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Presidentialism and Instability in Latin America: Understanding the Shortfalls of Constitutional Provisions & Checks and Balances

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Abstract:

This paper examines how the design of constitutional checks and balances impacts institutional stability and the success or failure of presidentialism in Latin America. Challenging early scholarship that predicted presidentialism would inevitably fail across the region, this study utilizes a 'most similar systems' comparative analysis of Brazil, Ecuador, and Peru. Specifically, it evaluates three key mechanisms of direct accountability: presidential impeachment, parliamentary dissolution, and the appointment and removal of state ministers. Ultimately, this paper argues that presidentialism thrives when constitutional design ensures independent state powers and accountability without compromising the continuity of the entire system of governance.

Keywords: Presidentialism, Latin America, checks and balances, constitutional design, institutional crises

Introduction

Early scholarship of Latin American politics argued that presidentialism would prove to be an unsustainable system for a region characterized by deep political cleavages and a vast plurality of political parties (Linz 1990). Strong executive branches were anticipated to result in ineffective governance and persistent institutional crises (Pereira & Melo 2012).In reality, scholars' predictions were challenged.. Countries with a weaker executive branch and stronger partisan support have fallen victim to institutional instability, while countries like Chile and Brazil, both of which possess strong executive branches, have proven to be among the most successful and stable democracies in the region (Pereira & Melo 2012).

Presidentialism has both failed and succeeded in the region, thus contradicting and supporting what scholars had previously predicted. This paper seeks to explain this dissonance by analyzing the impact of the relationship between institutional crises, the design of constitutional provisions, and the systems of checks and balances in every country and its impact on the implementation of presidentialism in Latin America. This paper argues that the form of oversight and control measures available to the three branches of government contributes to the stability of presidential systems in Latin America. This proves to be especially true in the case of impeachment processes, the appointment and removal procedure for state ministers, and the conditions for parliamentary dissolution.

This paper proceeds as follows. The first section reviews the existing literature on Latin American presidentialism, introducing first the arguments presented by Linz (1990) and Valenzuela (1993) in favor of moderate presidencies, and an eventual transition to parliamentarism. This section continues to discuss a stance in favor of stronger presidencies and a focus on systems of checks and balances is introduced by Pereira, Melo, and Mejía (2009, 2010, 2012). The second section explains the 'most similar systems' case study methodology utilized as the framework for this paper and justifies the selected cases and variables. Lastly, the third section conducts a constitutional analysis of the impeachment processes, the appointment and removal of state ministers, and the parliamentary dissolution procedure in the constitutions of Brazil, Ecuador, and Peru.

Literature review

The predominant scholarly view on presidentialism in the late 1980s and early 90s forecasted a regional breakdown of democracy thus recommending a shift towards parliamentarism. In "The Perils of Presidentialism" (1990), Linz identifies three major problems with presidential regimes: dual-legitimacy, rigidity, and the 'time factor'. As the executive and legislative powers are independent branches, both considered "true bearers of democratic legitimacy", Linz predicts constant tensions between the President and the Parliament. Secondly, he argues that the stability of presidential systems comes at the expense of being excessively rigid, given that presidents can only be removed through impeachment — a time-consuming process that does not always ensure success in removing the president. Lastly, Linz explains that delimited presidential terms foster short-term popular policy with no long-run prospect since presidents have little incentive to remain popular after their term concludes. Observing these considerations, Linz builds an argument for parliamentarism, and advocates against stronger presidencies.

Arturo Valenzuela also follows this line of argumentation in "The Crisis of Presidentialism in Latin America" (1993). He argues that the socio-economic cleavages and multipartyism that differentiate Latin America from the US were expected to be a major challenge for the success of presidentialism in the region. Valenzuela predicted that the multi-party system of Chile would be unlikely to continue functioning smoothly due to its constitutionally "exaggerated presidentialism", and that Uruguay and Brazil would follow suit (Valenzuela 1993, 133). To achieve a more stable and successful model of presidentialism, the author suggests potential reforms. These include granting presidents the possibility to dissolve Congress during their tenure, congressional run-off elections, and adopting a semi-presidential model with the presence of both a president and prime minister designated by the national assembly.

These traits of Latin American presidentialism, coupled with the region's political characteristics, were deemed a difficult combination that was expected to lead to severe instability and frequent political crises. This view advocates for parliamentarism, or at the very least, a weaker form of presidentialism as a more sustainable alternative. Although many of the critiques of the presidential model of government still hold, the failed predictions of this line of scholarship suggest the opposite. As of today, Brazil, Chile, and Uruguay have established themselves as models of stable governance, while countries with weaker executives have consistently been among the lowest performers in the region (Pereira & Melo 2012).

These cases demonstrate that, unlike what earlier scholars argued, presidentialism can be a stable system of governance under conditions that render executives stronger rather than weaker. This is the line of reasoning that Pereira, Melo and Mejía (2009, 2010, 2012) follow. In their analysis, the unexpected success of presidentialism in Latin America is explained by three factors: the power of presidencies, the presence of coalition goods available to presidents, and the strength of institutional checks at the disposal of the executive. A sturdy system of checks and balances combined with a strong presidency appears to be the best combination to promote a sustainable democracy in presidential countries. However, for an institutionally strong executive to translate into a stable model of governance, a strong legislature and judiciary acting as stabilizers are necessary as well (Pereira & Melo 2012).

Such observation is supported by the cases of Brazil and Ecuador. A strong executive in Brazil allowed presidents to overcome political opposition and create stable governance, while in Ecuador, the same feature contrastingly resulted in greater interbranch conflict

(Pereira & Mejía, 2010). These distinct outcomes were determined by the institutional features of the checks and balances systems available to the parliament and the executive, as well as the design of the judiciary system in both countries. Brazil is characterized by an independent judiciary and reliable oversight institutions that have ruled in favor of the legislature and against the presidency on several occasions. Ecuador, in contrast, possesses a politicized judiciary, and weak, clientelistic oversight institutions (Pereira & Mejía 2010). These cases demonstrate how the design of the checks and balances available to the executive and legislative powers influence the strength of all branches of government, and how this positively relates to institutional stability. The countries that were expected to experience democratic backsliding have instead risen as successful examples of governance, while those with the opposite characteristics have followed the contrary path.

This paper follows the framework introduced here. Mejía concentrates his analysis of institutional features on the mechanisms available to presidencies and legislatures to gain from trade, the duration and nature of politicians' terms, and the enforceability of coalition incentives offered to legislative branches when facing a minority government (Pereira & Mejía 2010). Pereira and Melo emphasize media pluralism as a mechanism of oversight, the independence of judicial systems, and the presence and effectiveness of horizontal accountability bodies (e.g., *contralorías* and audit courts) (Pereira & Melo 2012; Melo 2009). Following this line, the literary contribution of this work is the constitutional research approach that is taken to observe checks and balances systems.

This paper will concentrate its analysis on constitutional provisions and how their design can potentially compromise the stability of the entire system of governance. Measures such as impeachment processes and the removal of ministers are common and arguably necessary provisions of a constitution. Yet these systems need to be designed in a manner that does not allow major disruption through the use of checks and balances. Ensuring accountability without compromising stability is a fundamental aspect of strong institutions, and as argued in this article, a requirement for a successful and stable presidential system. Supporting the scholarly view that stronger executives and legislatures explain the unpredicted success of presidentialism in the region, this paper concentrates on the design of constitutional measures of direct accountability, rather than the functioning of judiciary systems, the role of coalition goods, or the features that characterize a presidential regime.

Methodology

The objective of this paper is to analyze and explain the success and failure of presidentialism across the Latin American region. By assessing the theory laid out by Melo, Pereira, and Mejía, I argue that the strength of presidencies and legislatures is decisive for the success of a presidential system. Additionally, this paper aims to generate new insight into this theory by evaluating systems of checks and balances and measuring institutional strength. This paper follows a case study research method, with a 'most similar systems' design to analyze how the constitutional provisions available to the executive and legislative branches of three presidential republics in Latin America have either endangered or reinforced their institutional stability. The objective is to explain why presidentialism succeeded in states like Brazil, while it has undeniably failed in countries like Peru. Thus, I analyze countries with similar characteristics and drastically different outcomes. The three cases selected are Brazil, Ecuador, and Peru.

Firstly, these three republics share a similar political makeup of vast multipartyism, the presence of political divisions and opposition, and a presidential model of government, although Peru is often labeled as a semi-presidential republic. Secondly, these cases provide a gradual demonstration of the successful strong model of presidentialism and the failed weaker one. Brazil is often categorized as a strong presidential democracy, while Peru and Ecuador are considered to be moderate instances of presidential democracy (Jones 2012).

While Brazil is considered a premier example of stable democracy, Ecuador has increasingly faced institutional instability. Peru on the other hand has succumbed to a perpetual political crisis since 2018, with six presidents in office in six years (Escobedo 2023). For precision and clarity, the variables of analysis will be three specific constitutional provisions: presidential impeachment, parliamentary dissolution, and the process of appointment and removal of ministers. These variables have been selected due to their capacity to compromise the stability of a system and their role in recent institutional crises in the selected case studies. The paper proceeds with a comparative analysis of each variable in the constitutions of our three case studies.

Empirical Analysis

I. Presidential Impeachment

The process of presidential impeachment is a constitutional feature present in all three countries. In the case of Brazil, impeachment is a process that involves all three branches of government. To prosecute the President, the Vice President, or a Minister of State, the lower chamber of Parliament has to authorize the request with a two-thirds majority vote (Constitution of Brazil, art. 51). This procedure differs depending on the accusation made. A common criminal offense will require a trial before the Supreme Federal Court, while a "crime of responsibility" requires prosecution by the State Senate (Constitutions of Brazil, art. 86).

Crimes of responsibility in this context refer to actions that violate the Federal Constitution, and that constitute a threat toward the existence of the state, the functioning of the legislature and judiciary, the exercise of constitutional rights, state security, probity in the Administration, budgetary law, and the general rule of law (Constitution of Brazil, art. 85). The clear conditions set by the definition of crimes of responsibility, along with the institutional requirement of approving the request by both parliamentary chambers ensures that impeachment processes are used only when truly necessary. The last time that an impeachment process was escalated to the Senate in Brazil was in 2016, after the reveal of the corruption scandal involving the then-President Dilma Rousseff.

The Ecuadorian constitution has a notably different regulation for presidential impeachment. The unicameral National Assembly can remove the President from office in two cases: if the president is adopting functions that do not constitutionally correspond to them and in the case of "serious political crisis and internal commotion". The first case requires the Constitutional Court to rule in favor of the Parliament before the impeachment motion can proceed, ensuring the involvement of a third, and more objective, party. The second case, however, is subject only to the interpretation of the Parliament, and an impeachment process can effectively remove the President after a simple two-thirds majority vote. To hinder the irresponsible usage of this measure, the constitution includes the concept of *muerte cruzada*. This means that the National Assembly can impeach a President only once during its tenure, and is required to call for presidential and legislative elections after removing the president from office (Constitution of Ecuador, art. 130). The impeachment of a President entails the dissolution of Parliament, which represents both a latent threat to the general stability of the governmental institutions and a deterrence to impeach. This has led to a limited use of the constitutional measure but to constant tension between these branches of government.

Peru has a more ambiguous and compromising regulation of impeachment. The President can be removed from office in the case of "permanent moral or physical incapacity, as declared by the Congress" (Constitution of Peru, IV, art. 113). A formal definition of moral incapacity is nowhere to be found in the Carta Magna, leaving this condition entirely up to the interpretation of Parliament. Due to this lack of specificity and measures of deterrence, impeachment has been weaponized by the Peruvian parliament in recent years, with a minimum of two motions of impeachment being introduced yearly – two motions have already been filed in 2024 alone (Congreso 2024). For some scholars, the possibility of interrupting a presidency is considered a sign of successful flexibility, as it subjects executives to the "popular will" and reduces the rigidity that Linz had warned about (Marsteintredet & Berntzen 2008). Rather than being a positive trait, a lax impeachment mechanism threatens an organized transition of power and the continuity of policy implementation. Moreover, it creates tangible instability, as regime change is a latent possibility. Countries like Ecuador and Peru have demonstrated the institutional and social damage that the constant use of this measure has created.

II. Parliamentary Dissolution

The dissolution of the legislative branch is another common constitutional provision in Latin America, meant to be used as a last resort by the Executive when cooperation with Parliament is unsuccessful. In the case of Brazil, the dissolution of the Parliament is not allowed in any case. An attempt to dissolve the legislature would be considered a coup and would require the immediate removal of the President. This has granted considerable security to the State Parliament and has forced Presidents to compromise and collaborate with the legislature.

Conversely, the Ecuadorian constitution does consider parliamentary dissolution. The President can dissolve the National Assembly only once during their tenure, in three cases: when the Assembly adopts functions that do not constitutionally correspond to the legislative branch, after repeated or unjustified obstruction of the presidential plan of government, or due to severe political crisis and internal commotion. Similarly to the impeachment process, the first condition requires the Constitutional Court to first rule in favor of the President. For the latter cases, there are no further requirements. The figure of *muerte cruzada* is utilized in this section as well. If the President dissolves the National Assembly, general elections are expected to be called immediately after (Constitution of Ecuador, art. 148). This is exactly what occurred with former President Guillermo Lazo, who resorted to dissolving the legislature after facing constant opposition and the threat of impeachment. Just like in the case of impeachment, this creates interbranch tension and grants the president a last-resort tool that can compromise the entire system of governance.

In the case of Peru, Parliamentary Dissolution occurs under even more lax conditions. The President is allowed to dissolve Congress after Congress has censured or denied a vote of confidence to two ministerial cabinets. Following this decision, the President is expected to call for legislative elections (Constitution of Peru, VI, art. 134). In the next section, it will become evident why this regulation is problematic in terms of regime stability.

Appointment and Removal of Ministers

Following a fully presidential system, the Ministers of State in Brazil are appointed directly by the President (Constitution of Brazil, art. 84). The ministers, however, are expected to respond to the National Parliament, and can be removed following the same procedure and conditions outlined for the process of presidential impeachment (Constitution of Brazil, art. 51, art. 85). This provides the state with a strong and independent executive branch, that is nevertheless accountable to the legislative branch.

In Ecuador, Ministers are also appointed directly by the President, with no prior approval of the National Assembly (Constitution of Ecuador, art. 151). However, Ministers are required to respond to the Parliament and can face political prosecution at the request of the State Attorney, the State Comptroller, the General Public Defender, and multiple Superintendencies, among other oversight bodies. After the request is accepted, the motion is escalated to the National Assembly, which is allowed to remove the minister in question with a simple majority vote (Constitution of Ecuador, art. 131). Rather than ensuring horizontal accountability, the involvement of such a vast range of institutions creates greater politicization of these oversight organizations. Furthermore, the exaggerated freedom granted to the Parliament to decide what justifies the dismissal of a minister allows the Assembly to enact this measure for partisan and personal interests, rather than condition its usage to actual necessity.

The President of Peru is also responsible for appointing the Cabinet of Ministers (Constitution of Peru, V, art. 122). However, for the Cabinet to take office, it has to receive a vote of confidence from the Congress (Constitution of Peru, VI, art. 130). A vote of confidence is a simple majority vote that represents the approval of Cabinet by the Congress. If this vote is denied, the President must appoint a new Ministerial Cabinet. Although this may appear to be a successful measure of accountability, evidence suggests it produces the opposite effect. First, the President is not formally required to modify the Cabinet in any manner. The new Cabinet can consist of the same members as the one that formerly received congressional disapproval. The Congress, moreover, is constrained to approve this Cabinet since, as was mentioned in the previous section, the President is allowed to dissolve Parliament after two negative votes of confidence. Additionally, the President of the Ministerial Cabinet can request a vote of confidence at any point (Constitution of Peru, VI, art. 133). This constitutional provision allows for weaponized usage, turning it into a political tool. If the executive is facing obstruction by the Parliament, the Ministers can resort to a request for a confidence vote, facilitating a constitutional avenue that introduces the threat of parliamentary dissolution.

Conclusion

Through empirical analysis, it has been observed how the Brazilian constitutional provisions ensure that neither the executive nor the legislative branch can be ousted arbitrarily, and there is a clear absence of measures that could compromise the stability of the entire system. Ecuador, in contrast, has a system of checks and balances that necessarily entails the removal of both branches of government, creating a latent threat to the permanence of the regime, and allowing for the politicization of these instruments. Lastly, the Peruvian constitutional provisions leave excessive room for interpretation and politicization and directly compromise the functioning of both the legislature and the presidency.

The contrasting outcomes of presidentialism across Latin America are at least partially explained by the design of constitutional provisions, which serve as systems of checks and balances available to the executive and legislative branches. When the state has a constitutional design that guarantees the independence of the state powers and careful usage of accountability measures, presidentialism thrives. Returning to the theory of institutional strength and stability, we can conclude that this design of constitutional provisions creates stronger institutions. Strong presidencies, characterized not by the annulment of other state powers by the executive, but rather by a power dynamic that reinforces the President (Quiroz 2019) yield stable democracies.

Moreover, other factors can influence the success of presidentialism. One aspect to consider is bicameralism. Brazil and Chile, two of the most stable presidential republics in the region, are bicameral, while Ecuador and Peru are unicameral to date. Similarly, the regulation of political parties can impact institutional stability. It is important to note that no factor alone can explain the success or failure of presidentialism in its totality, yet for Latin American presidential republics, there is a strong and clear correlation between the design of constitutional provisions and institutional stability.

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