative decrees to overcome unexpected news or challenges during their mandates.

Data and Methods

To get at our research questions, we use a large dataset comprised of the 251,958 administrative decrees issued by the 36 presidents who ruled in Argentina, Brazil, Chile, Colombia, and Peru between 1990 and 2017. Inacio and Neves (2018) created this dataset via web scraping routines, taking advantage of online repositories when available. Due to limitations on available information, the dataset only includes data for two Colombian presidents, those serving between 2002 and 2017.

Table 5.2 shows the number of decrees broken down by country. Chile clearly stands out, accounting for almost half of the total number of decrees. Presidents in Colombia, on the other hand, had the lowest frequency of decrees issued in the period studied, accounting for less than 4% of the dataset.

Zooming in to look within countries, Table 5.3 shows the total number of decrees issued by each president. In Argentina and Brazil, presidents Cristina Fernández de Kirchner and Fernando Henrique Cardoso, each of whom stayed in office for two terms, issued more than 10,000 administrative decrees each. By contrast, Peruvian presidents in these years issued an average of about 3,000 decrees.

When it comes to the number of decrees issued per year, the picture is much more stable. 1990 saw the fewest decrees issued (2.33% of the total), while 2010 saw the highest number (at 5.26% of the total). This is shown in Table 5.4.

Table 5.2 Total presidential decrees issued by country

<i>Country</i>	<i>Total</i>	<i>Per cent of total decrees</i>
Argentina	51,991	20.63%
Brazil	24,947	9.90%
Chile	123,002	48.82%
Colombia	9,457	3.75%
Paraguay	22,840	9.07%
Peru	19,721	7.83%
Total	251,958	100.00%

Table 5.3 Residential decrees issued by each president

<i>President</i>	<i>Total</i>	<i>Per cent of total decrees</i>
Argentina		
Menem	17,943	7.12%
De La Rúa	1,517	0.60%
Duhalde	2,233	0.89%
Kirchner	9,137	3.63%
C Kirchner	18,783	7.45%
Macri	2,378	0.94%
Brazil		
Collor	3,320	1.32%
Itamar	2,106	0.84%
Cardoso	10,170	4.04%
Lula	6,058	2.40%
Rousseff	2,470	0.98%
Temer	823	0.33%
Chile		
Aylwin	8,404	3.34%
Frei	22,575	8.96%
Lagos	33,928	13.47%
Bachelet	34,184	13.57%
Piñera	23,911	9.49%
Colombia		
Uribe	2,137	0.85%
Santos	7,320	2.91%
Paraguay		
Rodriguez	10	0.00%
Wasmony	5,080	2.02%
Cubas	4,246	1.69%
Gonzalez	772	0.31%
Duarte	15	0.01%
Lugo	3,875	1.54%
Franco	1,243	0.49%
Cartes	7,599	3.02%
Peru		
Fujimori	4,792	1.90%
Paniagua	499	0.20%
Toledo	4,090	1.62%
García	4,220	1.67%
Humala	4,175	1.66%
Kuczynski	1,945	0.77%
Total	251,958	100.00%

These tables are a useful starting point for investigating our data, but considering that we aim to understand how presidents in different countries make use of decrees, numbers alone tell only one part of the story. Looking at the raw numbers, it appears that the use of presidential decrees in Chile is generally part of the presidential strategy, while in Colombia it

Table 5.4 Total presidential decrees issues by year

<i>Year</i>	<i>Total</i>	<i>Per cent of total decrees</i>
1990	5,873	2.33%
1991	5,989	2.38%
1992	6,031	2.39%
1993	7,970	3.16%
1994	6,583	2.61%
1995	6,354	2.52%
1996	6,208	2.46%
1997	10,046	3.99%
1998	12,610	5.00%
1999	9,471	3.76%
2000	8,995	3.57%
2001	8,709	3.46%
2002	10,598	4.21%
2003	8,980	3.56%
2004	7,620	3.02%
2005	7,152	2.84%
2006	7,699	3.06%
2007	7,404	2.94%
2008	8,598	3.41%
2009	10,244	4.07%
2010	13,249	5.26%
2011	12,603	5.00%
2012	11,642	4.62%
2013	11,188	4.44%
2014	10,594	4.20%
2015	11,295	4.48%
2016	9,065	3.60%
2017	9,188	3.65%
Total	251,958	100.00%

may not have the same strategic value, although we need to consider the fact that our data on Colombia is related to a shorter period of time. To confirm whether this is true, we need to differentiate decrees by their content – to read and categorise each presidential decree and compare their use in different countries and across time. We used computational text analysis and machine learning techniques to do just that.

We rely on the decrees' abstracts⁴ as a summary of their content. We also processed information related to each presidential decree, such as the year of issue, the presidential mandate, the president's legislative powers,⁵ and other information related to the documents. We use a topic modelling algorithm to organise and discover the topics of all presidential decrees in our dataset on the basis of word occurrence and co-occurrence. Considering that this is an unsupervised machine learning model, the algorithm extracts or discovers topics without the researchers' direct intervention. At the outset, the researchers need to define the number of topics to be estimated (M. E. Roberts, Stewart, & Airoidi, 2016).

To be more specific, we use structural topic modelling (STM), a method derived from Latent Dirichlet Allocation – LDA (Blei, Ng, & Jordan, 2003), the main goal of which is to estimate the latent topics of a corpus of documents and the topic composition of each individual document (i.e., each presidential administrative decree). The estimation of these topics is based on semantically interpretable word occurrence and co-occurrence across all documents. The algorithm then estimates a mixture of topic proportions for each document – in other words, what percentage of each document is associated with each of the estimated topics. One advantage of using STM is that we can use document metadata to inform topic definition and the estimation of topic proportions (M. E. Roberts et al., 2014).

Our preferred model assumes 25 topics and uses covariates only for topic prevalence.⁶ The covariates we use are year, country, government type (one-party or multi-party cabinet), year within a given presidential mandate (analysed as first year or non-first year), and a measure of the legislative power of the president in question. We tested models with a range of numbers of topics, starting from an initial manual categorisation that considered six topics and then increasing the number to disambiguate topics that seemed to be covering more than one theme. We rapidly increased the number of topics to a band between 20 and 28, finally settling on 25 after careful consideration of samples of documents from all topics and examining the documents most highly associated with each topic.

We manually labelled the topics after careful consideration of words associated with each topic and the administrative decrees with a high prevalence of each topic. Using FREX, a measurement that considers both word frequency and exclusivity for each topic (Roberts, Stewart, & Tingley, 2019), we tested different topic labels iteratively by consulting with experts from different countries. Figure 5.1 summarises this process and shows the five words most closely associated with each topic.

The set of topics comprises administrative decisions in different policy areas, types of decisions, and audiences affected by them. It is interesting to note that decrees enacted to implement laws, which reflect the legislative agenda approved by congress, do not come up among the most prevalent topics. This points to the large volume of other types of administrative decisions under the discretion of the president.

Figure 5.2 shows the prevalence for each topic while considering the whole corpus of presidential decrees. By far, topic 3 stands out with the highest prevalence. This mainly shows that a substantial portion of the dataset is related to “*exentos*” – decrees from Chile that are not subject to any revision; the abstract of each of these decrees consists of only a single sentence, stating that the decree is in this category. Among the most prevalent topics that these types of decrees include are the concession of benefits to individuals or groups of civil servants, such as the military, and decisions related to the state’s economic and regulatory functions, such as concessions of public services.⁷ Beyond Chile, it is interesting to note the prevalence of presidential decisions directed to individuals, civil servants or

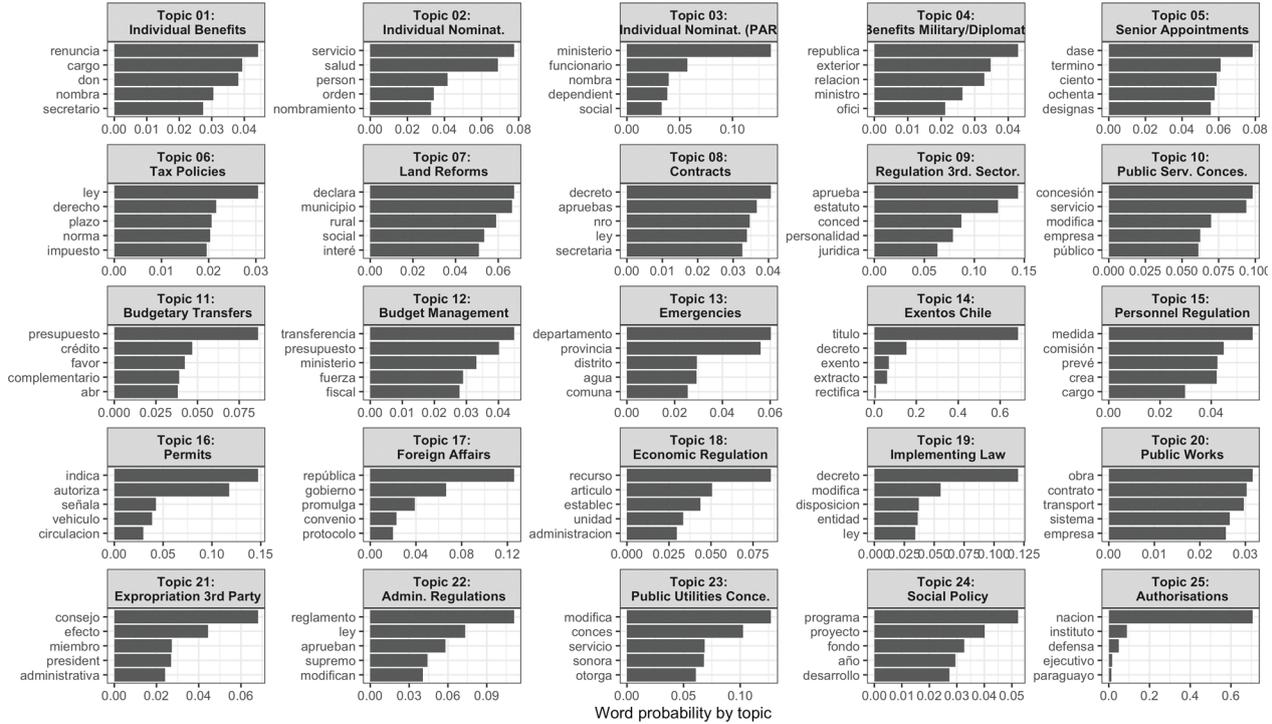


Figure 5.1 Highest word probability by topic.

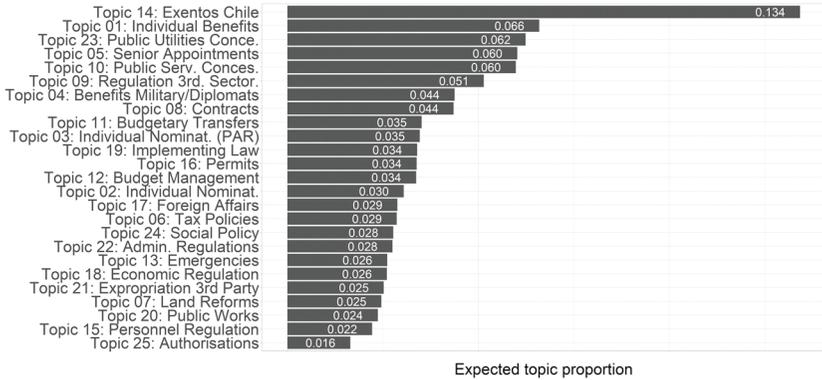


Figure 5.2 Overall topic prevalence across documents for the whole corpus.

not, suggesting a great personalisation of presidential decisions in certain countries. It is noteworthy that the regulation of administrative personnel (topic 15), which is more universalistic and less personalised, is among the topics with the lowest prevalence in our sample.

Is this distribution of topic prevalence similar across countries and governments? In the next section, we explore the data to demonstrate that the variations in topic prevalence reflect not only institutional constraints on presidents’ administrative decree power in each country, but also on their policy agendas.

Results

Taking the averages of all topic prevalences for each document by country, we create what can be understood as the “average presidential decree” by country, shown in Figure 5.3. The differences in topic proportion for each document show that the use of this instrument varies considerably across countries.

Analytically, we can combine some of these topics in order to have a clearer picture of decrees’ use in different countries. There are, at least, three clear themes that a subset of the topics can be bundled into: individual benefits (topics 1 through 5), group benefits (topics 6 through 10), and budgetary decisions (topics 11 and 12). Below, we consider each of these bundles of topics, starting with those related to individual benefits (topics 1 through 5).

It is not trivial for presidents to use administrative power to target individuals directly in some Latin American countries. Political appointments to executive posts and the granting of individual benefits, such as pensions and financial aid, can nurture presidential patronage. Notably, the prevalence of administrative decrees concerning personal decisions is a distinguishing trait of the presidential use of this power in Argentina and

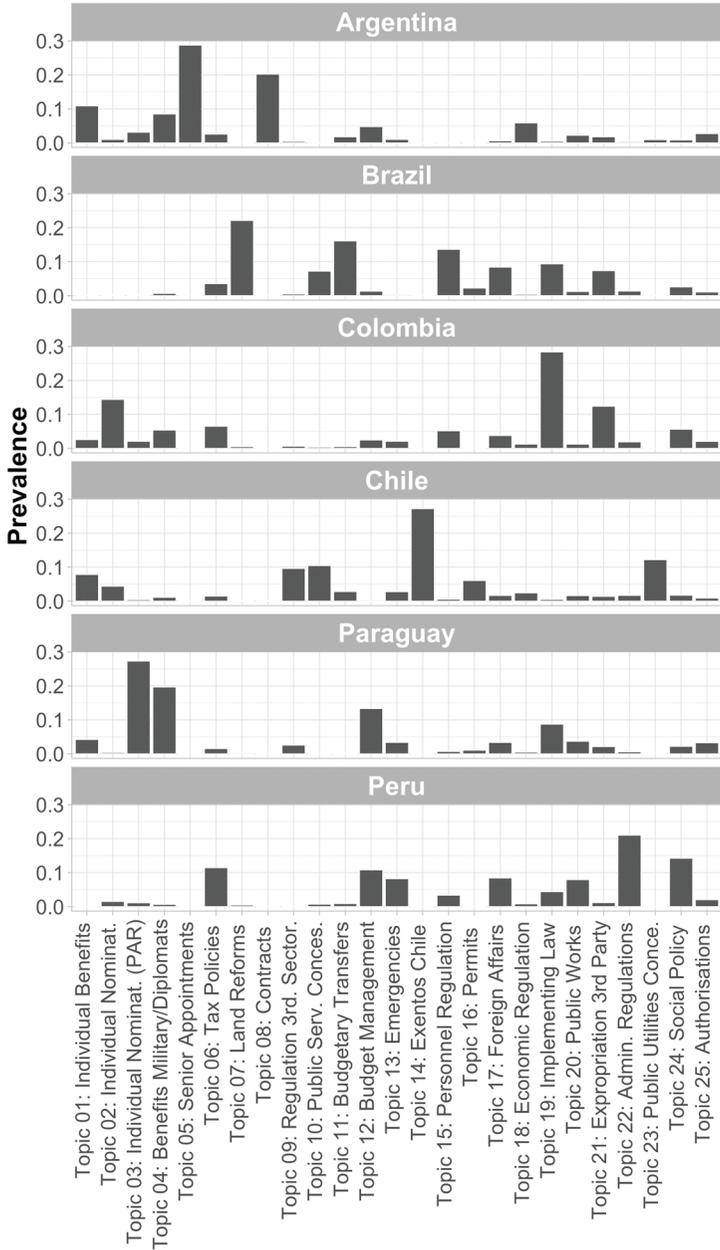


Figure 5.3 Average topic prevalence by topic and country.

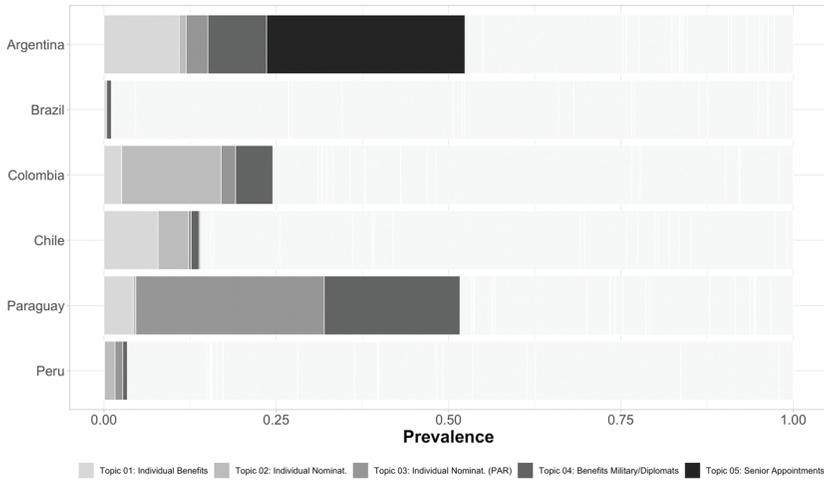


Figure 5.4 Average topic prevalence by topics related to “individual decisions” and country.

Paraguay. Additionally, the high proportion of individual decisions related to military personnel is paramount in three countries: Argentina, Paraguay and Colombia. Appointment decrees for Federal Executive positions in Brazil are issued separately, mostly through ministerial ordinances, which are not included in this database, and, as such, a residual prevalence of this topic is observed in the case of Brazil. The Brazilian president issues separate executive appointment decrees and hence we see a residual prevalence of this cluster of decrees in this country. Figure 5.4 highlights the average topic prevalence for topics in the “individual benefits category.”

The second set of topics we have bundled (topics 6 through 10) refers to distributive and regulatory decisions that can potentially affect different groups and areas of public policy. Here, we grouped administrative decrees on taxes, activities of non-governmental organisations, concessions of public services, public contracts, and land reforms. Figure 5.5 depicts the average topic prevalence of these topics. A significant proportion of the decrees on this type of decision is observed in Argentina (taxes and public contracts), Brazil (land reform and public service concessions), and Chile (regulation of the third sector and public concessions).

The power of the purse is seen as a crucial advantage of Latin American presidents that allows them to negotiate with parties and legislators, and also with subnational governments and interest groups (Raile, Pereira, & Power, 2011; Meireles, 2019). Budget laws regulate presidents’ discretion in this matter, yet presidents can take some unilateral decisions by administrative decree. They decide how and when to execute public expenditures and to transfer resources between ministerial portfolios or government programs. The prevalence of budget transfers is interesting in the case of

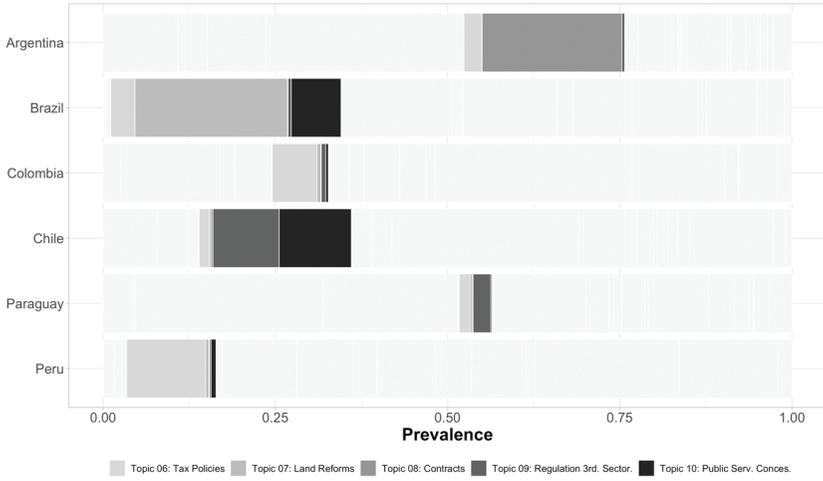


Figure 5.5 Average topic prevalence by topics related to “groups decisions” and country.

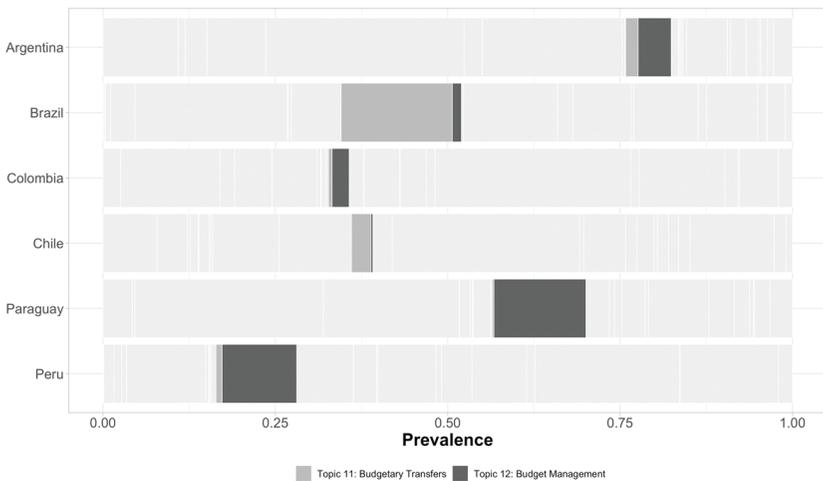


Figure 5.6 Average topic prevalence by topics related to “budgetary decisions” and country.

Brazil.⁸ This mechanism allows the Brazilian president to use budget control as a tool for managing the cabinet, which includes the decision on the size of the budget share that cabinet members will get as part of coalition politics. In the other countries in our corpus, budget management seems to be a way that might presidents have to take direct action in this policy area, as shown in Figure 5.6.

Does topic prevalence reflect the constitutional limits on presidential power to issue administrative decrees? Our findings show that, although a country’s legal definitions for the use of presidential administrative decrees determine the overall use and constraints of what can be done within countries, the content of administrative decrees not only varies across countries but also varies considerably across presidencies within countries.

In Figure 5.7, we can easily observe that different policy priorities have directed presidential attention in our sample of countries. For example, in Argentina, from Menem until Duhalde’s government, the largest proportion of decrees issued was on public contracts (topic 8). After this period, during Cristina Kirchner’s administration especially, there is an increase in individual decrees for political appointments (topic 5). In Brazil, the expropriation of land for agrarian reform was a prevalent decision in presidential decrees in several governments, most notably during Cardoso’s administration (1995–1999; 1999–2003). During the subsequent government of the left-wing Workers Party (PT) (under Lula [2003–2007; 2007–2011] and then Rousseff [2011–2016]), presidential attention turned to anti-cyclical policies, mainly between 2008 and 2014, with different government priorities. This led to a greater proportion of decrees for the execution of

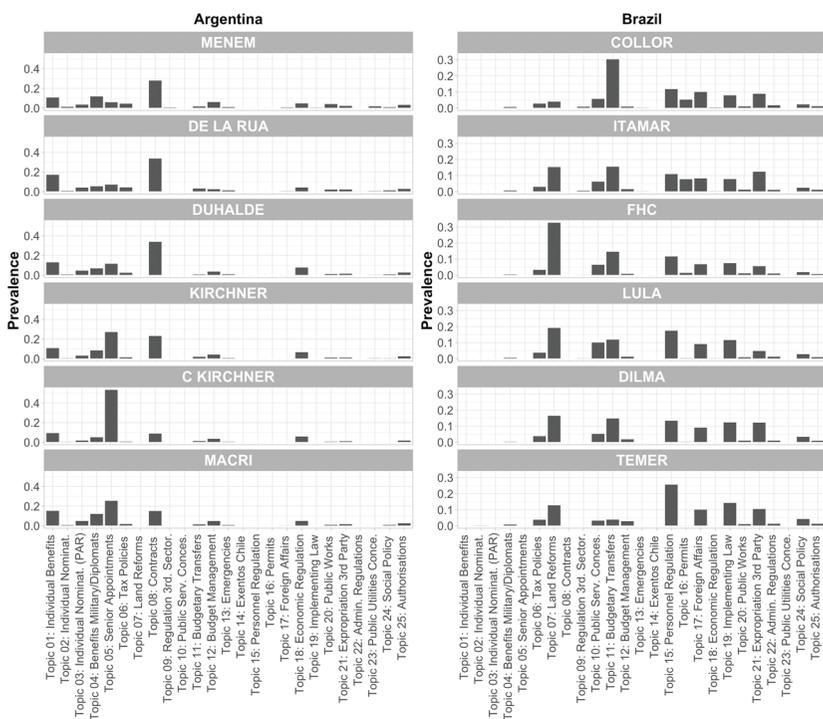


Figure 5.7a Average topic prevalence by topics and country.

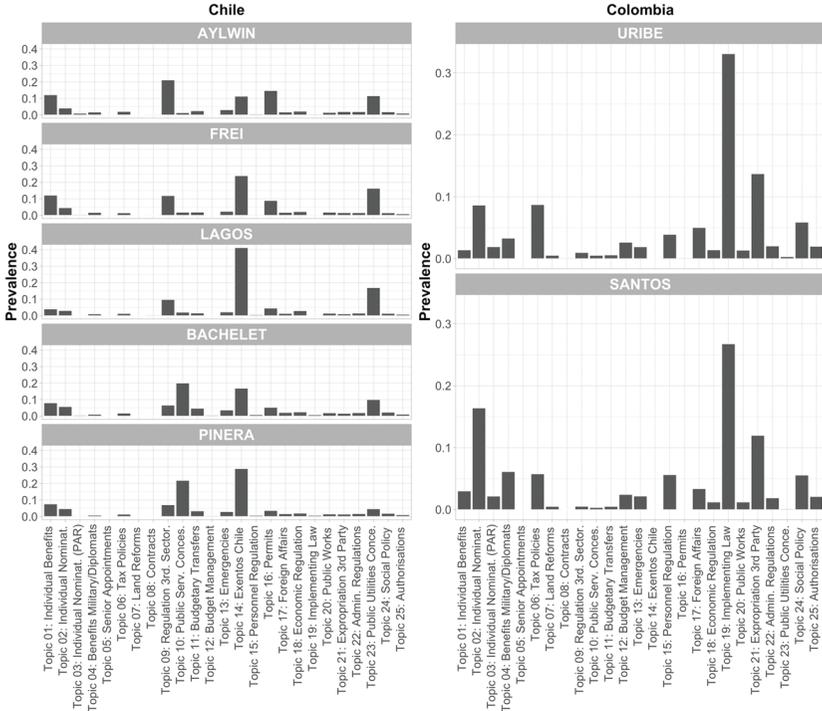


Figure 5.7b Average topic prevalence by topics and country.

public works and, especially in Rousseff’s government, the expropriation of land for infrastructure investments (hydroelectric plants, roads). Among the Chilean presidents, there are considerable oscillations in presidential attention and the decisions executed through administrative decrees. In the case of Colombia, the content of the decrees of the two analysed presidents, Uribe and Santos, is quite similar. However, the greater prevalence of individual decrees under Santos is noteworthy. In the Paraguayan and Peruvian cases, the prevailing topics change over the period, with a lower proportion of individual decrees and a higher proportion of budget decrees among the most recent presidents, but with variations between them.

Striking and discrete changes in topic prevalence are clearer when we look at our topic clusters, as we did previously. Figure 5.8 details the variations within countries related to the cluster of individual decisions. Although these decisions concentrate most of the issue of administrative decrees in Argentina and Paraguay, some governments have made greater use of these decisions. The large proportion of these types of decisions in Cristina Kirchner’s government contrasts with the previous and subsequent administrations. Similarly, the reduction of these decrees in Duarte’s

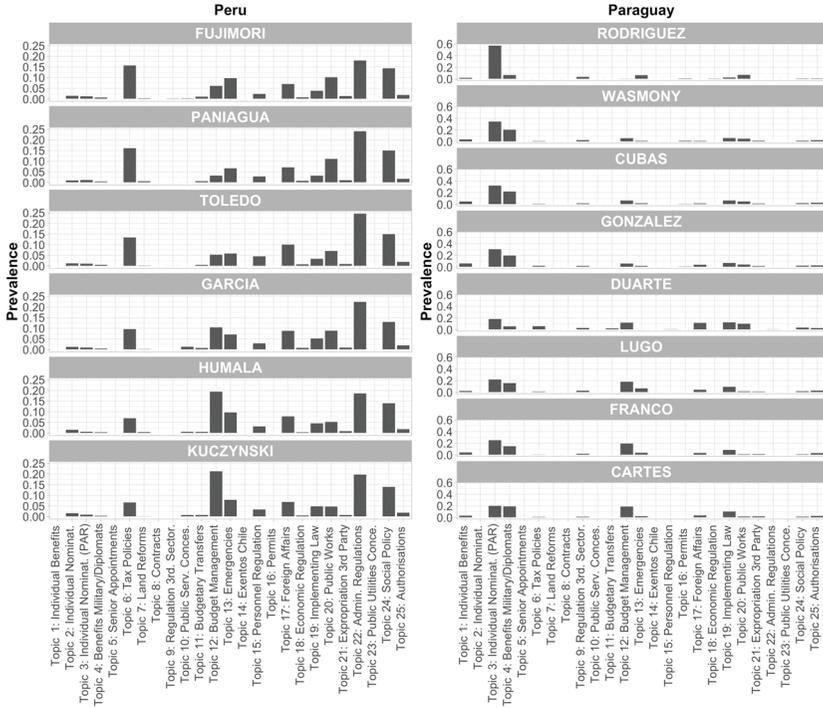


Figure 5.7c Average topic prevalence by topics and country.

and Lugo’s governments in Paraguay is government specific because we see that these individual decrees increased in subsequent administrations.

In the case of the second cluster, depicted in Figure 5.9, it is possible to see that presidents target different sectors and groups through administrative decrees. The focus on the regulation of the third sector by the first presidents and the prevalence of public service concessions among the latest Chilean presidents is noteworthy. Even though it is beyond the objectives of this paper to verify whether these oscillations are associated with specific cycles, such as the renewal of concessions at a certain point in our time series, it is very clear from our data that each president’s bundle of administrative decrees varies significantly.

Finally, in relation to the cluster of budget decrees, shown in Figure 5.10, there are discrete variations in the prevalence of this matter among the presidents of each country. In Paraguay and Peru, this topic is more associated with the most recent governments. By contrast, this type of decision, especially budget transfers between ministries, has oscillated throughout the Brazilian governments, with an accentuated drop in Temer’s administration.

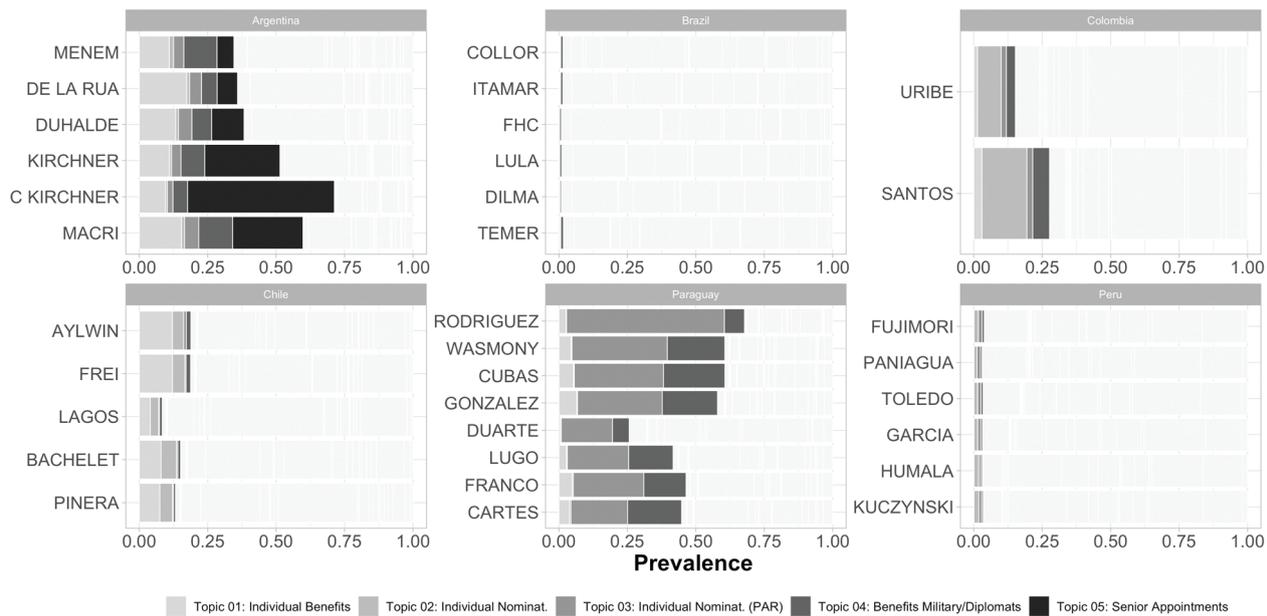


Figure 5.8 Average topic prevalence by topics related to “individual decisions” and country.

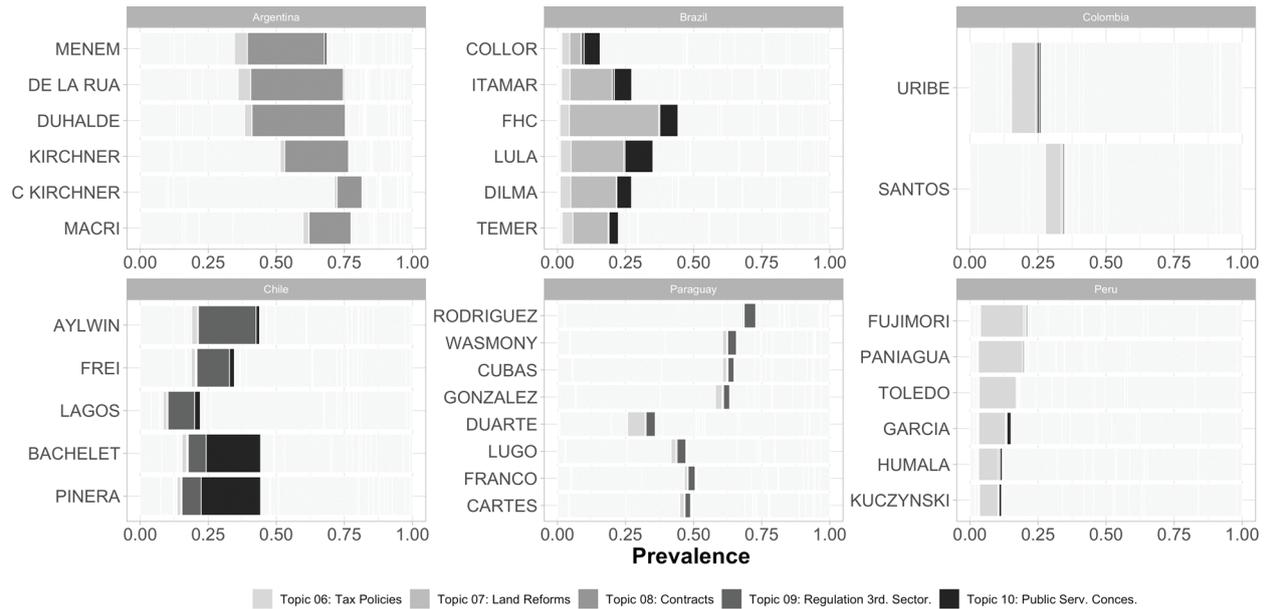


Figure 5.9 Average topic prevalence by topics related to “groups decisions” and country.

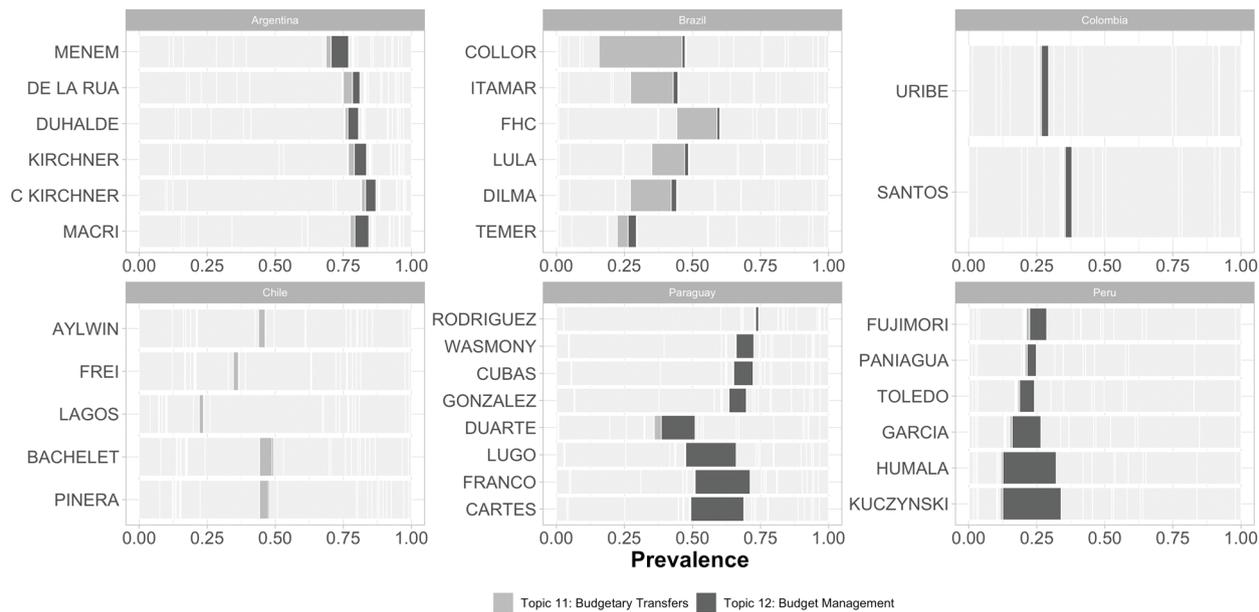


Figure 5.10 Average topic prevalence by topics related to “budgetary decisions” and country.

COVID-19 and Unilateral Presidential Actions

As we have shown earlier, there is great variation in how presidents use administrative decrees, even within the six-country focus and the 27-year time period under consideration. We now turn our attention to the use of these decrees in Brazil during the COVID-19 pandemic to show how decrees allow the president to manage specific policy and political priorities and to better understand where the focus of the presidential attention is when governing. The COVID-19 example is interesting for two reasons. First, this pandemic was an exceptional context that required fast and exceptional actions typically using emergency decree powers. Second, the health and sanitary emergency required actions primarily from the executive branch, thus putting pressure on this branch to exercise leadership in response to the crisis.

Meanwhile, the case of Jair Bolsonaro in Brazil is particularly interesting because *active inaction* was the central marker of this president's approach to the pandemic. Bolsonaro defended herd immunity and rejected policies of social distancing as well as restrictions on economic activity from the beginning. His administration during the pandemic was characterised by a lack of decision-making, by delays in the issuance of related decrees, and by paralysis in critical policy agencies; in parallel, his administration actively blocked or sabotaged emergency policies enacted by Congress and state governments to fill in the vacuum left by this presidential (in)action. Our data shows how Bolsonaro delayed or used only sparingly his decree powers to coordinate national efforts to implement sanitary measures, to expand the capacity of the public health system, or to create economic aid and relief programs.

Politically isolated and controlled by congress and Brazil's supreme court (Supremo Tribunal Federal, or STF) in his first year in office, Bolsonaro initially took the pandemic as an opportunity to test the limits of his unilateral powers. He bet on institutional confrontation to gain more room to manoeuvre and first tried to reshape inter-branch and federative relations in his favour. His moves merged inaction in relation to the COVID-19 pandemic with attempts for power-grabbing to advance his own personal agendas.

Bolsonaro asked the STF to extend the validity of "provisional measures," the type of executive decrees that have the force of law, claiming that the exceptional rules adopted by congress during the pandemic violated the constitutional requirement to deliberate on the provisional measures.⁹ The STF denied this request and reinforced congress's power to adopt extraordinary rules to react promptly to the executive's decisions. Bolsonaro also alleged legal uncertainty in making emergency decisions and called on the STF to guarantee that the prevailing Law of Fiscal Responsibility would not be applied to emergency measures.¹⁰ The STF reiterated that this law already rules on this exceptionality, but it did not compel the president into any particular action. For its part, the president put pressure

on congress to approve a constitutional amendment number 106 that established special rules (“war budget”) for public spending during the state of calamity. Trapped by horizontal oversight, Bolsonaro escalated his polarising rhetoric and blamed congress and the judiciary for the paralysis of his administration.

Congress and the STF reacted promptly to preserve checks and balances mechanisms and to avoid the costs of the president’s strategy of not making decisions while accusing them of tying his hands. Congress and the STF prevented any interruption of their activities through remote voting and live-streamed floor sessions. Congress made all the main decisions related to the pandemic, which pressured the president to issue the decrees that regulated these initiatives. There was also a parallel increase in provisional measures because the executive is obliged by the constitution to initiate certain budgetary decisions. Below, we comment first on the provisional measures and then on the administrative decrees approved during the pandemic.

During the state of emergency in Brazil, which lasted from March 2020 to December 2020, 137 laws were enacted. The executive was the author of 62% of those laws (85) due to the large number of provisional measures (44) and budget laws (39) that are the exclusive initiative of the executive, in addition to only two ordinary laws. Legislators proposed 44 ordinary laws and took on the burden of proposing and passing costly laws that rely on supermajorities: three constitutional amendments (war budget) and five complementary laws (such as the program to guarantee resources for federative units to tackle the COVID-19 outbreak), as well as the creation of emergency aid for poor and unemployed people. In multiple instances, the legislature exercised its veto power over the unilateral legislative measures of the executive: of the 108 provisional measures issued by the president during 2020, 52 lost effectiveness because congress members deliberately failed to put these measures to a vote on time, an unprecedented behaviour.

Bolsonaro used unilateral administrative actions selectively during the pandemic. Despite being in the presidency, he refused to lead the state response, which plays into why the number of pandemic-related decrees was so low. In 2020, the first year of the crisis, 10% of administrative decrees were pandemic-related, decreasing to 4.5% in 2021 and 2.5% in 2022.¹¹ Figure 5.11 shows the distribution of COVID-19 decrees by type (i.e., whether they are decrees that implement laws or autonomous decrees). This data shows that, as far as unilateral administrative decisions are concerned, the president’s attention was not on the pandemic. In 2020, the most critical year of the pandemic, decrees implementing laws correspond to almost half of the total of decrees issued, indicating that the executive’s moves on the pandemic were largely pushed by congress.

A critical vector of the president’s inaction was the paralysis of executive agencies. Initially, Bolsonaro delegated powers to the ministry of health to handle the emergency while he publicly denied the severity of the epidemic and antagonised social distancing measures. Strongly diverging from the ministry’s management of the pandemic, between April and June 2020

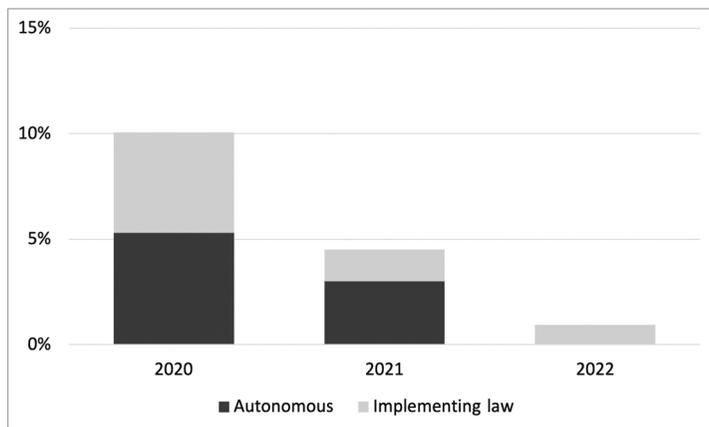


Figure 5.11 Percentage of COVID-19-related decrees by year and type – Brazil, 2020–2022.

Note: Own elaboration; data gathered until July 18, 2022.

Bolsonaro fired two ministers whose recommendations were aligned with the WHO and the larger scientific community. Ultimately, Bolsonaro politicised the ministry by appointing a military loyalist as health minister, who acted in accordance with the president’s political positions and remained in office for a year during the most critical period of the pandemic.

Meanwhile, Bolsonaro was very active in blocking governors and mayors who implemented restriction measures. Pressed to take urgent measures to prevent the collapse of health services and without national guidelines on how to do this, some subnational governments adopted stay-at-home orders and suspended economic activities. Bolsonaro reacted to this policy divergence by trying to grab power on federative issues. He issued a provisional measure subordinating decisions on social distancing and economic restrictions to federal agency approval. This decision was challenged and then partially overturned by the STF, as members of the federation are constitutionally empowered to make these decisions concurrently with the federal government. In addition, a number of decrees defined the essential activities that should not be affected by restriction measures, in open contradiction to and delegitimising the subnational governments’ actions. Such measures were widely used by the president to blame subnational governments for closing down economic activities.

This brief discussion of the issuing of administrative decrees in Brazil during the COVID-19 pandemic reinforces our argument about the multiple targets that presidents have when they resort to unilateral actions. In Bolsonaro’s case, the president’s unilateral actions reflect not only his refusal to lead a response to the pandemic, but also his moves to block the actions of those who did wish to mount a reaction.

Final Remarks

This chapter analysed, in an exploratory way, the issuance of unilateral actions by a subset of Latin American presidents executed through administrative decrees. We argue that administrative decisions are valuable to presidents, and that they amplify the executive's powers vis-à-vis the other government branches and political institutions. Nevertheless, little is known about how presidents use this multi-targeting tool and enhance presidential discretion and presidential unilateralism beyond legislative decisions. To move towards addressing this gap, we discussed the regulation of presidential discretion in administrative matters, indicating the potential of issuing law-implementing and autonomous decrees to pursue a president's policy agenda.

Administrative decrees represent a massive source of presidential decisions that remains largely unexplored. Current techniques for the automated analysis of texts as data mitigated one of the barriers to the systematic study of these decisions and the production of more comprehensive theories on presidential powers and policymaking. In this chapter, we use this strategy to identify and compare the contents of hundreds of thousands of abstracts of presidential decrees issued by the presidents of six Latin American countries over the past 30 years.

The results show that these decrees vary both between and within countries, providing important evidence that presidents already vested with broad legislative powers also resort to administrative prerogatives to execute their policy agendas successfully. Furthermore, we have shown that the objectives pursued through the issuance of administrative decrees can also include strategies of retaliation or inaction by presidents in response to the moves of other political actors. The pandemic highlighted the simultaneous use of these decrees, and their potential for abuse, across the continent.

Notes

- 1 Article 99 of Constitution (reformed in 2005).
- 2 Article 93 numeral 16 of Constitution (reformed in 2005).
- 3 The details of the topics exempted from control have been supplemented by Resolution 6 (2019) and Resolution 7 (2019) issued by the Office of the Comptroller General of the Republic.
- 4 Brazilian decrees abstracts were translated to Spanish using automatic translation and revised by the researchers, so that all texts used in the analysis were in the same language.
- 5 This is a measure of presidents' legislative power by Negretto (2013), which is built on several variables that measure the agenda-setting and constitutional legislative powers vested in the president of each country. The normalised scores range from 1 to 100 and the average score is 61.8.
- 6 All models were tested and run using the R package *stm* (M. E. Roberts, Stewart, & Tingley, 2019).

- 7 Because for this research we were only able to grasp the information available in the abstracts of the decree, we are unable to provide further details on the content of the exentos in Chile. However, this first incursion into the topics allowed us to highlight their importance for future research.
- 8 Brazilian presidents may revise budget laws to allocate new revenues or request authorisation for extraordinary expenditures. The president must issue a decree opening additional budget credits, however, only after congress has approved it.
- 9 ADPF 663 03/24/2020. See <https://portal.stf.jus.br/processos/verImpressao.asp?imprimir=true&incidente=5881118>
- 10 ADI 6.357, 03/26/2020. See <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=754438956>
- 11 Decrees issued up to July 2022.

References

- Alvear Téllez, Julio, and Vanessa Cisterna, Rojas. 2008. “La Sentencia Del Tribunal Constitucional Sobre La ‘Píldora Del Día Después’: ¿liberalismo Posesivo o Respeto a La Leycnatural?” *Actualidad Jurídica* 18: 23–54.
- Amorim Neto, Octavio. 2006. “The Presidential Calculus: Executive Policy Making and Cabinet Formation in the Americas.” *Comparative Political Studies* 39 (4): 415–40. <https://doi.org/10.1177/0010414005282381>
- Arnold, Christian, David Doyle, and Nina Wiesehomeier. 2017. “Presidents, Policy Compromise, and Legislative Success.” *The Journal of Politics* 79 (2): 380–95. <https://doi.org/10.1086/688080>
- Belco, Michelle, and Brandon Rottinghaus. 2017. *The Dual Executive: Unilateral Orders in a Separated and Shared Power System*. Studies in the Modern Presidency. Stanford: Stanford University Press.
- Blei, David M, Andrew Y. Ng, and Michael I. Jordan. 2003. “Latent Dirichlet Allocation.” *Journal of Machine Learning Research* 3: 993–1022.
- Bonilla, Ana María, María del Mar Otero, and Natalia de Zubiría. 2016. “Los Decretos Autónomos, Una Posible Facultad Sui Generis Del Presidente de La República.” *Universitas Estudiantes* 14: 93–110.
- Bordalí Salamanca, Andrés, and Yanira Zúñiga Añazco. 2009. “Análisis Del Fallo Del Tribunal Constitucional Sobre La Píldora Del Día Después.” *Anuario de Derechos Humanos* 5: 173–82.
- Carlin, Ryan E., Gregory J. Love, and Cecilia Martínez-Gallardo. 2015a. “Security, Clarity of Responsibility, and Presidential Approval.” *Comparative Political Studies* 48 (4): 438–63.
- Carlin, Ryan, Gregory Love and Cecilia Martinez-Gallardo. (2015b). “Cushioning the Fall: Scandals, Economic Conditions, and Executive Approval.” *Political Behavior* 37: 109–30.
- Carreras, Miguel. 2012. “The Rise of Outsiders in Latin America, 1980–2010: An Institutional Perspective.” *Comparative Political Studies* 45 (12): 1451–82. <https://doi.org/10.1177/0010414012445753>
- Carey, John M., and Matthew Soberg Shugart, eds. 1998. *Executive Decree Authority*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9780511609305>
- Cohen, Jeffrey E. 2012. *The President’s Legislative Policy Agenda, 1789–2002*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9780511998515>

- Figueiredo, Argelina, and Fernando Limongi. 1999. "Executivo e legislativo na nova ordem constitucional". Editora FGV. <https://editora.fgv.br/produto/detalhe/2047/executivo-e-legislativo-na-nova-ordem-constitucional>
- Flores-Macías, Gustavo A., and Jessica Zarkin. 2021. "The Militarization of Law Enforcement: Evidence from Latin America." *Perspectives on Politics* 19 (2): 519–38. <https://doi.org/10.1017/S1537592719003906>
- Howell, William G. 2003. *Power without Persuasion: The Politics of Direct Presidential Action*. Princeton: Princeton University Press.
- Inácio, Magna Maria, Daniel Chasqueti, Yanina Welp, Milagros Campos, Ana Isabel López García, Luis L. Schenoni, Luciana Santana, Marta Mendes Da Rocha, and Aglaé Tumelero. 2021. "¿Tiempos de prueba o poniendo a prueba a los presidentes? COVID-19 desafiando liderazgos en América Latina." *IBEROAMERICANA. América Latina – España – Portugal* 21 (76): 203–39. <https://doi.org/10.18441/ibam.21.2021.76.203-239>
- Inácio, Magna Maria, and Jorge Neves. 2018. "The Presidency and the Politics of Unilateral Decisions in Comparative Perspective." Center for the Study of Democratic Institutions (CSDI) United States: Vanderbilt University.
- Inácio, Magna Maria, and Filipe Recch. 2020. "Unpacking the Unilateral Actions in Latin America Presidentialism: Administrative Decrees as Multi-Targeting Tools." Paper presented at 2020 APSA Annual Meeting, Virtual Meeting, September 9-13 2020.
- Lewis, David E. 2008. *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance*. Princeton: Princeton University Press.
- Limongi, Fernando, and Argelina Figueiredo. 1998. "Bases Institucionais Do Presidencialismo de Coalizão." *Lua Nova: Revista de Cultura e Política*, no. 44: 81–106. <https://doi.org/10.1590/S0102-64451998000200005>
- Llanos, Mariana. 2001. "Understanding Presidential Power in Argentina: A Study of the Policy of Privatisation in the 1990s." *Journal of Latin American Studies* 33 (1): 67–99.
- Marshall Barberán, Pablo. 2008. "Sentencia sobre inconstitucionalidad del decreto supremo n° 48 del ministerio de salud en la parte que autoriza la distribución de la píldora del día después en el sistema público de salud (tribunal constitucional)." *Revista de Derecho XXI* (1): 155–70.
- Meireles, Fernando. 2019. "A política distributiva da coalizão," February. <https://repositorio.ufmg.br/handle/1843/BUOS-BBHFZ4>
- Moe, Terry M., and William G. Howell. 1999. "Unilateral Action and Presidential Power: A Theory." *Presidential Studies Quarterly* 29 (4): 850–73. <https://doi.org/10.1111/1741-5705.00070>
- Mudde, Cas, and Cristóbal Rovira Kaltwasser. 2013. "Exclusionary vs Inclusionary Populism: Comparing Contemporary Europe and Latin America." *Government and Opposition* 48 (2): 147–74. <https://doi.org/10.1017/gov.2012.11>
- Murillo, Maria Victoria, and Cecilia Martínez-Gallardo. 2007. "Political Competition and Policy Adoption: Market Reforms in Latin American Public Utilities." *American Journal of Political Science* 51 (1): 120–39.
- Negretto, Gabriel Leonardo. 2013. *Making Constitutions: Presidents, Parties, and Institutional Choice in Latin America*. Illustrated edição. Cambridge; New York: Cambridge University Press.
- Nogueira Alcalá, Humberto. 2008. "Análisis de La Sentencia Del Tribunal Constitucional Chileno Sobre El Decreto Supremo Que Regula La Distribución

- de La Pildora Del Día Después (LEVONORGESTREL 0.75 MG).” *Estudios Constitucionales* 6 (1): 361–72.
- Polga-Hecimovich, John. 2016. “Bureaucratic Circumvention: Policy Delegation Strategies and Implementation Success in Low Capacity Bureaucracies, with Evidence from Latin America.” The University of Pittsburgh ETD, University of Pittsburgh. <http://d-scholarship.pitt.edu/26659/>
- Raile, Eric D., Carlos Pereira, and Timothy J. Power. 2011. “The Executive Toolbox: Building Legislative Support in a Multiparty Presidential Regime.” *Political Research Quarterly* 64 (2): 323–34.
- Roberts, Kenneth M., and Steven Levitsky. 2011. *The Resurgence of the Latin American Left*. Baltimore: Johns Hopkins University Press. <https://doi.org/10.1353/book.1866>
- Roberts, Margaret E., Brandon M. Stewart, and Edoardo M. Airoidi. 2016. “A Model of Text for Experimentation in the Social Science.” *Journal of the American Statistical Association* 515: 988–1003.
- Roberts, Margaret E, Brandon M Stewart, and Dustin Tingley. 2019. “STM: An R Package for Structural Topic Models.” *Journal of Statistical Software*, 91, 1–40.
- Roberts, Margaret E., Brandon M. Stewart, Dustin Tingley, Christopher Lucas, Leder-Luis Jetson, Shana Kushner, Bethany Albertson, and David G. Rand. 2014. “Structural Topic Models for Open-ended Survey Responses.” *American Journal of Political Science* 58 (4): 1064–82.
- Rudalevige, Andrew. 2002. *Managing the President’s Program: Presidential Leadership and Legislative Policy Formulation*. Princeton: Princeton University Press.
- Rudalevige, Andrew, and David. E. Lewis. 2005. “Parsing the Politicized Presidency: Centralization and Politicization as Presidential Strategies for Bureaucratic Control.” In Annual Meeting of the American Political Science Association, Washington, DC.
- Scharpf, Adam. 2020. “Dangerous Alliances: Populists and the Military.” German Institute of Global and Area Studies (GIGA). www.jstor.org/stable/resrep24814
- Shugart, Matthew Soberg, and John M. Carey. 1992. *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9781139173988>
- Trejo, Lisi. 2015. “¿Un Tribunal Constitucional Para La República Argentina? Reflexiones En Torno a La Dimensión Política Del Control de Constitucionalidad a Partir Del Modelo Chileno.” *Ecuador Debate* 96: 73–88.
- Urrego Ortiz, Franky. 2005. “Control de constitucionalidad de los decretos expedidos con fundamento en facultades otorgadas en actos legislativos De cómo se pretendía eludir su revisión de constitucionalidad por parte de la Corte Constitucional.” *Estudios Socio-Jurídicos* 7 (2): 124–146.
- Vivacqua, Luis Esteban. 2013. “Potestades Normativas Del Ejecutivo. La ‘Zona Gris’ Entre Los Decretos Autónomos y Las Facultades Del Congreso.” In *Estudios de Derecho Público*, by Enrique M. Alonso Regueira, 271–82. Buenos Aires: Universidad de Buenos Aires.
- Weyland, Professor Kurt. 2004. *The Politics of Market Reform in Fragile Democracies: Argentina, Brazil, Peru, and Venezuela*. Revised ed. edição. Princeton: Princeton University Press.
- Zúñiga Urbina, Francisco. 2001. “Controles de La Potestad Legal y Reglamentaria.” *Ius et Praxis* 7 (2): 105–78.

6 Latin American Legislatures during the Pandemic¹

Manuel Alcántara, Mélangy Barragán and Mercedes García Montero

Introduction

Legislatures are central to the proper functioning of representative democracy. Among the constitutional bodies, the legislature is the one most closely tied to popular representation; among other functions, it creates regulations with the force of law, and it acts as an overseeing body for governmental actions. Given its centrality to the political system, the emergence of SARS-CoV-2 (COVID-19) and the subsequent health crisis raised numerous questions as to how this institution should operate in exceptional contexts such as the recent pandemic.

The initial outbreak of COVID-19 in Wuhan (China) on December 31, 2019, rapidly immersed the globalized world in its most severe health crisis to date, with impacts ranging far beyond health to affect the economy, science, education, social relations as well as politics. Virtually no arena, public or private, escaped the virus, forcing legislatures to adapt their necessary work to novel circumstances. Latin America was among the hardest-hit regions, although with substantial differences between countries (Martí i Puig & Alcántara, 2020), and the study of how the region managed the crisis has gained special relevance.

Measures were taken around the globe to contain the spread of the virus. The approval of restrictive regulations around fundamental rights, the adoption of laws to mitigate the effects of the crisis, and the urgent need to adapt the legislative work to the new situation, all became priorities for Latin American legislatures. Moreover, this occurred in the context of political and social crises that spread throughout the region in 2019 (Barragán, 2020), together with ongoing changes in the economic cycle (Sánchez López & García Montero, 2019). Among the crucial events and trends of 2019, we should recall the mass mobilizations in various countries, the annulment of the Bolivian elections, the dissolution of the Peruvian legislature and presidential impeachments on grounds of moral incapacity, the ongoing crisis experienced by traditional parties, and a lack of trust by citizens toward discredited political elites in a clear regional scenario of fatigued democracies (Alcántara, 2020). In addition, Latin America has not escaped the rise of ultra-nationalism and the emergence of autocratic leaders.

Latin America's nations are known to operate in an institutional environment defined by presidentialism, and this imposes a certain style of politics in which legislatures are often limited in their margin of action. Nevertheless, their reactions to the aforementioned challenges are worth examining, along with their responses to the spread of the pandemic. In this sense, this chapter studies the response capacity of the region's democracies, with special emphasis on legislatures as central institutions of representation and as a reflection of the plurality of different political forces, to manage the crisis caused by COVID-19 in institutional and political contexts that were already conflictive. In short, it seeks to understand the resilience of legislatures in the face of critical junctures.

Beyond the initial objective of understanding how the pandemic has affected legislative bodies in Latin America, this chapter presents a systematic analysis of the legislatures of 18 countries between March 2020 and May 2021, addressing both organizational and operational aspects, including political dynamics and legislative–executive relations.

This chapter argues that the responsiveness of legislatures to the pandemic cannot be isolated from the previous political context. In cases where conflict in executive–legislative relations was already present, the measures adopted to deal with the crisis increased the stress in the relations between the two branches.

The work is structured in four sections. The following section discusses the political context that the region was going through at the arrival of the pandemic. Next, the focus is on the national legislatures. This is followed by an explanation of how the functioning of legislatures and executive–legislative relations was affected. The chapter ends with some brief conclusions.

Pandemic, Politics, and Legislatures in Latin America

Although Latin America collectively accounts for 9% of the world population, during 2020 it experienced one-fifth of global COVID-19 infections and 30% of global deaths attributable to COVID-19. The virus arrived late in Latin America compared to China and Europe, but it rapidly spread and soon the region became the epicenter of the global health crisis. Brazil was the first Latin American country to report a case of COVID-19, on February 26,² but in less than a month, when El Salvador and Nicaragua confirmed their first cases on March 18, the virus had extended throughout the continent. The first death was registered in Argentina on March 7; by April 6, every Latin American country had reported deaths from coronavirus.

Economic effects quickly followed. According to data from ECLAC (2020), the year 2020 saw the closure of 2.7 million companies and a sharp drop in remittances received from abroad (crucial in countries where emigration is high), while some 28 million persons were plunged into poverty, 15 million of them experiencing extreme poverty. The region's structural

inequality was magnified by its enormous informal economic sector (54% in 2019), by low enrollment in social protection systems, and by precarious employment. Other endemic problems such as corruption and insecurity further complicated the context.

Thus, the consequences of the health crisis worsened an already critical situation in Latin America. As mentioned before, 2019 had seen the outbreak of waves of protest in certain countries (Ecuador, Chile, Bolivia, Colombia, Venezuela), in part because of the social impacts of the economic crisis prompted by the fall in prices for raw materials, which led to a crisis of expectations and to the lowered valuation of democracy itself due to rising citizen mistrust in representative institutions, particularly in the political parties. All this occurred in a framework dominated by strong presidentialism and the increasingly active role of armed and other security forces. Problems of corruption and deficiencies in the productive structure also fed the general dissatisfaction (Barragán, 2020; Alcántara, 2020).

When this already complicated context came to include a severe health crisis, classic debates in political theory were revived, regarding the role of the state and the need for public policies. Questions of individual freedom, the weight and leadership of international organizations, the predominance of the executive in declarations of state of alarm, and the role of the legislature reached central stage.

Latin American Legislatures in the Face of the Pandemic

The essence of a legislature lies in its representative nature, expressed in its composition, which makes it the body in charge of ensuring pluralism and its political expression through elections, oversight, and decision-making (García Montero, 2017). Legislatures fulfill a set of functions that can be grouped into four: legitimation, political representation, legislation, and political control. The first two of these are more transversal and symbolic while the second two are more procedural (Alcántara et al., 2005).

In a presidential context such as that prevailing in Latin America, the role of the legislative branch is strongly conditioned by the strength and centrality of the executive power. Since the classic text by Linz (1985), which warned us on the negative effects of this form of government for Latin American democracies,³ numerous analyses have focused on the consequences that this structural form of government, in interaction with other variables, can generate for inter-branch relations⁴ as well as for the functioning of legislatures.

This literature offers clues and hypotheses that help us understand the weight borne by legislatures during the crisis caused by COVID-19. A main conclusion drawn from these analyses is that, despite presidentialism, the president is not necessarily a hegemonic actor, as the legislatures of some countries have exerted fundamental weight in political decisions since the arrival of democracy in the 1980s (García Montero, 2010)⁵. This forces a search for the institutional and/or contextual determinants that shape the

position of a particular legislature as well as instances of cooperation or conflict in executive–legislative relations.

Among the first variables to take into account is the presence or absence of a legislative majority aligned with the president during the pandemic period. As noted earlier, such a majority can assure the president counts on parliamentary cooperation to govern, although the absence of obstacles and supervision can certainly engender situations of power abuse. Also of importance is whether a president's legislative majority derives from his or her own party or from a close and disciplined coalition of parties. The stability of the presidential mandate differs according to the characteristics of the coalitions formed, due to differences among coalition partners in terms of ideological proximity or the number of member parties that form them.

Another variable with a potential impact regards the institutional prerogatives enjoyed by a president. The analysis of presidential powers is a prominent topic in the literature,⁶ and in studies of Latin America, that of Shugart and Carey (1992) has been seminal,⁷ highlighting the importance of proactive powers to present initiatives to legislature or (in an extreme case) to impose them unilaterally (by decree), as well as reactive powers that permit the delay and/or veto of parliamentary initiatives (Mainwaring & Shugart, 1997). However, the exceptionality caused by the pandemic gave rise to diverse declarations of emergency that increased presidential power in extraordinary ways, especially in its proactive capacity; thus, it is necessary to qualify the impact of such presidential powers during the time when a state of alarm was in force.

A final group of variables with the potential to define relations between the two branches relates to the ideological positions of the presidents and legislatures in power. Polarization impacts the stability of the democratic system by lessening the possibility of reaching political agreements (Mainwaring & Scully, 1995; Hazan, 1997; Mainwaring & Shugart, 2002), especially in highly fragmented contexts (Downs, 1957).

The Reaction of Latin American Presidents to COVID-19

The pandemic outbreak put increased pressure on Latin American politics. First, most countries adopted measures affecting the exercise of people's rights and freedoms. Second, the outbreak caused serious interference in the functioning of legislative bodies, many of which had neither regulatory provisions nor sufficient technological tools for dealing with this type of situation. Finally, executive–legislative relations were significantly altered because of the adoption of exceptional constitutional measures and of the urgency in managing the pandemic. A context characterized by great uncertainty, gave presidents a tremendous power. As the literature argues, the concentration of power in the hands of the president did not generate conflictive relations between the executive and the legislative branches in those countries where the president's party had a legislative majority.

However, in those countries where the president faced a strong opposition, the crisis generated evident tensions.

The first decision which authorities confronted was the adoption of a legal framework through which to manage the pandemic. Despite variations in the spread and incidence of the virus, all Latin American governments (albeit with varied intensities and modalities) approved exceptional measures to mitigate the virus and to weather its socioeconomic impacts. These measures limited a wide range of citizens' rights and freedoms, most notably in terms of movement and assembly. Executives were granted powers that altered, at least partially, the principles under which the separation of power had been articulated, challenging not only the role of the legislative branch but also that of the judiciaries (see Llanos and Tibi Weber, this volume).

Despite the adoption of common measures, the pandemic legal framework was not homogeneous throughout the region. Some executives resorted to states of constitutional exception, while others to the ordinary legal system, approving a varied range of regulatory provisions (Table 6.1). The institutional framework chosen depended, to a large extent, on the constitutional provisions and the legislative majority required for its adoption.

Table 6.1 Declarations of state of emergency following the outbreak of the pandemic

<i>Country</i>	<i>Declaration of a state of constitutional exception</i>	<i>Adopted rule</i>
Argentina	No	State of Necessity and Urgency (Decree of Necessity and Urgency 260/20 of March 12, 2020, and its extensions. Protected by Article 99.3 of the Constitution)
Bolivia	No	Health Emergency (Supreme Decree 4196 of March 17, 2020, and its extensions. Protected by Articles 2.9, 35, 37 and 108 of the Constitution)
Brazil	No	Health Emergency (Decree 188 of February 3, 2020. Protected by Article 87 of the Constitution)
Chile	Yes	State of Exception and Public Calamity (Executive Decree No 4 of March 18, 2020. Protected by Articles 19.1, 19.2, 32.5, 39, 41 and 43 of the Constitution)
Colombia	Yes	State of Economic, Social, and Ecological Emergency (Decree No. 458 of March 17, 2020. Protected by Article 215 of the Constitution)
Costa Rica	Yes	State of National Emergency (Executive Decree No 42227, of March 16, 2020. Protected by Article 180 of the Constitution)
Dominican Republic	Yes	State of Emergency (Decree 134-20 of March 19, 2020. Protected by Article 262 of the Constitution)

Table 6.1 Cont.

<i>Country</i>	<i>Declaration of a state of constitutional exception</i>	<i>Adopted rule</i>
Ecuador	Yes	State of Exception (Presidential Decree No 1017 of March 16, 2020. Protected by Articles 164 and 165 of the Constitution)
El Salvador	Yes	State of Exception (Legislative Decree No 594 of March 14, 2020. Protected by Article 29 of the Constitution)
Guatemala	Yes	State of Public Calamity (Government Decree of March 6, 2020. Protected by Articles 138, 139 and 183 of the Constitution)
Honduras	Yes	State of Sanitary Emergency (Executive Decrees PCM-005-2020 / PCM-0023-2020 of February 10 and March 31, respectively. Covered in Articles 2-15 numbers 2, 11, 29 and 35 of the Constitution)
Mexico	No	No state of exception or health emergency is declared.
Nicaragua	No	No state of exception or health emergency is declared.
Panama	No	State of National Emergency (Cabinet Resolution No 11 of March 13, 2020. Protected by Article 79 of Law 22 of 2006)
Paraguay	No	State of Emergency (Decree 3456 of March 16, 2020. Protected by Articles 68 and 238 of the Constitution)
Peru	Yes	State of National Emergency (Supreme Decree No 044-2020-PCM of March 15, 2020. Protected by Article 137.1 of the Constitution)
Uruguay	No	State of Sanitary Emergency (Decree 93/020 of March 13, 2020. Protected by Article 44 of the Constitution)
Venezuela	Yes	State of alarm (Decree 4160 of March 13, 2020. Protected by Article 337 of the Constitution)

Source: García Montero, Barragán & Alcántara (2021).

To avoid possible abuses of power, a series of guarantees were established, with obligatory compliance. The first was that, in accordance with the provisions of Article 27 of the American Convention on Human Rights, any state that suspends rights and freedoms under an exceptional regime must immediately notify the Organization of American States. Second, any measures adopted during the regime of exceptionality must be compatible with the obligations imposed by international law. Finally, the declaration of the state of exception must be governed by the following principles: proportionality between the means and the proposed objectives, geographical and temporal limitation, and prohibition of discrimination in application of the adopted measures (Cervantes et al., 2020).

The declaration of a state of exception allowed executives to approve emergency decrees that affected citizen rights and freedoms. However, to avoid possible abuses of power, governments acted under the established mechanisms for legal and political control. The first of these corresponded to the controls exercised by supreme or constitutional courts; for example, the Constitutional Chamber of the Supreme Court of Justice of El Salvador suspended Decree No. 594, judging it unconstitutional (Llanos and Tibi Weber, this volume). In addition, legislatures exercised political controls and could determine whether or not to support an extension of the different states of alarm. In the Dominican Republic, for instance, the legislative branch denied the extension of the state of alarm required by the executive as of July 1, 2020.

Argentina, Bolivia, Brazil, Mexico, Nicaragua, Panama, Paraguay, and Uruguay, meanwhile, did not resort to a state of constitutional exception but instead implemented administrative measures within health legal frameworks (the same framework that the Dominican Republic adopted after the extension of the state of alarm was rejected by the court). In short, this group of countries opted to employ the mechanisms contemplated in their health codes for emergencies and to frame the limitation of rights and freedoms within such laws.

What Did Legislatures Do during the Pandemic?

Along with analyzing the protocols and mechanisms that sought to guarantee parliamentary activity during the pandemic, it is relevant to consider how the virus affected the volume and content of legislative production. It should be highlighted that parliamentary sessions were not interrupted (or only were for a limited time in some cases), which facilitated the legislative work in a way that throughout 2020 most legislatures did not modify their production capacity or levels of activity. Nevertheless, substantive cross-country variations can be found in relation to the content of the processed bills.

The pandemic forced Latin America's legislatures to devise tools to deal with the crisis and to contain its impact across multiple spheres. They approved regulations ranging from health protection to the temporary closure of schools, legal regimes for telework contracting, the reactivation of tourist activity, debt sustainability, and aid to the most vulnerable sectors. In addition, the management of the crisis compelled legislatures to change their agendas and temporarily suspend structural reforms that had begun before 2020 and sought to deal with the decline of revenues due to declining raw material prices. The priority was then to guarantee health services and stop the spread of the virus, pushing adjustment plans, prudent spending, and financial orthodoxy to the background. Moreover, fearing a humanitarian crisis, countries including Argentina, Brazil, Colombia, and Peru mobilized

additional funds to mitigate a range of effects. Among the economic measures adopted were the implementation of countercyclical plans that authorized monetary transfers, subsidies, and tax relieves for households and companies affected by declines in production and consumption.

One crucial area of activity of Latin America's legislatures was the approval of budgets for the coming year, that is 2021. As shown in Table 6.2, practically all countries approved their budgets during the pandemic, except Brazil, Ecuador, and Guatemala.

In Brazil, the government presented its budget for the year 2021 on August 31, 2020, but this was not approved by Congress. Because of the lack of this legal instrument, the government was forced to cover mandatory expenses through avoiding the implementation of certain governmental programs. In Guatemala, the budget for fiscal year 2019 remained in force due to the inability of the government to reach an agreement with Congress to approve the bills for 2020 and 2021. This delay can be ascribed to complaints from the opposition, a lack of effective prioritization, and attempts to approve exorbitant budgets to cover unnecessary items, which prompted protest demonstrations. In Ecuador, the Organic Code of Planning and Public Finance establishes that in election years and during a change of government, the budget for the prior year must be extended. Thus, in 2020 no budget bill was presented or put to a vote.⁸

In those countries that did approve budgets for 2021, they were generally oriented toward the promotion of post-pandemic economic plans. They included macroeconomic stabilization, stimulus to domestic markets, the promotion of production growth, employment generation, and the increase of state provisions to protect the most vulnerable sectors. In fact, the COVID-19 pandemic highlighted the weaknesses of Latin America's health and social protection systems and increases in real investment for these services were expected to be implemented. Even so, certain countries encountered difficulties in increasing public spending on health or social coverage due to the rigidity of their budgets. In Chile, 80% of the budget was already committed to implementing permanent laws, salary remuneration, and other minimum administrative supports, thus hindering the country's ability to adapt to the changing scenario and new needs arising from the pandemic.

Beyond the approval of budgets and plans to deal with the effects of the health crisis, legislatures also had to deal with projects unrelated to COVID-19. Although the approval of regulations related to the pandemic was a priority during 2020, other initiatives already in process continued their course. One case that gained heightened visibility was the approval the Law 27.610 regarding the voluntary interruption of pregnancy by the Argentine Congress, fulfilling a campaign promise of President Alberto Fernández. During the period under study, laws were approved within the

Table 6.2 Legislative production in 2020

<i>Country</i>	<i>Budget project presentation</i>	<i>Budget approval</i>	<i>Bills not oriented to the pandemic</i>
Argentina	Yes September 15, 2020	Yes December 14, 2020	Yes
Bolivia	Yes	Yes December 28, 2020	From October 2020
Brazil	Yes August 31, 2020	No	Yes
Chile	Yes September 30, 2020	Yes November 28, 2020	Yes
Colombia	Yes July 29, 2020	Yes October 20, 2020	Yes
Costa Rica	Yes September 18, 2020	Yes November 26, 2020	Yes
Dominican Republic	Yes October 2, 2020	Yes December 3, 2020	Yes
Ecuador	No	No	Yes
El Salvador	Yes September 30, 2020	Yes December 24, 2020	Yes
Guatemala	Yes October 28, 2020	Yes November 17, 2020 Repealed on November 25, 2020	Yes
Honduras	Yes September 15, 2020	Yes December 22, 2020	Yes
Mexico	Yes November 12, 2020	Yes November 13, 2020	Yes
Nicaragua	Yes October 22, 2020	Yes October 25, 2020	Yes
Panama	Yes July 30, 2020	Yes October 28, 2020	Yes
Paraguay	Yes September 1, 2020	Yes November 25, 2020	Yes
Peru	Yes August 31, 2020	Yes November 29, 2020	Yes
Uruguay	Yes September 1, 2020	Yes December 10, 2020	Yes
Venezuela	Yes	Yes October 29, 2020	Yes

Source: Own elaboration based on García Montero, Barragán & Alcántara (2021).

region against harassment (Argentina, Costa Rica), for public security (El Salvador, Guatemala), against cybercrime (Nicaragua), and related to intellectual property (Argentina), environmental justice (Paraguay), tax administration (Guatemala), and reform of the Penal Code (Honduras), among others.

Challenges for the Legislative Branch during the Pandemic

The alteration of the legislative work, especially in the first stage of the pandemic due to confinement measures, affected the possibility of conducting the oversight of executives' actions. Despite the speedy adoption of measures allowing legislatures to meet, the allotment of time for discussions was weakened (Directorio Legislativo & ParlAméricas, 2020), as were interactions with citizens and civil society organizations.

The extension of executive powers that led to the declaration of states of emergency reduced the capacity of legislatures to use certain ordinary controls and to supervise the use of extraordinary public funds meant to address the economic situation. Some international organizations (IDEA, 2020) warned on the risk of mismanagement of such resources, which could lead to the development of populist policies as a presidential strategy for clientelistic consolidation of the popular support bases. Likewise, the use of decrees by presidents with the force of law increased the concentration of decision-making power in the executive, obviating the necessary legislative deliberation.

Finally, another great challenge was prompted by conflicts between powers during the pandemic. These were different in each country depending on its political situation and legislative fragmentation. Some conflicts weakened the possibility of implementing plans to manage the crisis, in terms of both health and the economy. A clear example of health effects caused by conflictive relations between the executive and legislative branches was observed in Brazil, where President Jair Bolsonaro cast partial vetoes of a law approved by legislature and related to the mandatory use of masks; in turn, the Chamber of Deputies repealed some of the provisions in the presidential decrees related to the pandemic.

The Functioning of Legislatures during the Pandemic

Together with the adoption of a legal framework that would enable decision-making to manage the pandemic, it became necessary to restructure the activity of legislatures to adapt to the new situation. One priority was to reorganize the legislative work to make it compatible with the distancing measures imposed to counteract the spread of the virus. Meanwhile, the health crisis itself affected executive–legislative relations. At a time when some Latin American democracies were struggling with the rise of populism and leaders with autocratic tendencies, some presidents saw the pandemic as a window of opportunity to increase their power over other institutions. Measures adopted by some presidents to counteract the weight of legislatures, grounded on the need to adopt provisions to counter the pandemic, fomented conflicts between the two powers, thus exacerbating ongoing political crises.

As in other spheres of public life, the legislative work needed to prevent the spread of COVID-19 and guarantee the health of both deputies and

senators, as well as all staff members. To do this, general measures were implemented for the prevention of contagion. The most important are presented in Table 6.3. Most legislatures did not interrupt their operation during the pandemic, with only five countries doing so (Argentina, Bolivia, Brazil, Colombia, and Panama). The closure of the latter bodies ranged from one week to one month. Although most legislatures did not close, the reorganization of the legislative work proved to be necessary, sparking legal and regulatory debates in the chambers, since not all existing regulatory frameworks allowed to perform legislative functions virtually. This led to the adoption of various strategies.

First, the legislatures of El Salvador, Guatemala and Nicaragua, as well as the lower chambers of the Dominican Republic and Uruguay opted to continue meeting in person throughout the whole period. Second, in Honduras, Colombia (from March to June 2020), and Ecuador (from March 2020 to May 2021), all sessions were held remotely. Finally, most legislatures opted for mixed formulas in which face-to-face attendance was combined with virtual sessions. In these cases, the physical presence of a small proportion of legislators included the authorities of the chambers and of each of the political blocs. In cases where virtual sessions or a partially in-person system was adopted, the capacity of most of legislatures to incorporate new technologies proved extraordinary, allowing them to adapt in a very short time span.

The mechanisms used for adapting the legislative work to the digital context varied among countries. For example, in Brazil, the Congress approved regulatory reforms for both the Chamber of Deputies and the Senate to allow remote sessions, both for legislatures committees and plenary sessions. In Chile, the Congress undertook a constitutional reform on March 24, 2020, which ruled that, in exceptional situations caused by reasons connected to public health, and with the agreement of two-thirds of the members of each chamber, the legislature could undertake remote work supported by technological means for a period of one year. Resolutions modifying the regulations of chambers were also approved in Bolivia, Paraguay, and Peru. In Ecuador, an administrative proposal from the Legislative Administration Council of the National Assembly was approved. Panama approved a legal reform to allow virtual sessions, while in Colombia the decision was taken by means of a legislative decree issued by the executive.

Despite differences in the mechanisms used, the presence of legislators in their seats was limited in most Latin American legislatures, whether through the interpretation of legislation already in force or through regulatory reforms that would enable virtual sessions.

Control over data security also varied widely among countries. Brazil and Colombia are among the cases where more resources were invested in terms of cybersecurity and voting legality. At the opposite extreme there were legislatures, such as in Ecuador and Peru, where virtual sessions combined the use of the 'Zoom' video platform (questioned for its

Table 6.3 Organization of the legislative work during the pandemic

<i>Country</i>	<i>Session interruptions</i>	<i>Session organization</i>	<i>Voting organization</i>
Argentina	March 1, 2020 to May 12, 2020	Partially in-person-	In person and virtual
Bolivia	April 8, 2020 to April 29, 2020	Partially in-person only for those over age 70 and/or with illnesses	Individual in person and electronic from home
Brazil	Chamber of Deputies: March 19, 2020 to March 24, 2020 Chamber of Senators: March 16, 2020 to March 19, 2020	Partially in-person	Individual in person and electronic from home
Chile	No	Partially in-person	Individual in person and electronic from home
Colombia	March 16, 2020 to April 12, 2020	Online April 13, 2020 to June 20, 2020 Later, partially in-person	Electronic from home April 13, 2020 to June 20, 2020 Later, individual in person and electronic from home
Costa Rica	No	Partially in-person	Individual in person and electronic from home
Dominican Republic	No	In person	Individual in person
Ecuador	No	Online March 17, 2020 to May 11, 2021 Later, partially in-person	Electronic from home March 17, 2020 to May 11, 2020 Later, individual in person and electronic from home
El Salvador	No	In person	In person
Guatemala	No	In person	In person
Honduras	No	Online	In person
Mexico	No	Partially in-person	Individual in person and electronic from home
Nicaragua	No	Presential	Individual in person
Panama	Yes	Partially in-person	Individual in person and electronic from home
Paraguay	No	Chamber of Deputies: Partially in-person Senators: online	Individual in person and electronic from home
Peru	No	Partially in-person	Individual in person and electronic from home
Uruguay	No	In person	Individual in person
Venezuela	No	Partially in-person. From January 2021, in person	Individual in person and electronic from home. From January 2021, only individual in person

Source: García Montero, Barragán & Alcántara (2021).

vulnerabilities in relation to data protection) and remote voting systems. In some cases, as in Paraguay, the vote was not carried out by way of a specific application; rather, the deputies simply raised their hands in front of the camera at the request of the session's president.

Executive–Legislative Relations

As we commented in the previous sections, the pandemic led to a strong concentration of decision-making in the executive branch. Although most legislatures continued their activity, disruptions did force them to adapt to new modalities, and this came along with the need for urgent decisions, all which put the executive in a comparatively advantageous situation with respect to the legislative branch.

In this context, legislatures had to establish mechanisms that would permit them to exercise their control functions, to ensure accountability in governmental actions, so that special legislative commissions were created in some legislatures to monitor the health emergency (excluding only Argentina and El Salvador). These bodies for consultation were neither binding nor mandatory, but they contributed to the monitoring of governance. In some countries of the region, new control mechanisms were created and included in laws aimed at responding to the pandemic. In Chile, for example, it was established that the executive should be accountable to the Chamber of Deputies regarding some programs, such as the Guarantee Fund for Small and Medium Entrepreneurs and the implementation of the Emergency Family Income. In Brazil, the extraordinary fiscal, financial, and contracting regime prompted by the state of alarm could be suspended by Congress in the event of irregularities or lack of compliance with the limits that it imposed. In El Salvador, the National Assembly created a special committee comprised of government, private, and civil society representatives to oversee the use of the Emergency, Recovery, and Economic Reconstruction Fund. In Peru, the Congress approved laws for the control of public resources allocated to the pandemic.

The effectiveness of these counterbalancing mechanisms was nevertheless largely determined by the percentage of seats held by a president's party or coalition. Thus, in cases where the executive held a legislative majority, the risk of blockage was low, and the likelihood of cooperation between the powers was greater. On the other hand, if the presidential party or coalition was in a minority, the divided scenario could favor situations of deadlock or poor coordination (Ingberman & Villani, 1993).

When the virus initially reached Latin America, the situations of the parties aligned with the various presidents were mixed. As shown in Table 6.4, the presidential party or coalition had an absolute majority in congress in half of the countries considered: Colombia, Ecuador,⁹ Honduras, Mexico, Nicaragua, Panama, Paraguay, the Dominican Republic, and Uruguay. In another six, the forces related to the president were in the minority (although of different sizes): Argentina,

Table 6.4 Majorities by presidential parties in the legislature

<i>Country</i>	<i>President</i>	<i>President's party/coalition</i>	<i>Bicameral congress</i>	<i>% seats held by president's party/coalition in lower house</i>	<i>% seats held by president's party/coalition in upper house</i>
Venezuela	Nicolás Maduro	Gran Polo Patriótico Simón Bolívar (GPPSB) (2020) Gran Polo Patriótico Simón Bolívar (GPPSB)	No	30.0 92.0	-
Nicaragua	Daniel Ortega	Frente Sandinista de Liberación Nacional (FSLN)	No	77.2	-
Colombia	Iván Duque	Gran Alianza por Colombia	Yes	67.0	63.0
Mexico	Andrés Manuel López Obrador	Juntos Haremos Historia	Yes	61.6	53.9
Bolivia	Jeanine Áñez (until November 8, 2020) Luis Arce (starting November 8, 2020)	Movimiento Demócrata Social Movimiento al Socialismo (MAS)	Yes	0.03 58.0	0.03 58.3
Panama	Laurentino Cortizo	Uniendo Fuerzas	No	56.3	-
Uruguay	Luis Lacalle Pou	Coalición Multicolor	Yes	56.0	56.7
Ecuador	Lenín Moreno	Alianza PAIS	No	54.0	-
Paraguay	Mario Abdo Benítez	Asociación Nacional Republicana – Partido Colorado (ASN-PC)	Yes	52.5	37.8

(continued)

Table 6.4 Cont.

<i>Country</i>	<i>President</i>	<i>President's party/coalition</i>	<i>Bicameral congress</i>	<i>% seats held by president's party/coalition in lower house</i>	<i>% seats held by president's party/coalition in upper house</i>
Honduras	Juan Orlando Hernández	Partido Nacional de Honduras (PNH)	No	51.6	-
Dominican Republic	Danilo Medina (until August 16, 2020) Luis Abidaner (starting August 16, 2020)	Bloque Progresista Partido Revolucionario Moderno (PRM)	Yes	51.1 51.2	82.0 59.4
Argentina	Alberto Fernández	Frente de Todos	Yes	46.7	57.0
Chile	Sebastián Piñera	Chile Vamos	Yes	42.6	44.2
Brazil	Jair Bolsonaro	Independiente	Yes	10.1	President without party
Costa Rica	Carlos Alvarado	Partido Acción Ciudadana (PAC)	No	17.5	-
El Salvador	Nayib Bukele	Gran Alianza por la Unidad Nacional (GANA)	No	12.0	-
Guatemala	Alejandro Giammattei	Vamos	No	8.0 ¹⁰	-
Peru	Martín Vizcarra (until November 17, 2020) Francisco Sagasti (starting November 17, 2020)	Partido Democrático Somos Perú Partido Morado	No	0.04 7	-

Source: García Montero, Barragán & Alcántara (2021).

Chile, Costa Rica, El Salvador, Guatemala, and Peru. The cases of Bolivia and Venezuela are worth highlighting because elections altered the alignment of forces during the period considered; in both cases, the president's party went from a minority representation to an absolute majority in the lower chamber and in the unicameral legislature, respectively.

In the first group of countries, a large majority by the president's party in legislature not only facilitated cooperation between the executive and legislative branches but allowed the management of the pandemic to fall primarily on the president. In these cases, the executive played a dominant role, managing to approve almost all proposed projects, while the legislatures remained fundamentally reactive. Not having to reach agreements with other forces made it easier for these presidents to carry out their initiatives, including the budget. Although opposition forces in these cases did attempt to promote measures, their success was limited and their performance marginal. Similarly, a presidential majority reduced the ability of the legislature to exert control, highlighting the power imbalance and lack of counterweights.

In countries where the presidential party or coalition held a minority position in legislature, various scenarios were observed. In El Salvador, the Legislative Assembly initially supported the president's initiatives, but ongoing tensions between the two powers from before the onset of the pandemic became apparent during the management of the crisis. Thus, presidential vetoes of laws approved by the legislature in the pandemic context provoked the intervention of the Constitutional Chamber, which decided to uphold the laws. Costa Rica, on the other hand, presented an example of cooperation between the powers. Although the president's party did not have a majority in the legislature, agreements were reached from the beginning that made possible to manage the health crisis and to deal with its impacts in the political and social spheres. However, this did not prevent opposition parties from finding the pandemic as an opportunity to point out management failures and to distance themselves from the president's discourse on certain matters.

Finally, Bolivia and Venezuela presented unique cases of executive–legislative relations in that holding elections during the first year of the health crisis modified the alignment of forces and, consequently, the relationship between legislature and the president. In both cases, the outbreak of the pandemic occurred when the president's party held a minority in the legislature. In Bolivia, during the government of Jeanine Áñez in the first months, the legislature carried out strong oversight activities and stopped many initiatives proposed by the president, thus disputing her authority and denouncing the regressive nature of her administration. Following presidential elections and the arrival of Luis Arce to power, this inter-institutional tension and the congressional oversight of the executive diluted. Then, the relations between the powers returned to the state prior

to the departure of Evo Morales. Since Arce's arrival to the presidency, he has met no obstacles in carrying out his policies.

Finally, in the case of Venezuela, President Maduro's party held a minority in the Assembly until the elections were held, a situation that had led to a profound political and institutional crisis, in which the president did not recognize the National Assembly, its actions, and production. The elections of December 6, 2020, sharpened this conflict and the tensions in the country, but also served to strengthen the president. Amidst opposition boycotts of a flawed electoral process, Maduro's party won 92% of the seats in the legislature, bolstering the party's hegemonic tendency and ensuring control of the chamber.

Table 6.5 summarizes the arguments presented above and groups the countries according to their type of executive–legislative relations during the first year of the pandemic crisis.

The economic and social deterioration derived from the pandemic directly impacted the assessments of the ruling parties and marked the return of protests that had been interrupted by the pandemic. This situation challenged governability in the region and, at times, strained the relationship between the government and the opposition, especially in contexts where the president's party had a relatively weak majority in legislature. This tension manifested above all in the paralysis or failure of some government initiatives and in the narrow margin for action that presidents had, especially those who came to power with little popular or parliamentary support.

Finally, also worth noting is how the pandemic has affected presidential approval levels. Table 6.6 shows how most of the presidents experienced pronounced decreases in approval levels between the beginning of the pandemic and June 2021. While some in the first months of the pandemic experienced positive spikes in the assessment of their management – Jeanine Arce, Jair Bolsonaro, Iván Duque, Carlos Alvarado, Nayib Bukele, Luis Lacalle Pou – those assessments tended to decline as the health crisis continued. Therefore, practically all these presidents ultimately saw lower levels of approval than those registered in February 2020.

Table 6.5 Executive–legislative relations

<i>Conflictive relations</i>	<i>Moderate cooperation with some conflicts</i>	<i>Cooperative relations</i>
Bolivia (until November 2020), Chile, El Salvador, Peru, Venezuela (2020)	Argentina, Brazil, Paraguay	Bolivia (after November 2020), Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Mexico, Panama, Dominican Republic, Uruguay, Venezuela (2021)

Source: García Montero, Barragán & Alcántara (2021).

Table 6.6 Presidential approval (%)

Country	President	February 2020	October 2020	June 2021
Guatemala	Alejandro Giammattei	56	43	27
Panama	Laurentino Cortizo	63	40	40
Peru	Martín Vizcarra	54	50	-
	Francisco Sagasti	-	-	41
Honduras	Juan Orlando Hernández	42	42	31
Colombia	Iván Duque	33	46	23
Brazil	Jair Bolsonaro	39	43	31
Mexico	López Obrador	63	54	59
Costa Rica	Carlos Alvarado	28	35	25
Venezuela	Nicolás Maduro	14	15	14
El Salvador	Nayib Bukele	88	92	89
Uruguay	Luis Lacalle Pou	53	58	53
Chile	Sebastián Piñera	10	21	16
Bolivia	Jeanine Añez	42	50	-
	Luis Arce	-	-	49
Nicaragua	Daniel Ortega	27	32	35
Paraguay	Mario Abdo Benítez	-	28	50
Dominican Republic	Danilo Medina	59	-	-
	Luis Abidaner	-	72	79
Ecuador	Lenín Moreno	15	8	-
	Guillermo Lasso	-	-	68

Source: Directorio Legislativo & ParlAméricas (2020).

Conclusion

The pandemic put Latin American democracies and, more specifically, the responsive capacity of their legislatures to the test. Legislatures had to make multiple decisions in a short period of time before the declaration of a health emergency: whether to continue to meet or not, whether to hold face-to-face sessions or resort to virtual formats, and how to adopt mechanisms able to guarantee the proper functioning of the legislative work. All this had to be done while avoiding technical and legal obstacles, given the need to accommodate current regulations in such an exceptional context.

The adaptation of the operation of legislatures' chambers contributed to placing further stress on Latin America's political systems, already troubled by a lack of trust in institutions, democratic fatigue, and the socioeconomic crisis into which they had been plunged in the preceding years. Thus, legislatures also had to adapt their legislative production and adopt measures to deal with the crisis while still delivering on prior legislative projects related to issues exogenous to the pandemic.

Finally, with regards to the parliamentary function of governmental control, the pandemic reinforced previous trends in the relationship between powers. In cases where the president's party held a large majority in legislature, the legislatures endorsed the decisions of the executive. This

contributed to further strengthening the figure of the president, who was endowed with extraordinary powers derived from the approval of states of emergency. Contrarily, in scenarios in which a president's party held a minority in legislature, generally the tensions between powers increased, and the legislatures acted as a brake on some initiatives promoted by the presidents. Despite exceptions such as Costa Rica, as a rule conflictive relations were established between the legislative and executive branches.

Certainly, this situation also had to do with the sense of a fatigued democracy that spread in the region since 2018. The growing popular distrust in institutions, disaffection with democracy in general, the effects of inequality and frustration in expectations, all had generated a generalized malaise among the people. In addition, the crisis of political representation was increasingly present. Fragmentation in party systems, electoral volatility and the loss of voters' partisan identity are defining features of this fatigue. To this, we can add the predominance of candidates over parties, reinforcing the region's tendency toward the personalization of politics. The designs of electoral campaigns centered on individuals were accommodated with the new interaction mechanisms promoted by social networks. All this was not unrelated to the design of politics executed by artificial intelligence. A scenario that is favored by the institutional design of presidentialism.

Based on this analysis of the impact of COVID-19 on legislative activity in the region, an interesting line of research opens up on how the advent of extraordinary situations can affect both the functioning of institutions and the balance between powers. With this chapter we contribute that, in general terms, such a situation reinforces the powers of the president, limiting the counterbalancing capacity of the legislatures due to the ability of the former to resort to exceptional constitutional mechanisms to manage a crisis. This trend will only be evident firstly in cases where a president's party holds a parliamentary majority and secondly in those political systems that score low in indicators of the quality of democracy.

Notes

- 1 This chapter reproduces passages from the Introduction and Conclusions of the book *Los poderes legislativos latinoamericanos en tiempos de pandemia* (2021): García Montero, Alcántara & Barragán (eds.), published by the Madrid Center for Political and Constitutional Studies. ISBN: 978-84-259-1903-9.
- 2 The Brazilian health minister confirmed on February 26 that a 61-year-old man from São Paulo was infected following a visit to Lombardy (Italy) between the 9th and 21st of the same month.
- 3 The four main critiques revolve around: (1) the possible effects of dual legitimacy caused by separate elections in terms of ungovernability and stagnation; (2) rigidities established by fixed mandates, preventing institutionalized solutions to situations marked by conflicts between powers; (3) the generation of zero-sum games not conducive to cooperation; and (4) personalism fostered by the president's direct election.

- 4 See Alcántara and García Montero (2011), Aleman and Tsebelis (2016), Chasquetti (2008), Horowitz, (1990), Linz and Valenzuela (1993), Mainwaring, (1993), or Mainwaring and Shugart (1997).
- 5 See Martínez Nourdin and Dockendorff in this volume.
- 6 See Shugart and Haggard (2001), Samuels and Shugart (2003), Payne et al. (2003), PNUD (2005), Stein et al. (2005), García Montero (2010), Negretto (2014), Saiegh (2011), Lanzaro (2018), or Crisp et al. (2020).
- 7 These authors divide presidential powers into legislative and non-legislative. The legislative powers include that of exclusive initiative, the power of veto, the power to decree, power over the budget, and the power to call referenda. Non-legislative powers are related to censorship, the ability to form a cabinet, and the possibility of dissolving parliament.
- 8 However, because of the pandemic, a modification was introduced to this rule: for the year 2021, the amount taken into account would be the one actually spent until December 31, 2020, and not the one planned when the budget was initially approved. That is to say, the initial budget for 2021 was the codified budget of 2020.
- 9 President Lenín Moreno's break with his predecessor Rafael Correa led to massive defections from their Alianza PAIS (AP) party and the loss of Moreno's legislative majority. Thus, although the government had more than 70 seats in the Assembly at the beginning (2017), it ended with far fewer in 2021.
- 10 In the case of Guatemala, despite the fact that the presidential coalition held a minority in the Congress, most of the legislative parties were related to the executive, giving the president relatively stable support in practical terms.

Bibliography

- Alcántara, M. (2018). "La procelosa relación entre los poderes ejecutivo y legislativo en América Latina" in *Revista Pensamiento Iberoamericano*. Madrid: SEGIB, no 1, pp. 73–83.
- Alcántara, M. (2020). *América Latina vota, 2017–2019*. Madrid: Tecnos.
- Alcántara, M. & García Montero, M. (eds.) (2011). *Algo más que presidentes el papel del poder legislativo en América Latina*. Zaragoza: Fundación Manuel Giménez Abad de Estudios Parlamentarios y del Estado Autónomo.
- Alcántara, M., García Montero, M. & Sánchez López, F. (2005). *Funciones, procedimientos y escenarios: un análisis del Poder Legislativo en América Latina*. Salamanca: Aquilafuente, Ediciones Universidad de Salamanca.
- Aleman, E. & Tsebelis, G (2016). *Legislative Institutions and Lawmaking in Latin America*. Oxford: Oxford University Press.
- Barragán, M. (2020). América Latina 2019: Vuelta a la inestabilidad. *Revista Iberoamericana*, 2020, vol. 19, no 73, pp. 231–259.
- Cervantes, M., Matarrita, M., & Reca, S. (2020). Los estados de excepción en tiempos de pandemia. Un estudio comparado en América Latina. *Cuadernos Manuel Giménez Abad*, no 20, pp. 179–206.
- Chasquetti, D. (2008). *Democracia, presidencialismo y partidos políticos en América Latina: evaluando la "difícil combinación"*, Montevideo: Ediciones CAUCE.
- Crisp, B., Olivella, S. & Rosas, G. (2020). *The Chain of Representation: Preferences, Institutions, and Policy across Presidential Systems*. Cambridge: Cambridge University Press.

- Directorio Legislativo & ParlAmericas. (2020). COVID-19: The challenge of adapting and strengthening the role of parliaments: An analysis from an open Parliament perspective. Buenos Aires: Directorio Legislativo.
- Downs, A. (1957). *An Economic Theory of Democracy*. Nueva York, Harper.
- García Montero, M. (2010). *Presidentes y Parlamentos ¿quién controla la actividad legislativa en América Latina?* Madrid: Centro de Investigaciones Sociológicas.
- García Montero, M. (2017). “El Parlamento” in Salvador Martí i Puig; Juan Mario Solís Delgadillo & Francisco Sánchez (Org.): *Curso de Ciencia Política*, Senado de la República: México DF, pp. 415–492
- García Montero, M., Barragán Manjón, M. & Alcántara Sáez, M. (dirs.) (2021): *Los parlamentos en América Latina en tiempos de pandemia*. Madrid: Centro de Estudios Políticos y Constitucionales.
- Hazan, R. (1997). *Centre Parties: Polarization and Competition in European Parliamentary Democracies*. Londres, Pinter.
- Horowitz, D. L. (1990). “Comparing democratic systems”, *Journal of Democracy*, vol. 1, no 4, pp. 73–79.
- IDEA. (2020). *Balance de las tendencias democráticas en América Latina y el Caribe antes y durante la pandemia de la COVID-19*. IDEA Internacional.
- Ingberman, D., & Villani, J. (1993). An institutional theory of divided government and party polarization. *American Journal of Political Science*, vol. 37, no 2, pp. 429–471.
- Lanzaro, J. (ed.) (2018). *Centro presidencial. Presidencias y centros de gobierno en América Latina, Estados Unidos y Europa*. Madrid, Tecnos.
- Linz, J. & Valenzuela, A. (eds.) (1993). *The Failure of Presidential Democracy*. Baltimore: The John Hopkins University Press.
- Linz, J.J. (1985). *La quiebra de las democracias*. Madrid, Alianza.
- Mainwaring, S. (1993). “Presidentialism, multipartism and democracy: The difficult combination”, *Comparative Political Studies*, vol. 26, no 2, pp. 198–228.
- Mainwaring, S. & Shugart, M. S. (comps.) (1997). *Presidentialism and Democracy in Latin America*. Nueva York: Cambridge University Press.
- Mainwaring, S. & Shugart, M. S. (comp) (2002). *Presidencialismo y democracia en América Latina*. Paidós: Buenos Aires.
- Mainwaring, S. & Scully, T. (1995). “La institucionalización de los sistemas de partidos en América Latina”, *Revista de Ciencia Política*, vol. 17, no 1–2, pp. 63–101.
- Negretto, G. (2014). *Making Constitutions: Presidents, Parties, and Institutional Choice in Latin America*. New York: Cambridge University Press.
- Payne, J. M., Zovatto, D., Carrillo Flórez, F. & Allamad Zavala, A. (2003). *La política importa: Democracia y desarrollo en América Latina*, Washington: BID.
- PNUD (2005). *La democracia en América Latina: hacia una democracia de ciudadanas y ciudadanos*. Santiago de Chile: Programa de las Naciones Unidas para el Desarrollo.
- Saiegh, S. (2011). *Ruling by Statute: How Uncertainty and Vote Buying Shape Lawmaking*. New York: Cambridge University Press.
- Samuels, D. & Shugart, M.S. (2003). “Presidentialism, elections and representation”, *Journal of Theoretical Politics*, vol. 15, no 1, pp. 33–60.
- Sánchez López, F. & García Montero, M. (2019). *Los ciclos políticos y económicos de América Latina y el boom de las materias primas*. Madrid: Tecnos.
- Shugart, M. S. & Carey, J. (1992). *Presidents and Assemblies Constitutional Design and Electoral Dynamics*. New York: Cambridge University Press.

- Shugart, M. S. & Haggard, S. (2001). “Institutions and public policy in presidential systems”, in Haggard, S. & McCubbins, M. (eds.), *Presidents, Parliaments and Policy*. New York: Cambridge University Press, pp. 64–102.
- Stein, E., Tommasi, M., Echebarría, K., Lora, E. & Payne, M. (2005). *The Politics of Policies: Economic and Social Progress in Latin America 2006 REPORT*, Washington: Inter-American Development Bank, David Rockefeller Center for Latin American Studies and Harvard University.

7 Court–Executive Relations during the COVID-19 Pandemic

Business as Usual or Democratic Backsliding?

Mariana Llanos and Cordula Tibi Weber

Introduction

Emergencies are often considered the hour of the executive; they require immediate and flexible executive action to attempt to achieve sound policy responses and deal with high levels of uncertainty. Such pressing circumstances may lead to violations of democratic standards, even in established democracies. A burgeoning Political Science literature on the global COVID-19 pandemic has underlined the risks here. Governments around the world were called to take action to contain the SARS-CoV-2 virus and began to issue stay-at-home orders or mandate lockdowns. Public gatherings – including elections – were delayed or cancelled, limits to freedoms of assembly were imposed and democratic institutions were constrained in continuing their work. Democracies would be more hesitant than autocracies, and notably slower, to adopt extreme forms of lockdown and shut down work, but reactions were highly heterogeneous among them too (Cheibub et al., 2020). The undermining of accountability has occurred across regime types, particularly through disproportionate limitations imposed on the role of legislatures and media freedom (Edgell et al., 2021). Moreover, in polities experiencing democratic decay, the pandemic has provided the context for leaders to “steepen the curve”, thus accelerating a power grab already in play (Ginsburg and Versteeg, 2021).

In situations like this, high courts with constitutional review powers – supreme or constitutional courts (or chambers) – play a central role in controlling executive powers. In this chapter, we assess whether governments’ legal strategies to address the COVID-19 crisis were checked by courts or alternatively court–executive interactions in the first two years of the pandemic simultaneously resulted in diminishing court stature and declining democratic standards. Legal measures to fight a presenting emergency must have a clear constitutional grounding and provide the safeguards that neither will they be extended beyond the critical moment nor misused for other political purposes than the fight against the situation at hand – here, the COVID-19 pandemic (United Nations, 2020). Further, executives must fulfil their responsibility to protect the health of the population. Courts

are well-equipped to clarify uncertainties on the constitutionality of emergency measures as well as to channel public discontent, while also dealing with individual disputes related to the current exceptional situation. The judicial process also forces the government to justify its emergency policies in terms of legal principles (Petrov, 2020). Even though courts, as retroactive institutions that cannot act on their own initiative, have been assessed as having a limited (Bolleyer and Salát, 2021) or moderate as well as at times deferential role in emergencies (Fabbrini, 2010), they can still rein in abuses of power and even improve the effectiveness of emergency measures by supporting their legitimacy and feasibility (Petrov, 2020).

We focus on court–executive relations during the COVID-19 pandemic in democratic Latin America.¹ During the third wave of democratisation, courts in the region gained a considerable degree of formal authority – with the range of issues on which they are able to decide increasing substantially and access to them broadening in most cases, thus enabling the general population to reach these key institutions on constitutional matters (Brinks and Blass, 2017). All courts can potentially use their powers to control governmental measures and defend individual rights in critical circumstances. Three courts (the constitutional courts of Colombia, the Dominican Republic and Ecuador) have further constitutional powers for the abstract control of executive-issued emergency decrees (Cervantes et al., 2020). Latin American courts’ formal authority is unquestionably significant, but in practice their power varies considerably as these courts have often seen their orders defied or ignored and their authority or autonomy challenged by both formal and informal mechanisms of interference (Llanos et al., 2016).

In this chapter, we thus seek to interpret court–executive relations in the special context of the current pandemic. We adopt an inductive approach that: first, aims at discovering how executives react when they face controls by courts; second, examines which executives are prone to exploit such critical circumstances in their favour; and, third, investigates what the pandemic’s short- to medium-term effects have been on court–executive relations. We work with the cases of Argentina, Brazil, Ecuador and El Salvador, where the higher courts were ready to boldly exercise control over executives’ decisions vis-à-vis the pandemic. This can be regarded as a positive sign of these courts being institutions of control. However, executives who were first urged to take a position in facing up to the pandemic were also forced to react to the courts’ rulings to subsequently continue managing the crisis. We identify four different constellations of court–executive relations in the short time period of the first two years of the pandemic, with varying outcomes seen. Remarkably, only in one case (El Salvador) the functioning of democratic institutions was undermined.

The chapter is organised as follows. The following section develops the theoretical background and expectations. In the third section, we turn to Latin America, explore the role of courts during the pandemic and select four cases for deeper analysis. The subsequent two sections present

the empirical analysis, with the fourth section showcasing court actions during the pandemic and the fifth turning to executives' reactions to the latter. The sixth section discusses tentative explanations for the observed reactions: namely, the role of populist executives and governmental majorities. The final section summarises our findings on court–executive relations during the COVID-19 pandemic.

Theoretical Underpinnings and Operationalisation

How are courts expected to act in exceptional situations like the current pandemic? From the scholarly literature we learn that, in times of crisis, there are weaker institutional checks on executives' chosen courses of action (Posner and Vermeule, 2011). However, democratic institutions do not abdicate their powers of control in these special contexts. Crises expand executive powers, and for a certain period of time controls over the latter relax (Petrov, 2020). In such moments, court behaviour may vary considerably: it can range from courts refusing to control executives' action, to exercising some procedural controls to boldly exercising controls that set clear limits on what executives can do. Fabbrini (2010) identified a three-step evolution in the United States and European Union (EU) courts' jurisprudence regarding the legality of counterterrorism measures by the United States and EU courts: an initial deferential approach, an intermediate phase scrutinising more extensively the policies of the other branches and a last phase of strictly reviewing the measures adopted. Using a global dataset, Ginsburg and Versteeg (2021) document how during the onset of the pandemic judicial, legislative and subnational checks constrained executive legal decisions in most democracies – whether individually or jointly. In particular, courts intervened either to ensure the procedural integrity of emergency regimes, to balance the lockdown measures with constitutional rights and freedoms, or to demand that political actors take greater or fewer steps in addressing the pandemic.

Yet, while some executives accept to remain accountable in extraordinary contexts, others instead show a reluctance to do so – and some even see the crisis at hand as the opportunity to get rid of pesky checks on a more permanent basis. The list of actions questioning court authority is long, including overruling, non-compliance or more aggressive informal or formal actions, with particularly the latter having long-lasting and overarching effects. What, then, are the possible executive reactions to strong control of their pandemic policies by the courts and the consequences of such reactions? The judicial politics literature has discussed the causes and effects of compliance and non-compliance with court rulings as well as a range of both formal and informal types of political interference with courts that may lead to the undermining of judicial independence and to the weakening of horizontal control over the executive. Table 7.1 summarises the possible executive reactions we envision, which range from compliance, to selective compliance or outright non-compliance, to more

Table 7.1 Executive reactions to bold control by courts, and the effects hereof, compilation by the authors

<i>Executive’s reaction to court ruling(s)</i>	<i>Effects</i>
(1) Compliance	Potentially enhances institutional legitimacy of courts because their rulings are effective
(2) Selective compliance or non-compliance	Potentially reduces institutional legitimacy of courts because their rulings are not effective
(3) Informal interference: strong public rhetoric against courts, threats of violence against the latter and their members	Potential negative impact on courts’ independence: judges may refrain from taking bold decisions in the future because they anticipate similar reactions by the executive
(4) Formal interference: court packing or court curbing	Strong negative impact on courts’ independence

severe forms of executive abuse of courts’ independence. The different forms of executive reaction will, of course, have varying effects on courts’ institutional legitimacy as well as the latter’s stance vis-à-vis the executive.

The first possible executive reaction is the acceptance of court controls. Compliance with a given ruling by the executive potentially enhances the institutional legitimacy of courts because the latter’s rulings are effective, with these institutions hereby conceived of as influential ones by the general public (Kapiszewski et al., 2013). If the executive rejects a court ruling, future court reactions may differ according to the type (informal/formal) and severity of the experienced action. If the executive reacts with non-compliance or selective compliance with judicial decisions, this potentially undermines the public’s trust in the judiciary (Smith, 2017). With the severity of their reactions increasing, executives may turn to different forms of informal interference – like public harassment or threats of violence against courts and their members (Llanos et al., 2016). Some other forms of informal interference are clandestine in nature (e.g. phone calls, informal talks) and are difficult to detect. When confronting such informal interference, courts and their members still have a choice regarding how to react to the executive’s chosen course of action: they could subordinate themselves to the executive in future rulings, anticipating possible non-compliance or abuses by the latter as experienced previously, or they could withstand political interference and continue to exercise bold control. If a court withstands interference, this could have a positive effect on its institutional legitimacy because the public will perceive it as acting independently. The effect will be negative, however, if the executive succeeds in framing the court’s behaviour as opposing the interests of the majority of the population.

The most severe type of executive reaction, formal interference, includes all types of intervention aimed at packing or curbing the court (Kosař and

Šipulová, 2022): impeachments, the alteration of judicial selection and removal processes, changing jurisdiction, modifying court structure or procedures, slashing the budget, altering court size. Such measures change the composition of a given court, resulting in a majority of judges loyal to the government, or significantly reduce its overall power. While facing such interference, courts have very limited scope for action in defending their independence and power. These circumstances will have a strong negative short- to medium-term impact (and potential long-term one too) on the court's status.

Of course, all these court–executive interactions have to be considered against the backdrop of a past of frequent executive abuses against the judiciary (e.g. Pérez-Liñán and Mainwaring, 2013). We expect this past-dependent component to inform both courts' and executives' chosen actions and strategies during a crisis such as the COVID-19 pandemic.

Latin America: Four Case Studies

We assess that Latin America is a relevant scenario to witness how court–executive relations developed during the beginning of the current pandemic, and with what consequences. It is one of the world's most democratic regions (Coppedge et al., 2022a: 12), hosting mostly electoral democracies in which judicial institutions often confront powerful executives. Courts have the formal authority to solve conflicts triggered by the pandemic, and as we show below have often been reached out to for this purpose. Latin America has also been one of the world regions most affected by SARS-CoV-2's spread, with at least 69,803,000 reported infections and 1,713,000 reported deaths (Reuters COVID-19 Tracker, 15 July 2022) – thus experiencing 25 per cent of total related deaths globally, despite being home to only 6.4 per cent of the world's population.

The judiciaries reacted rapidly to the challenges they faced due to the restrictions of movement and stay-at-home orders (International Legal Assistance Consortium, 2020): many of them established commissions that planned and supervised the adaptation of work in order to maintain their own operation. An important step was increasing digitalisation. Before the pandemic, some of the judiciaries (such as those of Argentina and Chile) already offered a range of online procedures, including the presentation of claims, and social media was used extensively to keep the general public informed about their work (Llanos and Tibi Weber, 2020). All of this has been extended since 2020, with work-from-home facilities adopted for judges and staff.

Most Latin American courts have been actively engaged with COVID-19-related issues. A search on courts' institutional websites for decisions related to the pandemic during the period from March 2020 to May 2022, for which we employed different keywords (“covid”, “coronavirus”, “pandemia”), showed us that such decisions occurred throughout the 14 researched countries, with some dealing with hundreds (Brazil, Colombia,

Peru) or even thousands (Costa Rica) of cases, but most with at least a dozen COVID-19-related decisions.² The vast majority of these cases were individual actions, such as *amparos* and *habeas corpus*, demanding, for example, health protection for those in prison or support for owners of shops or restaurants who were ordered to close their businesses during lockdowns. But courts have also intervened to order political actors to adequately respond to the crisis (Brazil), to exert abstract control over the emergency decrees defining pandemic policies (Ecuador), to stress the need for legislative participation in the design of pandemic policies (El Salvador) as well as to resolve conflicts of competences between different levels of government regarding the management of health-protection measures (Argentina). In all these actions, courts have another political actor – the legislature or subnational government – that can turn to their side, a situation that makes these cases difficult to ignore for the executive and enhances the potential for court–executive confrontations.

As argued earlier, previous experiences of court–executive interactions shape current expectations and behaviour. According to the Bertelsmann Transformation Index (2022), most Latin American countries qualify as medium-level cases of judicial independence.³ These rankings have been quite stable since 2010, except for Ecuador (which went from low to medium independence between 2018 and 2020) as well as Guatemala and Honduras (which both went from medium to low independence between 2018 and 2020). These middle rankings indicate that even though courts are not deferential, they are subject to some sort of political interference. Relatedly, V-Dem data shows that for the period 2015 to 2019 Bolivia and Ecuador experienced “limited but very important arbitrary purges of the judiciary” (Coppedge et al., 2022b: 164). Notable events would be the dismissal and resignation of two judges of the Constitutional Tribunal in Bolivia in 2015 (Tibi Weber and Llanos, 2016) and the purge of the entire Ecuadorean Constitutional Court in 2018, shortly after President Lenín Moreno assumed office.⁴ Further, V-Dem data reports frequent attacks in Bolivia, Ecuador (still under Rafael Correa’s respective administrations) and El Salvador. Occasional attacks of this kind have also been indicated for Guatemala, Paraguay and Peru. This specific situation of medium-level judicial independence creates a “semi-hostile” environment for those courts seeking to control executives.

To explore in more detail how court–executive relations developed during the first two years of the pandemic we select four countries – Argentina, Brazil, Ecuador and El Salvador – where courts exercised bold control over executive action and, as compared to the Latin American region at large, the greatest repercussions hereof in politics as well as in public and academic debates have been seen. Three of these countries – Argentina, Brazil, El Salvador – had held presidential elections in 2019 and thus went through the health emergency under the same presidency: Alberto Fernández of Argentina (2019–2023), Jair Bolsonaro (2019–2023) of Brazil and Nayib Bukele of El Salvador (2019–). In Ecuador, Lenín Moreno (2017–2021)

was succeeded in May 2021 by Guillermo Lasso (2021–). Our analysis evinces that Bolsonaro and Bukele would show the fiercest reactions to institutional controls. Both are characterised in the scholarly literature as populist leaders with strong authoritarian tendencies.⁵

Limiting Executive Power: Four Courts and the Pandemic

In this section, we present the main pandemic-related decisions of the four selected courts.⁶ These ensured that emergency measures did not extend beyond the immediate need for them, stressed the competence of subnational governments in pandemic policies or, at least, made visible the respective executives' abuses of power.

The Ecuadorian Constitutional Court

Not only did this court take a strong stance for rights protection in the extraordinary pandemic situation (Prieto, 2020) but also fulfilled a notable role in the automatic control of emergency decrees. The court had been purged in 2018 shortly after Moreno's arrival to office, which is why submissive behaviour towards the latter's government during the pandemic could have been expected. However, the court actually engaged in bold control of the executive's management of this health emergency, stressing the need for parliamentary participation in political decision-making.

In fact, the court behaved stepwise and in an increasingly demanding way. The first three decrees through which Moreno enacted a state of exception were declared constitutional by the court. However, already with the first decision, the court reminded the executive to take special care of vulnerable groups during the implementation of these measures.⁷ In another decision on an emergency decree in August 2020, the court set an ultimatum on the government's use of the state of exception. In its decision, the court announced that it would not declare constitutional any further decree that mandates a state of exception based on the same facts.⁸ Accordingly, the situation was not unforeseeable anymore and thus, instead of a state of exception, the president would have to bring a law proposal to the National Assembly to regulate the measures to contain the pandemic. Consistent with that, when the executive issued a new state of exception in December 2020, the court declared this one to be unconstitutional.⁹ Moreno stated immediately that the government would abide by the ruling.

Afterwards, the executive did not declare any further states of exception for the whole country. However, in April 2021 it declared one in certain provinces, as justified on the grounds of the danger posed by the spread of new variants of the virus. Immediately, the Constitutional Court ordered the president to present a bill within a three-month timeframe to regulate the right of freedom of transit during the pandemic; on 22 April, Moreno submitted such bill to the National Assembly.¹⁰ However, with the change of government in May 2021, incoming president Lasso withdrew Moreno's

proposal and submitted his own in August of the same year – only to withdraw it immediately.¹¹

The Argentine Supreme Court

The pandemic created tensions between the court and the executive, but these “respond to dynamics of Argentine politics before the pandemic” (Welp, 2021: 218). It is a well-known fact that the Argentine judiciary in general and the Supreme Court as an institution have been subject to frequent interference by powerholders over many decades. This interference has been both formal, for example repeated court packings (Castagnola, 2020), and informal, such as the use of personal linkages to influence judicial decisions or instances of corruption (Llanos et al., 2016). Under the consecutive presidencies of Cristina Fernández de Kirchner (2007–2015), court–executive relations were highly tense and there were several attempts at judicial reform (Llanos, 2014). These relations were thought to become more relaxed under President Alberto Fernández, who had on several occasions declared himself to be a defender of the Supreme Court within the system of checks and balances. However, with the vice-presidency going to Cristina Fernández, judicial conflicts could not be totally ruled out.

Argentina had one of the strictest and longest lockdowns worldwide, lasting from March to July 2020. In April 2021, a new lockdown was enforced due to an increase in the number of infections. Notwithstanding these strict measures, the Supreme Court was involved in a modest number of cases related to the control of the executive’s emergency politics during the observed timeframe. In most of them, it would consent to the measures indirectly: for instance, while deciding on an *amparo* presented by farmers from the province of Córdoba who objected to the restrictions on entry to the neighbouring province of San Luis (Altavilla, 2020).

The case carrying the greatest political repercussions came to court in May 2021. When issuing the new lockdown by decree, President Fernández also ordered the closure of schools in the whole country. The mayor of Buenos Aires, Horacio Rodríguez Larreta, questioned the decision arguing that he was the only person legally able to decide on the closure of schools in his area. The Supreme Court ruled in his favour, stating that President Fernández had exceeded his constitutional powers.¹² This conflict was not only between different levels of government. It overlapped also with a political conflict between the government and the main opposition coalition that governed the city of Buenos Aires.

The Brazilian Supreme Federal Tribunal (STF)

The STF played a central role in controlling the executive and strengthening the authority of other state entities in the management of health issues from the beginning of the pandemic. This was so even though Bolsonaro and his allies had often questioned the STF before, using harsh public

rhetoric to depict the latter's members as part of the corrupt elite (Da Ros and Taylor, 2022). Bolsonaro's son Eduardo stated during his father's presidential campaign, meanwhile, that to close down the STF would only require one soldier and one corporal.

Despite this background, the STF had incentives to react boldly. Contrary to most of his Latin American counterparts, Bolsonaro neglected the scientific evidence and showed a complete reluctance to protect the Brazilian population from the virus (Blofield et al., 2020). This unwillingness to react adequately to the situation resulted in policy conflicts with the legislature as well as with governments at the state level, who decided to introduce measures – such as the closure of highways, ports and airports – on their own initiative. In so doing, they clashed with the federal government; Bolsonaro threatened to override these state-implemented measures.

According to Biehl, Pratos and Amon, in this tense inter-institutional situation “[n]o other institution has been more directly involved in countering the Brazilian executive's catastrophic handling of the pandemic than the country's highly scrutinised Supreme Court, the Supremo Tribunal Federal” (2021: 152). In a range of decisions, the STF stressed the capacity of state governments and municipalities to implement their own policies to control the pandemic. An important decision followed a lawsuit filed against the federal government by the Brazilian Bar Association in April 2020.¹³ The STF decided that the federal government could not override the policies of states, municipalities and the Federal District implemented to protect the population against the virus; hence, all three levels of government had the authority to decide on their own pandemic policies. It further added that a specific unit of government could not act against a more stringent law enacted by a superior unit.

Another important STF ruling that stressed the authority of states with regard to health issues concerned the decision taken in April 2020 by the Ministry of Health to confiscate dozens of ventilators that had been bought by the state of Maranhão, at that time severely hit by the pandemic. The STF ruled in favour of the latter, preventing the ventilators' confiscation.¹⁴ Remarkably, in the past the STF had backed the federal government in most disputes between different levels of government (Canello, 2017). Under Bolsonaro, the court's behaviour changed in favour of the lower levels of government (Abrucio et al., 2020: 670).

El Salvador's Constitutional Chamber

The relationship between President Bukele and the Constitutional Chamber of the Supreme Court was already tense before the pandemic. In February 2020, Bukele went to the Legislative Assembly accompanied by dozens of armed soldiers. He wanted to pressure legislators into approving a loan to finance his plan for fighting gang criminality. Following two *recursos de inconstitucionalidad* against this presidential move, the Constitutional

Chamber ordered the president to refrain from using the military for activities contrary to their constitutionally defined tasks.¹⁵

During the first months of the pandemic, Bukele’s administration introduced some of the strictest health-management protocols worldwide. Already prior to any infections having been confirmed in the country the president ordered the closure of schools and borders, as well as the implementation of a curfew that only allowed those in essential functions to leave their houses to go to work and one person per household to go out to buy food and medicine. Security forces reacted harshly to apparent violations of the curfew and many people were arrested and imprisoned in special detention centres. Early on, the Constitutional Chamber of the Supreme Court had to decide on the first cases related to the curfew. The decisive one in this regard was that of three women who were arrested for violating curfew by shopping for groceries in the local market. The *habeas corpus* that was presented in favour of setting them free resulted in a ruling stating that no person can be detained, only forced to stay at home, until the Legislative Assembly issues a law to regulate social mobility during the curfew.¹⁶ Therefore, although this was an individual case, the Constitutional Chamber exercised bold control over that government policy in general, producing a decision with *erga omnes* effects. This was the first of a number of decisions with which the Chamber would stress the importance of legislative participation in the management of the pandemic.

At the beginning of May 2020, Bukele’s government tightened the curfew even more: People were only allowed to go out to buy food or medicine two times a week, on days defined by their national identification numbers. At this time, more than 4,000 persons had already been arrested and held in the aforementioned detention centres for violating the curfew. Due to confrontations with the opposition parties holding a majority in the legislature, Bukele’s administration governed with decrees by the Ministry of Health but without a national emergency law or the declaration of a state of exception. Claiming violations of human rights and a lack of transparency in financial management, the legislature refused to support the president. At the end of May, the legislature voted that the curfew should be lifted on 8 June to enable informal workers to earn a living once more. Bukele vetoed that decision.

The conflict was discussed by the Constitutional Chamber together with other claims of unconstitutionality against various decrees on pandemic management. With its decision of 8 June, the Constitutional Chamber declared 11 presidential decrees unconstitutional and again underlined the role of the legislature: “The suspension of fundamental rights affecting the entire national territory implies the exercise of a competence that does not correspond to the Executive in the health sector, but to the Legislative Assembly; and only exceptionally, to the Council of Ministers”.¹⁷ Once more, in a third important ruling in August 2020, the Constitutional Chamber stressed that the legislature’s role with regard to pandemic

policies had to be respected by the executive and ordered Bukele to sign and publish the emergency law for the reactivation of the economy that had been approved by the legislature at the end of May.¹⁸

Executives' Reactions

V-Dem data on public attacks against the judiciary during the pandemic shows substantive differences in government behaviour (Coppedge et al., 2022a): Brazil and El Salvador obtained the highest conflictive value (0) for relations between courts and the government, while Ecuador improved its own such score during Moreno's term in office (from 2 in 2018–2020 to 4 in 2021) – that is, the respect for courts increased under his presidency. This trend was not permanent, though, as we demonstrate below. A qualitative assessment of executives' reactions to court rulings during 2020 and 2021 shows that most did so vigorously, while differing in intensity and success in terms of imposing their respective views. We identify certain instances of compliance, which would point to genuine checks on executive power being in operation. However, there were also situations of open attack: being either rhetorical in nature or formal (successful and unsuccessful) attempts at retaliation (see Table 7.2).

The mildest executive reactions were seen in the case of Ecuador. Even though the latter's Constitutional Court exercised bold control over emergency decrees, setting an ultimatum and eventually declaring the last decree unconstitutional, we are not aware of any fierce reaction either by Moreno or by representatives of his government, who rather accepted the ruling and complied with the court's orders. However, it is certainly not a minor issue that the court had been completely renewed under Moreno. Interestingly, after the change of government in May 2021, incoming President Lasso did not comply with the court order to present a bill that would regulate restrictions on freedom of movement during the pandemic by law. Lasso's

Table 7.2 Executive reactions to courts' pandemic-related decisions, compilation by the authors

<i>Executive reactions to court ruling(s)</i>	<i>Ecuador (Moreno)</i>	<i>Ecuador (Lasso)</i>	<i>Argentina</i>	<i>Brazil</i>	<i>El Salvador</i>
(1) Compliance	X		X	X	
(2) Selective compliance or non-compliance		X			X
(3) Informal interference			X	X	X
(4) Formal interference				X (unsuccessful)	X (successful)

reaction in May 2022 to the Constitutional Court’s rejection of emergency decrees for the control of criminal violence in the country shows that the current president has not been willing to accept limits to his power on this and other issues, a reluctance probably connected to the fact that the court was appointed by his predecessor’s allies.

Argentina follows in terms of the intensity of the executive’s reaction. Vice-president Cristina Fernández unleashed strong rhetoric in response to the Supreme Court’s decision on the closure of schools during the pandemic: “It is very clear that coups against democratic institutions elected by popular vote are no longer the same as in former times”, she tweeted (Infobae, 4 May 2021). President Fernández, for his part, said he would obey the ruling, but also showed himself to be disturbed by the decision. As part of the ongoing dispute with the court, the government drafted a proposal for judicial reform in August 2020, which pointed to enlarging the court’s membership – a classic form of interference in Argentine political history and an action designed to keep the court under pressure. In September 2022, the Senate approved an amended version that increased the number of Supreme Court judges from 5 to 15. The declared official aims here were to improve the provinces’ representation and achieve gender parity within the court, whereas opposition politicians regarded this as a move to increase government influence.¹⁹ This reform proposal cannot be regarded as primarily resulting from the pandemic but, as discussed in previous sections, needs to be framed within the broader conflictive stance between these two branches of government.

For Brazil, we observe both informal and (unsuccessful) formal attacks on the STF. Cases of formal interference with courts are rare in Brazil; impeachments or purges are almost non-existent. Given this tradition of court–executive relations and together with his lack of legislative majority support, Bolsonaro concentrated his actions on public attacks on and threats to the STF; formal attempts at retaliation remained unsuccessful. Bolsonaro himself frequently reacted with harsh statements on Twitter or in his public speeches. In April 2020, he joined a demonstration in Brasília where protesters were demanding military intervention and the shutting down of Congress and the STF. In June 2020, his supporters marched in front of the STF throwing fireworks and carrying torches, protesting against its investigations into their spread of “fake news” about judges on social media. This, and the fact that confrontation existed before, shows that the STF’s pandemic-related decisions were only one part of the conflict between itself and the executive. The conflict went further, with Bolsonaro questioning the separation of powers and trying to formally interfere with the STF. In August 2021, he attempted impeachment proceedings against judge Alexandre de Moraes; these failed, despite this iteration of Congress having supported several presidential projects. This legislative shield against formal interference, resulting from its consequent control over the executive’s actions during the pandemic and the expansion of its power to initiate criminal proceedings against high-rank politicians,

allowed the STF to defeat the executive's formal attack on its independence (Werneck Arguelhes, 2022).

The fiercest executive reaction – with far-reaching consequences for court independence – occurred in El Salvador. Bukele undermined the institutional legitimacy of the Constitutional Chamber from the beginning of the pandemic through non-compliance and informal interference therewith: He refused to obey many important rulings and openly defamed its judges in public speeches and on social media. Bukele created a “hostile narrative” that was spread by his online followers (Indacochea and Rubio Padilla, 2021), frequently accusing the judges of being responsible for the future deaths of Salvadoreans due to COVID-19. When the Constitutional Chamber declared 11 presidential decrees to be unconstitutional on 8 June 2020, Bukele described this decision on social media as an order set “to murder tens of thousands of Salvadoreans” (Deutsche Welle, 9 June 2020).

After the legislative elections of February 2021, by when the pandemic was almost a year old and which saw Bukele's party *Nuevas Ideas* gain a large majority, the reactions turned into formal ones. On the same day as the new legislature's inauguration, the legislators removed the five judges of the Constitutional Chamber – a decision justified on the grounds of alleged citizen discontent with the latter's “anti-popular decisions”. Further, they accused these judges of taking on attributes that corresponded to the executive's own competences, especially with regard to health issues – “faculties that were not authorized in the Constitution” (cited in Indacochea and Rubio Padilla, 2021). Afterwards, Bukele's majority appointed five new judges even though, according to law, this is only possible after a list of potential candidates is preselected by the Judicial Council. This co-optation of the Constitutional Chamber not only punished the previous judges for their boldness in the control of the government's pandemic-management policies but also paved the way for Bukele's possible re-election in the future. In September 2021, the new judges ruled that the constitution would allow the president to be in office up to ten years, *de facto* amending it to thus allow presidential re-election. One year later, the president publicly declared his desire to run for a second term in 2024. The human rights situation in El Salvador has only worsened since the onset of the pandemic, with the three branches of government operating in an extremely coordinated manner to prosecute thousands of people in a summary, illegal and indiscriminate manner (Amnesty International, 2022).

The executive's reaction to court control over pandemic-related decisions reveals the devastating effects hereof for judicial independence in the short-to medium term in El Salvador. The new judges are on-board with Bukele's government and, as they have already shown with the decision made on presidential re-election, are likely to demonstrate such loyalty when it comes to cross-cutting political matters in the future as well – potentially enabling the president to expand his powers even further. For the other three Latin American courts, the balance is mixed. The Brazilian STF was

able to use its decision-making regarding pandemic measures as a boost for its degree of institutional support in the face of a highly confrontational president. The Argentine Supreme Court's decision on the closure of schools was only one more episode in a long-running conflict between the judiciary and executive there. Under the government of President Lasso, the Ecuadorian Constitutional Court seems to have encountered problems typical of courts in Latin America (and in other developing democracies): namely, low compliance with their rulings.

Courts, Executives and the COVID-19 Pandemic

Which factors account, then, for the different patterns of court–executive relations witnessed during the current pandemic? In this section, we discuss two tentative explanations for such executive behaviour: the impact of populist presidents and the degree of fragmentation in political power. On the one hand, we observe that the two populist presidents were the ones showing the strongest hostile reactions to court control. This does not come as a surprise – a growing literature has pointed to the tensions between populist forces and liberal democracy, which may lead to the enactment of new, populist constitutions (Landau, 2017) or to forms of autocratic legalism (Scheppele, 2017). The strongly majoritarian character of populist governments usually collides with checks on executive authority, which are interpreted as contradicting the will of the people (Ruth-Lovell et al., 2018). Populist forces do not abolish courts and constitutions, but they seek to change or manipulate them in ways that ensure their subordination (Ginsburg, 2018), thus undermining horizontal checks and protections for minority groups excluded from their definition of the “people” (Landau, 2013).

On the other hand, the case of El Salvador shows that formal interference manifests if presidents have a majority in the legislature. This tends to produce more irreversible damage to long-term judicial independence than informal interference does. In judicial politics, the separation of powers approach has demonstrated that the concentration of power makes the judiciary relatively weak and deferential, whereas coordination problems between the executive and the legislature, occurring when the president finds himself in a minority position within the legislative branch, can reduce constraints on courts. The two other branches cannot react jointly to a judicial ruling, thus encouraging courts to rule against the government (Rios-Figueroa, 2007). Contrariwise, majority governments are more likely to interfere with the court as they are able to coordinate action with a supportive legislature.

The pandemic took hold in an anti-incumbent and politically distrustful context that had hoisted new populist figures to the fore. In Brazil, Bolsonaro, a former army captain and open defender of past dictatorships and far-right values, won the presidency in 2018 with the promise to eradicate political corruption and crime and to renew Brazilian politics by

undoing the left's legacies as inherited from the Workers' Party presidencies. Despite Bolsonaro's discourse mixing populist, patriotic and nationalist traits, the populist component thereof score much higher than any other Brazilian president over the past 20 years (Tamaki and Fuks, 2020). No presidential party in Brazil has had a congressional majority in a highly fragmented legislature; Bolsonaro relied on loose alliances with socially conservative centre-right parties until January 2021 when, facing serious calls for his impeachment, he decided to tighten his leverage in Congress. He achieved this by securing the presidencies of the two chambers and further political support from the *centrão*, a fluid group of opportunistic and power-hungry congressional parties. Nonetheless, he did not achieve a sufficient majority to impeach Judge De Moraes.

In El Salvador, Bukele became the first president since the end of the civil war in 1992 to be elected despite not being a candidate from one of the country's two major political parties. On the campaign trail, he promoted himself as a break from the traditional elites and the corruption and failures of previous administrations. In a similar vein to Bolsonaro, his main vehicle of communication with the general public has been social media. He defines criminal gangs and the traditional elite as enemies of the people. His Manichean narrative results in a "millennial authoritarianism", containing "traditional populist appeals, classic authoritarian behavior, and a youthful and modern personal brand built primarily via social media" (Melendez-Sanchez, 2021: 21). When Bukele took power, his centre-right Gran Alianza por la Unidad Nacional (GANU) only held 11 out of 84 seats in the country's unicameral legislature. However, profiting from enormous presidential popularity after a year in power, his newly founded party Nuevas Ideas was the first in the country's history to gain a supermajority of two-thirds in the parliamentary elections of February 2021.

In Argentina, populism has a long history due to Peronism, but Alberto Fernández's victory over Mauricio Macri (2015–2019) – who was seeking re-election – brought to power a moderate, pragmatic and compromise-seeking president with a centre-left political agenda, leading the coalition Frente de Todos. However, his candidacy had been orchestrated by Cristina Fernández, the charismatic and polarising ex-president who took the vice-presidency. With her often populist style, she has maintained the upper hand from that position, unleashing infighting and extremist stances within the government – as shown by her harsh reaction to the Supreme Court's ruling discussed here. Regarding congressional support, the president began his term with a relative majority in the Chamber of Deputies and an absolute one in the Senate; the latter he lost in the mid-term elections of November 2021. However, he maintained a relative majority of 49 per cent, enough to get the proposed judicial reform passed.

In Ecuador, in the wake of the populist governments of Correa (2007–2017), his handpicked successor Moreno (2017–2021) took a clear anti-populist stance (Burbano de Lara and De la Torre, 2020). His own successor, conservative ex-banker Lasso, also presented himself as anti-populist by

stressing the importance of dialogue with the opposition and rejecting the “cult of caudillismo” (LatinNews Weekly Report 27 May 2021). Both Moreno and Lasso lacked/lack majority backing, depending instead on ad hoc support from other parties in Ecuador’s highly fragmented unicameral legislature.

Our case studies show that these two factors – populism and degree of fragmentation of power – reinforce each other as explanations for executive behaviour. An executive that actively pursues an illiberal agenda and in addition has strong political power to push it through the legislature, within a longer-term context of disrespect or disregard for democratic institutions (as in El Salvador), is likely to be the most inclined to undermine courts’ stature during an exceptional situation and will thus be most detrimental to democracy. Alternatively, populists may wish to pursue these ends but lack the political means to achieve them or be prevented by a context in which democratic institutions still maintain a solid reputation. On the opposite end of the spectrum, non-populist executives will refrain from using the exceptional circumstances at hand to expand their power over courts. However, they may turn to non-compliance if they dislike the decisions taken and use strong rhetoric against courts in consequence.

Conclusion

Courts matter during emergencies such as the COVID-19 pandemic because they are entitled to keep in check executive excesses, particularly when legislative participation is reduced due to the need for immediate policy responses. This chapter studied court–executive relations in the context of pandemic-related court decisions. It showed that Latin American courts have decided on a considerable number of COVID-19-related cases, especially in Brazil and El Salvador – two countries entering the pandemic under populist presidents and where courts exercised bold control.

Our inductive approach allows us to draw two conclusions. On the one hand, courts matter in such exceptional situations: They can effectively limit the executive’s excesses, or at least make apparent that the latter is behaving illegally. This helps generate debate about such actions at the national and international level. Notwithstanding the observed attacks on the courts of Brazil and El Salvador, the fact that they engaged in bold control is a positive sign. Yet, the co-optation of the Constitutional Chamber in El Salvador represents devastating interference with judicial independence in the country, demonstrating a strong break with the rule of law there. In this regard, the pandemic has had a catalyst effect on authoritarian tendencies already underway.

Our exploration of two tentative explanatory factors for executive behaviour showed that populist executives engaged in harsh responses to court decisions, and that they used formal interference when having the majority for doing so. Even in Argentina, a country with a moderate president, the populist vice-president brought similar responses to court action – albeit within a long-standing divide within government.

What role has the COVID-19 pandemic played in this landscape of court–executive relations? As we explained, executive reactions have not diverged greatly from what is known about court–executive relations in the past. We learnt that the pandemic has acted as a conflict accelerator because it demanded immediate decisions by all institutional actors. This urgent need for decision-making increased the likelihood of democratic backsliding, while reducing constraints and enlarging the executives’ chances to act boldly – as has been observed for the case of Hungary (Guasti, 2020), and as we showed for that of El Salvador. Arguably, court–executive relations in Latin America may have remained unchanged from what they mostly were during the decade prior to the pandemic’s onset. Yet the combination of populist executives with strong institutional power in an emergency context has ultimately only accelerated democratic backsliding.

Acknowledgements

The authors thank Gaspard Estrada, Bert Hoffmann, Laurence Whitehead, and the other participants at the workshop “Democratic Institutions in Latin America: Challenges, Processes Remedies” (University of Erfurt, 23–24 June 2022), as well as Philipp Schroeder and the participants in the panel “Courts and the Separation of Powers” at the ECPR General Conference (Innsbruck, 22–26 August 2022), for their valuable comments on previous versions of the manuscript.

Notes

- 1 According to the Freedom House Index, in the years 2020–2022 the countries rating at least as partly free were: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru and Uruguay (Freedom House, 2022).
- 2 Out of the 16 democratic countries of the region, the websites of 14 high courts provide full-text search functions for their decisions. The archives of the Honduran and the Panamanian supreme courts were not accessible.
- 3 In 2020, only Chile, Costa Rica and Uruguay were classified as having high judicial independence.
- 4 The transitional *Consejo de Participación Ciudadana y Control Social Transitorio* dismissed all nine judges and replaced them in a move intended to cut the influence of ex-president Rafael Correa on this court.
- 5 Populism is a contested concept, being for many associated with issues on the left or right. However, a broader approach points to the phenomenon being defined rather by a core set of ideas beyond issues, particularly people-centric, anti-elite and polarising worldviews (Mudde, 2007).
- 6 We base the fourth, fifth and sixth section on information collected from Economist Intelligence Unit country reports (2020–2022), the LatinNews regional and weekly reports (2020–2022), as well as from national and international online newspapers.

- 7 Dictamen No. 1-20-EE/20.
- 8 Dictamen No. 5-20-EE/20.
- 9 Dictamen No. 7-20-EE/20.
- 10 Dictamen No. 1-21-EE/21.
- 11 In view of executive inaction, a group of oppositional legislators presented a new bill that was debated in the National Assembly in January 2022.
- 12 Dictamen No. 567/2021.
- 13 ADPF 672.
- 14 ACO 3385.
- 15 Inconstitucionalidad 6-2020.
- 16 Habeas Corpus 148/2020, 8 and 14 April 2020.
- 17 Inconstitucionalidad 21-2020/23-2020/24-2020/25-2020, p. 75.
- 18 Controversia 8-2020.
- 19 At the time of writing, the proposal had been sent to the lower chamber; its approval has been assessed as unlikely.

References

- Abrucio FL et al. (2020) Combating COVID-19 under Bolsonaro's federalism: a case of intergovernmental incoordination. *Brazilian Journal of Public Administration* 54(4): 663–677.
- Altavilla C (2020) Emergencia pública, presidencialismo y Estado de Derecho en Argentina en el contexto del COVID-19. *Derecho y Realidad* 18(36): 181–202.
- Amnesty International (2022) El Salvador: President Bukele engulfs the country in a human rights crisis after three years in government, 2 June. Available at: www.amnesty.org/en/latest/news/2022/06/el-salvador-president-bukele-human-rights-crisis/ (accessed 10 August 2022).
- Bertelsmann Transformation Index (2022) Available at: <https://atlas.bti-project.org/> (accessed 15 September 2022).
- Biehl J, Pratos LEA, and Amon JJ (2021) Supreme Court v. Necropolitics: The chaotic judicialization of COVID-19 in Brazil. *Health and Human Rights Journal* 23(1): 151–162.
- Blofield M, Hoffmann B, and Llanos M (2020) Die politischen und sozialen Folgen der Corona-Krise in Lateinamerika. *GIGA Focus Lateinamerika* 3.
- Bolleyer N and Salát O (2021) Parliaments in times of crisis: COVID-19, populism and executive dominance. *West European Politics* 44(5–6): 1103–1128. DOI:10.1080/01402382.2021.1930733.
- Brinks D and Blass A (2017) Rethinking judicial empowerment: The new foundations of constitutional justice. *I•CON* 15(2): 296–331.
- Burbano de Lara F and De la Torre C (2020) The pushback against populism: why Ecuador's referendums backfired. *Journal of Democracy* 31(2): 69–80.
- Canello J (2017) *Judicializando a federação? O Supremo Tribunal Federal e os atos normativos estaduais*. PhD Thesis. Instituto de Estudos Sociais e Políticos, Universidade do Rio de Janeiro.
- Castagnola A (2020) La trampa de la manipulación judicial: un análisis histórico del control político de la Suprema Corte argentina. *Revista Uruguaya de Ciencia Política* 29(1): 49–79.
- Cervantes A, Matarrita M and Reza S (2020) Los estados de excepción en tiempos de pandemia. Un estudio comparado en América Latina. *Revista Cuadernos Manuel Giménez Abad* 20: 179–206.

- Cheibub JA, Ji Yeon Jean H and Przeworski A (2020) Rights and Deaths: Government Reactions to the Pandemic. Available at SSRN: <http://dx.doi.org/10.2139/ssrn.3645410> (accessed 15 June 2022).
- Coppedge M et al. (2022a) *V-Dem v12*. Varieties of Democracy (V-Dem) Project.
- Coppedge M et al. (2022b) *V-Dem Codebook v12*. Varieties of Democracy (V-Dem) Project.
- Da Ros L and Taylor M (2022) Bolsonaro and the judiciary: between accommodation and confrontation, *Ibero-Online* 14: 44–54.
- Deutsche Welle (2020) Corte Suprema de El Salvador prorroga emergencia por coronavirus, 9 June. Available at: www.dw.com/es/corte-suprema-del-salvador-prorroga-emergencia-por-coronavirus/a-53542543 (accessed 20 November 2021).
- Economist Intelligence Unit (2020–2022) EIU country reports.
- Edgell AB, Lachapelle J, Lührmann A and Maerz SF (2021) Pandemic backsliding: violations of democratic standards during COVID-19, *Social Science & Medicine* 285(September). <https://doi.org/10.1016/j.socscimed.114-244>.
- Fabbrini F (2010) The role of the judiciaries in times of emergency: judicial review of counter-terrorism measures in the US Supreme Court and the European Court of Justice. *Yearbook of European Law* 28: 664–697.
- Freedom House (2022) Freedom in the World 2020–2022. Available at: <https://freedomhouse.org/> (accessed 21 September 2022).
- Ginsburg T (2018) Demographic backsliding and the Rule of Law. *Ohio Northern University Law Review* 44: 351–369.
- Ginsburg T and Versteeg M (2021) The bound executive: emergency powers during the pandemic. *International Journal of Constitutional Law* 19(5): 1498–1535.
- Guasti P (2020) The impact of the COVID-19 pandemic in Central and Eastern Europe: the rise of autocracy and democratic resilience. *Democratic Theory* 7(2): 47–60.
- Indacochea U and Rubio Padilla S (2021) Noche oscura para la independencia judicial en El Salvador. *Justicia de las Américas*. Available at: <https://dplfblog.com/2021/05/20/noche-oscura-para-la-independencia-judicial-en-el-salvador/> (accessed 22 November 2021).
- Infobae (2021) Cristina Kirchner calificó el fallo de la Corte Suprema por las clases presenciales como “un golpe contra las instituciones”. 4 May. Available at: www.infobae.com/politica/2021/05/04/cristina-kirchner-califico-el-fallo-de-la-corte-suprema-por-las-clases-presenciales-como-un-golpe-contra-las-instituciones/ (accessed 22 July 2022).
- International Legal Assistance Consortium (2020) Justicia en el tiempo de COVID-19: Desafíos del Poder Judicial en América Latina y el Caribe, December.
- Kapiszewski D, Silverstein G and Kagan RA (2013) Introduction. In Ibid. (eds) *Consequential Courts: Judicial Roles in Global Perspective*. Cambridge: Cambridge University Press, pp. 1–41.
- Kosař D and Šipulova K (2022) Comparative court-packing. JUSTIN Working Paper Series 1.
- Landau DE (2013) Abusive constitutionalism. *University of California, Davis Law Review* 47: 189–260.
- Landau DE (2017) Populist constitutions. *The University of Chicago Law Review* 85: 521–543.
- LatinNews 2020–2022. Latin American Weekly and Regional Reports.

- Llanos M (2014) Acción estratégica y cultura de la informalidad: la reforma judicial en Argentina. In Wences I, Conde R, and Bonilla A (eds) *Cultura de la legalidad en Iberoamérica: Desafíos y experiencia*. San José: Flacso, pp. 277–296.
- Llanos M and Tibi Weber C (2020) Cortes Superiores y redes sociales en América Latina. *Revista Uruguaya de Ciencia Política* 29(1): 15–47.
- Llanos M, Tibi Weber C, Heyl C and Stroh A (2016) Informal interference in the judiciary in new democracies: a comparison of six African and Latin American cases. *Democratization* 23(7): 1236–1253.
- Melendez-Sanchez M (2021) Latin America erupts: millennial authoritarianism in El Salvador. *Journal of Democracy* 32(3): 19–32.
- Mudde C (2007) *Populist Radical Right Parties in Europe*. Cambridge: Cambridge University Press.
- Pérez-Liñán A and Mainwaring S (2013) Regime legacies and levels of democracy: evidence from Latin America. *Comparative Politics* 45(4): 379–397.
- Petrov J (2020) The COVID-19 emergency in the age of executive aggrandizement: what role for legislative and judicial checks? *The Theory and Practice of Legislation* 8(1–2): 71–92.
- Posner EA and Vermeule A (2011) *The Executive Unbound: After the Madisonian Republic*. Oxford: Oxford University Press.
- Prieto G (2020) How Ecuador’s constitutional court is keeping the executive accountable during the pandemic. *Verfassungsblog*, 24 April. Available at: <https://verfassungsblog.de/how-ecuadors-constitutional-court-is-keeping-the-executive-accountable-during-the-pandemic/> (accessed 05 November 2021).
- Reuters Covid-19 Tracker (15 July 2022) Latin America and the Caribbean. Available at: <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/regions/latin-america-and-the-caribbean/> (accessed 09 September 2022).
- Ríos-Figueroa J (2007) Fragmentation of power and the emergence of an effective judiciary in Mexico. *Latin American Politics and Society* 49(1): 31–57.
- Ruth-Lovell S, Carlin RE, Castanho Silva B and McCoy JL (2018) Policy brief on populism in Europe and the Americas: what, when, who, and so what? University Segovia.
- Scheppele KL (2017) Autocratic legalism. *The University of Chicago Law Review* 85: 545–583.
- Smith BC (2017) *Judges and Democratization: Judicial Independence in New Democracies*. Abingdon: Routledge.
- Tamaki ER and Fuks M (2020) Populism in Brazil’s 2018 General Elections: an analysis of Bolsonaro’s campaign speeches. *Lua Nova* 109: 103–127.
- Tibi Weber C and Llanos M (2016) Between independence and control: recent developments within the judiciary in Latin America. In González-Sánchez V (ed) *Economy, Politics, and Governance Challenges for the 21st Century*. New York: Nova, pp. 101–115.
- United Nations 2020. International Covenant on Civil and Political Rights (ICCPR). Available at: www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (accessed 15 June 2022).
- Welp Y (2021) Argentina en su eterno laberinto. *Iberoamericana* XXI, 76: 213–218.
- Werneck Arguelhes D (2022) Weak, but (very) dangerous: The Bolsonaro Paradox. *Verfassungsblog*, 22 June. Available at: <https://verfassungsblog.de/weak-but-very-dangerous/> (cited 10 August 2022).

8 Democracy, Electoral Institutions, and Digital Platforms in Latin America

Gaspard Estrada

Introduction

This chapter presents a study into the role of digital platforms¹ in electoral campaigns and their regulation (or rather the inadequacy of that regulation) by electoral institutions in Latin America. Following the so-called third wave of democratisation in the region (Huntington, 1991), the bodies in charge of organising elections have played a key role in the construction of Latin American democracies. Indeed, in societies marked by weak institutions (Brinks et al., 2020) and distrust towards the state (Guemes, 2016), the elaboration and application of clear rules for the electoral game have been one of the main challenges for these bodies. It is not only a matter of organising elections in such a way that votes can be counted reliably, but also of allowing the electoral contest to take place in conditions of fairness for candidates and their political parties, while maintaining transparency in campaign financing and spending. Contrary to what has happened in the United States and Western Europe,² Latin American electoral bodies have asserted their centrality in the institutional construction of the region's democracies (Freidenberg, 2022, Nohlen et al., 2007), using their normative influence at the national and regional levels (Uribe, 2022), thereby increasing their prerogatives regarding campaign oversight and control.

However, the emergence of digital platforms as a part of the electoral arena has changed this paradigm. Their readiness to apply the concept of “freedom of speech” to their business model (and more generally, their defence of this concept in opposition to the demands of governments and regulators), together with the lack of transparency in their operation and decision-making, has disrupted the institutional arrangements in place in most Latin American countries, while their role has become increasingly important in recent years. Electoral bodies, whose work has also been impacted by this transformation, have tried to respond using their normative instruments. However, the mechanisms developed over the last 40 years seem ill-adapted to facing the challenge posed by the emergence of digital platforms in electoral campaigns: on the one hand, digital platforms have become actors in electoral litigation by deleting posts or even accounts

on the grounds of the “violation of the platform’s terms of use”, rather than by referring to the jurisprudence used by the electoral bodies. As a result, electoral bodies have lost some of their centrality in the regulation of election campaigns, even though this is their *raison d’être*. On the other hand, when electoral bodies respond to this new situation, the criteria they use for removing posts, accounts, or even suspending the activity of a whole digital platform raise concerns among organised civil society (especially journalists’ and human rights associations), who view such moves as attempts at “censorship”. The timing of judgements by the electoral authorities concerning content disseminated via social networks also raises questions, since that judicial procedures do not follow the same rhythms or timescales as social networks. In this sense, candidates’ campaign teams may prefer to win an election, even if it means being convicted later for offences related to the misuse of social networks.

The role and authority of electoral bodies are evolving, and not in the direction they want. Consequently, their desire to regulate digital platforms in order to maintain the institutional architecture of election regulation in Latin America is producing a heated debate, both inside and outside social networks, with varied outcomes.

To explain this situation, this chapter will review the origin and development of digital platforms as instruments for political representation, before focusing on the evolution of the role of electoral bodies in the context of the political transition in Latin America, and especially their affirmation of their role as institutions in charge of guaranteeing fairness and transparency in electoral campaigns. Finally, after a presentation of the main axes of the current debate on the regulation of digital platforms by electoral institutions in Latin America, we focus on four cases in the region: Colombia, Peru, Mexico, and Brazil.

Digital Platforms: A Remedy for the Crisis of Democratic Representation?

In April 2022, during a conference at Stanford University, former President Barack Obama spoke out on the growing nexus between technology and democracy, making clear his position in favour of the regulation of large digital platforms in order to avoid the “decline”³ of American democracy and, more generally, of democracy at the global level. This statement was viewed with surprise by much of the media because Barack Obama and his presidency had until then seemed to foster an idyllic vision of digital platforms as actors of change in favour of progressive agendas. Indeed, social networks were fundamental in the construction of the former president’s presidential aspirations, in three respects: the structuring and mobilisation of his militant base against the Democratic Party establishment, the obtaining of resources to finance his campaign, and – after he had won the primary elections to become the official Democratic candidate – the dissemination of his political message against his Republican

adversary (Katz et al., 2013). Once in office, his administration promoted the growth of digital platforms, while the latter continued to enhance their image as actors of political change, both in developed countries, where they facilitated movements such as #MeToo, and in developing countries, particularly during the social mobilisations of the Arab Springs in 2011, which led to the fall of several authoritarian regimes in North Africa and the Middle East. At a time when criticism of political and economic elites was growing, in the context of economic and social crises resulting from the collapse of the international financial system in 2008–2009, the emergence of new forms of activism and collective action – the result, paradoxically, of a sum of individual acts on social networks – made it possible to imagine a new political order in which digital platforms would be a catalyst for increased social participation (Castells, 2012).

From this “techno-optimistic”⁴ perspective, this new era could help to resolve one of the greatest challenges facing democracies: that of representation. According to the theory of “polyarchy” (Dahl, 1961, 1971), the coexistence of different political groups can prevent power imbalances from enduring over time, insofar as competition between interest groups makes it possible to exercise a certain type of control, thus contributing to creating a system in which every citizen can be heard. Over time, however, governmental structures seem to move away from ordinary citizens and towards the most powerful individuals. In this sense, the horizontal logic of digital activism would seem to offer the possibility of reinstating a pluralist ideal. The central argument used by advocates of this perspective is based on the reduction of the costs of participation and social coordination, as well as the creation of more direct channels of communication between “the people” and their rulers thanks to the emergence of digital platforms, which would therefore make it possible to overcome power imbalances (Pickard, 2006; Earl & Kimport, 2011; Margetts et al., 2016).

The Polysemy of the Concept of “Freedom of Speech” in Characterising the Functioning of Digital Platforms in Political Life

This “techno optimist” discourse went hand in hand with a broader narrative around the defence of the concept of “freedom of speech”, which became a key term in the narrative concerning the development and defence of digital platforms. Proponents of the first digital platforms shared a perception of states as being inefficient – and to some extent responsible for an estrangement between “the people” and their elites – a fact which contributed to the prevalence of libertarian ideals in public discourse about such platforms (Schradié, 2019). Given the attachment of such ideals to improving social participation, it was paradoxical that these same arguments accompanied the growth of Donald Trump’s community of followers on some of these platforms during the 2016 election cycle, which was partly built on the use of “fake news” and disinformation

campaigns, but was also stimulated by the functioning of algorithms aimed at maximising advertising revenue (Edsall, 2021); thus, in the name of “freedom of speech”, digital platforms simultaneously prioritised private profit while weakening democracy in the United States and internationally. While the case of the 2016 US presidential election, revealed in the wake of the “Cambridge Analytica affair”,⁵ is now widely known, it is worth noting that, prior to Donald Trump’s rise to power, most academic work in the social sciences devoted to the study of social networks tended to focus mainly on progressive movements (Pickard, 2006; Pickerill, 2006) to the detriment of more conservative movements, whose capacity for online and offline mobilisation was highlighted during the 2016 election cycle. Indeed, Jen Schradie’s (2019) research on the structuring of the digital activism of progressive and conservative activists in North Carolina in the early 2010s highlights the distinct approach used by conservative digital activism, whose growth – and subsequent electoral success – is largely due to the hierarchical functioning of conservative movements, contrary to the “techno optimist” ideal that assumes that the political use of digital platforms results in a horizontalisation of power relations. In short, the narrative of digital platforms as a factor for positive change in the functioning of democracy gave way to one in which increased political polarisation, lack of transparency, and misinformation take centre stage (Schradie, 2019).

This polysemy of the concept of “freedom of speech” with regard to the use and development of digital platforms also has an impact on a fundamental issue in the democratic life of a country: that of the link between money and politics in electoral campaigns (Falguera, 2015). One of the main political messages espoused by the digital activists linked to the Democratic Party, who contributed to the success of Howard Dean’s pre-campaign in 2004 (Kreiss, 2009) and then to Barack Obama’s presidential victory in 2008 (Kreiss, 2012), was concerned with a desire to break with the traditional model for the financing of electoral campaigns, which is mainly linked to the traditional financiers of political parties in the United States: lobbies and large corporations. In their view, digital platforms would help to give candidates (and by extension, citizens) back their “freedom of speech”, which had been appropriated by lobbies and interest groups, by making it possible for any individual to donate money – even modest sums – to the campaign. However, it was similarly on the grounds of avoiding “restriction of free speech” that the US Supreme Court ended restrictions on private campaign financing in 2010, following the famous *Citizens United vs. Federal Election Commission* decision,⁶ which had the effect of significantly increasing the incestuous link between money and politics. While there is no evidence that digital platforms were responsible for this change in case law, it is clear that these companies – as well as their leaders – benefited greatly from this ruling, as they subsequently became major donors to US election campaigns, and went on to spend millions of dollars on lobbying campaigns aimed at preventing regulation or antitrust legislation from impacting their business models (Lima, 2022; Evers-Hillstrom, 2021).

In light of such contradictory uses and consequences of the concept of “freedom of speech”, it seems that its very ambiguity reflects the difficulty of defining the role of digital platforms in our societies, particularly during electoral campaigns. As digital platforms develop new tools, their capacity to influence the political–electoral game increases, thus transforming them into non-identified “political actors” in democracies, with their own agenda-setting capacity and their own interests to defend (Bossetta, 2020; Popiel, 2022; Tarrant & Cowen, 2022).

Faced with these new “political actors” with the capacity to influence the electoral game (whether in terms of the fairness of electoral contests, the transparency of financing, or the dissemination of information), the institutions in charge of organising, controlling, and supervising elections have been unable to generate a regulatory framework capable of exercising jurisdictional or merely light-touch control over digital platforms, which are for-profit companies and therefore have different interests from those of regulatory institutions. This combination of the functioning of digital platforms and the activities (or inadequacies) of electoral bodies have gradually produced ever greater conflicts of interest. Such grey areas are proliferating, to the point of raising doubts about the future functioning of democratic institutions.

The emergence of COVID-19 added to this challenge. The adoption of social distancing and movement restriction measures resulted in fewer rallies and campaign events taking place in the streets, and more interactions taking place over social media. While this paradigm shift in electoral campaigning had already been on the rise for some years, the effects of the pandemic represented a considerable transformation. Traditionally, the political parties (and their party structures), together with the traditional media (print, radio, and television), played the role of intermediary between the candidate and voters. Now, however, the role of digital platforms is becoming central to this relationship.

The Gradual Strengthening of Latin American Electoral Institutions

In Latin America, the debate on the functioning of institutions (in this case, electoral institutions) is particularly relevant because of their central role in the processes of democratic transition that began in the 1980s. Indeed, in order to build democracies, it is necessary to establish political regimes characterised by certainty in the rules and uncertainty in the results (Przeworski, 2019). This entails, first of all, political actors acknowledging their electoral victories and, more importantly, their electoral defeats. However, throughout much of the twentieth century, the history of elections in Latin American was characterised by a lack of credibility in electoral processes, when they existed at all. Given the existing level of distrust, and the precarious state of the rule of law and institutions in many countries in the region, the newly empowered legislatures created autonomous

electoral bodies, seeking both to isolate them from the executive branch and to create a bureaucracy specialised in the organisation and conduct of electoral processes (Jaramillo, 2007, Zovatto, 2018). To reinforce the credibility of these processes, specialised courts were established to adjudicate electoral litigation (Jaramillo, 2007). By generating a legal and institutional framework, the aim was to give guarantees to all actors that the vote would be free, secret, and counted in a transparent and regular manner.

In addition to setting out how votes would be counted, it was also necessary to clarify what the rules of the game would be with regard to campaigning (Bjornlund, 2004). In this context, most Latin American countries initially adopted the “American” model. While the academic literature highlights that the process of “Americanisation”⁷ of electoral campaigns is a phenomenon found in most Western democracies (Farrell, 1996; Norris, 2000; Plasser, 2000), in Latin America the so-called “professionalisation” and “Americanisation” of campaigns was replicated with greater emphasis than in other regions.⁸ Latin American legislators, partly influenced by the large US political foundations and the arrival of US political consultants linked to them, gave a major role to electoral broadcasting on radio and television as a means of disseminating the candidates’ political messages (Plasser, 2000). The adoption of this model led to opportunities for candidates to obtain resources to finance their campaigns (especially from private companies), the absence of limits on political–electoral expenses, and the possibility for third parties to obtain airtime in the media, to be used either in favour of or against a candidate.

However, contrary to the idea established by the academic literature, which suggests that institutional stability is an indicator of democratic consolidation (Lijphart, 1995; Norris, 2011), in Latin America legislators have taken the opposite path of pursuing successive reforms of electoral institutions, whether to accommodate their own interests and preferences (Calvo & Negretto, 2020, Weyland, 2011), or to improve democratic institutions, or both (Freidenberg, 2022, Freidenberg & Došek, 2016, Freidenberg & Uribe, 2019). Furthermore, these reforms have not been initiated only by political elites, as electoral bodies have also played a role in the activism aimed at changing Latin American electoral laws (Uribe, 2022).

Thanks to their institutional design, and especially the considerable extent of their autonomy in some countries, electoral bodies in Latin America have acquired a constitutional and political relevance of their own, which distinguishes them from their counterparts in other regions of the world. While electoral bodies do not legislate, they may have resources for promoting legislative change in electoral matters, when political conditions permit. This has enabled Latin American electoral bodies to act as promoters and facilitators of the dissemination of ideas, norms, and regulatory projects. At the same time, the existence of international organisations that bring together electoral bodies at the regional level has led to the exchange of experiences and learnings that can then be incorporated into domestic legislation (Uribe, 2022).

The electoral reforms carried out in Latin America since the beginning of the political transition at the end of the 1970s have focused on four main issues: guaranteed access of candidates to the media; equal distribution to candidates of free media time; reduction in the duration of the campaign; and finally, greater regulation of opinion polls and electoral surveys (Cáceres, 2022). Thus, although the “American” model of electoral campaigns has been maintained in the region, several of its central components, such as the absence of limits on political–electoral spending, or the possibility for candidates to obtain private resources to finance their campaigns, have been increasingly regulated (Scherlis, 2022). In some countries in the region, private campaign financing has disappeared entirely, thus helping to increase the fairness of Latin American electoral contests, whereas in the United States, the removal of the limit on private campaign financing during Barack Obama’s term in office had the opposite effect.

This regulatory dynamic was particularly reflected in the crown jewel of the “American” model, that is, the broadcasting of political messages on radio and television (campaign “spots”). Between 1978 and 2018, some 53 electoral reforms were carried out to regulate political parties’ access to the media during election time (Cáceres, 2022). As time went by, reform activism increased: whereas in the 1980s only 6 reforms took place, in the 1990s this number rose to 14. During the decade 2000–2010, 20 reforms were passed, and from 2010 to the present there have been 14 amendments (Cáceres, 2022). The “American” model of electoral campaigns has thus gradually given way to a distinct “Latin American” model, which combines the strong presence of political marketing at the core of campaigns (together with the hiring of external consultants) with a robust regulatory system with power over campaign financing, candidates’ access to the media, and limitations on contributions to campaigns by private actors. In this sense, it could be said that the influence of electoral bodies has been aimed at increasing equity in the face of the triptych of factors that contribute to unlevelling the political field in an electoral competition (Levitsky & Way, 2010): disparity in candidates’ resources, differentiated access to the media, and unequal access to the law.

The Challenge to the “Latin American” Model of Electoral Campaigning Posed by Digital Platforms

The advent of digital platforms such as Facebook, Twitter, WhatsApp, or Telegram has brought with it a substantial change in information consumption patterns, as well as in electoral decision-making processes. With more than 390 million users (Insider Intelligence, 2021), Latin America is, after Asia, the second region in the world in terms of social media use. Despite unequal access to the Internet, growth projections continue to increase. However, this growing use has gone hand in hand with a worrying change in the pattern of information consumption, and particularly a declining trust in news, which has been demonstrated by several indicators over

recent years. According to the annual study by the Reuters Institute for the Study of Journalism at Oxford University (Newman, 2022), on average, only 42% of respondents globally trust the news in 2022. The results across Latin America show significant contrast: Brazil, with a level of trust of 48%, is the only country with a result above the global average. Argentina, on the other hand, has the worst score in the region, at 35%. The figures for trust in the news in Peru (41%), Chile (38%), Colombia (37%), and Mexico (37%) are all below the world average.

This downward trend is accompanied by a gradual loss of interest in political news in Latin America. Brazil is the country where the situation is worst, where 54% of the adult population avoid political news, well above the world average of 38%. Five years ago, 27% of Brazilians preferred not to consume news, slightly below the world average at that time, which then stood at 29%. The situation has also worsened in Argentina: 46% say they avoid news content, up from 31% in 2017. The other countries surveyed in the region were Chile (38%), Colombia (38%), Mexico (37%), and Peru (37%). Varied reasons are given for this news aversion: 43% of respondents complain about repetitiveness, especially in coverage of politics and the COVID-19 pandemic, while 29% say they are tired of the news, while another 29% say that they do not trust it.

These numbers have a direct consequence for candidates: the main instrument of political messaging in Latin American campaigns, the TV and radio spot, is losing its audience and its persuasiveness, as voters are increasingly uninterested in news and traditional media. Frustration with politics and the increase in social polarisation in the region (Shifter, 2020), which had already manifested itself before the pandemic in the large demonstrations that occurred across large parts of Latin America in the second half of 2019, have contributed to these trends, as have the lockdown and social restriction measures linked to COVID-19. In this context, the teams in charge of political campaigns have increased spending on advertising on digital platforms, making the latter a central element of their electoral campaigning strategies.

The main problem with this development is that electoral campaigns are entering a digital arena in which there is a lack of clarity with regard to the principles that have guided the construction of a “Latin American” model of electoral campaigns: that is, the existence of binding mechanisms to regulate the duration of campaigns and the space allocated to candidates on media platforms, as well as the supervision of the use of the public funds that are allocated to them. These mechanisms, however, run up against the positioning of digital platforms as staunch defenders of “freedom of speech”, in the broad sense of the term: digital platforms therefore oppose the existence of regulatory mechanisms aimed at managing the public statements of the candidates who use these platforms, as well as the role of external bodies in supervising their work, whether in terms of campaign financing or the fight against disinformation. Some digital platforms have similarly used the principle of “freedom of speech” to justify their

willingness to disseminate advertising that contains misleading information. Finally, it should be remembered that it was on this same principle that the US Supreme Court ruled in favour of removing any limits on private contributions from companies, which allowed the owners of digital platforms to become major donors to electoral campaigns in that country.

Unlike radio or television, whose operation presupposes a degree of state control (the operators of radio and television stations, which are mainly privately owned in Latin America, hold contracts for the use of publicly owned electromagnetic frequencies, which thus allows electoral authorities to define regulations both for their broadcasting and for monitoring campaign content),⁹ social networks do not depend on state authorisation to operate. Furthermore, the transnational nature of these platforms prevents electoral authorities from fully carrying out the task of monitoring and supervising campaigns because, on the one hand, some of the social networks used by candidates (such as WhatsApp, Signal, and Telegram) do not allow access to their data, and, on the other hand, there are no uniform rules at the international level for contracting advertising space for political campaigns on social networks. If we add to this the proliferation of “fake news” and disinformation campaigns – whose impact has been multiplied by the power of social networks – we are faced with a situation in which the electoral authorities in charge of organising, supervising, and controlling electoral campaigns find themselves without adequate instruments to carry out their main mission.

This is currently the main problem faced by Latin American electoral bodies. The academic literature on this subject considers that the regulation of digital platforms in electoral campaigns does not lie at the “heart of the electoral system”, in Lijphart’s sense, as it is not part of the process of formulating or reforming the principle of representation, the electoral formula, the size of electoral districts, the electoral threshold, or the size of legislative chambers (Lijphart, 1995; Nohlen, 2004). However, the capacity of these companies to influence electoral processes – in their role as intermediaries between candidates and voters, in their financing of campaigns, and in their lobbying and influence over legislation, as we will see below, and even as actors of electoral litigation through the enforcement of their “terms of use” – transforms them into central actors in campaigns. In this sense, their ability to influence the rules – or rather, the absence of rules – also transforms them into central actors in defining the “electoral system”, that is, the set of rules that allows votes to be converted into seats or positions of power, and that therefore determine who are the winners and losers of elections (Bowler & Donovan, 2012).

Latin American Electoral Authorities vs. Digital Platforms: Who Wins? Evidence from Colombia, Peru, Mexico, and Brazil

Most electoral bodies reacted to this new reality using the same institutional toolbox that they had traditionally used for regulating the broadcasting

of radio and television spots. This includes (1) the establishment of judicial regulation, thereby creating case law in electoral matters, and (2) the signing of cooperation and self-regulation agreements (this time with digital platforms, instead of chambers of commerce or groups of radio and television broadcasters) to create a regulatory framework without imposing binding rules. However, as we will see below, although the electoral authorities continued their reformist activism, the difficulties that they encountered in adapting their regulatory frameworks to digital platforms have resulted in a loss of centrality and capacity on the part of electoral authorities in electoral litigation.

The act of establishing norms and rules involves defining what it is possible to do, and what it is not possible to do. This presupposes, first of all, that it is possible to determine what content can be considered as political campaigning, and not just as an individual's personal expression. The first action undertaken by electoral bodies in this domain was therefore to attempt to regulate the use of digital platforms for political messaging during campaigns, and thus to incorporate them in their regulatory framework.

Thus, in Colombia, the National Electoral Council (CNE) issued resolution 2126–2020¹⁰ regarding an investigation into one of the candidates for mayor of Tarqui (Huila) in the October 2019 elections, because he had used his personal Facebook account in May 2019 to promote his candidacy outside the terms allowed for campaigning for those elections. The CNE decided not to sanction the candidate, but changed its doctrine by decreeing that digital platforms are media just like radio and television, and that they would therefore be regulated in the same way, especially with regard to the time allowed for advertising during an election campaign. However, the resolution does not specify the criteria for determining whether some particular content on a social network is of a “political” nature, which therefore limits its applicability (or its “discretionality”, as it is viewed by critics of this regulation). The central argument presented by the electoral arbiter for not making this distinction in the resolution refers to the need to balance respect for the fairness of electoral processes with the “right to freedom of speech, information and communication” – an issue which particularly arises in the case of social networks.

Something similar happened in Peru. The Peruvian Congress voted in 2020 to reform the Law on Political Organisations,¹¹ notably the part relating to the financing of such organisations. This reform defines the conditions in which parties and their candidates can purchase advertising space on digital platforms for their campaigns, and empowers the National Office of Electoral Processes (ONPE) to organise such campaigns. The new regulation sets a ceiling of up to three social networks for the daily contracting of advertising, that is, a given political party can broadcast electoral messaging on, for example, Facebook, YouTube, and Twitter (or another combination), every day, from 60 days before general elections until two days before the vote (at which point campaigning activity must stop). It

is no coincidence that this is the same regulatory period as that used for the broadcasting of election spots on radio and television. Another important aspect of the text is the introduction of the principle of equality and non-discrimination in political messaging, specifying that there should be no messages that are “sexist, racist, or based on gender stereotypes that harm or undermine the political participation of women and other groups”. However, just as in Colombia, Peruvian legislation does not specify how to identify this type of offence, nor how to control statements made on social networks, which therefore makes it difficult to enforce.

These two cases highlight the difficulty of applying the law when it comes to digital platforms. Furthermore, in cases where content published on a digital platform is deemed to be against the law, the question arises of who should be penalised: the author of the content, the digital platform, or the candidate who has benefited (or more than one of these)? In the case of Mexico, in 2021, the National Electoral Institute (INE) fined the Movimiento Ciudadano party €2.66 million (*La Silla Rota*, 2021), and also levied a fine of €21,000 against its candidate for the governorship of the state of Nuevo León, Samuel García, for posts made on social networks by the candidate’s wife, the influencer Mariana Rodríguez. The INE identified 45 photographs and 1,300 posts on Rodríguez’s Instagram account as being of a political nature, with an estimated advertising value – according to the INE – of €1.3 million euros, which the campaign did not pay for or report as expenditure. The INE decided that these publications went beyond a show of free speech or solidarity with her husband. The majority of the INE’s members considered Rodríguez’s status as a natural person with commercial activities to be proven, which therefore prevents her from contributing in kind to political campaigns. INE pointed out that Rodríguez was registered with the Tax Administration Service (SAT) for her business activities in advertising services, and that her name was registered as a trademark with the Mexican Institute of Industrial Property (IMPI). In support of his decision, one of the INE’s electoral councillors stated that it was not Mariana Rodríguez’s personal support for her husband that was being sanctioned, but rather the use of her means of work to deploy an advertising and electoral campaign strategy in favour of the candidate Samuel García.

However, this view was shared neither by Mariana Rodríguez nor by her husband. It also met with opposition from the Electoral Tribunal of the Mexican Federation (TEPJF), the judicial body in charge of controlling INE’s actions. The magistrates of the TEPJF decided that the influencer’s publications were covered by the exercise of her freedom of speech, arguing that

in the new form of communication through social networks, (Mariana) decided to share different aspects of her personal life, so that, in effect, after reviewing the publications, it can be seen that they are part of the exposure of her daily life.

The debate around the defence of “freedom of speech” in electoral campaigns has thus also become a central issue in Latin American electoral litigation, notably to the detriment of the agenda-setting capacity of electoral bodies to regulate digital platforms, in the face of the creation of case law favourable to the defence of “freedom of speech”.

This example is also interesting because it highlights the problem of the temporality of the implementation of judicial procedures. Indeed, the rhythm and timescales of electoral campaigns on social media are not the same as those of the judicial system designed for ruling on propaganda aired on radio and television. In this sense, the immediacy of social networks makes the applicability of legal decisions much more difficult, especially when one wishes to respect the rule of law and criminal procedure. In this case, the court decision was issued after the end of the election campaign. This situation effectively incentivises candidates to violate the law, if the penalty is only financial and does not affect the outcome of the election.

From this point of view, the example of the evolution of the regulation of fake news by the Brazilian Superior Electoral Court (TSE) is relevant. The 2018 presidential election was marked by the systematic sending of fake news via various digital platforms.¹² The problem for the candidates’ legal teams, from a legal point of view, was that of detecting the existence of these illegalities, because some of these platforms, such as Telegram or WhatsApp, operate in a closed manner. And once such illegalities have been identified, it remains very difficult to establish their cause, from a legal point of view, without the cooperation of the digital platforms. This prevented the candidates’ legal teams from being able to present strong enough cases to be judged in time by the electoral authorities.

However, several news reports¹³ documented how the use of WhatsApp was decisive in Jair Bolsonaro’s victory (Avelar, 2019). Shortly after the election, and following the scandal unleashed by revelations in the press, a WhatsApp representative accepted that his company had allowed illegal group messaging to take place during the 2018 presidential campaign in Brazil (Campos Mello, 2019). Thus, the press somehow replaced the judicial authority in enabling the action of digital platforms in preventing the dissemination of fake news.

The weakness of the TSE in this area was reinforced when, paradoxically, some of these posts were censored by WhatsApp itself. Instead of referring posts to the electoral authorities as violations of the electoral code, WhatsApp executives based their decision on a “violation of the platform’s terms of use” (not coincidentally, after the press revelations had already emerged). This decision effectively presupposed that Brazilian electoral law has a lower rank than the rules established by the platform itself, with the result that an electoral dispute becomes a matter of private law, in which there is no possibility for appeal, nor for asserting any kind of legal basis on which to defend oneself. For some, the adoption of such a measure is necessary for combating the spread of “fake news”. But for others, WhatsApp’s decision constitutes a breach of the principle

of “freedom of speech”, which, paradoxically, has been central to the narrative in defence of digital platforms.

Faced with this challenge, the TSE decided to become much more assertive in their judicial decisions, not only with a view to protecting the Brazilian electoral system and its democratic institutions, but also with a view to maintaining its centrality and agenda-setting capacity in relation to digital platforms, delivering timely responses to the requests made by candidates’ legal teams. TSE judges supported the drafting of a bill by Congress to prevent disinformation via social media (anti “fake news” law). This bill, which was approved by the Senate in 2020, was the object of multiple modifications in the Chamber of Deputies. As the possibility of seeing this law passing became more concrete, Jair Bolsonaro tried to publish a decree (“Medida Provisoria”, in Portuguese) to give the executive the power to regulate the content of digital platforms. However, in the face of increasing pressure from the media, prominent members of the opposition, and organised civil society (and digital platforms), both legal initiatives failed.

Faced with this situation, the TSE reacted, using new powers that the court had granted itself in 2019,¹⁴ which allow it, in effect, to act as an investigator, prosecutor, and judge in some cases. The inquiry rapporteur, Justice Alexandre de Moraes, issued several controversial decisions following the beginning of these proceedings. In his first decision, the magistrate ordered Facebook and Twitter to block access to the accounts of 16 individuals being investigated for allegedly spreading disinformation and hate speech online. However, despite these accounts being blocked at the national level, users outside of Brazil, or those who use a Virtual Private Network (VPN), continue to be able to access them. Justice Moraes requested a global suspension of the accounts after realising that his earlier request had a more limited impact than intended.¹⁵ Facebook and Twitter criticised the decision.

Nevertheless, Justice Moraes maintained his use of these new judicial tools, aiming to reinforce the centrality of the Brazilian Judiciary in electoral litigation, and to reduce the time taken to reach judicial decisions so as to make them more effective during the 2022 electoral campaign. The lawyers driving the candidates’ legal teams understood this new reality and decided to create specific taskforces aimed at creating lawsuits combating the spread of fake news, and demonetising pages that distributed false content in social media. As they were prevented from receiving remuneration for the reproduction of fake material, producers of this type of content saw their funding dry up. Consequently, it was no longer worth participating in the production and dissemination of fake news.¹⁶

Conclusion

These four cases show the complexity of the work of electoral bodies in regulating electoral campaigns in the digital age. The Brazilian TSE, the

Mexican INE, the Colombian CNE, and the Peruvian ONPE are all facing the emergence of digital platforms as competitors in the field of electoral regulation – a field in which electoral bodies had previously held a monopoly. Just as electoral bodies had, during the previous 40 years, used their ability to introduce reforms to reinforce their prerogatives and thus create a “Latin American” model of electoral campaigns, based on the regulation of elections, fairness in the treatment of candidates, and the increased transparency of electoral spending, these institutions reacted to this situation by creating new regulations in electoral law, strengthening their prerogatives, and trying to put limits on electoral communication via digital platforms. However, the particular functioning of social networks, which does not lend itself to the sort of regulation used for campaigning activities on radio and television, caused the reformist activism of the electoral authorities to have little influence on the impact of digital platforms in Latin American electoral campaigns. A recurring problem is the scope of the law provided by the electoral authority. The will to combine “freedom of expression” with the regulation of the media exposure of candidates – as happens on radio and television – prevents this norm from being applied effectively, as we saw in the case of Peru and Colombia. Another problem in the implementation of this regulatory framework is linked to the time required for judicial processes. As we saw in the cases of Mexico and Brazil, if there is no capacity for the electoral authority to act before the election, and if the penalty provided by law is limited to a financial fine, this law can ultimately be considered as an incentive to circumvent the law, considering that non-compliance will have only a marginal cost for the candidate. Finally, when an electoral body is confronted with the impossibility of obtaining an expansion of its judicial powers by the Congress, and instead decides to grant itself new powers to combat disinformation effectively, the outcome can be positive (as the Brazilian case) – but with a cost: it may attract criticisms that it is overstepping its remit, violating the rule of law, and restricting “freedom of speech”. Perhaps, with today’s tools, this is the only solution to the problem of regulating digital platforms, and therefore avoiding even greater democratic backsliding in Latin America.

Notes

- 1 When we refer to “digital platforms”, we are thinking in particular of the so-called GAFAMs (based on the initials of Google, Apple, Facebook, Amazon, and Microsoft), which control most of the social networks present in the Western digital ecosystem. In these cases, the shareholding control of these companies is in private hands, which is not the case for the large Chinese or Russian technology companies, whose ownership is directly or indirectly in the hands of the Chinese and Russian governments respectively.
- 2 This concentration of responsibilities in one or two bodies in electoral matters differs from most European countries and the United States, where these prerogatives tend to be fragmented vertically or horizontally. In France, the fragmentation is vertical: it is the Ministry of the Interior, under the executive

power, that oversees the organisation of electoral processes, together with the municipalities, while the National Commission of Campaign Accounts and Political Financing (an autonomous body) oversees the financing of parties and candidates. Finally, the Constitutional Council (the highest legal authority of the country) oversees the judicial control of the regularity of the electoral process. In the United States, fragmentation occurs at the horizontal level, since each state has its own electoral law, as well as its own agency in charge of electoral processes, whose leader is elected directly by the citizens, giving rise to its politicisation. The Federal Election Commission is responsible for enforcing federal campaign finance laws. Finally, it is the media that declares the winners of elections, in a process that is not governed by law.

3

If we do nothing, I'm convinced the trends that we're seeing will get worse. [...] In some cases, industry standards may replace or substitute for regulation, but regulation has to be part of the answer. [...] As the world's leading democracy, we have to set a better example. We should be at the lead on these discussions internationally, not in the rear. Right now, Europe is forging ahead with some of the most sweeping legislation [in years to] regulate the abuses that are seen in big tech companies.

(excerpt from Barack Obama's speech at Stanford University, 21 April 2022. <https://barackobama.medium.com/my-remarks-on-disinformation-at-stanford-7d7af7ba28af>)

4 For a broader discussion of the debate on “techno optimism”, see Danaher (2022).

5 *The Guardian* (UK), *The Cambridge Analytica Files*. www.theguardian.com/news/series/cambridge-analytica-files, accessed 28 July 2022.

6 Cornell Law School, *Citizens United v. Federal Election Comm'n (No. 08-205)*. www.law.cornell.edu/supct/html/08-205.ZS.html

7 We are here using Plasser's definition of the “American” campaign model (2000, p. 3):

Americanisation is a process of directional (unidirectional) convergence. From this angle, the central parameters of the actions of European and Latin American political communication actors resemble the communication process in the US. This results in a directional (one-way) convergence between US and European or Latin American electoral communication, in which – regardless of the institutional constraints of the competitive political situation – foreign communication actors adopt central axioms and strategic parameters of the actions of US actors.

8 However, it is worth noting that, while the regulatory framework of Latin American electoral campaigns tends to replicate the “American” model (in particular, the centrality of the communication of the candidate's message through electronic media and the hiring of external consultants for campaigns), their content and strategies for disseminating political messages have tended to differ over time from the “American” model. See Boas (2016).

9 This state control allowed, for example, the establishment of the Free Electoral Advertising Time (HGPE) system in Brazil, as well as the mechanisms for monitoring electoral advertising in Mexico, which became the responsibility of the National Electoral Institute after the electoral reform of 2007.

- 10 “Uso de redes sociales con fines electorales si se considera propaganda política”. A summary can be found here – www.cne.gov.co/prensa/comunicados-oficiales/309-uso-de-redes-sociales-con-fines-electorales-si-se-considera-propaganda-politica – and the full text of the resolution can be found here – www.cne.gov.co/component/phocadownload/category/129-2020
- 11 Full text available here: www.scribd.com/document/476606708/TEXTOFINAL-FINANCIAMIENTO-DE-ORGANIZACIONES-POLITICAS-pdf
- 12 www.thedialogue.org/analysis/how-much-is-fake-news-influencing-latin-elections/
- 13 See, in particular, the report in *The Guardian*, “WhatsApp fake news during Brazil election ‘favoured Bolsonaro’” (www.theguardian.com/world/2019/oct/30/whatsapp-fake-news-brazil-election-favoured-jair-bolsonaro-analysis-suggests), and an article in the Brazilian newspaper *Folha de São Paulo*, “Documento confirma oferta ilegal de mensagens por WhatsApp na eleição” (www1.folha.uol.com.br/poder/2018/10/documento-confirma-oferta-ilegal-de-mensagens-por-whatsapp-na-eleicao.shtml).
- 14 Federal Supreme Court inquiry n.4781 <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5651823>
- 15 www.dw.com/en/brazil-top-court-sets-precedent-by-banning-global-access-to-social-media-accounts/a-54452807
- 16 <https://piaui.folha.uol.com.br/o-qg-lulista-contras-fake-news>

References

- Avelar, D. (2019, 30 October). WhatsApp fake news during Brazil election “favoured Bolsonaro”. *The Guardian*. www.theguardian.com/world/2019/oct/30/whatsapp-fake-news-brazil-election-favoured-jair-bolsonaro-analysis-suggests
- Bjornlund, E. (2004). *Beyond free and fair: Monitoring elections and building democracy*. Johns Hopkins University Press.
- Boas, T. (2016). *Presidential campaigns in Latin America: Electoral strategies and success contagion*. Cambridge University Press.
- Bossetta, M. (2020). Scandalous design: How social media platforms’ responses to scandal impacts campaigns and elections. *Social Media + Society*, 6(2). <https://doi.org/10.1177/2056305120924777>
- Bowler, S., & Donovan, T. (2012). The limited effects of election reforms on efficacy and engagement. *Australian Journal of Political Science*, 47(1), 55–70.
- Brinks, D., Murillo, V. & Levitsky, S. (2020). *The politics of institutional weakness in Latin America*. Cambridge University Press. <https://doi.org/10.1017/9781108776608.002>
- Cáceres, K. (2022). El acceso a los medios de comunicación de los partidos políticos en tiempos electorales en América Latina. In F. Freidenberg (Ed.), *Reformas electorales en América Latina* (pp. 149–187). UNAM-IIJ-IECM.
- Calvo, E., & Negretto, G. (2020). When (electoral) opportunity knocks: Weak institutions, political shocks, and electoral reforms in Latin America. In D. Brinks, M. Murillo, & S. Levitsky, *The politics of institutional weakness in Latin America* (pp. 41–60). Cambridge University Press. <https://doi.org/10.1017/9781108776608.002>

- Campos Mello, P. (2019, 9 October). WhatsApp admits to illegal mass messaging in Brazil's 2018. *Folha de São Paulo*. www1.folha.uol.com.br/internacional/en/brazil/2019/10/whatsapp-admits-to-illegal-mass-messaging-in-brazils-2018.shtml
- Castells, M. (2012). *Network of outrage and hope: Social movements in the internet age*. Polity.
- Dahl, R. (1961). *Who governs? Democracy and power in an American city*. Yale University Press.
- Dahl, R. (1971). *Polyarchy: Participation and opposition*. Yale University Press.
- Danaher, J. (2022). Techno-optimism: An analysis, an evaluation and a modest defence. *Philosophy & Technology*, 35, Article 54. <https://doi.org/10.1007/s13347-022-00550-2>
- Earl, J., & Kimport, K. (2011). *Digitally enabled social change: Activism in the internet age*. MIT Press.
- Edsall, T. (2021). Democracy is weakening right in front of us. *The New York Times*. www.nytimes.com/2021/02/17/opinion/digital-revolution-democracy-fake-news.html
- Evers-Hillstrom, K. (2021, 16 July). Tech executives increased political donations amid lobbying push. *The Hill*. <https://thehill.com/business-a-lobbying/business-a-lobbying/563439-tech-executives-increased-political-donations-amid/Falguera>
- era, E. (2015). Conclusiones. In E. Falguera, S. Jones, & M. Ohman (Eds.), *El financiamiento de los partidos políticos y las campañas electorales: Manual sobre el financiamiento político* (pp. 389–413). Idea Internacional.
- Farrell, D. (1996). Campaign strategies and tactics. In L. LeDuc, R. Niemi, & P. Norris (Eds.), *Comparing democracies: Elections and voting in global perspective* (pp. 160–183). Sage.
- Freidenberg, F. (2022) (Ed.) *Reformas electorales en América Latina*. Mexico: UNAM-III-IECM.
- Freidenberg, F., & Došek, T. (2016). Las reformas electorales en América Latina: nuevas estrategias conceptuales y desafíos metodológicos. In F. Tuesta Soldevilla (Ed.), *Partidos políticos y elecciones. Representación política en América Latina* (pp. 73–103). Jurado Nacional de Elecciones.
- Freidenberg, F., & Uribe, C. (2019). Las reformas político-electorales en América Latina (2015–2018). *Revista de Estudios Políticos*, 185, 191–223.
- Guemes, C. (2016). Democracia republicana y confianza en América Latina: La esperanza que no llega, que no alcanza. *Andamios*, 13(30), 13–37.
- Huntington, S. (1991). Democracy's third wave. *Journal of Democracy*, 2(2), 12–34.
- Insider Intelligence. (2021). Social media users in Latin America (2021–2025). Insider Intelligence.com
- Jaramillo, J. (2007). Los organos electorales supremos. In D. Nohlen, D. Zovatto, J. Orozco, & J. Thompson (Eds.), *Tratado de derecho electoral comparado de América Latina* (pp. 371–436). Idea Internacional.
- Katz, J., Barris, M., & Jain, A. (2013). *The social media President: Barack Obama and the politics of digital engagement*. Palgrave Macmillan.
- Kreiss, D. (2009). Developing the “good citizen”: Digital artifacts, peer networks, and formal organization during the 2003–2004 Howard Dean campaign. *Journal of Information Technology & Politics*, 6(3–4), 281–297. <https://doi.org/10.1080/19331680903035441>
- Kreiss, D. (2012). *Taking our country back: The crafting of networked politics from Howard Dean to Barack Obama*. Oxford University Press.

- La Silla Rota. (2021, 20 July). Por imágenes de Instagram de su esposa, INE multa a Samuel García de 55 mdp. *La Silla Rota*. <https://lasillarota.com/nacion/2021/7/20/por-imagenes-de-instagram-de-su-esposa-ine-multa-samuel-garcia-de-55-mdp-289112.html>
- Levitsky, S., & Way, L. (2010). Democracy's past and future: Why democracy needs a level playing field. *Journal of Democracy*, 21(1), 57–68. <https://doi.org/10.1353/jod.0.0148>
- Lijphart, A. (1995). *Sistemas electorales y sistemas de partidos*. Centro de Estudios Constitucionales.
- Lima, C. (2022, 3 February). The tech giants are doling out political donations to antitrust skeptics in Congress. *The Washington Post*. www.washingtonpost.com/politics/2022/02/03/tech-giants-are-doling-out-political-donations-antitrust-skeptics-congress/
- Margetts, H., John, P., Hale, S., & Yasseri, T. (2016). *Political turbulence: How social media shape collective action*. Princeton University Press.
- Newman, N. (2022). *Overview and key findings of the 2022 digital news report*. Reuters Institute for the Study of Journalism. <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022/dnr-executive-summary>
- Nohlen, D. (2004). *Sistemas electorales y partidos políticos*. Fondo de Cultura Económica.
- Nohlen, D., Zovatto, D., Orozco, J., & Thompson, J. (Eds.). (2007). *Tratado de derecho electoral comparado de América latina*. Fondo de Cultura Económica.
- Norris, P. (2000). *A virtuous circle: Political communication in postindustrial societies*. Cambridge University Press.
- Norris, P. (2011). Cultural explanations of electoral reform: A policy cycle model. *West European Politics*, 34(3), 531–550.
- Pickard, V. (2006). Assessing the radical democracy of Indymedia: Discursive, technical and institutional constructions. *Critical Studies in Media Communications*, 23(1), 19–38. <https://doi.org/10.1080/07393180600570691>
- Pickerill, J. (2006). Radical politics on the net. *Parliamentary Affairs*, 59(2), 266–282. <https://doi.org/10.1093/pa/gsl008>
- Plasser, F. (2000). American campaign techniques worldwide. *Journal of South African and American Comparative Studies*, 3(1), 1–20. <https://doi.org/10.1080/17533170200603106>
- Popiel, P. (2022). Digital platforms as policy actors. In T. Flew & F. R. Martin (Eds.), *Digital platform regulation* (pp. 131–150). Palgrave Macmillan. https://doi.org/10.1007/978-3-030-95220-4_7
- Przeworski, A. (2019). *¿Por qué tomarse la molestia de hacer elecciones? Pequeño manual para entender el funcionamiento de la democracia*. Siglo XXI Editores.
- Scherlis, G. (2022). El cambio de paradigma en la regulación de los partidos políticos latinoamericanos. In F. Freidenberg (Ed.), *Reformas electorales en América Latina* (pp. 69–97). UNAM-IIIJ-IECM.
- Schradie, J. (2019). *The revolution that wasn't: How digital activism favors conservatives*. Harvard University Press.
- Shifter, M. (2020). The rebellion against the elites in Latin America. *The New York Times*. www.nytimes.com/2020/01/21/opinion/international-world/latin-america-elites-protests.html
- Tarrant, A., & Cowen, T. (2022). Big tech lobbying in the EU. *The Political Quarterly*, 93(2), 218–226. <https://doi.org/10.1111/1467-923X.13127>

- Uribe, C. (2022). Las reformas electorales en América Latina: Los retos en los procesos de cambio institucional y los desafíos para la construcción democrática. In F. Freidenberg (Ed.), *Reformas electorales en América Latina* (pp. 315–329). UNAM-IIIJ-IECM.
- Weyland, K. (2011). Cambio institucional en América Latina: Modelos externos y consecuencias no previstas. *América Latina Hoy*, 57, 117–143.
- Zovatto, D. (2018). *Reforma político-electoral e innovación institucional en América Latina (1978–2016)*. Tirant Lo Blanch y Tribunal Electoral del Poder Judicial de la Federación.

9 Dynasties, Double-Dealings, and Delinquencies

Some Entangled Features of Subnational Politics in Mexico

Jacqueline Behrend and Laurence Whitehead

Introduction

This chapter makes two main contributions to the literature on subnational democratization and to the study of formal and informal institutions. First, it provides a conceptual framework to understand subnational democratization processes as complex entanglements of liberal and illiberal – and also formal and informal – structures and practices. Second, it provides an empirical analysis of how some of these structures and practices become entangled with formal democratic institutions at the subnational level in Mexico.

Mexico's most important political achievement in the last few decades was the replacement of single-party rule with a democratic regime where votes are fairly counted, political parties alternate in office, and citizen preferences are to some extent respected. Yet despite the major institutional developments that paved the way for fair vote-counting, formal institutions fail to deliver what most citizens expect from a high-quality modern democracy. Major policy areas of critical importance to the electorate are strongly affected by informal processes and traditional practices that persist from pre-democratic times, or that even gain traction under the “really existing” version of political decision-making that has emerged from the country's imperfect and contested transition to multi-party electoral politics. Such informal practices are far from peripheral or marginal phenomena. In fact they are crucial components of the democratic system. Overlooking the study of such informalities would severely misrepresent the lived realities of public life as experienced by most Mexican citizens. The institutional conditions they must contend with often involve complex and opaque interactions and entanglements between formal rules and informal practices (tacit rules, procedures, and collective expectations) along the lines just indicated. However, such informal and often illiberal practices do not completely negate Mexican democracy although they may create one that is low-intensity or of low-quality, particularly in some subnational jurisdictions.

Turning to the subnational level, democracy has spread unevenly across the Mexican territory, and the 32 federal entities provide evidence of widely

variable and distinct entanglements of liberal and illiberal structures and practices. Uneven democratization has generated low-quality democracy in some locations, while in other states democratic practices are above the national average. Our recent work has been concerned with describing and explaining quality variations within large federations in general, and then Mexico in particular.¹ We proposed the concepts of illiberal structures and practices to refer to how subnational units can vary within nationally democratic countries (Behrend and Whitehead, 2016a and b). We build on this framework here to show how formal democratic institutions can become “entangled” with informal structures and practices that existed prior to democratization, or that arise in parallel to the democratization process. These diverse trajectories reflect specific subnational biases and distortions: not all states suffer from the same combination of democratic deficiencies or virtues, so the entanglements evidenced in each subnational entity need to be compared and investigated empirically. Some of them can strengthen democracy, but others can hinder the development of high-quality democracies.

We focus on three of the main domains where informal institutions and local structures and practices can become entangled with formal democratic institutions in ways that distort or reduce democratic quality at the subnational level: namely, political dynasties (Behrend, 2021); double-dealing; and “democratic delinquencies” (Whitehead, 2021). The first is an informal institution based on a social structure, while the second and third are informal practices.

The chapter proceeds as follows. In the first section, we develop the concept of “entanglement” and place it within the broader literature on informal institutions in Latin America. We then adapt the notion of entanglement to the analysis of subnational democratic variations. In the following sections we focus on political dynasties, double-dealing, and democratic delinquencies as distinct domains of entanglement that affect the quality of subnational democracy in Mexico. We then provide case studies covering the outcomes across a sample of Mexican states. The final section concludes.

Informal Institutions and Entanglements

Institutions are rules and procedures that are officially sanctioned and are supposed to be publicly enforced (Helmke and Levitsky, 2006). They are anchored in the political system. Structures are durable social characteristics that are grounded at the social level. Practices are more short term and relational and focus on interpersonal relations.

As Helmke and Levitsky (2006) point out in their work on informal institutions in Latin America, there is a broad consensus about the centrality of political institutions, but formal institutions alone have proved insufficient for analysing the region’s politics. Camp (2018) elaborates on this for Mexico. In most cases, what matters is not only whether formal

institutions are adequately enforced, but how they interact with other – informal – structures and practices that can shape, distort, or reinforce how both formal and informal institutions work.

Informal institutions are understood as “socially shared rules, usually unwritten, that are created, communicated, and enforced outside the officially sanctioned channels” (Helmke and Levitsky, 2006: 5). Informal institutions coexist and interact with their conceptual opposite, formal institutions, that are understood as “rules and procedures that are created, communicated, and enforced through channels that are widely accepted as official” (Helmke and Levitsky, 2006: 5). They interact with formal institutions either by complementing, accommodating, competing with, or substituting for them (Helmke and Levitsky, 2004: 728/9). They also interact with social structures and practices that derive their political cohesion not so much from enforcement rules as from local history, inherited advantage, customs, learned behaviour, and collective expectations. Whereas institutions depend on the enforcement of rules, structures and practices are more flexible, adaptive, and socially embedded.

Of course, formal and informal institutions, social structures, and practices, exist in all modern societies, and shape multiple public domains. Our concern here is with their impact on democracy, specifically on recently democratized large federations, and on Mexico as a canonical exemplar. In the Mexican case a key *formal* institution enforces precise formal rules of electoral integrity (the Instituto Nacional Electoral (INE)) with the judiciary charged with broad aspects of official constitutional compliance, while various *informal* institutions such as business, labour, educational, and religious networks, also have the capacity to enforce some compliance with their rules. At the same time various durable social structures (such as the political dynasties discussed below) also shape Mexican democracy. These coexist with other practices that are more local, negotiable, and relational, such as clientelism, indigenous *usos y costumbres*, – and specifically delinquent activities, such as the *huachicoleo* that is examined below.

In the ideal liberal democracy formal institutions would work harmoniously and authoritatively, informal institutions would be complementary, and social *fuerzas vivas* (both structures and practices) would be permeated by a supportive ethos. The “rule of law” would therefore be consensual and binding on all. But in practice such democracies are few and far between, so the study of subnational politics in contemporary Mexico provides a salutary reality check. The “many Mexicos” (Byrd Simpson, 1960) vary on multiple dimensions, but they share very high levels of labour market informality and socio-economic inequality, and the establishment of democracy was a fitful and incomplete process that never established a clear-cut break with prior authoritarian rule. Especially at the local level, and in some subnational jurisdictions, previously well-developed informal institutions, structures, and practices often survived more or less intact. Key social and political actors could partially evade the democratic enforcement logic of the new regime, and collective expectations of society-wide compliance

were never strongly implanted. So, although electoral integrity was much strengthened, other aspects of the rule of law were less embedded, in particular in the critical domain of citizen security – the most important source of public trust in the political system.

The result is that Mexico's formal and informal institutions coexist with difficulty, and with limited enforcement capacities. Pre-democratic structures and practices are often ill-adapted or little changed from the past. Formal and informal institutions interpenetrate and compete for control, and traditional social structures and practices resist and may seek to displace institutional compliance disciplines. The consequent fragmented order and low trust environment provide strong incentives for the spread of “double-dealing” – a form of strategic interaction discussed more fully below. While such conduct is to be found in all settings, in an authoritative rule of law system it can be marginalized, whereas in contemporary subnational Mexico recurrent evidence of widespread impunity promotes double-dealing and thereby reinforces citizen distrust.

In such conditions formal democracy is distorted or refracted through its entanglement with existing structures and practices, in particular those operating at subnational (state, city, and municipal) levels. Here we focus on the entanglement between institutions, social structures and political practices and how key democratic institutions such as federalism, elections, courts, Congress can both coexist and interact with social structures and political practices that at times distort democracy and at others strengthen it.

The idea of entanglement highlights the fact that, even in political systems that are considered democratic there can be mixes of liberal and illiberal structures and practices that are in tension and constant flux. In previous work (Behrend and Whitehead, 2021), we define illiberal structures and practices as structures and practices that do not safeguard political and civil rights and that consequently erode subnational democracy. At the opposite end of illiberal practices, we have the concept of liberal structures and practices, which could be defined as practices that safeguard political and civil rights. Practices refer to “actions” that governments, governors, or politicians undertake. As noted earlier, they refer to interpersonal relations. Structures refer to relatively durable social characteristics. By illiberal practices, we do not refer to isolated actions that governments undertake but rather to repertoires of actions (practices) that are repeated over time and that constitute a form of interaction between governments and citizens (including opposition politicians, journalists, and other members of organized groups). Although the existence of illiberal structures and practices in a democratic context is not sufficient to characterize the regime as a whole, these entanglements are important for democracy and democratic quality because they point to how diverse political structures and practices *interact* in really existing political systems.

Beyond the social sciences entanglement can be seen as a legitimate approach – in quantum physics and in evolutionary development, and then by extension in human affairs.² Entanglement in political processes

occurs when formal and informal structures and practices are generated, interact or share proximity in such a way that each cannot be explained independently of the other. One of the main principles of entanglement is “non-separability” (Wendt, 2015: 33). This means that the outcomes that political scientists and comparativists seek to explain cannot be understood as the result of causal processes that flow in only one direction or that can be isolated.³ In the study of democratization, the entanglement of formal institutions and informal structures and practices means that they cannot be fully separated, since their properties depend on this relationship, and they are mutually constitutive. For example, the causal effects of institutions cannot be understood independently of the informal structures and practices they are linked to. But at the same time, informal structures and practices develop in response and in adaptation to formal political institutions. The concept of entanglement and non-separability helps explain why similarly designed institutions can have such varied effects in different settings, even within a single country. Entanglement is therefore opposite to determinism (Wendt, 2015), which, in this context, is the notion that similarly designed institutions will have similar effects in all settings.

Entanglement also needs to be differentiated from causal configurations, which is another concept developed to address causal complexity. The idea of causal configurations refers to a series of factors (or variables) that, when combined, produce specific outcomes (Ragin, 2008). Entanglement, in contrast, does not involve uncovering a “causal recipe” (Ragin, 2008: 9). Rather, it involves uncovering and understanding the diverse political and social processes that interact and mutually constitute each other, thus producing distinct results. In entangled political processes the causal arrows flow in many directions. Of course, this does not mean that “everything matters” and that generalization has to be ruled out. On the contrary, it means that a set of formal institutions and informal structures and practices that interact and become entangled to produce specific political outcomes need to be identified and scrutinized, and that how these factors become entangled needs to be explained. The mix of structures and practices that become entangled in each subnational setting may vary, and the way they become entangled may vary as well, but this does not mean that there is an infinite number of entanglements, and that generalization is impossible.

Between the two polar opposites of a society where politics can be adequately understood according to the rules that are laid down on paper, and a society where formal rules are consistently ignored, entanglement draws attention to how formal institutions and informal structures and practices interact to produce distinct outcomes. The entanglement of formal and informal structures and practices may help understand why similarly designed political systems produce different outcomes. This stands out as an important explanation of subnational variation.

The analytical benefits of the concept of entanglement, as opposed to direct causation of causal configurations is that it allows us to see a different reality. If our concepts only enable us to analyse simple causal

processes, then political complexities generated when formal and informal structures and practices are reciprocal and mutually constitutive will fall out of our range of vision.

Mexican Subnational Entanglements

Building on our previous work on subnational illiberal structures and practices,⁴ we argue that subnational units in democratic countries contain domains of entanglement between different types of political structures and practices, some of them more liberal, some more illiberal. In very few cases we find subnational units that conform to an ideal-type democratic system, whereby each indicator scores well and stands on its own. Here we argue that federalism, which is one of the most important formal institutions that organizes Mexican politics, allows different levels of government to interpret rules and adapt them to local circumstances. We focus on three structures and practices that are entangled with democratic institutions in Mexico at the subnational level: political dynasties, double-dealing, and democratic delinquencies. Even if some of these structures and practices existed in the previous authoritarian period, they are not merely a remnant of the past that refuses to go away. They have adapted, influenced, and become influenced by democratic institutions and, as such, they are both constitutive and constituted by them.

Our first domain of entanglement concerns the existence of political dynasties in a federal country and in a context of competitive elections. In federal countries like Mexico, subnational elections are organized and supervised by state authorities. These two formal institutions – federalism and elections – become entangled with an informal rule: the importance of family connections for a career in politics. Subnational political dynasties are grounded at the social level, but they have persisted in a context of democratic elections and federalism. Indeed, political dynasties have existed in national and subnational politics for many years, but when they become entangled with democracy and competitive politics, families are forced to adapt to a context of campaigning and winning elections. Representative institutions thus shape the practices of political dynasties. But at the same time, representative institutions are shaped and constituted by the political families and dynasties that merge their private interests with those of the state. Political dynasties are not in themselves undemocratic, not if family members are elected following democratic rules and procedures that respect civil and political rights. But they can lead to low-quality democracies because, in practice, family members have informal advantages in getting elected. Political dynasties affect elite rotation, party alternation and representation.

Double-dealing is the behavioural strategy incentivized by the coexistence of rival logics of compliance competing for the allegiance of a given community or social network. This can, of course, take place at national level, but at that level regulatory oversight and the risks of public

exposure is relatively high, in contrast to the lower visibility and greater scope for obfuscation that exists in quite a few subnational locations, not just at the local and municipal levels, but also in some dysfunctional state governments. Double-dealing can flourish at the interstices between federal and local rules and procedures, especially in a competitive multi-party system where partisan divergences incentivize non-cooperation. But it is an even more tempting strategy where the justice system is weak or co-opted, the media can be intimidated, and informal *fuerzas vivas* (active local groups and interests capable of moulding political outcomes, ranging from propertied interests to unions to churches and extra-legal agencies) can exercise *de facto* enforcement powers without much fear of official supervision. Again, this is not inherently anti-democratic. Some double-dealing can ease the path towards political reform and may even encourage traditionally authoritarian groups to become more flexible and to gradually embrace a more pluralist outlook—for example, by selectively liberalizing the local media, to allow the expression of more diverse viewpoints, albeit within informally negotiated boundaries. But this strategy is liable to generate resistance to full compliance with formal democratic norms, and it can undermine trust in give and take of political exchanges that are crucial for democratic stability and coexistence.

In a more drastic register, our third informal domain of entanglement – the practice of democratic delinquencies – refers to organized activities geared specifically to the distortion or even capture of targeted democratic institutions for illicit gain. Democratic delinquencies can also stall the development of high-quality democracy at the subnational level. Democratic delinquencies therefore occur at the margins of the rule of law and they may involve security forces, local populations and elected municipal authorities. These are but three examples of subnational structures and practices that become entangled with representative institutions and produce distinct versions of subnational democratization processes.

Political Dynasties and Informal Structures

Thirty years after the onset of democratization and the demise of single-party rule, political families and dynasties continue to be important in Mexican politics. At the subnational level, governors with blood or marital links to other politicians have governed in 27 of the 32 states (84%) since 1989 (Behrend 2021).⁵ Many governors, whether from the PRI, the PAN, the PRD, or, more recently, MORENA, belong to political dynasties, a fact that, as Camp (2018) notes, is linked to one of the most generalized informal rules of Mexican politics.

This section concerns political dynasties, a concept that refers to family succession in a single elected position. A political dynasty exists when a family relation succeeds an elected public official *in the same position*, either immediately or in a subsequent period. These relations can be based on marital links, lineage, or extended family. Dynasties are distinguished from

political families, where relatives hold elective office simultaneously, previously, or subsequently, but they do not necessarily hold the *same elective office*. Political dynasties also need to be distinguished from the concept of nepotism. Nepotism involves designating family members in unelected positions. Political dynasties often engage in nepotism, and nepotism may be central to capturing the local state. Yet, unlike nepotism, the concept of political dynasty refers to electoral politics.

The importance of political dynasties is by no means limited to the subnational level. Many Mexican presidents, before and after the transition to democracy, were related to other elected politicians. Former President Enrique Peña Nieto, for example, was related by blood or marriage to several former and subsequent governors of the State of Mexico (Camp, 2018), which he governed before becoming president. However, the entanglement of these informal structures of elite recruitment with formal electoral politics is most salient at the subnational level. Political families and dynasties can be found in many countries with free, competitive, multiparty elections. Political dynasties are not in themselves undemocratic since family members can be elected following democratic rules and procedures with guaranteed political and civil rights. But the pervasiveness of political dynasties can lead to low-quality democracies because, in practice, family members have informal advantages that help them get elected. Political dynasties may also generate problems of accountability if politicians hesitate to hold their relatives accountable for misdeeds or abuses while in office.

Political dynasties matter for several reasons. First, the question of “who governs” (Dahl, 1961) and who gets elected is central because it indicates whether a democracy is permeable and responsive to different interests (Behrend, 2021). The prevalence of political dynasties means that family ties largely determine the chances of acceding to elected office. In part this may reflect the fact that politicians’ offspring, like the offspring of doctors, lawyers, or other professionals, wish to follow in their parents’ footsteps (Smith, 2018). But democratic dynasties may also indicate that a closed political elite pursuing narrow self-interest has captured the democratic process, with damaging effects on accountability and on economic and social development (Behrend, 2011, 2021; Smith, 2018). Second, subnational political dynasties matter for democracy because of their potential connections with powerful economic groups operating both within and outside the local arena, as in the heartland State of Mexico (Behrend, 2021). In other cases, such dynastic complicities are confined to the subnational level.

There are only five states where none of the governors elected since 1989 belonged to a political family – Aguascalientes, Durango, Guanajuato, Hidalgo, and Sinaloa. In Chiapas, almost all governors had family links to other elected politicians, while in Tlaxcala, Coahuila, Nayarit, Sonora, and Zacatecas at least half of the elected governors belonged to political families.

Political dynasties, as defined here and elsewhere (Behrend, 2021), are less widespread than political families, but they are still prevalent. In

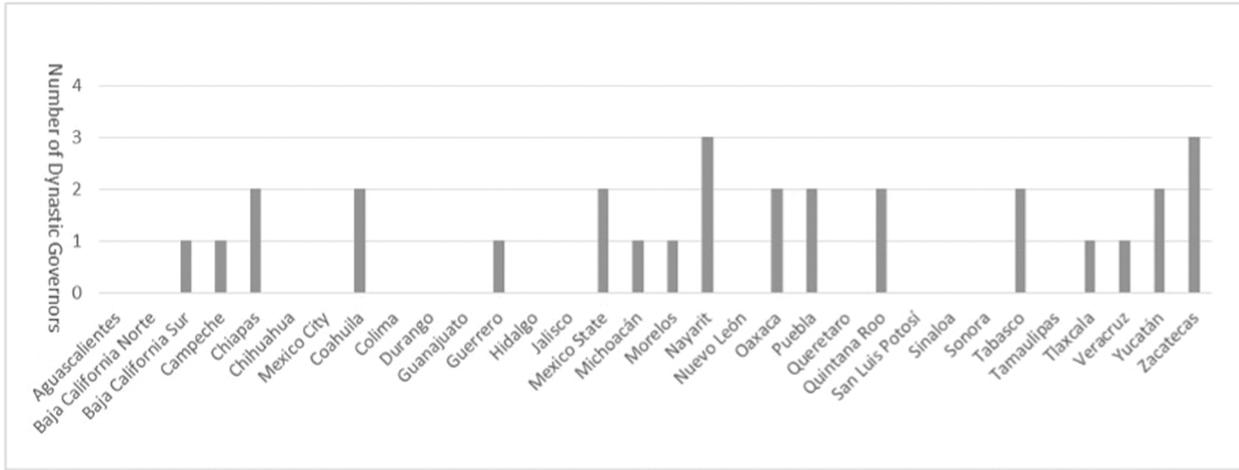


Figure 9.1 Number of dynastic governors after 1989 by state in Mexico.

Source: Dataset of Mexican Political Dynasties, Behrend (2021).

Mexico, 17 out of 32 states were governed by political dynasties at some point after 1989 (53%) (Behrend, 2021). Figure 9.1 shows the number dynastic governors elected in each Mexican state after 1989. While most cases involved a single dynasty, some displayed alternation between two different dynasties. This can be a sign of the closure of the political game in these states and can point to the existence of a local oligarchy. Nayarit is the state with the longest period of dynastic rule; it was governed by political dynasties for 15 years. Four other states were governed by political dynasties for 12 years (two complete periods) or more—Chiapas, Coahuila, Yucatán, and Zacatecas. Many subnational political dynasties in Mexico originated *during* the hegemony of the Institutional Revolutionary Party (PRI), but also a few cases arose *after* the transition to democracy.

Some of the PRI-based political dynasties disappeared after the onset of democratization. In Hidalgo, for example, the Lugo–Rojo dynasty had five elected governors before the onset of democratization, but its last member was elected governor from 1987 to 1993. Another member of the family became interim governor for four months in 1998–1999, when the elected governor resigned. Since then, no members of that dynasty have been elected governor. But this has been the exception rather than the rule.

On the other side some states developed new political dynasties as democratization proceeded. Tlaxcala is a case in point. Before the 2021 elections, Tlaxcala had no political dynasties in the period under analysis. Yet, in the June 2021 gubernatorial elections, the granddaughter of the former PRI governor (1957–1963) was elected for the new MORENA party.

Such gubernatorial dynasties reflect one of the most generalized informal rules of Mexican politics, the importance of family relations for a political career (Camp 2018). As democratization boosted gubernatorial power and autonomy, traditionally ruling families have gained elective positions at the local and state level and new ones have arisen. This crucial informal practice of political recruitment in Mexico has survived the transition to democracy and shows how informal rules become entangled with competitive elections. As a result, even though votes are fairly counted and democratic rules are respected, some individuals have greater chances of being elected due to their family origins.

Double-Dealing

Mexico's local democratization processes are highly diverse, with formal processes filtered through a wide variety of informal institutions and socially embedded structures and practices. Many of these are inheritances from the pre-democratic past, but others are adaptive innovations to the new incentives that arise from an imperfect and uneven national process of political liberalization and reform. The overall result of these changes is that for many communities, groups, and social interests there is considerable uncertainty about which of the old or new principles of strategic political action are currently most applicable. Two arenas are selected here where

such conflicting pressures can be shown to generate considerable incentives for double-dealing: subnational justice systems and the provincial print media. Both domains involve the ostensible performance of democratic services, but can be subject to countervailing informal pressures from local vested interests and *fuerzas vivas* carried over from pre-democratic times.

Under competitive elections with electoral integrity (as provided by Mexico's INE) voters can pursue some of their objectives according to the standard logic of political pluralism. But what if state governors use their positions to loot the public accounts, to intimidate the media, to engage in no holds barred legal operations (hence the phrase "lawfare") against their political rivals? These are all practices that democratic critics previously associated with Mexico's one-party system. This would constitute gubernatorial "double-dealing" – campaigning in accordance with the incentives of a competitive party system, but governing as if nothing had changed from the authoritarian past. After all, the established six-year tenure and "no re-election" provisions carried over from the PRI system still provide considerable incentives for Mexican governors to double-deal in this way, and in a considerable number of states much of the electorate remain accustomed to just such practices. Although democratization was supposed to rectify such misconduct, in practice it may have accentuated them. Under the hegemonic party system, governors were somewhat restrained in their use of office for power accumulation purposes since the federal authorities might intervene against them if they overplayed their hand. Once party alternation shifted the locus of gubernatorial appointment power from the presidency to the local electorate such central controls evaporated, and state governors gained more leeway to maximize the wealth and power of their entourage before leaving office, without much fear of a federal backlash.

De-regulation, for example, allowed many governors to launch crony capitalist projects. Snyder (2001) documents how de-regulation of the coffee sector in Puebla resulted in crony capitalism and the strengthening of a local oligarchy. Such double-dealings by governors illustrate how democratization can reinforce illiberal structures and practices. Subnational autonomy allowed governors leeway, provided they could control local politics and suppress consequent scandals. Over the past decade such double-dealing officeholders have fled into exile or struggled to evade prosecution once their opportunities for malfeasance reached their six-year limits (*Los Angeles Times*, March 31, 2017). To be clear, not all state governors have responded by double-dealing in the manner outlined earlier, and the scandals generated by those who most abused their privileges of office could produce salutary effects on their successors. So, both positive and negative outcomes could arise.

A critical arena for double-dealing is the justice system – both at the national and the subnational levels. In constitutional theory a neutral and impartial rule of law underpins other features of a democracy, such as the separation of powers and popular sovereignty. But longstanding Latin American (including Mexican) practice encompasses an alternative

informal frame of reference. There is much evidence of double-dealing by a wide array of police, judicial, prosecutorial and prison officials, at all levels of government. At the highest federal level, the notoriously overbearing – indeed arbitrary – conduct of Mexico’s current *Fiscal General de la República* (even on matters where his family or his personal assets are involved), suggests conflicts of interest that cast a long shadow over public trust in the impartiality of law enforcement throughout Mexico (Lemus, 2022). This is not an isolated case – indeed a major new report has alleged that the recent predecessor deliberately orchestrated the evidence to falsify the “historical truth” about a notorious 2014 human rights state crime (*Proceso*, August 21, 2022). The impression that such very public episodes create is of massive double-dealing in the justice system that destroys trust concerning protection of the rights of the innocent.

This helps explain very low public confidence in the efficacy, professionalism, and integrity of national prosecution services, and all the more so as regards most state and municipal courts, police services and prisons. Some of the dysfunctions of the local justice system are attributable to underfunding and poor governance rather than explicit double-dealing, but officials working for an untrustworthy and discredited agency have limited incentives to conform to their formal duties. Either from demoralization or in response to misdirection from above they are often cross pressured over how resolutely to perform their official tasks. This helps account for the impunity that so many state governors have recently relied upon as they engaged in their looting sprees. The negligence of state legal authorities when Governor Duarte of Veracruz (2010–2016) abused his office is an exemplary case. Not all Mexico’s subnational justice systems are that compromised, and indeed many individual legal officials endeavour to correctly discharge their formal duties – even at considerable personal cost. In some important jurisdictions they risk becoming expendable scapegoats, as indicated by recent litigation in various northern states including Chihuahua and Tamaulipas.

Such divided loyalties and conflicting incentives extend beyond the electoral and judicial sectors, with subnational double-dealing not only in the public sector but also sometimes tainting the media, the labour movement, state universities, some agricultural and business interests, and even the church and indigenous communities. These can all potentially serve as positive agencies of democratization. But in many cases their operatives have been schooled to doubt the reliability of formal rules, and local opinion can be permeated by distrust in the integrity of all officialdom.

For illustrative purposes let us consider the subnational media. Under one-party rule the options available to most local journalists were fairly clear and circumscribed. What they could report, how they should present it, and which topics they should avoid was not hard to discern in a stable authoritarian context. Democratization opened enticing new career horizons and attracted more readers. In some parts of Mexico this positive democratizing dynamic remains in place and has generated a more vibrant

and better-informed civil society. But in other locations the old outlook still governs most local journalism. In between, a substantial section of the profession has found itself in the firing line, caught between two rival logics of reportage.⁶ And Mexico has become particularly notorious for its high rate of assassination of (mostly unprotected local) journalists. Drug cartels and criminal organizations are currently penetrating larger cities and even attempting to capture control in certain state governments. This territorial expansion places more Mexican reporters under perilous cross-pressures and induces larger-scale double-dealing.

Democratic Delinquencies

Democratic delinquencies mostly involve organized activities geared specifically to the distortion or even capture of targeted democratic institutions for illicit gain. Such activities seek to colonize vulnerable enclaves *within* a still broadly democratic regime, rather than to subvert the entire political system – although the cumulative effect of a succession of delinquencies can become threatening to democracy as a totality. Delinquency is an umbrella term that embraces a very wide spectrum of activities from tacit complicity in such slippery white-collar abuses as money laundering to the most explicit and flagrant excesses of violent organized crime. A partial inventory of specifically democratic delinquencies includes: directing illicit funds to political parties and candidates for election in exchange for promises of financial and legal advantages after they take office; inducing legislators or regulators to shield criminal enterprises from investigation; penetrating municipal and city governments so that complicit officials can extort local communities; suborning police and military officers to act as tools of partisan manipulation; intimidating monitors in poorly supervised polling stations to tamper with ballot boxes.

Such constellations of abusive behaviour are widespread in much of Latin America (and elsewhere). Without fully negating democratic governance in the region, they can nevertheless seriously distort and downgrade its quality and undermine citizen trust in public authority. Powerful factions within these regimes can benefit from tolerating and even facilitating these delinquencies. Mutual complicities can develop between influential democratic politicians and delinquent *fuerzas vivas*. Such deviations from high-quality democratic standards can become self-sustaining and systemic without necessarily precipitating regime change. They may instead give rise to durable, but fragile and low legitimacy democratic equilibria “low intensity” democracies in O’Donnell’s parlance (O’Donnell 1993).

Sceptics might dismiss the concept of democratic delinquency as a contradiction in terms. If a political order is democratic then it surely must be opposed to the forces of crime and delinquency? And if politics is dominated by delinquent groups and practices, then surely the rule of law, and accountability of political representatives to the public interest, has been abandoned? But reviewing the really existing state of democratic

governance in much of the western hemisphere the starkness of this binary contrast is hard to sustain. It reduces democratic conduct to the observance of formal rules, and it relegates informal social practices to a shadow world of corruption and extortion. But given the double-dealing features of many local justice systems, democratic delinquencies in subnational Mexico includes behaviours that may not be clearly illegal. The concept needs to also encompass a broad penumbra of indirect involvements, passive complicities, and reluctant entrapments. On this more nuanced assessment these two spheres can become mutually entangled, with high levels of delinquency penetrating major segments of the subcontinent's formal institutions (even though these often retain substantial components of democratic commitment and potential); and with potentially emancipatory energies present in the informal realm, notwithstanding the delinquent and possibly even practices that also flourish there. On this view, "democratic delinquency" is not an oxymoron. Delinquent entanglements can encompass diverse forms of abusive practices ranging from technically incorrect conduct to flagrant criminality.

If both the apex and the lower branches of Mexico's formal justice system are widely believed to be untrustworthy, ineffective, and subject to elite manipulation and misgovernment, the bulk of the population may have little faith in the integrity of the formal justice system. However, this does not necessarily eliminate all options for self-protection and collective action. Thus, where the municipal police are incapable or unwilling to provide any law enforcement some desperate municipalities have been known to resort to the creation of *autodefensas*. If lawyers and journalists are silenced by death threats and expulsions, other sources of community leadership (unions, churches, even traditional indigenous authorities) may step forward to fill the void in local authority and to provide communal guidance and direction. When federal authorities such as the new National Guard established by President López Obrador in 2019 are deployed into troubled zones as forces of military occupation perhaps acting beyond the reach of the law, informal *fuerzas vivas* may construct alliances or invite in countervailing informal sources, including seeking protection from organized crime and locally embedded cartel groups. There are many different variants of informal agency to consider here, some of them passively defensive and others more aggressively delinquent. All involve complex and shifting forms of entanglement between unofficial actors and interests that need some way to cope with the insecurities arising from the formal system's derelictions of duty. For the sake of illustration, current practices of *huachicoleo* can stand in for this larger array of possibilities.

Huachicoleo is a specific form of Mexican delinquency involving theft and resale of oil from Pemex pipelines (León Sáez 2021). A typical instance involves an informal community located close to a pipeline that colludes to siphon off enough crude to fill a few tankers that can then sell the fuel at a discount to compliant petrol stations. Recently the state oil monopoly has suffered major financial losses through oil theft taking place in many

poor locations across Mexico. From time-to-time tragic explosions have occurred, even causing serious loss of life to local participants (*Reforma*, April 4, 2022). This delinquency takes place at the intersection between formal and informal networks and highlights the close entanglements arising between the two sides.

From the formal perspective, Pemex headquarters operates a centralized information system that registers unplanned falls in pipeline pressure and identifies the time and place of each incident. In an effective rule of law regime this would alert the local police authorities who would intervene to curb the practice and detain the culprits before they had gained momentum. Moreover, the delinquent tankers would be easily identified before they could recirculate their booty through commercial outlets, and complicit petrol stations would be promptly sanctioned. When Mexico's formal state bureaucracy and justice system failed on all these accounts *huachicoleo* expanded into a big business. It spread to other forms of oil theft, all dependent on the complicity of a web of Pemex employees (e.g., overloading tankers and then draining them down once they left the depots). When US oil prices were lower than in Mexico the perpetrators were even able to supplement their profits by smuggling in oil from the North and adding it to their illicit resale networks.

Now, consider the same question from the standpoint of informal community participation. In poor municipalities near major pipelines local leaders are aware that great natural resources derived from the Mexican subsoil pass nearby, with no benefits accruing to their people. In fact, danger, disturbance, and the risk of contamination are the main consequences of abutting a pipeline. No doubt Pemex generates huge profits for some people, but it can be hard to detect much trickle down in many locations. Seen in this light the unauthorized retention of a small proportion of the nearby oil for the direct benefit and employment of needy locals may not seem so unjust as standard rule of law theory would suggest. Moreover, most policing in Mexico is conducted at the municipal level, is very poorly remunerated, and can be closely connected to local interests. So those formally charged with protecting public property may be weakly incentivized to act against the wishes of their immediate neighbours. In any case, they have to consider the power of the *huachicoleo* network, and the consequences for their own job security if they attract the hostility of the occult *fuerzas vivas* engaged in this activity. Local democracy enters here, because municipal police depend in part on the instructions received from elected mayors and councils. Moreover, rather than rewarding them for correct discharge of their official duties higher authorities may sanction them.

Thus, formal, and informal institutions (such as the municipal police and some truckers and petrol retailers) are deeply entangled in the operations of the oil theft business, which has often been characterized by a *contubernio* between municipal officeholders and their covert funding sources. It is important to stress that this dyadic relationship only prospers because it is embedded in a broader web of tacit complicities. The majority

of participants are not actively delinquent, they simply look the other way, fail to resist, or report, take small advantages without direct criminal engagement. Similar considerations apply to a wide array of other democratic delinquencies – as when *autodefensas* stray beyond self-protection, or evangelicals promote intimidatory political agendas.

The prevalence *narcocorridos* and *narcomantas* in numerous localities demonstrates the delinquent interest in reaching some sectors of public opinion. Elected politicians with criminal associations and criminals with political associations deal with unreliable prosecutors and cross-pressured law enforcement agencies. Such crime and delinquency are so extensive and recurrent that they can distort and degrade overall political decision-making and undermine citizen compliance with official regulations. Delinquent behaviour becomes normalized in multiple domains, including police, courts, prisons, municipalities, legislative assemblies and even governors and ministries. But subnational experience also shows that such delinquent penetrations of democracy are very uneven and always subject to pushback. Even political leaders and parties that become heavily entangled with delinquent forces can nevertheless retain a strong sense of political as opposed to criminal purposiveness.

Democratization and Subnational Entanglements

The previous sections show how political dynasties, double-dealing, and democratic delinquencies become individually entangled with democratic institutions at the subnational level in Mexico. But to what extent do these informal structures and practices combine? What kinds of more complex entanglements can be observed in the Mexican states? This section aims to illustrate these entanglements through five subnational examples that show how these structures and practices appear together.

Perhaps the most exemplary case is located in the State of Mexico. The subnational political dynasty formed by Isidro Fabela in the state in 1942 also achieved national influence. Three members of the dynasty governed the state during the period of single-party rule, and two members of this dynasty have governed the state since the onset of democratization, Enrique Peña Nieto (2005–2011), who then became federal President, and Alfredo del Mazo Maza (elected for the period 2017–2023). The State of Mexico is one of the few states where, despite multi-party rule at the municipal level, the PRI has maintained control of the governorship, due mostly to the cohesion of its political elite. At the same time, democratic delinquencies are also strongly present there. In 2022 it was one of the states most affected by *huachicoleo* and it is among the states that are ranked low in the Democratic Development Index (IDD) of the Instituto Nacional Electoral (INE).⁷ This result does not seem too surprising given the entanglement of these two practices with the formal institutions of democracy. But other cases show entanglements that are less intuitive.

The state of Hidalgo, for example, has not had any political dynasties since the transition to democracy and is the second-highest ranking state in the IDD.⁸ However, democratic delinquencies are deeply entangled with local democracy (notably via control of the state university) and it was among the jurisdictions most affected by *huachicoleo* in the period spanning from 2016 to 2019.⁹

Guanajuato also evidences complex entanglements. Its democracy was among the highest-ranking according to the IDD, and it developed no political dynasties after democratization, but after 2019 its place on the IDD ranking began to drop sharply and it is now among the lowest.¹⁰ Guanajuato is one of the five states that were hardest hit by democratic delinquencies such as cartel capture and *huachicoleo* over the last few years.

Veracruz is an extreme case of entanglement of illiberal structures and practices that have seriously diminished democracy. It has figured persistently among the lowest democratic performers in Mexico according to the IDD, and political dynasties were also important both before and after the transition to democracy. Miguel Alemán Velasco, son of former president Miguel Alemán Valdés (1946–1952) was elected governor from 1998 to 2004. The Grupo Alemán, as the family business conglomerate is called, owns media, airline, tourism, and other firms (see Lucas, 2019). Under Governor Duarte de Ochoa (2010–2016), legal authorities were subordinated to the executive, the murder of journalists was among the highest in the country and the state was classified as one of the most dangerous places for the media in Latin America.¹¹ Criminal violence in the state was scandalous (Olvera and Andrade, 2021).

Puebla is among the states that developed political dynasties after the transition to democracy. It ranks low on the IDD and is one of the states permeated by democratic delinquencies such as *huachicoleo*.¹² After the onset of democratization, Puebla developed a new political dynasty. Governor Moreno Valle, the grandson of a former governor with close links to the political and economic elite from the State of Mexico, was elected governor from 2011 to 2017 for the PAN, although he had risen to prominence as a PRI politician. Despite party alternation many past practices persisted in Puebla (Durazo Herrmann, 2016). During his mandate, allegations of corruption abounded (Aroche Aguilar, 2018). Double-dealing is also deeply entangled in the political life of Puebla. There were many allegations of illiberal practices such as media control and threats against opposition journalists. When Moreno Valle's mandate ended, his wife stood for governor and was elected in 2018, although her mandate was short-lived. Ten days after her election she and her husband the former governor died in a helicopter accident (Morales, 2020).

This brief overview shows that illiberal structures and practices do not combine to form coherent wholes, but rather become entangled with diverse liberal and illiberal structures and practices in different subnational entities according to their local particularities. From this point of view, democratic processes may get thwarted or held back by such entanglements. On the

other hand, viable projects of democratization and reform will only be possible if their design takes into account the real dynamics of political change, including a full appreciation of realities of subnational entanglements in a specific national context.

Conclusion

In theory, any consolidated democracy is governed by authoritative and coherently liberal formal institutions that are congruent with supportive informal institutions and in harmony with underlying social structures and practices. The democratic rules of political life are underpinned by matching behavioural and attitudinal dispositions. Comparative experience demonstrates, however, the unreality of this postulated and idealized end-state. In practice, formal democratic rules are not invariably stable, harmonious, and universally binding. The informal institutions that are supposed to back them up may actually possess substantial autonomy and perform other functions. Illiberal social structures and relational practices can continue to exercise substantial influence over parts of political life and may generate unsupportive attitudes and behaviours. This has recently become evident even in some of the most venerable and exemplary of the world's leading democracies (e.g., the United Kingdom and the United States). Although formal institutions command most public and scholarly attention these background influences are always latent and may periodically take centre stage. They merit regular analytical attention since, rather than serving as merely peripheral or secondary factors, they are actually integral to the politics of all "really existing" democratic regimes.

This chapter addresses an exemplary case where their significance is most visible. Subnational politics in Mexico provides a privileged setting for examining features of democratic reality that are also present, but less in evidence, elsewhere. The chapter has focused on the informal institutions and the social structures and relational practices that presently contribute such a strong influence on the quality and stability of democratic life in many of Mexico's varied 32 subnational state jurisdictions. It has highlighted the importance of "entanglements," as opposed to unidirectional causal mechanisms, in shaping the outcomes of competitive politics. Citizen experiences of subnational democracy vary greatly across different parts of the "Many Mexicos". To provide depth and specificity to this observation the chapter has focused on one salient social structure (political dynasties), and two relational practices (double-dealing and democratic delinquencies). These three are prominent features of the current political scene, but other unofficial institutions and illiberal structures and practices could also deserve consideration, depending upon the contextual and historical specifics of different localities. They may ebb and flow depending on the horizontal and vertical pressures in play (Eaton, 2020), and although their entanglements can generate low-quality security traps and other poor democratic outcomes (Bailey, 2009) they should

not be characterized as unambiguously negative for democratic viability. Although illiberal practices often run counter to the logic of formal democratic institutions, they can also sometimes have a positive effect, particularly when they help reconnect politics with a disaffected citizenry and if they stimulate efforts to broaden participation and universalize rights. The path to better democratic governance in subnational Mexico (and elsewhere) involves creative engagement with informal institutions and illiberal structures and practices, rather than monocausal reliance on blueprints of formal institutional design.

Notes

- 1 Behrend and Whitehead (2016a, 2016b, 2017, 2021).
- 2 For example, Wendt (2015); Sheldrake (2020).
- 3 According to Wendt (2015: 33), “non-separability refers to the fact that the states of quantum systems can only be defined in relation to a larger whole. It is the basis of non-local causation in quantum mechanics, and what makes quantum phenomena irreducibly holistic”.
- 4 Behrend and Whitehead (2016a and b).
- 5 This data comes from an original dataset of the family relations of all elected governors since 1989 developed by Behrend (2021).
- 6 *Rapporteurs Sans Frontiers* “Mexico’s Tragic Record on Missing Journalists” (August 2018) lists 21 who have gone missing in the previous 15 years. Michoacán, Veracruz, Nuevo León, Coahuila, Tamaulipas, and Guerrero were the states recording most such murders. The situation worsened thereafter. See also Chapter 10 of Lemus (2022).
- 7 See <https://idd-mex.org/>. Retrieved on 19 August 2022.
- 8 *Op. cit.*
- 9 See www.forbes.com.mx/los-5-estados-con-mas-huachicoleo-durante-2018/. Retrieved on 19 August 2022.
- 10 *IDD, op. cit.*
- 11 *RSF, op. cit.*
- 12 *IDD, op. cit.*

References

- Aroche Aguilar, E. (2018). “Rafael Moreno Valle Rosas, PAN, 2011–2017”. In A. Paxman (Ed.), *Los gobernadores: caciques del pasado y del presente* (pp. 133–174). Mexico City: Grijalbo.
- Bailey, J. (2009). “‘Security Traps’ and Democratic Governability in Latin America”. In Bergman, M. and Whitehead, L. (Ed.), *Criminality, Public Security, and the Challenge to Democracy in Latin America* (pp. 251–276). Notre Dame: Notre Dame University Press.
- Behrend, J. (2011). “The unevenness of democracy at the subnational level: Provincial closed games in Argentina”. *Latin American Research Review*, 46, 150–176.
- Behrend, J. (2021). “Political dynasties and democracy in contemporary Mexico”. *Latin American Policy*, 12(2), 385–404. ISSN 2041-7365. EISSN 2041-7373.
- Behrend, J., & Whitehead, L. (2016a). *Illiberal Practices: Territorial Variance within Large Federal Democracies*. Baltimore: Johns Hopkins University Press.

- Behrend, J., & Whitehead, L. (2016b). "The struggle for subnational democracy". *Journal of Democracy*, 27, 155–169.
- Behrend, J., & Whitehead, L. (2017). "Prácticas iliberales y antidemocráticas a nivel subnacional: enfoques comparados". *Colombia Internacional*, 91, 17–43.
- Behrend, J., & Whitehead, L. (2021). "Mixed messages about democratization in the many Mexicos". *Latin American Policy*, 12(2), 1–16. ISSN 2041-7365. EISSN 2041-7373.
- Byrd Simpson, L. (1960 [1941]). *Many Mexicos*. Berkeley, Los Angeles, London: University of California.
- Camp, R. A. (2018). *La política en México. ¿Consolidación democrática o deterioro?* Mexico: Fondo de Cultura Económica.
- Dahl, Robert A. (1961). *Who Governs? Democracy and Power in an American City*. New Haven: Yale University Press
- Durazo Herrmann, J. (2016). Social Heterogeneity, Political Mediation, and Subnational Illiberalism: Oaxaca and Puebla, Mexico. In J. Behrend, & L. Whitehead (Eds.), *Illiberal Practices: Territorial Variance within Large Federal Democracies* (pp. 230–261). Baltimore: Johns Hopkins University Press.
- Eaton, K. (2020). "Latin American politics and the subnational comparative method: Vertical and horizontal challenges" *Latin American Politics and Society* 62, 3.
- Helmke, G., & Levitsky, S. (2004). "Informal institutions and comparative politics: A research agenda" *Perspectives on Politics* 2, 4.
- Helmke, G., & Levitsky, S. (Eds.) (2006). "Introduction": *Informal Institutions and Democracy. Lessons from Latin America*. Baltimore: Johns Hopkins University Press.
- Lemus, J. (2022). *El Fiscal Imperial*, Mexico City: Harper Collins.
- León Sáez, Samuel (2021). *Mexico's Fuel Trafficking Phenomenon: Analyzing an Emerging Black Market*. London: Palgrave.
- Los Angeles Times*. (2017). "The sordid record of former Mexican governors: 3 in prison, 3 under investigation and 4 wanted by the authorities", March 31.
- Lucas, N. (2019, July 18). "¿Qué significa el regreso de la familia Alemán a la radio de México?" *El Economista*. Retrieved October 9, 2021, from www.economista.com.mx/empresas/Que-significa-el-regreso-de-la-familiaAleman-a-la-radio-de-Mexico-20190718-0115.html
- Morales, A. (2020, March 23). "SCT: Desplome de helicóptero por falla mecánica." *El Universal*. Retrieved September 8, 2021, from www.eluniversal.com.mx/nacion/politica/accidente-de-los-moreno-valle-por-falla-mecanica
- O'Donnell, G. (1993). "On the state, democratization and some conceptual problems: A Latin American view with glances at some postcommunist countries". *World Development*, 21, 355–369.
- Olvera Rivera, A. J., & Andrade Guevara, V. M. (2021). "Persistent illiberalism: Democracy, authoritarianism, and politics in Veracruz". *Latin American Policy*, 12(2), 1–14.
- Proceso* (2022). "Caso Ayotzinapa: La 4T, a la caza de los autores de la 'verdad histórica', August 21.
- Ragin, C. (2008). *Redesigning Social Inquiry: Fuzzy Sets and Beyond*. Chicago: University of Chicago Press.
- Reforma* (2022). "Falla Estrategia Contra Huachicol", April 4.
- Sheldrake, M. (2020). *Entangled Life: How Fungi Make Our Worlds, Change Our Minds and Shape Our Futures*. London: Bodley Head, 2020.

- Smith, D. M. (2018). *Dynasties and Democracy: The Inherited Incumbency Advantage in Japan*. Stanford: Stanford University Press.
- Snyder, R. (2001). *Politics after Neoliberalism: Reregulation in Mexico*. New York: Cambridge University Press.
- Wendt, A. (2015). *Quantum Mind and Social Science: Unifying Physical and Social Ontology*. New York: Cambridge University Press.
- Whitehead, L. (2021). "The danger of democratic delinquency". *Journal of Democracy*, 32(3), 78–93.

10 Civil–Military Relations and Democracy in Latin America in the 2020s

John Polga-Hecimovich

On September 30, 2019, Peruvian president Martín Vizcarra issued a presidential decree formally dissolving the national congress and calling for new legislative elections. In response, lawmakers in the opposition-controlled legislature refused to accept the decree, voted to suspend Vizcarra’s presidential powers pending an impeachment process, and appointed Vice President Mercedes Aráoz as interim president. Aráoz, an estranged ally of Vizcarra, accepted the appointment. A short while later, however, commanders of the army, navy, air force, and national police met with Vizcarra at the presidential palace and publicly recognized him as the country’s constitutional leader (LatinNews Daily Report 2019f). This support appeared to tip the scales of the institutional stalemate in Vizcarra’s favour, and the following day, Aráoz resigned her position as vice president and relinquished her appointment as interim president.

Several other incumbents in the region also turned to the military to fortify weak positions. In Ecuador, the week following the Peru controversy, violent national protests ensued after President Lenín Moreno scrapped the country’s nationwide fuel subsidies and prompted the president to briefly relocate the country’s capital to Guayaquil. Heading off calls for his removal, he appeared on national television flanked by military leaders as he announced a state of emergency; he survived the ordeal. Later that month, amidst massive social protest and upheaval in Chile, President Sebastián Piñera also declared a state of emergency with a dozen officers at his side; he too survived. In Bolivia, meanwhile, incumbent Evo Morales called on military officers to “maintain the country’s political unity” after a disputed presidential vote and widespread protests. On November 10, however, Morales resigned after military brass urged him to step down (LatinNews Daily Report 2019b).

These episodes provoked real concerns from policy analysts and academics about the role of the armed forces in Latin American politics and the potential for democratic backsliding (Corrales 2019; Fisher 2019; Isacson 2020). These apprehensions intensified in 2020, as the COVID-19 pandemic thrust militaries into the limelight across the region as key cogs in the realms of public policy decision-making, public security, and logistics, and citizens were faced with stay-at-home orders and other restrictions

on personal liberties that harkened back to darker periods in the region's history. On the basis of these experiences, this chapter asks: How did the role of Latin American militaries change during the intense protest wave of 2019 and the COVID-19 pandemic? Has the military “returned” in Latin American politics, undermining civilian control of the military? And have changes in military roles or in civil–military relations contributed to democratic backsliding in the region?

I argue that despite their increased visibility, the roles of the armed forces in Latin America did not radically change in the 2019–2021 period. These organizations have long been arbiters of civilian political conflict, sometimes abiding by political orders and other times not. Similarly, they have been intimately involved in policy implementation, including in humanitarian and health missions. In that sense, their responses to the events of 2019–2021 are largely consistent with previous behaviour. Similarly, while presidents and regimes appear to be more dependent on their armed forces for survival than at any point in the recent past, those militaries have not sought to undermine their subordination to civilian authorities. In supporting presidents during times of crisis and carrying out tasks during COVID, most militaries in the region have not independently pursued prerogatives from civilian leaders but instead carried out responsibilities delegated to them—and later relinquished them when asked. The most notable and troubling exceptions to this are in Brazil and El Salvador, although mission drift in those places had less to do with the political moment than the civilian leaders in charge.

The chapter proceeds as follows. It opens by discussing civil–military relations in Latin America and the evolving political role of the Latin American military. The following section describes military responses to the 2019 wave of protests that swept the region and situates them in historical context, arguing that these responses largely adhere to democratic patterns of responses to presidential crisis. After that, I describe military task engagement in the COVID-19 pandemic, systematizing where and how militaries were deployed internally. The penultimate section evaluates the effects of these military missions on civil–military relations and democracy. The last section concludes.

Civil–Military Relations and Democracy

A democracy is not consolidated until its armed forces are subordinated to the legitimate authority and control of civilian authorities (Huntington 1957; Stepan 1988). Beyond democratic consolidation, ensuring civilians' preferences prevail over the military's across policy domains is fundamental to continued democratic governance. This can be a challenge, especially when the armed forces have been intimately involved in politics (Feaver 2003). Maximizing civilian control of the military therefore involves minimizing the scope of military prerogatives and areas of state policy in which the armed forces holds exclusive jurisdiction (Pion-Berlin 1992; Trinkunas

2005). New or weakly institutionalized democracies face an even tougher challenge, since leaders must ensure the military will not attempt a coup d'état or otherwise defy civilian authority (Kohn 1997).

Unfortunately for most of Latin America, its experience is rife with direct military involvement in politics (Loveman 1999). Military dictators and military-backed caudillos governed much of the region throughout the nineteenth and early twentieth centuries, and almost without exception, the region's initial attempts at democratization were interrupted by military coups. Moreover, since Latin American militaries engaged in relatively few inter-state wars in the twentieth century,¹ governments and military leaders tended to redefine threats to their sovereignty as internal—especially during the Cold War (Stepan 1973; Pion-Berlin 1988). During this time, political and economic crisis often resulted in direct military governance, from the repressive bureaucratic-authoritarian regimes of the Southern Cone to the “revolutionary” military governments of the Andes to more traditional military dictatorships in Central America. In total, militaries directly governed in 12 of 19 countries at some point in the 1960s and 1970s.²

With the onset of the third wave of democratization, democratic leaders were challenged to rein in military autonomy and exercise civilian oversight of the armed forces (Rouquié 1987; Fitch 1998). As Brooks recognizes, “even after militaries withdraw to the barracks during democratization, [militaries] often retain significant domestic political power, which varies with the conditions of the transition, their popular support, and other factors” (Brooks 2019: 386). In Chile, for example, Article 93 of the 1980 Constitution prohibited presidents from hiring, promoting, or firing senior military leaders, while 1989 constitutional reforms gave the armed forces the right to appoint four of the country's 38 senators. In other places, like Brazil and Argentina, militaries were unhappy to lose their privileged positions and retained important informal powers (Hunter 1994).

Roles began to change in the 1990s and 2000s. Except for Panama, which joined Costa Rica in dismantling its armed forces, militaries across the region retreated from direct political governance but retained varying degrees of power and autonomy. Many militaries took on missions that exploited their organizational efficiency, including policing, infrastructure projects, and the administration of social services, while others moved into entrepreneurship (Brenes Castro and Casas 1998). Politicians also occasionally turned to the armed forces to adjudicate political conflict or support the ruling government in times of crisis.

Of course, even in places where democracy has endured, public attitudes and civilian control over the military remained an ongoing challenge (Battaglino 2015; Diamint 2015). Most notably, there have been successful military coups d'état in Ecuador (2000), Honduras (2009), and Bolivia (2019), and three failed coups in Venezuela (two in 1992; one in 2002). Unlike the past, however, in no cases did the military remain in power after

overthrowing the previous regime. Furthermore, the incidence of military coups has decreased markedly since 1990, with presidents far more likely to be removed through impeachment or as a consequence of mass mobilization (Llanos and Marsteintredet 2010).

Military Responses to Social Protest

Despite the armed forces' gradual return to the barracks, the political, economic, and social turmoil of Latin America in the late 2010s and early 2020s brought renewed attention to their role in domestic tasks (e.g., Corrales 2019). The first inflection point came in 2019, as five years of economic stagnation, myriad high-level corruption scandals, and questions of electoral integrity and the state of democracy conspired to produce an unprecedented wave of social protest. During that year, anti-government demonstrations took place in Venezuela, Haiti, Nicaragua, and Guatemala, followed by Puerto Rico and then, in the largest mass expression of political and social discontent, Ecuador, Peru, Haiti (again), Chile, Colombia, and Bolivia (see Table 10.1). Unrest led presidents across the region to call on their militaries in conspicuous ways, not only to repress protestors and/or restore order but to provide support for often precarious mandates, either through a public statement or a public appearance by the high command.

These anti-government demonstrations and military responses are systematized in Table 10.1. Classifications of what constitutes “significant” are, of course, subjective. I code based on whether protestors called for the removal of the head of state and whether or not they presented what I consider a credible threat to that leader's survival. There were protests in various other countries, including Argentina, Brazil, Costa Rica, Mexico, Paraguay, and Uruguay, but these were aimed at specific policy gains or reversals and did not threaten the integrity of the regime. Further, this table is restricted to the extraordinary protest wave of 2019, and does not consider anti-government protests in other years, such as demonstrations in 2017 in Brazil (Soto and Boadle 2017), Honduras (Cuffe 2019), or Venezuela (Cawthorne 2017), or the massive anti-Ortega protests in Nicaragua in 2018, where police and militia repression led to the deaths of an estimated 500 protestors (Klein et al. 2022).

In total, there were nine significant anti-government demonstrations during the year (Bolivia, Chile, Colombia, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Peru, Venezuela), with the military playing some role in six of them (Bolivia, Chile, Ecuador, Honduras, Peru, Venezuela). While the military complied with orders from the head of state in four cases (Venezuela, Honduras, Peru, Chile), repressing protestors in at least three of them and publicly manifesting confidence in the president in all four, it only conditionally complied with orders in Ecuador and defied orders before later complying in Bolivia.

Table 10.1 Military responses to significant anti-government demonstrations (2019)

<i>Country</i>	<i>Significant anti-government demonstrations</i>	<i>Military response?</i>	<i>Compliance or defiance with orders</i>
Argentina	No		
Bolivia	Oct–Dec	Yes	Defiance, compliance
Brazil	No		
Chile	Oct–Dec	Yes	Compliance
Colombia	Nov–Dec	No	N/A
Costa Rica	No		
Cuba	No		
Dominican Republic	No		
Ecuador	Oct	Yes	Conditional compliance
El Salvador	No		
Guatemala	Apr, May, Sep	No	N/A
Haiti	Feb–March, Oct–Dec	No	N/A
Honduras	Apr–Jul	Yes	Compliance
Mexico	No		
Nicaragua	Mar	No	N/A
Panama	No		
Paraguay	No		
Peru	Nov	Yes	Compliance
Uruguay	No		
Venezuela	Jan–Apr	Yes	Compliance

Source: Author.

In roughly chronological order, the cases are the following:

- Venezuela.** The first anti-government demonstrations in the region were aimed at Venezuelan president Nicolás Maduro and began in January 2019. In that month, the opposition-controlled National Assembly swore in Assembly President Juan Guaidó as the country’s interim president in an attempt to overthrow Maduro, who had been re-elected in the previous year in elections lacking international observation and tainted by accusations of coercion, fraud, and vote rigging. Beginning on January 23, protestors took to the streets to demand Maduro’s resignation, taking up Guaidó’s slogan of “Cessation of usurpation, transitional government, and free elections”. The military was a crucial actor: opposition politicians including Guaidó called for members of the military to help topple Maduro, while the president visited military barracks and naval bases to rally support (LatinNews Daily Report 2019a). Despite some high-profile defections, the bulk of the military continued to profess loyalty to Maduro, ultimately ensuring

his survival. Moreover, the president deployed the state security apparatus against the population in subsequent protests, limiting dissent.

- **Honduras.** In Honduras, protest marches by teachers and health workers in April against a series of executive and legislative decrees aimed at education and health privatization morphed into broader anti-government demonstrations by the month of June (Cuffe 2019). This multi-sector movement pushed several demands but focused its efforts on removing President Juan Orlando Hernández from power. In response, the government announced the national deployment of the military to restore order. As with the Venezuelan state's reply to demonstrations, state security forces used tear gas to disperse protests as well as live ammunition, leading to some protestor deaths (LatinNews Daily Report 2019c).
- **Peru.** As summarized in the introduction to this chapter, executive–legislative crisis with accompanying pro- and anti-government protest in Peru was only resolved after commanders of the army, navy, air force, and national police publicly recognized President Martín Vizcarra as the country's constitutional leader on September 30 (LatinNews Daily Report 2019f). The president survived thanks to this military support.
- **Ecuador.** On October 3, President Lenín Moreno declared a state of exception in major cities across Ecuador's national territory in response to the violent protests being staged by the *Confederación de Nacionalidades Indígenas de Ecuador* and others, in rejection of the economic policy measures announced by his government. Protestors demanded a repeal of the decree eliminating subsidies and also sought to demonstrate their opposition to mining and oil exploitation, and ultimately, Moreno's resignation (LatinNews Daily Report 2019e). Through his state of exception decree, the president ordered security forces to re-establish order and even transferred the country's capital to the city of Guayaquil. Pion-Berlin and Acácio (2020, 2022) find that the military only conditionally complied with its orders, leaving most repression to the national police, and instead played a supporting role. Among other things, it provided public transportation to citizens and exclusively employed non-lethal weapons in an attempt to avoid confrontation. In some cases, this led to the injury of soldiers and their capture by protestors (Meza 2019).
- **Chile.** A fare increase on the Santiago metro sparked student protests on October 18 and which quickly escalated into broader demonstrations against the rising cost of living, economic inequality, and a host of other grievances in Chile. President Sebastián Piñera declared a state of emergency and ordered thousands of police officers and soldiers into the streets to curb violence, restore order, and impose curfew (LatinNews Daily Report 2019d). The military also publicly stood by Piñera amidst calls for his resignation. For some, the military's role evoked memories of dictatorship-era terror. However, Pion-Berlin and Acácio (2020) argue that while the armed forces appear to have committed some abuses in

maintaining order, these paled in comparison to abuses perpetrated by the country's national police force, known as Carabineros.³

- **Bolivia.** In Bolivia, protests broke out after irregularities emerged in the October 20 elections. Protestors first demanded a recount of the returns, and later the removal of President Evo Morales and new elections without Morales' participation (BBC News Mundo 2019). The president asked the military to intervene in the protests and increasingly violent disturbances in the cities of La Paz, Santa Cruz, and Cochabamba, but in a letter, senior commanders refused (Machicao and Londoño 2019). Then, when Morales suggested he would run for the presidency in new elections, senior officers advised him to resign. This action set off a new wave of protests, this time from allies of the president. However, in this circumstance, the military responded with lethal force. It was bolstered by a decree issued by interim president Jeanine Áñez which granted exemptions from criminal responsibility for actions in "legitimate defence" or a "state of necessity" (Lozano 2019; Molina 2019). In sum, this was an example of a military defying orders and then complying with them (Pion-Berlin and Acácio 2022).

Military responses were largely consistent with contemporary precedent in the region, partially as a result of them possessing an internal security function and partially a result of how presidents have employed them in times of crisis. If the cases deviated in any way, it is only because militaries more often complied with presidential directives in 2019 than in the recent past. Indeed, Pion-Berlin and Trinkunas (2010) show that presidents (and protestors) frequently called upon Latin American militaries to resolve constitutional crises in the 1990s and 2000s. However, unlike most of the examples described here, Pion-Berlin and Trinkunas find that militaries between 1990 and the late 2000s generally refused presidential orders⁴ to intervene against civilian opposition forces during such crises and instead remained quartered (Pion-Berlin and Trinkunas 2010). Compliance with government directives to restore public order that has been disrupted, of course, is characteristic of a military under civilian control—not one run amok with autonomy.

Military Responses to COVID-19

Right as the region began to emerge from these protests in late 2019 and early 2020, the onset of the COVID-19 pandemic again thrust militaries into the spotlight as first responders, and then in the realms of decision-making, public security, and logistics. In fact, all governments in the region with armed forces deployed their soldiers in a variety of COVID-19 activities. In doing so, militaries were not forced to undertake "unfamiliar domestic tasks" (Wilén 2021). To the contrary, governments in the region have long employed their armed forces for all sorts of domestic task implementation, including crisis response and humanitarian relief (Pion-Berlin and

Arceneaux 2000; Pion-Berlin 2016). Macias Herrera and Croissant (2022), for instance, find that all 17 Latin American national militaries had been deployed in instances of humanitarian or disaster relief prior to COVID-19. This is even true globally, where an increasing number of countries have employed their militaries in support of health efforts (Michaud et al. 2019).

One reason militaries are used for domestic task implementation has to do with the benefits they offer in comparison to more conventional bureaucratic agencies, especially in organization and logistics. Most professional militaries boast the ability to rapidly mobilize and respond to crises with manpower and operational support, such as food distribution, emergency medical services, and other health efforts (Heaslip and Barber 2014). Militaries may be more able to carry out policies more quickly and effectively than civilian bureaucratic agencies due to a lack of agency capacity to provide the services (Brömmelhörster and Paes 2004). Crisis situations or urgent developmental tasks need to be met immediately, and under many circumstances, the military represents the only organization capable of meeting those needs—especially missions that require large amounts of human capital or mobilization. Globally, Erickson, Kljajić, and Shelef (2022) find that 95% of the world’s states used their armed forces to respond to the pandemic in some fashion; further, 71% of all states employed the military for coercion, 72% for logistics, 66% for healthcare, and 36% in policymaking. Turning to the military, then, to deal with the fallout from COVID was a natural response for Latin American leaders.

The ways politicians employed the military to deal with the challenges of the pandemic, however, were not uniform across the continent. In their analysis of 14 Latin American democracies with militaries, Passos and Acácio (2021) identify six areas in which involved militaries responded to the pandemic: border security, logistics, medical care, defence industry production, crisis management, and policing. While all 14 governments turned to their armed forces, they found that governments in Uruguay and Argentina delegated only a limited number of pandemic responses to the military, while governments in Peru, Brazil, and Honduras intensively deployed the military in an array of tasks across all six identified domains.

Similarly, Macias Herrera and Croissant (2022) carry out a comprehensive and detailed mapping of Latin American military roles and missions during the pandemic.⁵ Functions which all militaries in the region performed include providing border security, establishing and/or guarding isolation, quarantine, and health centres, and providing assistance in health-related matters. Other near-universal roles include the production of medical equipment (16 of 17 countries), transport and distribution of said equipment (14 of 17), street patrols to enforce stay-at-home orders (15 of 17), and the distribution of food and water (15 of 17). Few militaries engaged in the protection of critical infrastructure (4 of 17), the dissemination of COVID-19 information (4 of 17), or appointed a military officer as health minister (only Brazil and Cuba).

Importantly, the region's armed forces largely played a supplementary or sometimes complementary role to civilian responses instead of one of replacement. And despite the overall expansion of military roles, these began to shrink as the pandemic wore on. Many logistical and healthcare tasks, like guarding quarantine centres and posting COVID-19 information, were temporary by nature, and disappeared as vaccines became more ubiquitous and the health sector gained the ability to keep up with COVID cases. In short, presidents' use of militaries to respond in a variety of ways to the challenges raised by the pandemic were consistent with how they have been employed in recent decades, and while this involved task expansion, it was largely temporary.

Civilian Control and Democracy

As a consequence of these crises and leaders' responses, Latin American militaries have been more visible in the political realm than at any other moment since the region's return to democracy in the 1980s. Predictably, this raises concerns with how engaging the military in the 2019–2021 period may affect civil–military relations and impact Latin American democracy.

Evaluating the relationship between military roles and democracy is a complicated task. Increased task implementation by the military does not necessarily constitute a lack of civilian control of the military—nor is it evidence of democratic decay. On the contrary, civilian leaders can allocate institutional prerogatives and choose when to delegate authorities to the military while still exercising control over the institution (Feaver 2003; Croissant et al. 2010). The task is to determine when and where militaries claim formal prerogatives or whether they seek to contest civilian authority informally (Brooks 2019: 386). In other words, does the military seek prerogatives from civilian authorities or is it asked by civilian authorities to bear those responsibilities?

Social Protest and Civil–Military Relations

Public military support of presidents during moments of institutional crisis represents both a victory for civilian control of the military as well as a potential danger. Unlike in the mid-twentieth century or before, most decisions by security forces about whether to support or withhold support from elected leaders does not result in direct military intervention, a coup d'état, or a military dictatorship. In the six cases from 2019 highlighted here, only in Bolivia did the armed forces make a decision to actively decide a political outcome. And while supporters of Evo Morales decried the military's intervention as a coup, many opponents described it as a victory for Bolivian democracy and stability after an episode of electoral fraud (Graham-Harrison and Collins 2019).

At the same time, the military's role in maintaining domestic order and determining who does or does not stay in power harkens back to a

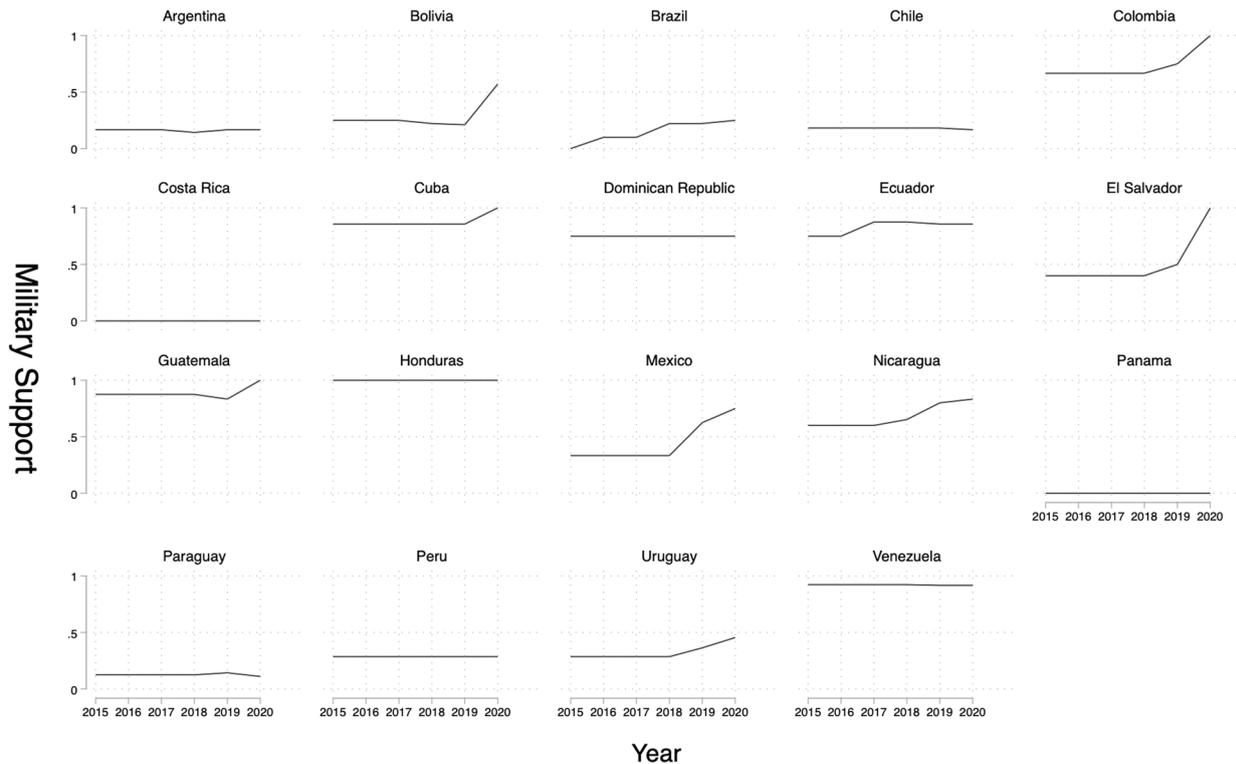
previous era of praetorianism. In fact, it appears that Latin American presidents are more dependent now on the military for legitimacy and survival than they have been in a long time. Figure 10.1 plots “reliance on military for regime survival”, a standardized measure which captures the extent to which retracting military support would substantially increase the chance that the regime would lose power. The figure shows that in the 2018–2020 period, regime reliance on the military increased in ten countries (Bolivia, Brazil, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Uruguay) with one country, Honduras, already at its maximum. This jump is put into further relief by the relative lack of intra-country variation between 2010 and 2015, suggesting that the change in perceptions about the military’s role was related to its conspicuousness in many places immediately prior to and during the pandemic (i.e., presidents appearing on national broadcasts during times of social protests or political crisis surrounded by senior officers).

This is a worrying development for civilian control and ultimately, for democracy. Dependent civilian leaders may be less willing to restrict, contradict, and even send orders to militaries upon which their survival depends, weakening checks on the military. Moreover, it is a clear indication of praetorianism, insofar as the armed forces and not voters or legislators determine which civilian leaders survive and which fall. The Bolivia experience from 2019, in which the military refused to obey orders from Evo Morales, suggested his resignation, and later stood by and followed orders from successor Jeanine Áñez is an example. Authoritarian regimes in the region may be even more beholden to their militaries than democratic ones. Macias Herrera and Croissant (2022) identify regime maintenance as a central mission in Bolivia, Cuba, Nicaragua, and Venezuela. Notably, all save Bolivia are authoritarian.

With that being said, Varieties of Democracy data also indicate that the military was the group that political regimes relied on most strongly in order to maintain power in only two countries in 2021 (the most recent year available) and seven countries since 2000: Argentina (2010–2017); Brazil (2004–2020); Colombia (2009); Cuba (2005–2018, 2020–2021); El Salvador (2001–2009, 2011–2021); Guatemala (2009–2020); and Peru (2002–2016). This tells a slightly different story of military dependence. In this less praetorian version, the armed forces are just one in a constellation of institutions and groups that contribute to regime survival throughout the region, and in most cases in contemporary Latin America, are not the most vital group.

COVID-19 and Civil–Military Relations

Military responses to COVID-19 were probably even less detrimental to civil–military relations. Although some political analysts and scholars worried—justifiably—that the militarized response to the pandemic would undermine civilian control of the armed forces, this does not appear to



Source: Varieties of Democracy v12

Figure 10.1 Reliance on military for regime survival (2015–2020).

have been the case (e.g., Isacson 2020; Passos and Acácio 2021; Akkoyunlu and Lima 2022). While it is true that civilian leaders expanded the number of tasks they delegated to their armed forces during the height of the pandemic, these were not autonomous choices of the military. Instead, they complied with civilian orders, a behaviour which demonstrates the maintenance of civilian control.

The fact that most militaries did not exploit the pandemic to seek additional institutional autonomy is also noteworthy. Pion-Berlin and Arceneaux (2000) argue that the impact of internal military missions on civilian control hinges on three questions: (1) the existence of capable civilian organizations to fulfil the operation, (2) the willingness of military officials to relinquish control when a civilian organization exists, and (3) the creation of an alternative civilian organization to carry out the action in the future. As a result, they find that role expansion in the 1990s did not lead to increased military autonomy in Brazil or Argentina when presidents enlisted the military's help in distributing food or providing health services. Similarly, Latin American governments' employment of the military during the COVID-19 pandemic meet at least the first two of these criteria, since militaries responded to an extraordinary circumstance at the behest of civilian governments before later voluntarily relinquishing these roles.

There is also little indication of military-led mission creep. Though the pandemic accelerated military participation in aspects of governance, the military typically acted on the initiative and according to the directives of civilian leaders. The effect of militarization on democracy, then, was differentiated by what tasks militaries were called on to perform. Macias Herrera and Croissant (2022) find that military COVID-19 activities were less likely to cause damage to democratic civil–military relations if they were limited to policy implementation and excluded enforcing punitive public security measures. Military autonomy granted by civilian leaders also played a role. Public security roles for militaries with high autonomy, for example, tended to result in more human rights abuses (Acácio et al. 2022).

The Military and Long-Term Democratic Trends

In short, there does not appear to be much evidence that the 2019 protest cycle or domestic responses to COVID significantly altered the role of Latin American militaries or undermined civil–military relations. Empirical data measuring democracy suggest that countries in the region continued along longer-term trajectories of democratic deepening, democratic decay, or steadiness which began prior to the 2019 protest wave.

To illustrate, Figure 10.2 uses data from the Varieties of Democracy project to plot liberal and electoral democracy scores for all countries across the region between 2010 and 2021. The sharpest drop (and subsequent recovery) came in Bolivia in 2020, after direct military involvement

in precipitating a change in power. As described earlier, President Evo Morales stepped down on November 10, 2019, after General Williams Kaliman and the military high command called on him to resign in order to restore peace and stability to the country amidst post-electoral violence. The next most prominent decrease came in El Salvador, although this drop happens to coincide with the arrival to power of President Nayib Bukele, who has frequently threatened and flaunted democratic norms while in office. Other democratic erosion began before 2019, including in Brazil, Chile, Colombia, Guatemala, Mexico, Nicaragua, Uruguay, and Venezuela.

Still, this is not to say that militaries have not contributed to democratic backsliding, or that this was not exacerbated by the protest cycle or pandemic. Broad measures fail to capture how the militarization of politics may have contributed to or accelerated pre-existing democratic erosion—or conversely, how militaries refusing to follow presidential orders may have blunted that decay. Two examples of democratic erosion in Figure 10.2 are Brazil under Jair Bolsonaro (2019–2022) and El Salvador under Bukele (2019–present), countries whose presidents held weak normative commitments to democracy used their militaries to contribute to democratic erosion. Both cases of pandemic militarization are covered in detail by Acácio, Passos, and Pion-Berlin (2022) and Macias Herrera and Croissant (2022). Suffice it to say that in each country, the authors find that military COVID-19 roles did not drive democratic backsliding, but rather intensified existing patterns.

In Brazil, for example, Akkoyunlu and Lima (2022) argue that autonomous military decisions taken by officers on a quest for political influence threatened civilian control and democracy beginning under the Michel Temer presidency (2016–2018). Bolsonaro, an ex-Army captain, accelerated this process, giving preferential treatment to the military and appointing an estimated 8,450 military personnel to administrative positions in his government (Penido et al. 2021). It is no surprise, then, that Bolsonaro appointed military men to top civilian government positions in the Ministry of Health as well as the Crisis Committee for Supervision and Monitoring of the Impacts of COVID-19. While this may not undermine democracy, it does challenge norms of civilian control.

Concluding Thoughts

Latin American militaries played a key role in responding to the social unrest that swept the region in 2019 and the pandemic that followed. This does not represent as wide a deviation from the past as it may first appear. Militaries have been arbiters of civilian political conflict in Latin America since the 1990s and have assumed humanitarian and health missions that civilian leaders have delegated to them in times of crisis. With few exceptions, militaries have not sought to undermine their subordination to civilian authorities or independently sought autonomy from civilian

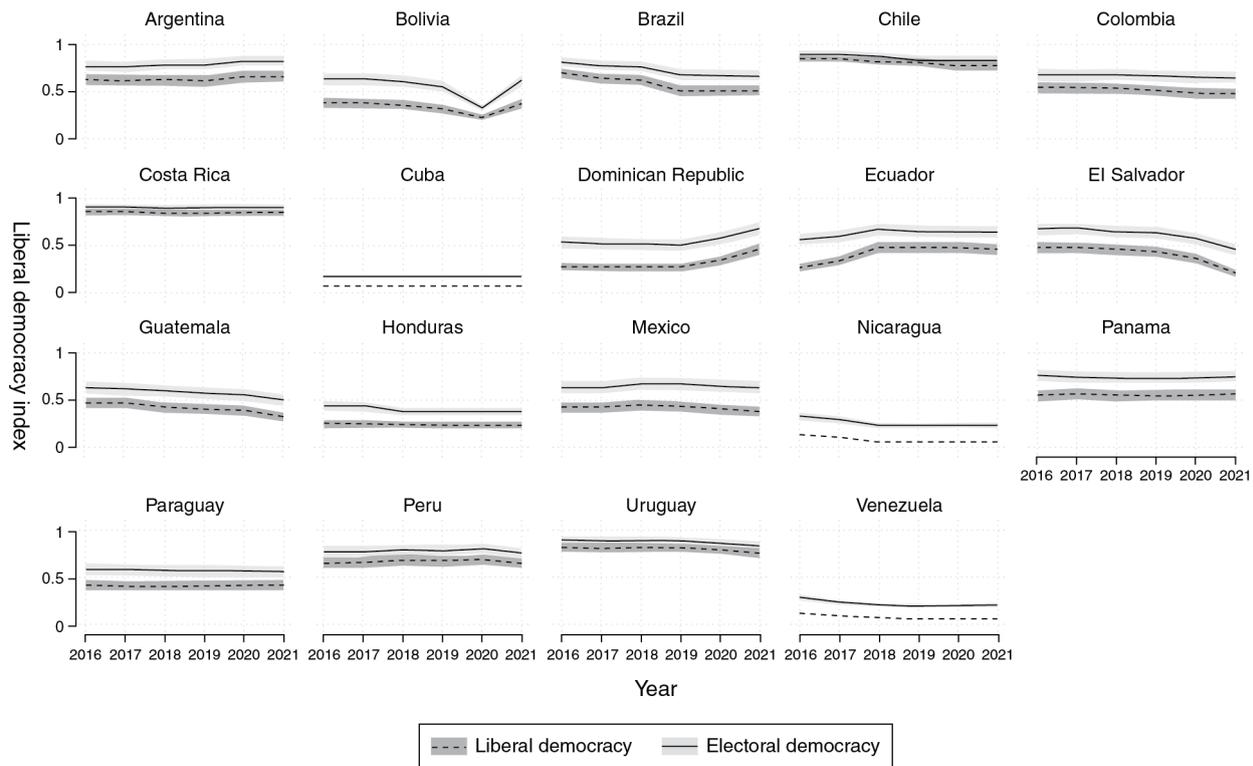


Figure 10.2 Democracy in Latin America (2010–2021).

leaders. Instead, they have assumed an expansion of the tasks delegated to them and before relinquishing them. As such, it does not appear to represent the “return” of the military to the political sphere or the return of civil–military relations to the days of the Cold War (Pion-Berlin and Acácio 2020).

That is not to say that all is well. According to some figures, civilian leaders in Latin America are more dependent on the support of their armed forces for survival in the face of institutional challenges than at any moment in recent history. This is a troubling development for a region with a history of military interruptions and praetorianism, as this could threaten military subordination to civilian control. The type of task expansion that accompanied the response to COVID-19 also poses the risk of mission creep, especially in places where presidents may not demand militaries give back the responsibilities they acquire. In other countries, would-be authoritarians may direct armed forces to assume tasks and duties that undermine democracy and contribute to backsliding, as in Brazil or El Salvador.

Ultimately, civil–military relations in contemporary Latin America may be driven more by civilian leaders than the military. It is civilian leaders who turned to the armed forces in Venezuela, Honduras, Peru, Ecuador, Chile, and Bolivia during times of crisis in 2019, not only to restore domestic order but to demonstrate public shows of support for their leadership. Similarly, it was civilian leaders who responded to the challenges of the pandemic by sanctioning vast military role expansion in 2020 and then decided when to terminate these activities. This points to the importance of democratic checks and balances, both vertical and horizontal, on politicians as key mechanisms for citizens to exert authority over their armed forces.

Latin America’s reaction to extraordinary governability challenges in the late 2010s and early 2020s is not unique in a global context. However, given the region’s history and precedent of military involvement in politics, presidents, legislators, and citizens may wish to exercise greater caution in how they decide to delegate autonomy to their armed forces than leaders in more consolidated democracies.

Notes

- 1 The Chaco War, the so-called Soccer War between El Salvador and Honduras, and the Falklands War, and then a border war between Colombia and Peru and three border wars between Ecuador and Peru.
- 2 Argentina, Bolivia, Brazil, Chile, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Panama, Peru, and Uruguay.
- 3 Using lawsuits filed on behalf of alleged victims of abuses, they show that 1,544 Chileans alleged suffering at the hands of the Carabineros while only 87 people charged abuses by military personnel (Pion-Berlin and Acácio 2020).
- 4 In 9 of the 13 cases they examined.
- 5 They identify four roles and 15 different missions within those roles: (1) Decision-making and planning (a military officer as health minister, military-led emergency

units); (2) Public security (border control, street patrols, crowd and riot control, protection of critical infrastructure); (3) Logistics (decontamination of public areas, distribution of food/water, repatriation of nationals); and (4) Healthcare (production of medical products, distribution of medical products, transportation of medical personnel/patients, establishment of COVID-19 isolation/quarantine/health centres, assistance in health-related functions, dissemination of COVID-19 information).

Works Cited

- Acácio, Igor, Anaís M. Passos, and David Pion-Berlin. 2022. "Military Responses to the COVID-19 Pandemic Crisis in Latin America: Military Presence, Autonomy, and Human Rights Violations." *Armed Forces & Society* 49 (2):372–394, 0095327X211070035.
- Akkoyunlu, Karabekir, and José Antonio Lima. 2022. "Brazil's Stealth Military Intervention." *Journal of Politics in Latin America* 14 (1):31–54.
- Battaglini, Jorge. 2015. "Políticos y militares en los gobiernos de la nueva izquierda sudamericana." *Política y Gobierno XXII* (1):3–43.
- BBC News Mundo. 2019. "Elecciones en Bolivia: concentraciones masivas de seguidores del gobierno y la oposición dejan 30 heridos." *BBC News Mundo*, 29 October.
- Brenes Castro, Arnaldo, and Kevin Casas, eds. 1998. *Soldados como empresarios: los negocios de los militares en Centroamérica*. San José: Fundación Arias para la Paz y el Progreso Humano.
- Brömmelhörster, Jörn, and Wolf-Christian Paes. 2004. *The Military as an Economic Actor: Soldiers in Business*. Basingstoke: Palgrave Macmillan.
- Brooks, Risa A. 2019. "Integrating the Civil–Military Relations Subfield." *Annual Review of Political Science* 22:379–98.
- Cawthorne, Andrew. 2017. "Year of Protests and Crisis in Volatile Venezuela." *Reuters*, 30 November.
- Corrales, Javier. 2019. "Latin America Risks Becoming the Land of Militarized Democracies." *Americas Quarterly*, 24 October.
- Croissant, Aurel, David Kuehn, Paul Chambers, and Siegfried O. Wolf. 2010. "Beyond the Fallacy of Coup-ism: Conceptualizing Civilian Control of the Military in Emerging Democracies." *Democratization* 17 (5):950–75.
- Cuffe, Sandra. 2019. "Honduras Protest Crackdown: Five Things to Know." *Al Jazeera*, 22 June 2022.
- Diamint, Rut. 2015. "A New Militarism in Latin America." *Journal of Democracy* 26 (4):155–68.
- Erickson, Peter, Marko Kljajić, and Nadav Shelef. 2022. "Domestic Military Deployments in Response to COVID-19." *Armed Forces & Society* 49 (2):350–371, 0095327X211072890.
- Feaver, Peter D. 2003. *Armed Servants: Agency, Oversight, and Civil–Military Relations*. Cambridge: Harvard University Press.
- Fisher, Max. 2019. "'A Very Dangerous Game': In Latin America, Embattled Leaders Lean on Generals." *The New York Times*, 31 October.
- Fitch, John Samuel. 1998. *The Armed Forces and Democracy in Latin America*. Baltimore: Johns Hopkins University Press.
- Graham-Harrison, Emma, and Dan Collyns. 2019. "Is It a Coup or a Return to Democracy? Battle for Bolivia's Soul Rages." *The Guardian*, 17 November.

- Heaslip, Graham, and Elizabeth Barber. 2014. "Using the Military in Disaster Relief: Systemising Challenges and Opportunities." *Journal of Humanitarian Logistics and Supply Chain Management* 4 (1):60–81.
- Hunter, Wendy. 1994. "Contradictions of Civilian Control: Argentina, Brazil and Chile in the 1990s." *Third World Quarterly* 15 (4):633–53.
- Huntington, Samuel P. 1957. *The Soldier and the State: The Theory and Politics of Civil–Military Relations*. Cambridge, MA: Harvard University Press.
- Isacson, Adam. 2020. "In Latin America, COVID-19 Risks Permanently Disturbing Civil–Military Relations." Washington, DC: Washington Office on Latin America (WOLA).
- Klein, Graig R., José Cuesta, and Cristian Chagalj. 2022. "The Nicaragua Protest Crisis in 2018–2019: Assessing the Logic of Government Responses to Protests." *Journal of Politics in Latin America* 14 (1):55–83.
- Kohn, Richard H. 1997. "How Democracies Control the Military." *Journal of Democracy* 8 (4):140–53.
- LatinNews Daily Report. 2019a. "Maduro and Guaidó vie for Control of the Military." *LatinNews Daily Report*, 28 January.
- . 2019b. "Morales Resigns after Army Calls for Him to Step Down." *LatinNews Daily Report*, 11 November.
- . 2019c. "Police Repression Risks Escalating Tensions." *LatinNews Daily Report*, 25 June.
- . 2019d. "Seeking to Ease Social Discontent Following Outbreak of Unrest." *LatinNews Daily Report*, 21 October.
- . 2019e. "Under Stage of Siege Following Violent Protests." *LatinNews Daily Report*, 4 October.
- . 2019f. "Vizcarra Loses Patience and Dissolves Congress." *LatinNews Daily Report*, 1 October.
- Llanos, Mariana, and Leiv Marsteintredet, eds. 2010. *Presidential Breakdowns in Latin America. Causes and Outcomes of Executive Instability in Developing Democracies*. New York: Palgrave Macmillan.
- Loveman, Brian. 1999. *Por la Patria: Politics and the Armed Forces in Latin America*. Washington: Scholarly Resources.
- Lozano, Daniel. 2019. "Bolivia: un mes de crisis, 23 muertos y sin acuerdo a la vista." *El Mundo*, 17 November.
- Machicao, Mónica, and Ernesto Londoño. 2019. "Bolivia's Democracy Faces Pivotal Test as Unrest Spreads." *New York Times*, Oct. 31.
- Macias Herrera, Ariam, and Aurel Croissant. 2022. "Mapping Military Roles in COVID-19 Responses in Latin America – Contours, Causes and Consequences." In *HCAIS Working Papers on Ibero-America*, 1–26. Heidelberg: Heidelberg University.
- Meza, Andrés. 2019. "Ecuador: protestas se radicalizan con retención de militares por parte de indígenas." *France24*, 7 October.
- Michaud, Joshua, Kellie Moss, Derek Licina, Ron Waldman, Adam Kamradt-Scott, Maureen Bartee, Matthew Lim, Jamie Williamson, Frederick Burkle, Christina S. Polyak, Nicholas Thomson, David L. Heymann, and Louis Lillywhite. 2019. "Militaries and Global Health: Peace, Conflict, and Disaster Response." *The Lancet* 393 (10168):276–86.
- Molina, Fernando. 2019. "El Gobierno de Bolivia anula el decreto que permitía a los militares reprimir las protestas." *El País*, 29 November.

- Passos, Anaís Medeiros, and Igor Acácio. 2021. “The Militarization of Responses to COVID-19 in Democratic Latin America.” *Revista de Administração Pública* 55 (1):261–72.
- Penido, Ana, Gabriela Araujo, and Davi Matos. 2021. “Militares no Governo de Bolsonaro.” In *Informed Temáticos 2020*, ed. J. Bigatão and M. Vitelli, 1–7. São Paulo: Observatório Brasileiro de Defesa e Forças Armadas.
- Pion-Berlin, David. 1988. “The National Security Doctrine, Military Threat Perception, and the ‘Dirty War’ in Argentina.” *Comparative Political Studies* 21 (3):382–407.
- . 1992. “Military Autonomy and Emerging Democracies in South America.” *Comparative Politics* 25 (1):83–102.
- . 2016. *Military Missions in Democratic Latin America*. Basingstoke: Palgrave Macmillan.
- Pion-Berlin, David, and Craig Arceneaux. 2000. “Decision-Makers or Decision-Takers? Military Missions and Civilian Control in Democratic South America.” *Armed Forces & Society* 26 (3):413–36.
- Pion-Berlin, David, and Harold Trinkunas. 2010. “Civilian Praetorianism and Military Shirking during Constitutional Crises in Latin America.” *Comparative Politics* 42 (4):395–411.
- Pion-Berlin, David, and Igor Acácio. 2020. “The Return of the Latin American Military?” *Journal of Democracy* 31 (4):151–65.
- . 2022. “Explaining Military Responses to Protests in Latin American Democracies.” *Comparative Politics* 54 (2):229–51.
- Rouquié, Alain. 1987. *The Military and the State in Latin America*. Berkeley: University of California Press.
- Soto, Alonso, and Anthony Boadle. 2017. “Brazil’s Temer Deploys Army as Protesters Battle Police.” *Reuters*, 24 May.
- Stepan, Alfred. 1973. “The New Professionalism of Internal Warfare and Military Role Expansion.” In *Authoritarian Brazil: Origins, Policies and Future*, ed. A. Stepan, 47–65. New Haven: Yale University Press.
- Stepan, Alfred. 1988. *Rethinking Military Politics: Brazil and the Southern Cone*. Princeton: Princeton University Press.
- Trinkunas, Harold A. 2005. *Crafting Civilian Control of the Military in Venezuela: A Comparative Perspective*. Chapel Hill: University of North Carolina Press.
- Wilén, Nina. 2021. “The Military in the Time of COVID-19. Versatile, Vulnerable, and Vindicating.” *PRISM* 9 (2):20–33.

11 Conclusion

*Leonardo Morlino, Mariana Llanos and
Leiv Marsteintredet*

The Political Consequences of the COVID-19 Pandemic in Latin America

When the COVID-19 pandemic first pervaded our lives, our initial reaction was to protect ourselves. However, we also immediately understood that such a dramatic event affected our communities and deeply challenged political institutions, doing so asymmetrically and differently from country to country. Preliminary analyses of reactions to the pandemic's onset and the decisions made to protect citizens yielded an ironic finding: democracies – that is, precisely the regimes that were supposed to care most for their citizens – were slower and more hesitant than autocracies to take protective and compulsory measures as most of them violated individual rights. Hence, this slow reaction to the crisis brought about consequent much higher costs in terms of deaths (see, e.g. Cheibub, Hong and Pzeworski, 2020, 2–13).

Among democracies, the three factors that accounted for greater success in responding to the pandemic's arrival were: a competent state apparatus; a government in place that citizens trust; and, effective leadership (see Fukuyama, 2020). Once the situation gradually started to cool off, and it seems that at the time of writing (November 2022) we are slowly beginning to recover from such a dramatic, widespread and unexpected global event, the most relevant question no longer is what autocracies and democracies did to cope with the pandemic but what its actual impact has been on politics. Or, in other words: What have the political consequences of the pandemic been for our democratic institutions?

From this perspective, and in our view, there is no doubt that one of the most salient world regions for understanding the impact of COVID-19 on democracy is Latin America, rather than the consolidated, more prosperous Western democracies or the non-democratic regimes found elsewhere around the globe. On the one hand, political instability and institutional weakness in a number of Latin American countries make their democratic institutions more sensitive to external challenges, so that the impact of events like the pandemic can be detected more readily. On the

other, ever since the third wave of democratisation, the region has suffered numerous crises such as the debt one in the 1980s, hyperinflation, crises of representation and democracy, presidential deadlocks and natural disasters. One may question the degree to which the COVID-19 pandemic playing out since early 2020 has constituted a unique, larger challenge to democracies in the region than the previous travails did: Was it, rather, just one more external test that the struggling democracies of the region had to go through? That said, it is important to recall that Latin American countries have been heavily affected by the pandemic – with them, for example, seeing about 20 per cent of infections and 30 per cent of deaths around the globe in its first year despite the entire area making up only 9 per cent of the world’s population.

Even though this volume did not set out to analyse the consequences of the pandemic exclusively, the latter stepped in and constituted yet another (extreme) challenge that the region’s political institutions have had to mediate and handle. We therefore take the opportunity in this concluding chapter to analyse how and to what extent the pandemic has altered the course of or affected democratic institutions in Latin America. With regards to the political consequences here, we might assert there has been a resurgence of authoritarianism, even of neo-fascist attitudes; from an opposing perspective, meanwhile, it could be said to have been an opportunity for democratic leaders to reform their polities (see e.g. Fukuyama, 2020).

We contend that a more accurate and profitable perspective will ensue from reviewing and assessing the pandemic reactions of democratic institutions in the countries of the region.¹ Events since early 2020 – in particular in countries where institutions are weak and state deficiencies rampant, as they are in many countries of Latin America (Brinks, Levitsky and Murillo, 2020) – can be considered a sort of litmus test for the resilience of democracy. Let it be added that “resilience” here should be considered the ability of a democratic system, its institutions, political actors and citizens to prevent or react to external and internal challenges, stresses and assaults (Merkel and Lührmann, 2021).

To spell out more clearly the research questions in need of further investigation, we should ask whether, in terms of its impact and political consequences, the pandemic: (1) brought about a critical juncture for all those democracies; (2) had a catalysing effect; (3) had mixed results, but ones impossible to concretely establish; or (4) even had no impact or consequences. Before investigating these effects empirically, we first make explicit in the next section the theoretical meaning and related hypotheses of the three possible alternatives: namely, *critical juncture*; *catalysis*; and, *mixed chaotic effect*. We discard the analytically possible zero impact: the pandemic has been so dramatic also in terms of deaths and other human, economic and social costs in all the countries dealt with here as to make that outcome simply not credible.

Critical Juncture, Catalysis or Mixed Chaotic Effect? Definitions and Hypotheses

When tracing the traditional understanding of a “critical juncture”, we can recall that in Political Science – and Sociology – the concept was initially adopted by Lipset and Rokkan (1967, 37–38) about profound changes totally reshaping the political and social landscape of Western Europe. Later, it was systematically applied to unions in Latin America in Collier and Collier’s (1991) seminal book. However, the origin of the notion goes back to palaeontology, within the theoretical framework of “punctuated equilibrium” developed by Eldredge and Gould (1972). They considered the evolution of the species to be the result of protracted phases of equilibrium and stasis interrupted by a moment of profound, rapid change (critical juncture) due to dramatic external events.

The subsequent revival and reintroduction of this notion would be due to its more explicit inclusion in the path-dependency approach (Capoccia and Kelemen, 2007), where again continuity is explained by the strength and inertia of recurrent patterns, once established, and change is induced by a specific dramatic event. Briefly, it is postulated that this is:

a dual model of institutional development characterised by relatively long periods of path-dependent institutional stability and reproduction [...] punctuated occasionally by brief phases of institutional flux – referred to as critical junctures – during which more dramatic change is possible [...]. Junctures are “critical” because they place institutional arrangements on paths or trajectories which are then very difficult to alter.

(Capoccia and Kelemen 2007, 341–342)

In other words, profound changes ensue from choices made in responding to a dramatic event, and, once taken, they are difficult to revise, consequently establishing future paths. Can, then, the changes occurring in Latin American democracies due to the COVID-19 pandemic be considered a critical juncture followed by stabilisation and continuity? A dramatic event potentially triggering significant change has undoubtedly been present in this instance. However, were there indeed resulting profound, rapid shifts?

An alternative theoretical proposal adopts a metaphor with other meaningful implications. In Chemistry, a well-known transformation process stems from a chemical reaction due to the addition of a substance known as a “catalyst”. The other chemical components may undergo greater or less profound transformations when the catalyst is added. However, ultimately, the catalyst may provoke a change characterised by robust and meaningful continuity. The catalysing process to be carried out needs the presence of pre-existing factors, the necessary component(s) of the subsequent chemical reaction. If we assume that the pandemic is the catalyst and focus on

democratic politics, the hypothesis is that the former may have prompted the latter's complex institutions to change in three possible directions:

- 1 the catalyst may either accelerate or slow down changes and instances of weakening already happening within democratic institutions, with those that were already becoming dominant now being even more so;
- 2 in situations of conflict and stalemate, the catalyst can bring about some change in the process, which may ultimately favour certain actors over others and thus break the impasse;
- 3 finally, because of its specific characteristics, the catalyst has the potential to become more prominent for some components than others (e.g. in our case, health system and management).

Overall, within these theorised outcomes there can be significant changes, but all of them are gradual and the result of existing favourable contextual factors that are either magnified or weakened by the catalyst (pandemic). Thus, the main challenge with this theoretical proposal and the related hypotheses is an empirical one. In other words, every change we detect should be the result of the catalyst and a pre-existing phenomenon or situation, already in motion in some way, within a given stalemate or regarding a specific connection between the catalyst and the existing institutional arrangement.

An example may help to clarify better the theoretical proposal we are making. Namely, there exists, say, an ongoing process of political polarisation/radicalisation that the pandemic has accelerated or increased. As a consequence, we find additional growth in the distance between respective actors in terms of their public-policy proposals and the disappearance of moderate positions. Some other examples are worthy of mention here: if there had been a reduction of inequality or poverty during the last few decades, once the pandemic becomes widespread that trend is not reversed but immediately decelerated; the latent existence of a territorial conflict between central and local powers, be they regional or municipal, may be accentuated by the decisions taken to cope with the pandemic; or, because of the specific characteristics of the catalyst, the always-present issue of health protection is partially transformed to attend to specific pandemic-related needs. Will, then, our empirical analysis of the Latin American cases reveal such catalyst effects to exist with regards to the region's main democratic institutions?

A third possibility sees both theoretical frameworks sketched above as two Nexus' shirts, which simplify and condense down complex realities without actually capturing them. Thus, accepting the asymmetry and differential impact of the pandemic on our democracies – and even on different institutions of the same polity – might be a much better idea and closer to fair, correct empirical analysis. Consequently, no adequate theoretical framework can be formulated; one can, thus, only carry out a detailed, specific empirical analysis detecting the changes occurring – be they more

apparent than substantial, more superficial than profound and eventually more conjunctural than structural and persistent in the years that follow. Does this third hypothesis better explain the pandemic's impact on democratic institutions in Latin America? In the remainder of the chapter, we tease out the institutional impacts of the pandemic utilising the framework laid out above.

Empirical Results

As already mentioned, this volume's focus on Latin America's prominent democratic institutions and their performance under duress in the last almost three years gives us the chance to investigate what the most suitable framework is to highlight the core features of the pandemic's impact. Thus, we can start from the head of the executive power (the president), scrutinise the connections with the primary institutions of horizontal accountability (Congress and the Supreme Court), further review the legislative power and its activities, make a brief check at the subnational level, find the consequences on electoral campaign and elections, and finally explore what has happened regarding the role of the military. In the final section, we suggest what the best-fitting theoretical framework is here, as well as which key pandemic-related consequences will mark Latin American democracies in the near future.

The President and Presidentialism

With the pandemic rapidly expanding, decisional activism from the executive power was largely expected, and it effectively took place in most Latin American countries for better or for worse. It became immediately evident that the adoption of exceptional constitutional measures and the urgency of coping with the pandemic and all its related uncertainties would in many instances give presidents tremendous power – at least temporarily (Ginsburg and Versteeg, 2021). In fact, in cases such as El Salvador there was already an ongoing trend of strengthening the power of the presidency. Thus, we might immediately reach the conclusion that a catalysing mechanism was set in motion, facilitating the further concentration of power in the hands of President Nayib Bukele in this particular case. However, a more in-depth way to check if there was effectively a change in the role and power of the region's incumbents is by looking first at the presidential term rules and at how they performed in the first years of the pandemic.

From this perspective, we might consider the observed use of impeachment during the period from mid-2020 to the beginning of 2022. In their research on this topic, Llanos and Marsteintredet (Chapter 2, this volume) emphasise the limits of impeachment as a check on executive authority in presidential democracies, calling it “an imperfect instrument of accountability that is highly susceptible to political manipulation”. Through their

empirical analysis of both successful and unsuccessful cases in the last few years, they single out two recurrent errors in that procedure: removing an innocent president, which occurs when an impeachment process is solely driven by politics, and not removing a guilty president, which happens when the accountability mechanisms in place do not work, respectively.

One expected implication of the pandemic could have been a truce on impeachment so as to give the president the liberty to deal with the health threat at hand. Yet, in the period mentioned earlier, there were at least four unsuccessful impeachment attempts – Chile (November 2021), Paraguay (March 2021), Peru (December 2021, March 2022) – and one successful one – Peru (November 2020). Certainly, in the indicated years the opening of impeachment proceedings – whether eventually successful or not – often mirrored the dissatisfaction of citizens and saw it manifest as an intra-elite conflict, but the way that this legal tool was implemented continued to follow its core inner logic – that is, it was not changed or affected by the pandemic. Interestingly, the case of Jair Bolsonaro in Brazil is one in which the pandemic, and the president’s disastrous handling of it, should have warranted impeachment, but eventually did not – despite hundreds of such requests being presented on these grounds. Successful impeachment could have been expected with such an ideologically extreme incumbent, but the outcome is ultimately in line with previous cases of presidents managing to build a protective legislative shield.

Another possible litmus test for the presidency’s changed role in Latin America in light of the pandemic is suggested by Welp and Whitehead (Chapter 3, this volume). They focus on mechanisms of direct democracy (MDD) and present data on the activation of the latter between 1980 and 2022 as part of attempts to interrupt and/or change the terms of a presidential mandate, including unsuccessful such ones. In their data set, there are the votes concerned with presidential term rules but also reform packages in which the issue of the presidential term is involved. If the pandemic had changed the role of that institution, we should expect a rapid growth of those activations during the years 2020–2022. This should be even more so the case if we consider that MDD has become more common anyway in the last few decades, turning into an important tool for institutional and political struggles.

Moreover, recall cases are expected to be more frequent when voters can express their dissatisfaction by changing the primary responsibility of executive power. As Welp and Whitehead point out, activation “depends upon renewing the allegiance of successive citizen cohorts”; in most Latin American countries, meanwhile, “such allegiances are more fragile, and behavioural norms include both foreshortening and extending the mandates of incumbent presidents”. However, even when we pay attention to the recall in the Mexican case, eventually unsuccessful, as the two authors do in the mentioned chapter, the data they present and discuss do not support in any way the pandemic having had an impact on the presidency when seen from this specific angle.

A different conclusion could be expected when analysing the decrees of Latin American incumbents, the unilateral administrative decisions that represent an important feature of presidential discretion because they constitute an opportunity for those in power to implement a substantial part of their policy agenda. Such leverage also effectively reveals the salience of the president's political role vis-à-vis other political institutions. Moreover, we expect such discretionary power to become even more accentuated in emergencies.

The comparative analysis carried out by Inácio, Recch and Guerrero Valencia (Chapter 5, this volume) addresses this issue for the years preceding the pandemic. First, their data stress that concession of benefits to individuals or groups of civil servants, such as the military, and decisions related to the state's economic and regulatory functions, such as concessions of public services, are among the most prevalent content in those decrees (alongside budgetary decisions). When we focus specifically on the pandemic years, the pattern does not change. A detailed analysis by the three authors of the Bolsonaro government in Brazil confirms this. Considering the negative stance he took on the pandemic, there was a lack of active decision-making and delays of presidential decrees to coordinate national efforts on the implementation of sanitary measures, to expand the capacity of the public health system or to create economic aid and relief programmes. At the same time, there was presidential activism to stop or sabotage emergency policies by Congress and state governments. Thus, the authors show that Bolsonaro initially took the pandemic as an opportunity to test the limits of his unilateral powers. He bet on institutional confrontation to gain more room for manoeuvre in advancing his own agenda and tried to reshape inter-ministerial and federative relations in his favour. In this vein, the pandemic was seen by him as an excellent opportunity to assert and expand his power. Data on unilateral administrative decisions confirm that the president's attention was not on the pandemic; decisions related to addressing the latter were advocated by Congress instead.

Finally, Martínez and Dockendorff (Chapter 4, this volume) analyse the question of hyper-presidentialism in Chile and the degree to which the latter, from a comparative perspective, can be said to have a *de jure* and *de facto* hyper-presidential system. They investigate as well the role that this label played in the demands for a new system of government at the Constitutional Convention of 2021. Hyper-presidentialism conceptions did indeed affect the constitutional draft, and the presidency came out of it with limited formal prerogatives. However, the approval of the president's immediate re-election as well as changes introduced to the structure of the legislative branch ran in the counter direction, thus following the prevailing trends in Latin America's new constitutionalism (Gargarella, 2022). Apart from delaying certain processes – such as the first referendum on whether to write a new constitution or not – and reducing the street protests that had spurred President Sebastián Piñera's decision to hold a referendum in the first place, the pandemic did not significantly alter the reform

process that had begun in October 2019 already. Ultimately, the status quo prevailed: the new constitution was soundly rejected in a referendum taking place in September 2022.

The various topics addressed in this volume allow us to formulate two tentative conclusions regarding the impact of the pandemic on the institution of the presidency – albeit ones offered with all necessary caution, as obviously needed when dealing with such complex and recent processes. On the one hand, there has been a minor impact here and, on the other, a strong continuity wherein the catalysing effect emerges: the process of impeachment, the MDD and attempts to expand presidential power are all recent trends in Latin American politics regardless, even though incumbents may have envisaged the pandemic as being a window of opportunity for increasing their power over other institutions of government.

The Supreme Court

A paradox of critical times is that, in emergencies, maintaining accountability becomes particularly important, even though such controls may hinder swift and most-needed executive action (Bolleyer and Salát, 2021). Within a democracy, a key institution that performs an essential accountability role is the Supreme Court (or, in some cases, the Constitutional Court). In the context of the pandemic, high courts – and, more generally, the entire judiciary – become particularly relevant as the decisions taken to fight the SARS-CoV-2 virus's spread may affect several fundamental rights and have decisive economic repercussions. Such provisions allow governments to strengthen their power, sometimes threatening civil liberties.

Thus, the research on the role played in Latin America by the Supreme Court vis-à-vis the executive during the pandemic is especially relevant. Llanos and Tibi Weber (Chapter 7, this volume) studied these relations based specifically on the decisions that these courts took regarding executive measures to deal with the pandemic. They point out that some Latin American courts had two important roles here: the latter stressed the need for legislative participation in the design of pandemic policies and decided on conflicts between different levels of government about competences in the management of health protection respectively. The authors also show that the control of executive emergency decrees, the decisions that stress the need for legislative participation and those that regulate the distribution of power between different levels of government potentially generate court–executive conflicts. This means that, in addition to the executive, the courts' interlocutors are also the legislature and the subnational governments, thus shaping a complex, multifaceted situation with their rulings.

The main findings emphasise how the courts matter in exceptional situations, such as the one brought about by the pandemic, by effectively limiting the executive's excesses of power and by showing how courts can still perform their accountability functions. However, one Latin American

case also reveals an opposing situation: in El Salvador, courts' independence is annulled by the co-optation of their members. Thus, the pandemic has had again a catalyst effect here: strengthening ongoing authoritarian tendencies when already present or, contrariwise, assisting a more solid democracy to emerge.

Such a catalyst effect can also be seen when “executive reactions have not diverged greatly from what is known about court–executive relations in the past. We learnt that the pandemic has acted as a conflict accelerator because it demanded immediate decisions by all institutional actors”. Moreover,

court–executive relations in Latin America may have remained unchanged from what they mostly were during the decade prior to the pandemic's onset. Yet the combination of populist executives with strong institutional power in an emergency context has ultimately only accelerated democratic backsliding.

(Llanos and Tibi Weber, this volume)

The Legislature

When considering accountability, it is also unavoidable to include the analysis of relations between the executive and legislative branches. Alcántara, Barragán and García Montero (Chapter 6, this volume) present an analysis of Latin America between March 2020 and May 2021, reviewing specifically the organisational and operational aspects of the legislative powers and the relationships between these and the respective executive ones. Their first main conclusion is that the incumbent is not necessarily a hegemonic actor, even when the presidential systems of the region give them strong constitutional powers.

The legislatures of some countries have exerted significant weight on political decisions. This becomes evident in reactions to the pandemic, too. In a short space of time, they adapted their activity and organisation to the new health situation with decisions taken on their meetings and other activities without leaving aside the legislative projects in play concerning issues unrelated to the pandemic. Moreover, the latter reinforced previous trends in the relationships between the two branches as to the parliamentary function of controlling the government. More precisely, in cases where the president's party held a large majority in Congress legislatures endorsed the executives' decisions. This further strengthened the president, who already had extraordinary powers because of the declaration of a state of emergency. Put differently, when a president's party did not hold a majority in Congress the conflicts between executive and legislative powers increased, and legislators slowed down (or even stopped) the initiatives the presidents promoted. Alcántara, Barragán and García Montero additionally emphasise how these developments were related to a situation already in existence since at least 2018, as characterised by a growing disaffection

with democracy and its institutions, the personalisation of politics, the fragmentation of party systems, electoral volatility and the loss of voters' partisan identity. Hence, again, we observe how the pandemic fed into processes already underway, in line with the hypothesised catalyst effect.

The authors conclude that the pandemic also drove a stronger concentration of decision-making power in the executive branch because of the need for urgent responses. Consequently, the latter was in an advantageous situation, one that eventually contributed to reinforcing the powers of the president and limiting the legislative's counterbalancing role. This has been so in cases where a president's party enjoyed a parliamentary majority, such as Colombia, the Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay and Uruguay. Also, in those political systems that score low on indicators of the quality of democracy. Thus, when assessing the pandemic's impact on legislatures, the previous context and the key variables in the relationships between the legislative and executive branches account for what happened – with, ultimately, a catalyst process again in effect here.

The Subnational Level

The pandemic's impact on relations between the centre and the different states is relevant when analysing federal systems, of which there are four in Latin America: Argentina, Brazil, Mexico and Venezuela. It is worth mentioning here the cases of Brazil and Mexico. Regarding the first, Inácio, Reach and Guerrero (Chapter 5) analyse the conflict between the president, the governors and the mayors, with the Bolsonaro government overruling decisions taken by local authorities aimed at implementing restriction measures and preventing the collapse of health services. The president also issued several decrees defining the essential activities that should not be affected by restriction measures, contradicting and delegitimising the subnational governments' actions. Llanos and Tibi Weber (Chapter 7), for their part, refer to the decisions taken by the STF, which mediated in those conflicts. In other words, as mentioned earlier, in connection with other powers Bolsonaro tried to profit from this situation and thus to enlarge his authority vis-à-vis the subnational realms of government to the detriment of the policy at hand.

On Mexico with its 32 federal states, Behrend and Whitehead (Chapter 9) propose an analysis focused on the notion of “entanglement”. This refers to the political process occurring “when formal and informal structures and practices are generated, interact or share proximity in such a way that each cannot be explained independently of the other”, so that there is a “non-separability” among the different liberal and illiberal, formal and informal structures and practices in place – since their properties depend on this relationship. As the authors spell out, this means that the causal effects of institutions cannot be understood independently of the informal structures and practices that they are linked to. Their chapter posits that the relationship between national and local political units is multidimensional and

subject to periodic shifts and readjustments, as characterised by local dynasties and political delinquency. This occurs within a democratic framework defined by open public debate, competitive elections, the separation of powers and communities of citizens. However, within such an entanglement of formal and informal institutions and complicities, and consistent with the Brazilian case, tensions between the incumbent and subnational authorities over how to handle the pandemic seem to have been heavily influenced by President Andrés Manuel López Obrador's desire to further his own agenda and authority.

Electoral Campaigns and Elections

When considering elections and analysing the political opinions of citizens, the most relevant topic initially here is the enormous changes that technology has brought to electoral campaigns. In this vein, Estrada (Chapter 8) examines the profound impact of digital platforms (Facebook, Telegram, Twitter, WhatsApp) on electoral campaigns, essentially changing not just the political information to hand but also the electorate's decision-making processes. This adds to the fact that, with more than 390 million users, Latin America is the second-busiest region in the world in terms of social media activity (the first being Asia). The author especially stresses how these new political actors are heavily influencing the voting game – whether in terms of the fairness of electoral contests, the transparency of financing or the dissemination of information – and the institutions that are entitled to organise, control and supervise elections. Until now, such institutions – which have historically played a key role in the construction of Latin American democracies – have proved themselves unable to devise and implement an effective regulatory framework capable of exercising jurisdictional or partial control over the mentioned digital platforms.

When the pandemic arrived, a new challenge emerged. Adopting social distancing and restrictions on movement changed how political information was conveyed to the public. There were far fewer rallies and campaign events, political parties played a much weaker role as intermediaries between candidates and voters, and the traditional media (press, television and radio) began to lose their audiences and their persuasiveness, as voters became increasingly uninterested in the established channels of news dissemination. Thus, digital platforms became much more central instead, with far more interactions now taking place on social media – with a consequent increase in related advertising expenditure.

As pointed out by several chapters of this volume (see, e.g. Chapter 1), disaffection with politics and the growth of political and social polarisation frame the wider context in which these trends have only accelerated over time. In this vein, the pandemic can again be said to have had a catalyst effect with its lockdown and social-distancing measures. Furthermore, Estrada adds how the effects of COVID-19 were similar in most countries of

the region: that is, they strengthened the ongoing weakening of traditional media to the benefit of digital platforms, with all related consequences. In addition, most electoral bodies tried to regulate those online platforms by adopting the same provisions that were earlier implemented to control radio and TV broadcasting: namely, via judicial regulations and the signing of cooperation and self-regulation agreements to create a regulatory framework without imposing binding rules.

The Military

When it comes to the military, Polga-Hecimovich's (Chapter 10) analysis suggests the roles of the armed forces in Latin America did not radically change in the 2019–2021 period. COVID-19 did not turn out to be a turning point in civil–military relations in the region. Military organisations in the region have long been arbiters of civilian political conflict, sometimes abiding by political orders and other times not. Similarly, they have been intimately involved in policy implementation, including in humanitarian and health missions also long before COVID-19. In that sense, their responses to the events of 2019–2021 are largely consistent with previous behaviour. While presidents and regimes appear to be more dependent on their armed forces for survival during the last years of political turbulence than at any point in the recent past, those militaries have not sought to undermine their subordination to civilian authorities. In standing by presidents during times of crisis and then carrying out civilian tasks during COVID-19, most militaries in the region have not independently sought those prerogatives from civilian leaders but instead borne out responsibilities delegated to them—and later relinquished them when asked. The most notable and troubling exception to this rule is Brazil, although its mission drift was more a function of the military's relationship to President Jair Bolsonaro and not a reaction to the political moment.

Final Remarks

When considering the impact of the COVID-19 pandemic on Latin America's different government institutions as a whole and consequently on the region's democracies, the two respective hypotheses on a critical juncture and on the absence of a suitable theoretical framework both find little support. Despite all ambiguities in this historical phase, especially in some countries of Central America, democratic institutions proved, for the most part, resilient to the external shock of the pandemic.² Hence, from a political perspective, the latter did not trigger a critical juncture, even in the broader definition of Capoccia and Kelemen (2007). Despite greater instability in countries such as Peru, or a certain growth in support for the military in conjunction with the increase of populist opinion and parties, prominent democratic institutions such as parliament and the courts ultimately proved themselves robust.

The notion of one single apt theoretical framework being impossible to identify can also be easily discarded. The second of our proposed such frameworks – the catalyst effect – seems to indeed capture the pandemic’s actual impact here. Regarding the three subdimensions of the catalyst effect mentioned above, the empirical analysis confirms the first one on the accelerating/slowing-down effect regarding processes already ongoing as well as the second one on the pandemic ultimately favouring certain actors over others. As for the third and last, however – that is, for example, on the development of the health system and health management – we do not have the necessary empirical data to confirm or deny its validity.

To sum up briefly the main empirical findings presented in this volume, the pandemic offered presidents the opportunity to assert their own agendas and increase their power over other institutions of government, such as the Supreme Court and the legislature. They had the chance herewith to further concentrate decision-making in their own hands, eventually reinforcing their power and limiting the legislature’s counterbalancing role. This was due mostly to incumbents’ ability to resort to existing constitutional mechanisms to manage the health crisis at hand. As per the catalyst hypothesis, while demanding immediate decisions by all institutional actors, the pandemic still accelerated or slowed down long-standing processes according to the context in question. It has brought further to the fore ongoing authoritarian tendencies, thus accelerating democratic backsliding, but only where populist executives can count on robust institutional support. Certainly, the pandemic has accelerated the digital revolution in politics, with the decline of traditional media and provisions to control new forms via old legal tools. Even though, as the Brazilian presidential elections of 2022 illustrate (see Chapter 8), electoral bodies may become more assertive while determined to maintain their centrality and agenda-setting capacity in relation to digital platforms, it remains to be seen how the new digital actors will affect democratic processes in the future, and with what consequences.

This leads to the open, pending question of whether the limited changes brought about by the pandemic are only conjunctural and if there is the possibility of their reversal as it slowly begins to cool off. If the hypothesis on the catalyst effect is correct, the reply should be a negative one. The pandemic’s onset only created an opportunity for the implementation of processes that, in one way or another, were already going on. These processes may continue or be consolidated in its eventual aftermath.

The questions addressed in this volume concerned how Latin America’s democracies, key political institutions and the actors therein have handled the challenges resulting from increasing popular disenchantment with the very same representatives of politics per se. Although as a whole it did not deal directly with the pandemic, in this concluding chapter we discussed how the latter – as yet another external challenge to democracy – has impacted the region’s political systems. We hope that the volume to hand came up with certain answers to the key questions raised, although

others certainly remain regarding these recent events. For example, despite the negationist positions taken by a few leaders – most famously Jair Bolsonaro – has the pandemic promoted a renewed sense of democracy in contexts where there is no longer room for neoliberal policies? Moreover, at the core of democracy, is there a new presence of public institutions to be seen in the economy – even at the cost of higher debt and likely inflation – and at the same time a stronger demand for security in terms of social and health protection and policies mitigating against extreme poverty? New research is necessary to address these additional, relevant questions, which we hope other scholars will soon carry out.

Notes

- 1 Our assessment complements other works that have already contributed to understanding the impact of the COVID-19 pandemic in Latin America (e.g. Aguiar-Aguilar and Barrientos del Monte, 2022; García Montero, Barragán Manjón and Alcántara Sáez, 2021).
- 2 The pandemic did not change the situation in the already authoritarian cases of Cuba, Nicaragua and Venezuela, which were beyond our framework of analysis. In El Salvador, it is too early to assess whether President Bukele's concentration of power will end with full autocracy.

Bibliography

- Aguiar-Aguilar A and Barrientos del Monte F (eds.) (2022) *Gobiernos, instituciones y derechos frente a la pandemia por COVID-19. Reflexiones desde la ciencia política*. México: Asociación Mexicana de Ciencias Políticas-Tirant lo Blanch. ISBN: 978-84-1113-123-0
- Bolleyer N and Salát O (2021) Parliaments in Times of Crisis: COVID-19, Populism and Executive Dominance. *West European Politics* 44 (5–6): 1103–1128. DOI:10.1080/01402382.2021.1930733.
- Brinks D, Levitsky S and Murillo MV (2020) The Political Origins of Institutional Weakness. In: D Brinks, S Levitsky and MV Murillo (eds.) *The Politics of Institutional Weakness in Latin America*. Cambridge: Cambridge University Press, pp. 1–40.
- Capoccia, G and Kelemen RD (2007) The Study of Critical Junctures: Theory, Narrative and Counterfactuals in Historical Institutionalism. *World Politics* 59 (3), pp. 341–369.
- Cheibub J A, Hong JYJ and Przeworski A (2020), Rights and Deaths: Government Reactions to the Pandemic. Available at: <https://ssrn.com/abstract=3645410> or <http://dx.doi.org/10.2139/ssrn.3645410>
- Eldredge N and Gould SJ (1972) Punctuated Equilibria: An Alternative to Phyletic Gradualism. In: J M Schopf (ed.) *Models in Paleobiology*. San Francisco: Freeman Cooper, pp. 82–115.
- Fukuyama, F (2020) The Pandemic and Political Order. *Foreign Affairs* 99, pp. 26–32.
- García Montero M, Barragán Manjón M and Alcántara Sáez M (2021) (eds.) *Los parlamentos en América Latina en tiempos de pandemia*. Madrid: Centro de Estudios Políticos y Constitucionales.

- Gargarella R (2022) “Constitucionalista Gargarella sobre el borrador: ‘Pone a Chile en la línea del modelo predominante en América Latina’” Available at: Constitucionalista Gargarella sobre el borrador: “Pone a Chile en la línea del modelo predominante en América Latina” | Emol.com (accessed 18 November 2022)
- Ginsburg T and Versteeg M (2021) The Bound Executive: Emergency Powers during the Pandemic. *International Journal of Constitutional Law* 19(5): 1498–1535.
- Lipset S M and Rokkan S (1967) (eds.) *Party Systems and Voter Alignments* New Haven: Yale University Press.
- Merkel W and Lührmann A (2021) “Resilience of Democracies: Responses to Illiberal and Authoritarian Challenge” *Democratization* 28 (5), pp. 869–884.

Index

- abstract control of emergency decrees 129
- accountability 1, 7, 9, 17, 22–5, 30–1, 36, 38–9, 46–7, 49, 51, 79, 118, 128, 174, 179, 210–11, 213–14
- administrative decisions 76–7, 79, 83, 87, 100, 102, 212
- administrative decrees 10, 76–9, 82–4, 87, 89, 91, 93–5, 99–102
- administrative unilateralism 83
- Alfonsín, Raúl 20, 42
- amparos* 133, 135
- Argentina 1993; 1989; 2001; 2002 20, 41–3, 49, 57, 77, 84, 190
- Argentina: Fernández, Alberto 113, 120, 133, 135, 139, 142; Fernández de Kirchner, Cristina 84, 135; Frente de Todos (coalition) 142; Judicial reform 135, 139, 142; Macri, Mauricio 142; Peronism 142; Rodríguez Larreta, Horacio, major of Buenos Aires 135; Supreme Court 135–6, 139, 141
- armed forces 188–91, 193–7, 199, 202, 217
- Arteaga, Rosalía (Ecuador 1997) 31

- Balaguer, Joaquín 20
- Basabe-Serrano, S 20, 58, 64
- Bertelsmann Transformation Index 145
- bicameralism 67; asymmetric 69
- Bolivia 1985; 2003; 2005; 2008; 2016; 2019 1, 20, 29, 31, 40, 41, 43, 44–5, 50, 106, 108, 133, 190–2, 196–7, 201–2
- Bolivia, Constitutional Tribunal 40, 133
- Bolsonaro, Jair 1, 4–5, 10–11, 13, 26, 28–30, 77, 99–101, 115, 120, 122–3, 133–6, 139, 141–2, 159–60, 200, 211–12, 215, 217, 219
- Bolsonaro's government 13, 28, 101, 136, 142
- Brazil 1992, 2016 20, 41, 133, 197, 199
- Brazil 1–5, 10–13, 19–22, 24, 26–30, 40–1, 56–7, 77, 79–80, 83–5, 91–3, 95, 99–101, 107, 110, 112–18, 120, 122–3, 129, 132–3, 135–6, 138–43, 149, 155–6, 159–61, 189–92, 195, 197, 199–202, 211–12, 215–18; Brazilian Bar Association 136; Bolsonaro, Jair 1, 26, 99, 115, 120, 122, 123, 133–4, 159, 160, 200, 211, 217, 219; De Moraes, Alexander 139, 142, 160; Federal government 101, 136; legislative shield 139; Maranhão, state of 136; Ministry of Health 100, 136, 200; Supremo Tribunal Federal (STF) 80, 99–101, 135–6, 139–41, 215
- Bucaram, Abdalá 20, 41

- catalysis 207–8
- censorship 125, 149
- Chamber of the Regions 66–9
- chaotic effect* 207–8
- checks (and balances) 2, 5, 10, 13, 22, 25, 56–8, 62, 100, 130, 135, 138, 141, 197, 202
- Chile 1, 3–4, 7, 10, 17, 40, 45, 54–74, 79–80, 82–5, 87, 91, 94–5, 108, 110, 113–14, 116–18, 120–3, 132, 155, 188, 190–3, 200–2
- coalition presidentialism 21
- Collor de Melo, Fernando 20
- Colombia 2009 41–3, 49, 197
- compliance (with court decisions) 118, 130–1, 138, 141, 169, 170, 172–3, 182, 192, 194

- Congress 2–4, 7–9, 11, 13, 17–21, 23–30, 39, 41, 46–8, 51, 57–9, 62–9, 76, 78–82, 87, 99, 100, 113, 116, 118–21, 139, 142, 157, 160–1, 170, 188, 210, 212, 214; Congress of Deputies 66–7, 69; National Congress 57, 62, 188
- Constitutional Convention 7, 55, 212
- constitutional courts 112, 128–9
- constitutional prerogatives 10, 54, 56, 59, 66–7, 69
- constitutional referendum 40
- constitutional reform 39, 42–4, 59, 62, 116, 190
- constitutional theory 36, 177
- constitution making 53
- constraints on the executive 61, 70
- contextual powers 209
- counterterrorism 130
- coup 19, 23, 29, 41, 190, 196
- Coup d'état, military coup 18, 32, 41, 44, 49
- court curbing 131
- court packing 131
- COVID-19 1, 2, 5, 8, 10, 12–13, 27–9, 75, 106–47, 152, 155, 188–9, 194–7, 199–200, 202–3, 206–8, 216–17; Argentina 116–17; Bolivia 116–17, 195; Brazil 77, 99–101, 116–17, 132–3, 143; Chile 117; Colombia 116–17, 132–3; Costa Rica 117, 132–3; Dominican Republic 116–17; El Salvador 116–17, 140, 142; Guatemala 116–17; Honduras 116–17; Mexico 117; Nicaragua 116–17; Panama 116–17; Peru 117, 132–3; Uruguay 116–17; Venezuela 117
- critical juncture 7, 13, 107, 207–8, 217
- Cubas Grau, Raúl 20
- cuoteo* 63
- declarations of state emergency 110–11
- decree 42, 44, 49, 76–80, 82–3, 86–7, 89, 99, 103, 110–12, 116, 134, 138, 160, 188, 193–4
- deliberative democracy, deliberative forms 9, 37
- democracy 1–3, 5–6, 11–13, 17–19, 26, 29–30, 36, 39–40, 49, 151, 162, 167–70, 172–4, 176–7, 181–4, 188–91, 196–202, 206–7, 213–15, 218, 219; resilience of 207
- democratic backsliding 2, 6–7, 10–11, 13, 144, 161, 188–9, 200, 214; decay 2, 5, 128, 196, 199; erosion 7, 200
- democratic delinquencies 168, 172–3, 179–80, 182–4
- digital activism 150–1
- digitalisation (of court procedures) 132
- digital media 37
- digital platforms 12, 148–66, 216–19
- discretionary power 78, 212
- Dominican Republic 1996 22
- Duhalde, Eduardo 20, 57, 72, 85, 93
- Ecuador 1994, 1997, 2000, 2005, 2014 and 2018 20, 41–4, 138, 190, 197
- Ecuador 1, 11, 19, 20, 22, 39, 41–5, 56, 62, 108, 111, 113–14, 116–19, 122–3, 133, 138, 141–3, 188, 191–3, 197, 201–2, 215; Constitutional Court 11, 20, 45, 56, 129, 133, 134, 141; Lasso, Guillermo 123, 134, 138, 141–3; Moreno, Lenin 43, 119, 123, 125, 133, 188, 193
- elections, electoral procedures 2, 4–5, 12, 18, 21, 27–30, 32, 37–8, 41–3, 46, 67, 69, 106, 108, 121–2, 128, 133, 140, 142, 148–9, 152, 156–7, 161–2, 170, 172, 174, 176–7, 188, 192, 194, 210, 216, 218
- electoral institutions 12, 148–9, 152–3
- electoral litigation 148, 153, 156–7, 159, 160
- El Salvador, 4–5, 11, 13, 107, 111, 114, 116–18, 121–3, 129, 133, 136, 138, 140–4, 189, 192, 197, 200, 210, 214; Bukele, Nayib 4–5, 11, 120, 122–3, 133–4, 136–8, 140, 142, 200, 210, 219; Constitutional Chamber 112, 136–7, 140, 143; detention centres 137; Party Gran Alianza por la Unidad Nacional (GANU) 120, 142; Party Nuevas Ideas 142; Violations of human rights 137
- emergency 7, 10–11, 27, 39, 50, 66, 75, 99–100, 109–12, 118, 123–4, 128–30, 133–4, 137–9, 144, 188, 193, 195, 202, 212–14; decrees 99, 112, 129, 133–4, 138, 213; regime 130
- entanglements 12, 167–8, 170–2, 180–4
- estallido social* 3, 65
- executive 3–13, 17–18, 20–2, 26–7, 30, 38, 40, 45–6, 49, 52, 54, 56–9, 61–4, 66, 68–9, 75–9, 82–3, 89, 91, 99–100, 102, 107–16, 118, 121–2, 124, 128–41, 143–4, 153, 159, 160, 183,

- 193, 210–11, 213–15, 218; abuses 7; aggrandizement 147; emergency decrees 213; exclusive (legislative) initiative 67, 100
- fatigued democracies 106
- Federalist Papers 36
- Fernández, Alberto 113, 120, 133, 135, 139, 142
- financing of electoral campaigns 151
- fixed terms 8–9, 18, 21
- form of government 1, 56–8, 65, 68, 108
- fragmentation of political power 9, 18, 83, 115, 124, 141, 143
- freedom of speech 148, 150–2, 155, 157–61
- Fujimori, Alberto 20, 26–7, 43–4, 85
- Fujimori, Keiko 26–7
- government coalitions 29, 63
- Guatemala 1993, 2015 20, 197, 200–1
- Gutiérrez, Lucio 20
- Habeas corpus* 133
- high courts 2, 128, 213
- Honduras 2009 20, 41–2
- horizontal accountability 22, 210
- Hungary 144
- hyper-presidentialism 10, 46, 53–62, 64–5, 68–9, 212
- impeachment 4, 7–9, 17–31, 38–42, 50–1, 106, 132, 139, 142, 188, 191, 210–11, 213; attempt 17, 21, 26–8, 211; offence 24, 25, 29; processes 17–19, 24, 28, 51, 188, 211
- informal institutions 12, 167–70, 176, 181, 184–5, 216
- institution 1–13, 19, 22–4, 26, 28, 37–8, 41–2, 44–5, 48, 50–1, 54–67, 69, 77–83, 89, 99, 102, 106–10, 115, 121–4, 128–32, 134–6, 139–41, 143–4, 148–9, 152–3, 156, 160–1, 167–73, 176, 178–82, 184–5, 188, 190, 196–7, 199, 202, 206–19
- institutional crisis 122
- institutional coup 19, 29, 41, 190, 196
- institutionalization 15, 73
- institutional legitimacy 131, 140
- institutional reform 7–8, 51, 62
- interference 11, 48, 109, 129–33, 135, 138–41, 143; formal 11, 129–32, 135, 138–9, 141, 143; informal 129–32, 135, 138, 140–1
- judicial constraints 61
- judicial independence 130, 133, 140–1, 143
- Kuczynski, Pedro Pablo 20, 27, 85
- Latin America 1–6, 8–13, 17–20, 22–3, 25, 27, 29–31, 36–42, 44, 49–50, 54–7, 59–64, 68, 75–8, 83, 89, 91, 102, 106–10, 112–13, 115–16, 118, 123, 129, 132–3, 136, 140–1, 143–4, 148–9, 152–6, 159, 161, 168, 177, 179, 183, 188–91, 194–7, 199–202, 206–10, 212–18
- legislative branch 3, 9, 21, 66, 108–10, 112, 115, 118, 121, 141, 212, 214
- legislative constraints 61
- legislative powers 60, 62, 83, 86–7, 102, 214
- legislative shield 21, 25, 139, 211
- legislature 3, 7, 10, 18, 22–4, 26, 37, 47, 51, 56, 58, 63–4, 66–7, 69, 100, 106–10, 112–13, 115–16, 118–19, 121–4, 128, 133, 136–8, 140–3, 152, 188, 213–15, 218
- legitimacy 2–3, 11, 21, 39–42, 129, 131, 140, 179, 197; of courts 129, 131; of presidents 39–40, 42, 51
- leyes de acuerdo regional* 66
- Linz, Juan, 1990, 1994 19–21, 30
- litmus test 207, 211
- lockdown 2, 128, 130, 133, 135, 155, 216
- López Obrador, Andrés Manuel 4, 43, 46–8, 119, 123, 180, 216
- Lugo, Fernando 20, 22, 25, 30, 40, 85, 95, 176
- Mahuad, Jamil 19–20
- mandates, term-limits 9, 36–9, 42, 49–50, 52, 83–4, 134, 191, 211
- mechanisms of direct democracy (MDDs) 36–8, 40, 42, 45, 50–1, 211, 213
- Melo, Fernando Collor de 20, 24
- Menem, Carlos Saúl 42–3, 85, 93
- Merino, Manuel (Peru 2020) 31
- Mesa, Carlos (Bolivia) 20, 31
- México 2022 43, 49
- military 2, 5, 12–13, 18–19, 41, 44, 46, 49, 67, 87, 91, 101, 137, 179–8, 188–200, 202, 210, 212, 217
- Molina, Pérez 20
- Morales, Evo 20, 29, 40–1, 43–4, 122, 183, 188, 194, 196–7, 200
- multiparty cabinets 22

- neo-golpismo 23
- Odebrecht company 27
- Panamá 1998 43–4
- pandemic 1–11, 13, 27, 28, 75, 77, 99–102, 106–24, 128–44, 152, 155, 188, 189, 194–200, 202, 209–19
- Paraguay 1999, 2012 43–4, 190
- party system 5, 18, 22, 36, 124, 173, 177, 214–15; party system fragmentation 3, 4, 9, 18, 21, 83, 115, 124, 141, 143, 162, 215
- Pérez, Carlos Andrés 20, 24
- Peru 1993, 1998, 2000, 2018, 2020 3, 17, 19, 20, 26–7, 29–30, 43–4, 62, 77, 84, 114, 120, 122–3, 197, 201, 211
- Piñera, Sebastián 63, 65, 85, 120, 123, 188, 193, 212
- plebiscite 10, 36, 40
- political dynasties 168–9, 172–6, 182–4
- political interference 130–1, 133
- political parties system 3–5, 7, 12, 18, 27, 62–3, 65, 108, 142, 148, 151–2, 154, 167, 179, 216
- political system 4, 30, 37, 42, 45, 53–60, 62, 68–9, 106, 123, 168, 170–1, 179, 215, 218
- populism 115, 142–3; populist leaders 5, 134
- power concentration 10, 36, 55, 57, 59–61, 65, 68–9
- prerogatives 10, 12, 26, 46, 54, 56, 58–60, 63, 65–9, 75, 102, 109, 148, 161, 189, 196, 212, 217; constitutional 10, 54, 56, 59, 66–7, 69; formal 58, 60, 63, 68–9, 196, 212; presidential 54, 65
- presidential agenda 77, 82–3
- presidential breakdowns 3–4, 18–23, 25, 29, 39–42, 50
- presidential decrees 77, 82, 84–7, 102, 115, 137, 140, 212
- presidential hegemony 57–8, 60, 64
- presidential impeachment 18–9, 23, 35, 51, 60
- presidential interruption 9
- presidentialism 9–10, 20–1, 36, 46, 50, 54–62, 64–5, 75, 77, 107–8, 124, 210, 212; presidential mandates 39, 42, 50, 83
- presidential power 2, 8, 10, 30, 54–5, 58–60, 64–6, 68–9, 75, 79, 102, 109, 188, 213
- presidential re-election 56, 66–7, 69, 140
- presidential regime 8, 18–9, 36
- presidential unilateralism 75, 78, 83, 102
- presidential wrongdoing 24
- presidents' policy agenda 82, 84
- protests 1–3, 7–8, 12–13, 17, 41–2, 44, 64–5, 122, 188–9, 191, 193–4, 197, 212; demonstrations 17, 65, 113, 155, 191–3; street 212
- radio 152–9, 161, 216–7
- raison d'être* 149
- recall elections 37, 41–3
- recall referendums 39–40, 45, 49
- re-election 28, 38–46, 56, 63, 67–9, 140, 142, 212
- referendums 9, 36–40, 43–5, 47, 49–50; citizens initiatives 37; plebiscite 10, 36, 40; popular consultation 42; popular initiative 40
- Regional Assembly 67
- regulations 45, 78, 106, 112–13, 116, 123, 156, 161, 182, 217
- Rodriguez, Saá Adolfo (Argentina 2001) 31
- Rousseff, Dilma 20, 22–3, 25, 28, 30, 40, 83, 85, 93–4
- Rúa, Fernando de la 20, 85
- rule of law 2, 143, 152, 159, 161, 169–70, 173, 177, 181
- Sánchez de Lozada, Gonzalo 41
- social media 12, 132, 139–40, 142, 152, 154, 159–60, 216
- spending bills 62, 63, 112
- structural thematic models 8, 11
- structural topic modelling (STM) 77
- subnational governments/lower levels of government 2, 91, 101, 134, 213, 215
- subnational politics 167, 169, 172, 184
- Supreme Court 23–4, 46, 48, 58, 79–81, 99, 112, 135–7, 139, 141, 151, 156, 210, 213, 218
- techno-optimist 150
- television 152–4, 156–9, 161, 188, 216
- term limits 8, 38, 40, 42–3, 49, 51–2, 66–7; fixed terms 8; presidential term-limits 8, 36, 38, 39–45, 51, 52
- third wave of democratization 190
- Type 1 error 18, 24–6, 28–31
- Type 2 error 18–19, 24–6, 28–31
- Twitter 139, 154, 157, 160, 216

- ultra-nationalism 106
- urgency of scheduling 38, 47
- Uribe, Álvaro 39, 41–3, 85, 94
- Venezuela 1993, 2004, 2007, 2009, 2016, 2022 20, 24, 30, 39–40, 43–5, 49, 62, 201
- veto power 21, 56, 63, 66–7, 100, 109, 115, 121, 137; partial veto 115
- Vizcarra, Martín 20, 26–7, 30, 120, 123, 188, 193
- vote of confidence 23
- Zelaya, Manuel 19–20, 41, 43–4
- Zuazo, Siles 20



Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>