

CONSTITUTIONAL REFORM AND CONGRESSIONAL CLOSURE IN CONTEMPORARY  
LATIN AMERICA

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## ABSTRACT

ALISSANDRA T. STOYAN: Constitutional Reform and Congressional Closure in  
Contemporary Latin America  
(Under the direction of Jonathan Hartlyn.)

Over the past decade in Latin America, there have been several cases of attempted and successful closures of congress through the mechanisms of direct democracy and constitutional reform. This is qualitatively different than previous closures through military coups or *autogolpes*. When are presidents more likely to attempt to close congress by this means and what factors determine whether it will be successful? I argue that several factors make a president more likely to attempt this strategy: a radical agenda and a minority in congress (incentives), perceived chance of success in relation to alternative strategies, and diffusion effects. In turn, success is determined by the presence of two factors. One is mobilizational leverage, which I measure by examining the presence of an electoral mandate, high presidential approval, and the ability to rally large sectors of the electorate around the president's agenda. The second is institutional leverage, which I measure by examining party system weakness, and the neutralization of non-legislative institutions, such as the military, Supreme Court, and electoral council. I test this theory in four case studies: Venezuela, Ecuador, Honduras, and Nicaragua.

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# INTRODUCTION

The 1990s ushered in profound changes, not only in Latin America, but in the world as a whole. Since the third wave of democracy and the end of the Cold War, democracy has enjoyed a greater deal of legitimacy and resiliency around the world.<sup>1</sup> In Latin America more specifically, military interventions and authoritarianism have become less viable strategies and this has been reflected in an increased “survival rate” of democratic and semidemocratic regimes (Mainwaring and Pérez-Liñán 2005, 20). Latin American democracies are truly more resilient than ever, having overcome palpable challenges such as economic crisis, the crisis of representation, weakened state institutions, and party system polarization, which may have caused democratic breakdown in the past.

Hence, Latin American presidents now have a democratic imperative.<sup>2</sup> Yet, over the last decade, presidents with a radical agenda and a desire for sweeping political change have run up against entrenched interests within the institutions of representative democracy. Previously, this type of executive-legislative conflict often led to regime breakdown through a military coup or an *autogolpe*. However, within this new context, Latin American presidents have had to find a way to manage such conflict without precipitating regime breakdown. Thus, they have sought to consolidate power and advance their radical agendas through a reliance on the tools of direct democracy and constitutional reform. Recently, this has occurred in Venezuela, Bolivia, and Ecuador through a relatively innovative and yet strikingly similar sequence of events, culminating in the closure of Congress.

In this paper, I explain in detail the closure of Congress through the mechanisms of direct democracy and constitutional reform. In specific terms, a president is elected and is blocked in Congress, meaning that his or her party does not have a majority. Calling a referendum, the president encourages citizens to vote ‘yes’ to establish a Constituent Assembly to rewrite the Constitution, even if this action is not allowed under the current Constitution. The president then pressures the Supreme Court to allow this line of action and to entrust the Constituent Assembly with *plenos poderes*, or supreme powers. Through elections to the Constituent Assembly, the

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<sup>1</sup> Amartya Sen (1999) wrote: “In any age and social climate, there are some sweeping beliefs that seem to command respect as a kind of general rule... While democracy is not yet universally practiced, nor indeed universally accepted, in the general climate of world opinion, democratic governance has now achieved the status of being taken to be generally right” (as cited in Plattner 2010, 82).

<sup>2</sup> Being classified as a democracy determines eligibility for aid and expands the realm of potential trading partners. It also determines membership in political alliances and organizations.

president's party carries a majority. Eventually, the Constituent Assembly closes the Congress, where the president lacked a majority.

When might a president attempt this process? If the president decides to begin the process, what factors will ultimately determine whether or not it will be successful? The answers to these questions are of great importance in understanding the trajectory of democracy in Latin America today, and especially this new reliance on the tools of direct democracy. My work builds upon literature on representative versus direct democracy (Canovan 1999; Coppedge 2003; Plattner 2010; Roberts 1998), as well as executive-legislative conflict and the closure of Congress (Kenney 2004; Linz and Valenzuela 1994; Pérez-Liñán 2007; Siavelis 2009). However, it draws a distinction between prior closures and more recent closures that I examine here.<sup>3</sup> This distinction can be traced to several regional trends. One is the increased ability of Latin American democracies to withstand economic and political crises and to overcome structural challenges, such as weak state institutions (Mainwaring and Pérez-Liñán 2005). Another factor is the crisis of representation (Domínguez 1997; Drake and Hershberg 2006; Mainwaring, Bejarano and Pizarro Leongómez 2006) and growth of independent candidates. Lastly, this process has been influenced heavily by a recent turn toward direct democracy in the region (Barczak 2001; Van Cott 2009).

My analysis has two key parts. First, I identify several reasons that presidents may attempt this process. Secondly, I point out two determinants of the success or failure of these attempts. I argue that minority presidents with a radical agenda are more likely to undertake this endeavor because they are presented with a specific set of incentives that make the closure of Congress an attractive strategy. Likewise, the president's perception of his chances for success, in relation to other options, also plays a role in determining whether or not he will attempt the strategy. I also argue that the success of this process depends on the presence of two specific types of leverage: mobilizational and institutional. Mobilizational leverage refers to the president's degree of public and visible support behind his agenda. Institutional leverage, on the other hand, refers to his ability to neutralize threats against his agenda from other non-legislative state institutions. Often, a president can develop and utilize an anti-institutional agenda as a means of rallying support and building mobilizational leverage. Such an agenda also sends a signal to existing institutions, making his institutional leverage more credible.

I will provide evidence for these arguments through four case studies. Two of these are cases in which the process proceeded successfully to congressional closure (Venezuela and Ecuador). In the other two cases, the process was not successfully completed and Congress was not closed

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<sup>3</sup> It is important to emphasize that I am focusing on closures of Congress that occur through a process of constitutional reform. I believe that they differ qualitatively from previous attempts to close Congress through coups or *autogolpes* because they do not cause immediate regime breakdown. Hence, the case analyses and conclusions drawn from them are not meant to be generalizable to the set of *all* closures of Congress.



(Honduras and Nicaragua). I will demonstrate how the aforementioned causes are present in the positive cases, but not fully present in the negative cases. I will also distinguish between mobilizational and institutional leverage, demonstrating that the absence of either or both of these conditions precludes success.

I proceed in six sections. The first section is a brief discussion of forms of democracy and executive-legislative conflict. The second is an elaboration of a theory of congressional closure. The third section includes a discussion of methodology and the measurement of key variables. The fourth section traces this process through four cases studies. The fifth section briefly synthesizes the findings of these case studies and provides my interpretation of the results. The final section explains the implications of this process for the practice, and the study, of Latin American politics.

## LITERATURE

### Forms of Democracy

I focus on a presidential strategy that employs the tools of direct democracy to undermine one of the primary institutions of liberal, representative democracy: the Congress. However, the president retains democratic legitimacy through a reliance on the tools of direct democracy and constitutional reform. I begin, therefore, with a brief discussion of definitions of democracy. I place particular emphasis here on the forms of democracy that are most pertinent to the present discussion: liberal representative democracy and direct democracy.

Conceptualizations of democracy are many and varied, and have sparked debate over the ‘essence’ of democracy. However, there is some consensus on procedural definitions. One commonly-used definition of democracy is minimalist, focusing on free and fair elections. According to Joseph Schumpeter (1950), “the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote” (269). Other scholars, like Robert A. Dahl (1998), have argued for a more elaborate procedural definition of the concept, requiring also political rights and civil liberties, freedom of the press, and viable political institutions - often referred to as ‘polyarchy.’ Still others like Philippe C. Schmitter and Terry Lynn Karl (1991) have emphasized the mechanisms of accountability. “Modern political democracy is a system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives” (Schmitter and Karl 1991, 76).

While consensus has emerged around the minimal procedural definition of democracy, two dichotomous conceptions of democracy produce tension within modern Latin American democracies (Roberts 1998, 19). These are the liberal representative conception of democracy and the direct or participatory conception of democracy. In analyzing the case of Venezuela, Michael Coppedge (2003) makes an important distinction between “democracy narrowly defined as popular sovereignty versus the more conventional notion of liberal democracy” (165). Liberal representative democracy places emphasis on effective institutions of horizontal accountability (O’Donnell 1998). The basic values behind this type of democracy are the protection of individual and minority rights and civil liberties. It also implies that “what distinguishes democratic rulers from nondemocratic ones are the norms that condition how the former come to power and the practices that hold them accountable for their actions” (Schmitter and Karl 1991, 76). Hence, elected officials should be constrained by a constitution, and independent institutions, parties and branches of government are necessary in order to enforce the constitution and constrain leaders. However, as O’Donnell points out, “the effectiveness of horizontal accountability depends on networks of properly committed agencies (including courts) - networks that delegative leaders such as Fujimori, Yeltsin, and Argentina’s Carlos Menem are skilled at disrupting through divide-and-conquer tactics” (O’Donnell 1998, 119). Thus, the mere presence of institutions is not enough. They must be strong enough to check the power of the executive.

Direct or participatory democracy, on the other hand, stands in stark contrast. Direct democracy is based upon the idea of popular sovereignty or, put more simply, that “a government should do what most of its citizens want it to do” (O’Donnell 1998, 166). These regimes may either complement or potentially bypass existing processes of representative democracy, depending on the context (Dalton, Scarrow and Cain 2004, 126). However, direct democracy always stresses the participation of all citizens in the decision making process and, ultimately, the importance of majority rule. They rely heavily on referenda, plebiscites, recall, and popular initiatives as ways of determining the interests of the majority. In this sense, there is an inherent tension between representative democracy, with elected elites as decision-makers, and direct democracy, with mechanisms for the average citizen to participate directly in decision-making.

However, both representative and direct democracy tend to raise particular problems within society. Margaret Canovan (2002) argues that there is a fundamental paradox within representative democracy. That is, “empowerment undermines transparency. Attempts to give a political voice to the population at large tend to produce institutions that separate people and power in the very process of mediating between them” (Canovan 2002, 28). In fact, the very disillusionment with liberal democratic processes that Canovan describes has occurred in many Latin American countries over the last few decades, producing a resurgence of direct democracy

in the region. A similar disillusionment has appeared in other, diverse regions of the world, even in highly-developed, Western European countries (Dalton, Scarrow and Cain 2004).

Many have also cautioned against the vulnerability of direct democracy to the leader's whims. Michael Coppedge (2003) has argued that this is an oversimplification of democracy. Monica Barczak (2001) recognizes that while tools of direct democracy can potentially enhance participation, "*consultas* and initiatives can [also] be used in more pernicious ways. An authoritarian-minded president, for example, might see the referendum as a way to circumvent (and thereby weaken) the legislature" (39). The basic fear is that unchecked political power has the potential to devolve to 'delegative democracy,' meaning that "whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and a constitutionally limited term of office" (O'Donnell 1994, 59).

Overall, the tensions that sometimes exist between representative and direct democracy in Latin America have been an integral part of the closure of congress through the tools of direct democracy and constitutional reform. It is widespread dissatisfaction with the institutions of representative democracy that lends political salience to the radical agendas advocating a reorganization of democracy toward a more participatory model. By examining several cases, I will illuminate the conflict caused by the interaction of these two very different conceptions of democracy within the modern Latin American democracy.

### **Executive-Legislative Relations and Conflict**

In addition to highlighting tensions between two conceptions of democracy, I also emphasize the importance of institutions and the problems which may arise when they clash over policy. In doing so, I draw upon a well-established literature dealing with executive-legislative conflict. The severity of these conflicts is conditioned by a number of institutional factors which will be discussed here. Ultimately, I argue that the closure of congress through the tools of direct democracy and constitutional reform has been implemented by some Latin American presidents as a way to advance their policy agenda and political careers, while circumventing paralyzing legislative opposition.

When a president wants to make policy, he is faced with a number of options for changing the status quo. Octavio Amorim Neto (2006) develops a decision-theoretic model of a president's legal policy-making strategies. A president may choose between enacting policy through statutes, implying the passage of law through traditional legislative channels, or through executive prerogatives (decrees) where possible. He decides which strategy to employ based on the potential value, cost, and probability of success of implementing each. The value of statutes is that they

are seen as legitimate and much less likely to be overturned. However, in order to pass laws this way, the president must have a majority in Congress or be able to form a coalition, which can be costly because of “the side payments the president has to make to secure a majority favorable to the bill” (Amorim Neto 2006, 420). Furthermore, the president is likely to have to compromise regarding his policy objective. On the other hand, decrees are valued for their relatively short time horizons, allowing presidents to “immediately affect the policy status quo and move it to the position they want” (Amorim Neto 2006). Still, they are seen as exceptional and often may only be used in emergencies, and so they are costly because they may be considered illegitimate and can be more likely to be overturned.

Presidential systems in Latin America display a number of institutional and partisan features which increase the likelihood of executive-legislative conflict and decrease the likelihood of passing a law through a congressional majority. These features are multiparty presidentialism, institutionalization and ideological distance of the party system, and constitutional powers granted to the president.

First, in multiparty systems the president is less likely to have a majority (Linz 1990; Mainwaring and Shugart 1997). Thus, if the president would like to pass a law via statute, he must rely on coalition formation. Likewise, multiple parties exacerbate the conflict of ‘dual legitimacy,’ inherent to presidential systems. Because both the president and members of the legislature “derive their power from the votes of the people in a free competition among well-defined alternatives, a conflict is always possible and at times may erupt dramatically” (Linz 1990, 53). This conflict is more likely to arise in systems where there is split party control of the executive and legislature. It is dangerous according to Linz because “there is no democratic principle on the basis of which it can be resolved” (1990, 53). Multiple parties also make it less likely that the president will carry an electoral mandate, winning office with more than 50% of the vote, unless a run-off is held.

Not only is the sheer number of parties important, but the degree of institutionalization and ideological polarization are also conditioning factors (Dix 1992; Mainwaring and Scully 1995; Mainwaring 1998). An institutionalized party system is one that has strong and stable parties, with low electoral volatility. In less institutionalized party systems, “party affiliations do not structure the vote as much as in institutionalized party systems” (Mainwaring and Scully 1995, 22). Furthermore, the linkages between the executive and legislative branch will be stronger under institutionalized systems (Mainwaring and Scully 1995, 26). While many Latin American countries have multiparty systems, there is great variation across the region in the degree of institutionalization of those systems. Polarization refers to the left-right ideological distance between relevant parties in the system and tends to be tied closely to the number of parties

in the system; those countries with only two parties tend to be less polarized (Mainwaring and Scully 1995, 32). Overall, significant ideological distance can have a negative effect on the president's ability to form of coalitions.

Lastly, the president may possess certain constitutional powers, such as decree and veto powers, that enhance his influence on the policy-making process with respect to the legislature or that allow for different avenues of policy-making. Gary Cox and Scott Morgenstern point out that presidents will use their formal constitutional powers to act unilaterally less frequently as the president's legislative support increases (2001, 175). While the authors also describe Latin American legislatures as primarily reactive institutions, which respond to presidential policy proposals, they emphasize that this does not mean that the legislature is necessarily weak. "Even if one continues to view the president as the central actor in the civilian political universe, his anticipation of a (possible) legislative veto should in theory condition most of his actions" (Cox and Morgenstern 2001, 171). The strategy employed in this veto player game will be affected by whether or not the president can issue decrees and under what circumstances they can take this action (Amorim Neto 2006; Cox and Morgenstern 2001; Negretto 2004).

However, delegated decree power should be distinguished from constitutional decree powers (Carey and Shugart 1998). Delegated decree powers are given to the president by the legislature and are often limited to certain policy areas for certain lengths of time. Constitutional decree powers are given to the president by the constitution and can include either emergency powers or standard decree powers. Emergency powers give the president the right to act unilaterally only during times of unrest as defined by the legislature. Standard constitutional decree powers, on the other hand, endow the president with the uncontested power to take policy initiatives without prior legislative consent (Carey and Shugart 1998, 14). The type of decree power a president holds will determine the relative legitimacy of his actions, and it will also affect his decision of which strategy to undertake.

Returning to the decision-theoretic model of Amorim Neto (2006), it is apparent that both of the legal strategies that he describes - passing laws through statute or through decree - have the potential to affect only one bill at a time because they do not change the composition of the Congress in any way. However, when the president would like to make radical and sweeping changes, strategies which address individual policies may not be sufficient. Within this context, such a president may opt for a strategy that changes the power or make-up of Congress. Thus, I would add two strategies to those of Amorim Neto (2006) - the closure of Congress through constitutional reform and an *autogolpe*. All four strategies are displayed in figure 1.

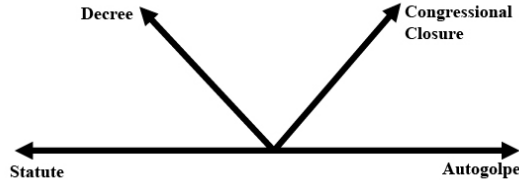


Fig. 1: Presidential Strategies for Affecting Policy

Thus, it is possible to think of the president's closure of Congress as a third, but more extreme, strategy available to him. The cost of closing Congress, as with the use of decree power, is related to a loss of legitimacy. Yet, this is heavily dependent upon the context in which the strategy is attempted and the method through which it is pursued. For example, the closure of Congress has actually enhanced presidential legitimacy when coupled with popular constitutional reforms. Regardless of context, this strategy is valuable because it allows for long-lasting and sweeping changes to the status quo.

It is important to emphasize that the third strategy moves beyond standard policy-making and enters the realm of executive-legislative crisis. Aníbal Pérez-Liñán (2007) operationalizes executive-legislative crisis as instances where at least one of the branches threatens the other with closure or loss of office. More specifically, he defines it as:

...any episode in which the chief executive threatens to dissolve Congress or supports a constitutional reform having that purpose, attempts a military coup against Congress, or "suspends" the term of the legislature (even if no decree proclaims its "dissolution") until the next election. It also includes any situation in which congressional leaders announce a decision to impeach the president, to declare him or her incapacitated, or to force his or her resignation; in which at least one of the houses of Congress debates any of these alternatives; or in which Congress legitimizes a military or civilian uprising against the executive by accepting his "resignation" or by appointing a successor (2007, 44-45).

Executive-legislative conflict has been a persistent aspect of Latin American democracies; what has changed over time is the international and domestic community's response to such conflicts and the ultimate consequences for democracy. In the past, these types of institutional crises produced several reactions that can be differentiated by their legality, or whether or not they are provided for by law. Legal responses often lead to regime continuity while illegal responses cause regime breakdown. One common, legal outcome of executive-legislative conflict has been the impeachment of the president by Congress, a strategy which gained popularity during the late 1980s and the 1990s in Latin America (Pérez-Liñán 2007). An illegal outcome was a military coup. If executive-legislative conflict was extreme, it might prompt the military to intervene and suspend democracy. An example of this was the coup against Salvador Allende

in Chile in 1973. Another, less common, illegal outcome was an *autogolpe*. An *autogolpe*, or self-coup, occurs ‘when a president closes the courts and the legislature, suspends the constitution, and rules by decree until a referendum and new legislative elections are held to approve broader executive powers’ (Cameron 1998, 125). They also typically entail the use of force, military intervention, press censorship, the repression of opposition, and the restriction of civil liberties. The most recent, successful Latin American case was Alberto Fujimori’s in Peru in 1992 (Kenney 2004). The *autogolpe* represents the fourth and most extreme presidential strategy for affecting policy.

However, more recently, the international context has reduced democratic breakdowns and democracies have also been able to better withstand crises in Latin America. Jonathan Hartlyn (2002) points out that, recently, “international forces and governments have all supported the rejection of any return to outright authoritarianism, encouraging at least minimally electoral democracies” (122). In fact, there is concrete empirical support for this, showing that military interventions have decreased significantly since the 1970s Pérez-Liñán (2007, 43). Not only were coups attempted less often, but attempts more often failed. Although Fujimori was successful in 1992, there are a number of examples where coup attempts have been stymied since that time. There were two failed coups in Venezuela in 1992, one led by Hugo Chávez. Jorge Serrano in Guatemala attempted an *autogolpe* very similar to that of Fujimori but failed in 1993 (Pérez-Liñán 2007). There were also failed military coups in Paraguay in 1996 and Ecuador in 2000<sup>4</sup>.

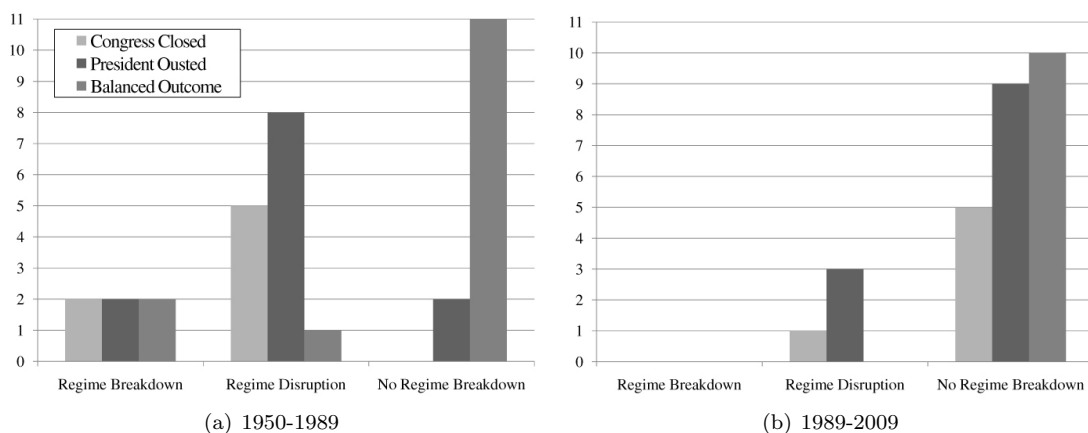


Fig. 2: Outcomes of Executive-Legislative Conflict in Latin America

Source: Data through 2005 from Pérez-Liñán (2007, 61), with my own updates through 2009.

Together figures 2(a) and 2(b) classify executive-legislative conflict in the region from 1950 -

<sup>4</sup> While the military did successfully oust President Jamil Mahuad in Ecuador in January of 2000, the military junta lasted only a few hours. Under severe international pressure, they restored power to Mahuad’s Vice President, Gustavo Noboa

2009 according to these criteria. However, it is apparent from figure 2(b) that, since 1989, Latin American executives and legislatures have tended to deal with conflict in ways that do not cause immediate regime breakdown but rather continuity. Instances of breakdown and disruption were more frequent between 1950 and 1989.<sup>5</sup> The closure of congress through constitutional reform falls into the category of no regime breakdown. As figure 2(a) demonstrates, prior to 1989 there were no executive-legislative conflicts that were resolved in this way. Thus, the trend has been toward resolving executive-legislative conflict without breakdown.

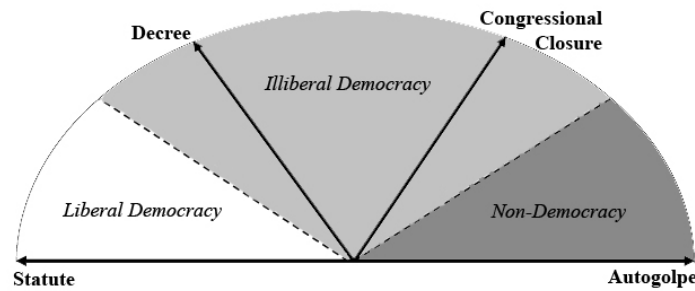


Fig. 3: Consequences of Presidential Strategies for Democracy

As previously mentioned, the closure of Congress through constitutional reform is a strategy that does not result in immediate regime breakdown. Figure 3 updates figure 1, displaying the consequences of these strategies for democracy. Of all of the strategies available to a president, affecting policy through statutes does not present a threat to the quality of democracy nor potential for regime breakdown. At the opposite extreme, an *autogolpe* is a strategy which produces immediate regime disruption or breakdown. A regime would no longer be considered a democracy, even an illiberal democracy, after a president carries out an *autogolpe*. However, congressional closure through constitutional reform has popular consultation at its foundation. The use of a referendum gives this newer process a degree of democratic legitimacy that *autogolpes* do not have. However, Congressional closure leads immediately to a lower quality democracy, as it undermines horizontal accountability and concentrates power in the executive. Similarly, although decrees may be used within a liberal democracy, issuing decrees frequently can lead to deterioration to illiberal democracy.<sup>6</sup> Overall, statutes, decree powers, and congressional closure through constitutional reform are ways in which the president can affect policymaking without precipitating immediate regime breakdown.

<sup>5</sup> Before 1990, 39.4% of crises ended without regime breakdown. After 1990, 85.7% ended without regime breakdown. This difference is statistically significant at the 0.001 level.

<sup>6</sup> In fact, both decrees and congressional closure may lead to what O'Donnell (1994) has called 'delegative democracy.' "Delegative democracies rest on the premise that whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and by a constitutionally limited term of office" (O'Donnell 1994, 59).



This recent trend toward democratic continuity is not particularly surprising given the context of the ‘Third Wave’ (Huntington 1991), the fall of Communism, and a subsequent reversal of U.S. foreign policy in the region toward democracy-promotion. Within this context, Latin American executives with radical agendas have found a new way to seek to consolidate power and advance their agenda without regime breakdown. I argue that the closure of congress through the tools of direct democracy and constitutional reform is an innovative way of dealing with this conflict.

## THEORY OF CONGRESSIONAL CLOSURE

I turn my attention now to a detailed examination of the third strategy for affecting policy: the closure of Congress through the tools of direct democracy and constitutional reform. The argument I develop below explains both why a president might attempt to close congress through such an innovative process and what factors will influence its success. First, I posit several antecedent conditions which increase the likelihood that a president will attempt to close congress through the tools of direct democracy and constitutional reform. They are: a minority in congress, the president’s perceived chance of success in relation to other options, the post-Cold War international climate making other strategies impractical, and diffusion effects. In turn, the success of such attempts is determined by the presence of two individually necessary and jointly sufficient mechanisms: mobilizational and institutional leverage.

### *Conditions Increasing the Likelihood of an Attempt*

While important changes have influenced the method of closure, there is a great deal of continuity with respect to the president’s incentives for closing congress. Regardless of whether presidents chose to close congress through an *autogolpe* or through direct democracy and constitutional reform, the presence or absence of incentives will heavily condition the decision-making process. Simply put, a president has the incentive to close congress if his policies are blocked by the institution. Again, if the president’s party has a majority or a coalitional majority in congress, then he is more likely to pass laws through statutes and has very little to gain by closing congress. However, if the president’s party has a minority in congress, then there are certain incentives to pursue the more extreme strategy of closing congress. First and foremost, he stands to consolidate a substantial amount of power in the executive branch. Furthermore, under the proper conditions, this strategy may be less costly than alternatives such as coalition-building or using decrees. Coalition-building will almost inevitably require the president to compromise. It is also possible that the president will be able to form a coalition but that it will be divided on policy issues that are particularly important to the president. Likewise, issuing decrees may make his

or her policies appear illegitimate and predispose them to being overturned. If the president does not have a comfortable majority in congress, then the potential for executive-legislative conflicts exists, especially when sweeping reforms are proposed.

An attempt to close congress is inevitably a high-risk, high-reward strategy with a large degree of uncertainty. Despite this fact, the president's perception of the chances for success in relation to other strategies is still a conditioning factor. The president usually has some idea of how his radical agenda will be received, and can produce a self-assessment of the factors which will determine the success of closing congress: mobilizational and institutional leverage. The president will weigh the potential costs and benefits of closing congress, conditioned by the chances for success, as compared to other options. The presidents who ultimately try to close congress through constitutional reform tend not to have other viable options. Thus, a president's assessment of capacity can be inaccurate, or it may also be the case that the president is willing to take a large risk to attempt to close congress.

At the same time, several factors have changed to make the closure of congress, specifically through the tools of direct democracy and constitutional reform, more likely. Primarily, there was a marked decrease in the probability of success of more traditional methods. Since the late 1980s, there has been a growing proportion of failed military coups and *autogolpes* in the region.<sup>7</sup> This has affected the president's assessment of the probability of success of *autogolpes*, coups, and military intervention. Furthermore, the 1990s brought a rise in presidential impeachments.<sup>8</sup> Describing the importance of this trend, Pérez-Liñán states that "a new specter is haunting Latin America - the specter of impeachment. These presidents pursued different policies, confronted different challenges, and embraced different leadership styles, but all of them faced the threat of being unseated by congress - a novel experience in the Latin American presidential tradition" (Pérez-Liñán 2007, 35). Thus, in recent years, Latin American presidents have found themselves being held more accountable than ever before. This has drastically increased the importance of public approval and has increased the potential threat posed by an opposition controlled congress.

Diffusion is clearly also at work in the region, making this new phenomenon more likely. Once Latin American presidents knew that old strategies were no longer viable, they needed to establish new strategies for dealing with institutional conflict. Successful examples of the closure of congress through the mechanisms of direct democracy and constitutional reform have proven that this new strategy is a viable option in the region. In 1999, Hugo Chávez was the first

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<sup>7</sup> For a detailed discussion about the regimes that experienced "near-breakdowns" in the 1990s, see Mainwaring and Pérez-Liñán (2005, 48-49).

<sup>8</sup> For more information on cases of impeachment and near-impeachment, see Pérez-Liñán (2007, 14-35).

president to intentionally implement this strategy in order to eliminate opposition in Congress but he was no doubt inspired by earlier events. In turn, subsequent attempts in Latin America were motivated by this successful example. Yet, at the same time, it is important to note that this diffusion is likely to be brief and episodic; not only will presidents learn from previous examples, but so will the opposition. Eventually, they will come to recognize this new process and may move to stop it before it can succeed.<sup>9</sup> Hence, diffusion also plays an important role in determining the likelihood of an attempt at this process.

### *Mechanisms Determining Success*

I hypothesize that two mechanisms will determine whether a president's attempt to close Congress is successful. On one hand, the president needs a high degree of popularity and the ability to mobilize large sectors of the population if he wants to be successful. I call this mobilizational leverage. On the other hand, he needs to neutralize threats from non-legislative institutions, such as the military, the high court, and electoral councils. I call this institutional leverage. I refer to these mechanisms as 'leverage' because they are tools which afford the president an advantage over the existing congress.

These two forms of leverage function in distinct ways. Mobilizational leverage can be used to legitimize drastic reforms, including the closure of congress. Specifically, if he has high levels of mobilizational leverage, the president can demonstrate broad public support for his actions. It also determines the president's ability to fill the Constituent Assembly with members of his own party through elections. There are a number of potential reasons why the president cannot gain a majority in Congress but can do so in elections to the Constituent Assembly. These include differences in electoral rules, the electoral calendar,<sup>10</sup> and the degree to which Congress has been discredited among the president's support base. The Constituent Assembly may seem like a more legitimate institution to the president's supporters, and so they may be more likely to turn out to vote in these elections. Support for the president's radical policy agenda can be demonstrated through easily quantifiable mechanisms, such as elections or referenda, or through less concrete mechanisms, such as organization of public protests or marches.

In contrast, institutional leverage ensures that the Supreme Court or Electoral Council will allow the formation of a Constituent Assembly and will endow it with supreme power, in addition to confirming that the military will not intervene to stop this process. This depends upon the

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<sup>9</sup> Perhaps the clearest empirical example of 'learning' on the part of both the president and the opposition is Honduras, where Manuel Zelaya was removed from office by the military after he attempted to hold a referendum to determine whether or not to hold a separate referendum to establish a Constituent Assembly. The dynamics of this case will be discussed in more detail in the Honduran case study in the next section.

<sup>10</sup> When legislative elections are held in advance of presidential elections, this typically favors traditional parties and incumbents.

president's ability to influence the Supreme Court, and the ability to make concessions to the military to ensure their cooperation. Furthermore, once a president has developed mobilizational leverage, he will be able to use it to place more pressure on non-legislative institutions. In this respect, mobilizational and institutional leverage can also interact. In situations where one or both types of leverage is lacking, but the president attempts to close congress regardless, I hypothesize that the process will fail.

Mobilizational and institutional leverage may exist organically; however, the president also has the ability to cultivate and strengthen these mechanisms within certain domestic environments. For example, mobilizational leverage may be increased with the help of a strident, anti-institutional agenda. An agenda goes beyond rhetoric; the president often communicates a direct plan of action against existing institutions. It is anti-institutional in the sense that the president wants to operate outside of existing democratic institutions which constrain him.<sup>11</sup> Anti-institutional agendas can be particularly effective within the context of an uninstitutionalized party system, a crisis of representation, or economic crisis. When the country's party system is relatively weak or uninstitutionalized, the president will have a great deal of freedom in the establishment of his agenda. Where the institutions of liberal, representative democracy have been discredited through corruption, the long-term exclusion of certain sectors of society, or repeated socio-economic crises, the president's agenda may be more tractable overall. Lastly, within the context of economic crisis, an anti-institutional agenda may be more popular. Abby Córdova and Mitchell Seligson (2009) have found that lower levels of individual and national wealth both lead to lower support for representative democracy on average. Thus, during economic downturns, one might expect to see a public shift from support of representative democracy in favor of more direct forms of democracy.

Conversely, there are domestic environments which constrain the president so that he is unable to develop mobilizational or institutional capacity. Where representative institutions have not been discredited, the electorate may value the current model of democracy and be adverse to presidential challenges to the system. Furthermore, overt statements against representative institutions risk alerting the opposition to his plan and alienating congress, thus removing coalition-building as a viable alternative. Often, however, an anti-institutional agenda is a logical precursor to mobilizational leverage. A president who runs on a platform of protecting the status quo would have a hard time subsequently generating popular support for his initiative to close Congress. Thus, there are certain countries where, even if the president had the incentives to close congress, it would not be a viable option.

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<sup>11</sup> This would contrast with cases where the president was content to work for institutional change within constitutionally stipulated mechanisms.

Another important aspect of mobilizational and institutional leverage has to do with the timing of the president's attempt. I hypothesize that both types of leverage will be higher within the window of time where the president has been elected until shortly after he takes office. For example, with respect to presidential approval, this period of time has been known as the 'honeymoon period:' "the initial high support for a president... an aura of goodwill, with even supporters of the defeated opponent offering their tentative approval" (Erikson, MacKuen and Stimson 2002, 36). Timing also affects institutional leverage through judicial independence. For non-independent courts, members of the judiciary have been shown to make strategic decisions about whether to rule in favor of the current government or against it. Once the end of the president's term approaches - if he does not have the ability to be reelected or polls show that he is unlikely to be reelected - then "judges who lack institutional security begin facing incentives to increase their antigovernment rulings to distance themselves from a weakening government" (Helmke 2002, 291). With this in mind, a president's institutional leverage with respect to the Supreme Court should be highest just before and directly after he or she takes office. Moreover, institutional leverage should decrease toward the end of the term if the president cannot or is not expected to win reelection. The idea of timing effects will be explored in greater detail in the case studies that follow.

In summary, mobilizational and institutional leverage jointly determine the success of an attempt to close congress through the tools of direct democracy and constitutional reform. If a president possesses both of these, he will be successful in his attempt. If he lacks one or both types of leverage, he will fail. A president can take action to strengthen these mechanisms; developing an anti-institutional agenda is one potential way to strengthen his relative position. This action is particularly useful in the presence of an uninstitutionalized party system, a crisis of representation, or economic crisis.

## METHODOLOGY & MEASUREMENT

### Comparative Case Analysis

The phenomenon of interest lends itself to comparative case studies for several reasons. First of all, it is a rare occurrence. As previously shown in figures 2(a) and 2(b), there have only been 13 successful closures of congress in Latin America since 1950, and only 5 of those approximate the closure of congress through constitutional reform: Colombia (1991), Guatemala (1994), Venezuela (1999), Ecuador(2007), and Bolivia (2008). Thus, the question I posit has a very small-n. Additionally, my theory indicates a degree of causal complexity which would be

difficult to capture using quantitative methods (Ragin 1987, 13-15). I posit that a combination of preconditions will make a president more likely to attempt this process. Likewise, the interaction of two mechanisms, mobilizational and institutional leverage, will lead to success.

I focus on Venezuela, Ecuador, Honduras and Nicaragua because my goal is to control for as many factors as possible, while providing “a representative sample and ...useful variation on the dimensions of theoretical interest” (Seawright and Gerring 2008, 296). Since these countries are located in Central America and the Andean region, they share a number of common features. These similarities allow me to control for historical, structural, and institutional factors such as: colonial histories, inequality, political system,<sup>12</sup> level of democracy, and political freedom. Furthermore, within these four cases, I have significant variation on theoretically important independent variables, as well as variation over the full range of values on the dependent variable. This ensures that there is no selection bias due to truncation, which would be a problem if my analysis was limited only to successful closures. One potential cause for concern is the independence of these cases. Diffusion effects have clearly been at work in the region. Chávez attempted this process a full ten years prior to Zelaya, and it is clear that not only have presidents learned from prior attempts but so has the opposition. Hence, diffusion effects are an integral component of my theoretical understanding of the phenomenon and my discussion of the cases.

Although there were five successful cases of congressional closure through constitutional reform, I only focus here on two of them. Therefore, I would like to comment briefly on the exclusion of other cases. There are several important differences underlying the two earliest cases of congressional closure through this process. In Colombia in 1991, it was a much more organic process. While President César Gaviria pushed for constitutional reforms, it is clear that he never envisioned the closure of Congress as a result. The push to close Congress stemmed precisely from the fact that political ‘insiders,’ like Gaviria, did not control the process (Dugas 1997, 323). The majority of seats in the Constituent Assembly were held by ‘outsider’ politicians, advocating the closure of congress so that new elections might allow them to gain a foothold in the legislature (Dugas 1997, 96). Gaviria negotiated, though unsuccessfully, in an effort to *maintain* the integrity of the current congress (Dugas 1997, 342).

On the other hand, President Ramiro de León Carpio in Guatemala may have been the first to purposely attempt to close Congress in this way. The Electoral Supreme Court gave him permission to hold a referendum on moving forward legislative elections, but this was blocked by the Constitutional Court before it could occur. The Catholic Church acted as a mediator and negotiated an agreement whereby the current constitution would be amended (Vargas Llosa and Aroca 1995, 147). Congress approved (by 2/3 vote) an amendment that would allow for its

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<sup>12</sup> All four countries are multiparty, presidential systems.

early termination and renovation, and a popular referendum later confirmed it. De León Carpio expressed his utter disbelief over the outcome, “I have to imagine that [the] Congressmen didn’t realize what they were signing, for it meant their way out of office” (Vargas Llosa and Aroca 1995, 147). This case differs most markedly in that it did not involve a Constituent Assembly but rather Congress allowed this process to occur.

Lastly, Bolivia would be another potential successful case that follows this process much more closely than Guatemala and Colombia. However, I primarily chose not to pursue Bolivia because of the grassroots, bottom-up nature of the *Movimiento al Socialismo* (MAS). Because of this, Evo Morales’ movement to revise the constitution was much more organic and Bolivia differs greatly from Venezuela and Ecuador, where the presidents have driven the process in a much more top-down way.

These cases are extraordinary, but I would like to situate them within the region more broadly. A logical question is why this might not happen in other countries where the president has high levels of mobilizational or institutional leverage. In some situations, presidents may not have as radical a policy agenda to advance. In other situations, the president may already have consolidated power, either through partisan control of the legislature or the use of decrees. Lastly, it may be that the democratic tradition in the country simply will not allow for this process.

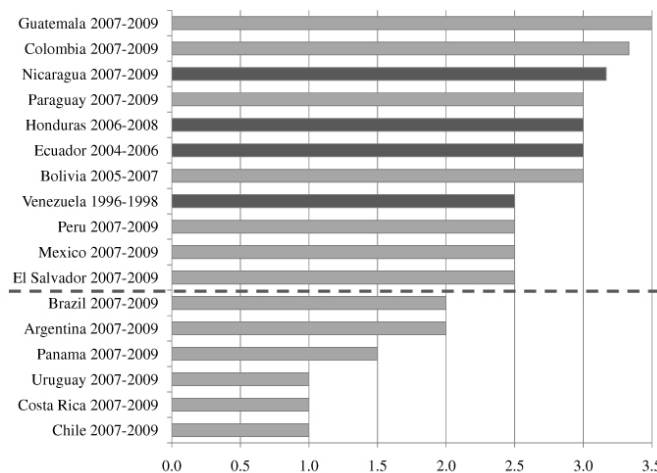


Fig. 4: Three Year Average of Freedom House Democracy Scores

Note: Low values signify higher levels of democracy. Source: *Freedom in the World* (2009)

Looking at average Freedom House scores in the region indicates that, in some countries, liberal democracy is simply too consolidated for this process to be tractable. Figure 4 displays three year averages of political rights and civil liberties scores.<sup>13</sup> The dotted line represents a

<sup>13</sup> For each country in each year, the political rights and civil liberties scores were averaged. I then took the

logical cut-off point. At an average Freedom House score lower than 2.5, this process is extremely unlikely because liberal democracy is too consolidated. According to this classification, there are six countries where we would never expect this to happen: Argentina, Brazil, Chile, Panama, and Uruguay. It is important to note that figure 4 does *not* indicate that this process will happen in any of the remaining countries with scores of 2.5 or higher. It only means that the process is not precluded from happening there. A convincing argument could be made for several of the remaining cases. As a thought experiment, one could think about what might have happened in 2006 if Ollanta Humala had won in Peru or if Andrés Manuel López-Obrador had won in Mexico. It is possible to imagine these presidents, with a radical and anti-institutional agenda, attempting this process.

My analysis has two parts, and I address different types of causality in each part. First, I discuss causes which are neither necessary nor sufficient for a president to attempt this process. Whether or not a president makes an attempt is relatively stochastic because it relies so much on the intentions and perceptions of one individual. Thus, the presence of incentives, favorable international and local conditions, or even a perceived chance of success does not guarantee that an attempt will be made. Likewise, an attempt may occur when none of these conditions are present. With this in mind, I acknowledge that equifinality is inherent to an attempt to close congress, meaning that there could be multiple causal paths that result in the closure of congress. That being said, the conditions mentioned above will increase the likelihood that a president will attempt the process, even if they cannot guarantee it.

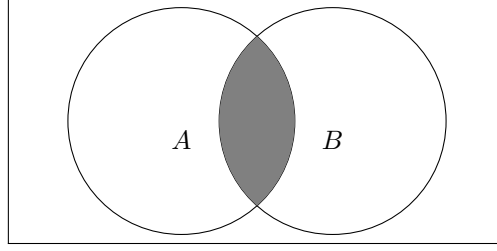
On the other hand, the factors which determine whether a president succeeds or fails in this endeavor are much more deterministic. I discuss two mechanisms that display INUS causality. This means that mobilizational and institutional leverage are individually an “*insufficient* but *necessary*” part of a condition which is itself *unnecessary* but *sufficient* for success (Mackie 1965; Mahoney 2008). Thus, one will never observe the successful closure of congress through constitutional reform when mobilizational leverage is not present. However, the presence of mobilizational leverage alone does not guarantee success. The same could be said of institutional leverage. It is only when these two mechanisms are jointly present that an attempt will be successful.

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average of these scores over three consecutive years for each country. For countries where an attempt has been made, it is a three year average prior to the attempt. For countries where no attempt has been made, it is simply the three most recent available years.





**Fig. 5: Causes of Success in the Set of Attempts,  $U$**

As figure 5 illustrates, my theory about the success of this process only holds in the set of attempts to close congress through the tools of direct democracy and constitutional reform ( $U$ ). Within that set of attempts, cases which display both mobilizational leverage ( $A$ ) and institutional leverage ( $B$ ) will be successful. The set of successful cases is represented in figure 5 by the gray shaded area. Though an analysis of Venezuela, Ecuador, Honduras, and Nicaragua, I will demonstrate that these two mechanisms are, in fact, INUS conditions for the successful closure of congress through constitutional reform.

### Measuring Success and Mobilizational and Institutional Leverage

The process of closing congress is driven by the president in a conscious effort to remove opposition. I define an attempt to close congress as any situation where the president pursues a referendum to establish a Constituent Assembly. A successful attempt would be the removal of an opposition dominated Congress. Therefore, if the incumbent Congress ceases to hold sessions, the process was successful. This would still be true if, after a span of time, a new Congress is elected. In successful cases, the president's party is often able to win a majority of seats in the new legislative body.

I operationalize the two distinct types of leverage by examining a number of factors that jointly compose each. I measure mobilizational leverage through the presence of an electoral mandate, high presidential approval, and the ability to rally large sectors of the electorate around the president's agenda. Part of this mobilization might occur through the development and expansion of formal organizations, but it could also occur through more informal demonstrations of support, such as protests or marches.

I am careful to consider exogenous measures of institutional leverage, which are separate from the process itself. Therefore, I measure institutional leverage by examining the neutralization of threats from non-legislative institutions, such as the military, Supreme Court, and electoral councils. With respect to the military, I consider the executive's ability to make concessions and also the military's relationship with the executive over time. With respect to the judiciary, I

examine judicial independence, and the timing of the attempt to hold a referendum. Judicial independence is an indication of institutional leverage because it determines the extent to which the president can influence the Supreme Court or Electoral Council’s ruling. I will assess several different measures of *de facto* independence, which account for the actual degree of independence the court retains, as opposed to *de jure* independence stipulated by law. Closely related to this is the timing of the request to hold a referendum to form a Constituent Assembly. Institutional leverage will be higher when the president acts during a period of time when non-independent courts are likely to ‘strategically defect’ from the opposition’s policies (Helmke 2002, 291), just before or shortly after the president takes office. If the president waits too long to initiate the process, then the court is more likely to ‘strategically defect’ and rule against him.

Ultimately, leverage is a relative measure. Thus, I always consider the president’s leverage in relation to that of the opposition. Many of the pre-conditions I discuss help to shed light on the opposition’s mobilizational leverage. Likewise, I include party system weakness in my analysis as a gauge of the opposition’s institutional leverage.

## CASE STUDIES

The following four case studies explore the causal mechanisms behind the closure of congress through this unconventional process. I examine first the positive cases, Venezuela under Hugo Chávez and Ecuador under Rafael Correa. Then, I examine the negative cases, Honduras under Manuel Zelaya and Nicaragua under Daniel Ortega. For each case, I comment briefly on the pre-conditions for an attempt. I then discuss the key independent variables: mobilizational leverage and institutional leverage. Specifically, I focus on the levels of these independent variables, how the president may have attempted to build each type of leverage, as well as potential interactions between both types of leverage.

### Venezuela - Hugo Chávez

#### *Background*

For much of the latter half of the twentieth century, Venezuela was considered a model democracy, “the political darling of the developmental set” (Karl 1987, 63). Venezuelan ‘exceptionalism’ was thought to be the result of the nation’s superior political institutions, which appeared to channel, rather than suppress, political conflict (Ellner 2008, 54). In 1958, the Pact of Punto Fijo was negotiated between the three major political parties: *Acción Democrática* (AD), *Comité de Organización Política Electoral Independiente* (COPEI) and *Unión Republicana Democrática*

(URD). For many years, it afforded Venezuela fair elections, consistent turnover of power, strong representative institutions, and relative respect for civil rights. However, in order to protect elite interests, *puntofijismo* marginalized a large portion of society whose interests were in direct conflict with those of elites.

Ultimately, the rigid party system or ‘partyarchy’ (Coppedge 1997) proved unable to adapt as great socio-economic changes prompted excluded sectors to become more restless for inclusion. Hugo Chávez entered Venezuelan politics during a time of both economic and political crisis and social upheaval. In 1989, President Carlos Andrés Pérez’s implementation of neoliberal economic policy led to the *Caracazo*, one of the most violent popular revolts in Venezuelan history (López Maya 2003*b*). These economic policies led to profound changes in Venezuelan society, such as the growth of unemployment and the informal sectors. Thus, the collapse of the Venezuelan party system has been attributed to a number of individual-level factors, such as: “left ideology, lack of incorporation into traditional parties, negative views of parties, dissatisfaction with the incumbent, and expectations of better performance by new parties” (Morgan 2007, 94). In 1998, large sectors of society that were formerly marginalized now stood ready to be incorporated into a new economic and political model. The environment favored both radical reform and ‘outsider’ candidates, such as Chávez.

Still, it would take time for Chávez to realize the advantages of taking the electoral route to the presidency. As a young military officer in 1992, he played a prominent role in a failed coup against Pérez. His charisma was apparent on national television, as he called for an end to the rebellion and accepted full responsibility for its defeat. “This appearance of less than one minute gave a face to the insurrection and captured the collective imagination of broad sectors of the population” (López Maya 2003*a*, 78). It took time, but eventually Chávez realized that the electoral route was a feasible option. Six years later, in 1998, he would reenter the political arena as a candidate for the presidency.

Relying heavily upon his charisma, Chávez capitalized on widespread hostility toward the established parties and institutions, building his own political party, the *Movimiento Quinta República* (MVR). At its core, Chávez’s campaign platform signified a repoliticization of social inequality (Roberts 2003, 55) and he promised the citizens of Venezuela radical change in the form of a new constitution. As the 1998 elections approached, it became apparent that candidates aligned with traditional parties, AD and COPEI, were likely to be challenged by ‘outsider’ candidates in the presidential race.<sup>14</sup> Chávez, running under his MVR party, and Enrique Salas Römer, as the candidate of his own *Proyecto Venezuela*, pulled ahead rapidly in the polls.

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<sup>14</sup> Former Miss Universe Irene Sáez was ahead in the polls until she accepted COPEI’s endorsement and her support declined radically. AD’s candidate, Claudio Fermín, also fell in the polls throughout his campaign (McCoy 1999, 66).

Despite the surge in popularity of outsider candidates for the presidency, their parties did not fare well in the legislative elections, which were held early that year. Although traditional parties saw a decline in their seat percentages overall, Chávez's MVR managed to gain only 25% of the seats and *Polo Patriótico* (Patriotic Pole), garnered only 33% of the seats overall (*PARLINE Database* 2009). Still, by November it was clear that the presidency would go to either Chávez or Römer. AD and COPEI withdrew support from their respective candidates and, at the last minute, backed Römer.<sup>15</sup> On December 6, 1998, Chávez won with 62.5% of the vote - a mandate - defeating Römer with 31.5%, Saez with 4.6%, and all other candidates each receiving less than a percentage point of the vote (*Consejo Nacional Electoral - Venezuela* 2010).

Before he even reached office, President-elect Chávez worked toward fulfilling his campaign promise to establish a more participatory form of democracy in Venezuela, but he faced several challenges. First of all, under the 1961 constitution, reform through a Constituent Assembly was not permitted. Rather, reform was supposed to take place within the bicameral legislative branch.<sup>16</sup> A second, related problem was that Chávez's coalition did not have a majority in the legislature. Therefore, in order to achieve the type of radical institutional change he had promised, Chávez would first have to find a way to overcome these challenges. Figure 6 shows a time line of events in the process of reform, beginning with Chavez's election and concluding with the national elections held in July of 2000.

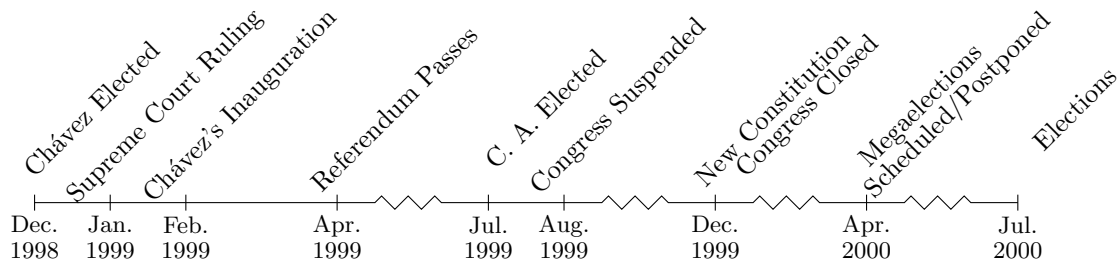


Fig. 6: Timeline - Venezuela

Even before his inauguration, Chávez began pressing the topic of constitutional reform through a Constituent Assembly. In an interview with Marta Harnecker, Chávez described the challenge as being "...how to convene a constituent assembly through legal means... We based

<sup>15</sup> Römer tried to reject their support and accept, instead, only the support of local governors from these parties but, still, this move substantially hurt his performance in the elections.

<sup>16</sup> According to the 1961 constitution, there were two possible avenues for reform: a general reform process initiated in the legislative branch (Articles 245) and an amendment process (Article 246).

our position on article 4 of the old constitution, which basically said: ‘Sovereignty resides with the people who shall exercise it through suffrage (a referendum is a form of suffrage), through the institutions of public power,’ and so forth” (Chávez Frías and Harnecker 2005, 48). On January 19, 1999, the Supreme Court of Justice ruled in response to two motions brought before it, upholding the “legality of using the referendum mechanism stipulated in the electoral law to convene a National Constituent Assembly, even though the 1961 constitution did not explicitly establish the notion of such an assembly” (Kornblith 2006, 299). Having solved this challenge, Chávez issued a decree to hold a referendum on constitutional reform within hours of taking office on February 2.

Thus, the first nationwide referendum in Venezuela’s history was set for April 25, 1999 (Kornblith 2006, 300). It asked Venezuelans: “Do you call for a National Constituent Assembly to transform the state and create a new legal order that allows for the effective functioning of a social and participatory democracy?” (Kornblith 2008, 118).<sup>17</sup> Though the abstention rate was high, with estimates ranging from 40-60%, approximately 92% of votes cast were in favor of creating a constituent assembly to reform the constitution (Kornblith 2006; McCoy 1999). High rates of abstention had become normal in Venezuela in the mid- to late-1990s as disillusionment with *Puntofijismo* set in, and so it did not affect the legitimacy of the vote.<sup>18</sup>

The election to fill the Constituent Assembly also saw high rates of abstention, but it was another tremendous victory for Chávez and an important step toward ‘reestablishing the Republic.’<sup>19</sup> The elections were held on July 25, 1999 and Chávez’s coalition, *Polo Patriótico*, won 95% of the seats (Kornblith 2006, 300). With the use of a majoritarian system of elections, votes were not translated proportionally into seats; this formula favored Chávez’s coalition. In regional races, the opposition won 44% of the vote but only 3% of the seats (Crisp 2000, 231). In this way, Chávez was able to consolidate control over the Constituent Assembly, unlike Congress where his coalition still only held 33% of seats.

The creation of a Constituent Assembly generated a great deal of institutional tension, throwing off the preexisting balance of powers in Venezuela. Although the Supreme Court ruled to allow the formation of Constituent Assembly in January 1999, it was made clear that “the functioning of the Constituent Assembly does not mean that it can supplant the powers of the State or to assume the roles of the Executive, Legislative, or Judicial branches” (Brewer-Carías 1999,

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<sup>17</sup> Original text: “¿Convoca usted una Asamblea Nacional Constituyente con el propósito de transformar el Estado y crear un nuevo ordenamiento jurídico que permita el funcionamiento efectivo de una democracia social y participativa?”

<sup>18</sup> See abstention figures in table 1.

<sup>19</sup> Chávez’s slogan for reform was ‘*Refundación de la República*.’

243).<sup>20</sup> Still, the Constituent Assembly directly challenged the Congress and other institutions through the degree of legitimacy it could claim, having been directly elected. In August of 1999, just a month after it formed, the Constituent Assembly declared ‘judicial and legislative emergencies,’ suspending both the judicial and legislative branches in turn (Richter 1999, A8). The suspension proved only to be temporary and both branches reopened a few weeks later, in September. However, this was a sign of things to come.

The final blow against representative institutions in Venezuela would come “during the period of juridical limbo that came after the electoral ratification of the constitution but before the date of its official promulgation” (Kornblith 2006, 302). The new constitution, developed by the Constituent Assembly, was put to a referendum on December 15, 1999. It was approved by 72% of the votes, but the abstention rate soared to 56% of the electorate (*Consejo Nacional Electoral - Venezuela* 2010). Toward the end of December, Congress, the Judiciary, and the National Electoral Council were closed and replaced with individuals associated with the governing coalition. Congress was replaced with the *Congresillo*, a group of Constituent Assembly members chosen by Chávez to act as a legislative body in the interim (García-Guadilla 2003, 188). In order to relegitimize public institutions, Chávez called for a set of recall elections for all institutions in 2000 - known as the ‘megaelections.’ However, just three days before they were supposed to take place, the ‘megaelection’ was postponed until July 2000 and it was divided into two separate elections.

Overall, the process of closing congress through the tools of direct democracy and constitutional reform was extremely successful for Chávez. By dominating the Constituent Assembly, Chávez maintained a great deal of control over the process of reform. The new constitution institutionalized and formalized aspects of direct democracy, even going so far as to create an additional ‘branch’ of government: the *Poder Ciudadano* or citizens’ branch. It emphasized the use of “...referendums; public opinion polls; legislative, constitutional, and constituent initiatives; open municipal council (*cabildo abierto*); and the citizens assembly” (Alvarez 2003, 154). It also centralized power in the executive branch, establishing a unicameral legislative body, the *Asamblea Nacional*, already firmly under Chávez’s control. Lastly, the act of closing congress and being able to accomplish such sweeping reforms within his first year in office helped Chávez solidify the loyalty of his supporters.

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<sup>20</sup> Original text: “...el funcionamiento de la Asamblea Constituyente no significa que esta pueda suplantar los Poderes Constituidos del Estado o pueda asumir la funciones que corresponden a los órganos de los Poderes Ejecutivo, Legislativo o Judicial.”

Chávez had high levels of mobilizational leverage by all measures considered here: his electoral mandate, high levels of public approval, and organizational capacity. He also employed a strong, anti-institutional agenda throughout his campaign and his first year in office in order to build this leverage as much as possible. This mobilizational leverage, in turn, allowed him to place more pressure on non-legislative institutions. More generally, it ensured that he would be able to continue to win referenda and control the Constituent Assembly and the reform process in general.

As an ‘outsider’ with a strong anti-institutional message in the 1998 elections, Chávez captured one of the largest mandates in Venezuelan democratic history. Table 1 shows the winning percentages of the vote captured by the 9 presidents in Venezuela, from 1958 - 2000. Under *puntofijismo*, the two main parties AD and COPEI alternated candidates in office, rarely capturing more than 50% of the votes. The only candidate to rival Chávez’s mandate was Jaime Lusinchi in 1983, who was backed by AD. In contrast, Rafael Caldera won in 1993 with only 30.5% of the vote. Though he was far from a political outsider, he was not backed by either of the major parties in that election. Thus, for an unexperienced ‘outsider’ like Chávez, winning with 56.2% of the vote offered an important degree of confidence and legitimacy. As time went on, Chávez’s electoral majority would increase with every election, owing in part to a fragmented opposition that opted for abstention rather than voting (Tenenbaum 2006, 193).

*Table 1: Venezuelan Presidents, 1988-2010*

| Year | President            | Party        | Winning |            | Term Approval |      |      |
|------|----------------------|--------------|---------|------------|---------------|------|------|
|      |                      |              | Votes   | Abstention | Low           | Avg  | High |
| 1958 | Rómulo Betancourt    | AD           | 49.2    | 6.6        | u             | u    | u    |
| 1963 | Raúl Leoni           | AD           | 32.8    | 7.8        | u             | u    | u    |
| 1968 | Rafael Caldera       | COPEI        | 29.1    | 3.2        | u             | u    | u    |
| 1973 | Carlos Andrés Pérez  | AD           | 48.7    | 3.5        | u             | u    | u    |
| 1978 | Luis Herrera Campins | COPEI        | 46.6    | 12.5       | u             | u    | u    |
| 1983 | Jaime Lusinchi       | AD           | 56.7    | 12.3       | u             | u    | u    |
| 1988 | Carlos Andrés Pérez  | AD           | 52.9    | 18.1       | 32.9          | 42.1 | 46.7 |
| 1993 | Rafael Caldera       | Convergencia | 30.5    | 39.8       | 33.3          | 42.9 | 58.2 |
| 1998 | Hugo Chávez          | MVR          | 56.2    | 36.6       | 55.7          | 61.9 | 65.5 |
| 2000 | Hugo Chávez          | MVR          | 59.8    | 43.7       | 39.7          | 49.2 | 56.2 |
| 2007 | Hugo Chávez          | MVR          | 62.8    | 25.3       | 34.6          | 45.3 | 50.9 |

Note: All values are percentages; u - data unavailable; Sources: *Consejo Nacional Electoral - Venezuela* (2010), Carlin, Hartlyn and Martínez-Gallardo (2009).

Moreover, Chávez not only maintained but even built upon this base of support during his first year in office. He wasted no time in beginning drastic reforms of the Venezuelan political system. Thus, he took advantage of the high degree of cohesion among his supporters coming

off of the tremendous electoral win. He also benefited by attempting this process during the ‘honeymoon’ period that most presidents enjoy shortly after being elected. While it is true that Chávez’s discourse and promise of radical change polarized the population, figure 7 shows that he was able to maintain high levels of presidential approval over the first two years of his presidency. The box in this figure outlines the time period during which these reforms were enacted. At the time, Chávez maintained support within the range of 60 - 65%, leading to high levels of mobilization leverage. It was not until 2001 that approval dropped below 50% (Carlin, Hartlyn and Martinez-Gallardo 2009). High approval ratings gave Chávez confidence that he would be able to win referenda, elections for the Constituent Assembly, and recall elections that he proposed during this time period.

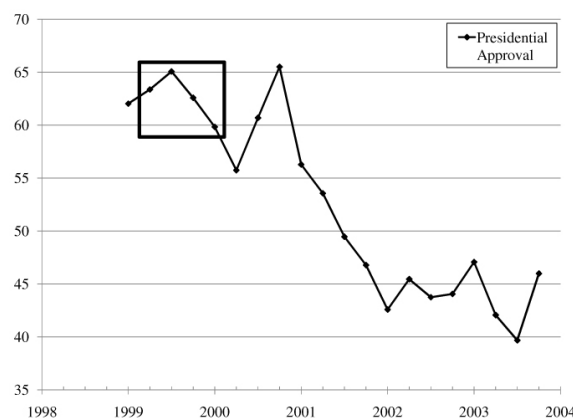


Fig. 7: Presidential Approval in Venezuela: Hugo Chávez

Source: Carlin, Hartlyn and Martinez-Gallardo (2009)

Lastly, Chávez displayed a remarkable ability to organize groups within society in support of his reforms. His organizational strategy followed two paths: one top-down and the other bottom-up. Though Chávez only had limited success with grassroots strategies (Ellner 2008, 178), his followers proved particularly loyal. In the wake of the *Caracazo*, many members of the opposition worried that widespread violence would ensue if Chávez’s supporters were denied. When the Constituent Assembly closed Congress in August of 1999, many members of Congress refused to accept it and attempted to enter Congress anyway. They clashed with *Chavistas* who had taken to the streets to defend the ruling of the Constituent Assembly. This scene was reminiscent of the *Caracazo* and greatly strengthened Chávez’s position vis-à-vis the Congress. Ultimately, Chávez knew that he could count on this type of spontaneous mobilization of his supporters.

Chávez was most successful in constructing top-down, official organizations such as the *Polo Patriótico*. Through this electoral coalition, Chávez integrated a number of smaller left political



parties, social movements, and sectors of civil society. Social organizations had gained newfound importance with the discrediting of traditional political parties, and Chávez was quick to co-opt them, regardless of their ideological heterogeneity (García-Guadilla 2003, 189). Formal and informal networks were created to integrate existing organizations into the process of drafting the constitution; however, the Constituent Assembly was selective in determine who would be allowed to participate, claiming that some organizations previously aligned with the traditional parties were merely bastions of oligarchs (García-Guadilla 2003, 188). The strength of Chávez's movement was based in the majority of the population, the lower socioeconomic strata, and the exclusion of 'oligarchic' factions resonated well with them.

It was Chávez's development of a strong anti-institutional agenda that allowed him to generate support among the poor and lower-middle class sectors of the population. Through his campaign, Chávez politicized socioeconomic class and criticized the longstanding history of political marginalization that existed in Venezuelan institutions. Self-identifying as a 'revolutionary,' Chávez demonstrated his "intention to go beyond change *within* the system to change *of* the system..." (Norden 2003, 95). His platform was staunchly anti-institutional, "developing a discourse of antiliberalism and rupture with the past" (López Maya 2003*a*, 84). He railed against corruption in Venezuela's representative institutions and openly declared his determination, in the form of concrete threats, to eradicate the traditional political parties (McCoy 1999, 66-67). For example, addressing the opposition-dominated Congress at his inauguration, Chávez warned, "The constitution, and with it the ill-fated political system to which it gave birth forty years ago, has to die; it is going to die, sirs - accept it" (Jones 2007, 227). As a result, his popularity grew exponentially. While socioeconomic conditions provided an environment amenable to Chávez's mobilization of a "populist backlash" (Roberts 2003, 59), it was the manner in which Chávez harnessed the grievances of Venezuelan society that allowed him to develop a high degree of mobilizational leverage.

### *Institutional Leverage*

In addition to displaying high levels of mobilizational leverage in his first year in office, Chávez also displayed high institutional leverage, or the ability to neutralize threats from non-legislative institutions. Part of this ability was generated organically by the collapse of the party system. Another part was constructed directly as the result of high levels of mobilizational leverage. Still, when one considers Chávez's relationship to the Judiciary and the military, it is clear that neither of these institutions presented a viable threat to his agenda.

The collapse of the Venezuelan party system weakened existing democratic institutions and,

in relation, increased Chávez's institutional leverage. Clearly, Chávez's institutional leverage is high or low only *relative* to the opposition's institutional leverage. Initially, institutions such as the legislative and judicial branches were dominated by the opposition. Yet it is important to note that when Chávez set this process in motion, the opposition lacked cohesion, could not act as a unified force, and was significantly weakened as a result of the collapse of the party system. The fragmentation of the opposition not only increased the ability of Chávez's personalistic MVR to win elections and referenda, but also to use their highly visible popularity against existing institutions.

Chávez was aware of the fact that the military, with its monopoly on force, could represent a potential threat to both his agenda and his presidency. However, he had a natural affinity to the institution because he had risen through its ranks. As a result, he wanted to incorporate the military into his vision for a new Bolivarian Republic as a means of neutralizing potential opposition to it. Chávez made an attempt to integrate the military rank-and-file with his administration by offering staff positions to officers. In 1999, "retired and active-duty military officers held up to one-third of the portfolios in the presidential cabinet" (Trinkunas 2005, 213). His plans for the new constitution included a larger role for the military in politics, expanding its duties and political rights (Norden 2003, 99-100). Moreover, Chávez promised to integrate the military into a single command structure in the 1999 Constitution. He also planned to transfer the responsibility of approving military promotions from the legislature to the executive, giving himself the ability to reward members of the military personally with promotions. Overall, by expanding the role of the military in the political development of the country, Chávez hoped that the institution would actually feel invested in his vision. In this way, he ensured that the military would not challenge him and, again, increased his institutional leverage.

Lastly, the Judiciary represented a potential threat because it could prevent Chávez from pursuing these controversial reforms. As the 1961 constitution did not explicitly allow for constitutional reform via a referendum to form a Constituent Assembly, Chávez knew that he would need the cooperation of the Judiciary in approving this move. Though it is widely debated, the Judiciary's lack of action is likely linked to Chávez's high levels of mobilizational and institutional leverage: intense pressure for reform within certain sectors of society and the Judiciary's interpretation placing emphasis on the legality of the referendum according to the electoral law (Kornblith 2006, 299). Judicial independence has always been rather low in Venezuela, as in much of Latin America. As of 1999, "no legal changes [had] been effective to put an end to traditional political interventions in [the] Venezuelan judiciary" (Correa Sutil 1999, 275). Several measures of *de facto* judicial independence exist, including a measure by Feld and Voigt (2003) and one by the World Economic Forum (2004, as cited in Stein, Tommasi, Echebarría

and Payne 2005). Unfortunately, these measures are not available for the time period under consideration here. I turn instead to measures of the rule of law, which include a component on the independence of the judiciary. In 1998, Venezuela's percentile rank in comparison with a world-wide sample was 25.7 (*World Governance Indicators* 2009). Thus, it is plausible to assume that judicial independence was relatively low at the time of Chávez's election. His institutional leverage over the Supreme Court was increased because the Court was asked to rule on the constitutionality of the referendum and Constituent Assembly at a very early stage in Chávez's term. In December of 1998, the opposition filed a preemptive case with the Supreme Court, asking whether such a reform path would be constitutional. However, just a month later - on January 19, 1999 - the *Tribunal Supremo de Justicia* upheld its legality. It is likely that, due to a lack of judicial independence and the fact that these events transpired in the interim between Chávez's election and just after his inauguration, the Venezuelan Supreme Court faced incentives to 'strategically defect' from the incumbent government. Hence, they ruled in favor of Chávez and the future government.

### *Summary*

Overall, the Venezuelan case displayed several pre-conditions which increased the likelihood that Chávez would make an attempt to close congress. These included strong incentives and an international and domestic environment that increased the probability for success of this strategy, as compared to other options. Success was ultimately made possible by high levels of mobilizational and institutional leverage. Chávez's anti-institutional agenda helped build his mobilizational leverage, which could in turn be used to pressure non-legislative institutions to allow the process to proceed without intervention. Furthermore, the early timing of the appeal to the Supreme Court benefited Chávez vis-à-vis the opposition. In the end, the opposition-dominated Congress was closed and replaced with a unicameral body, which is loyal to Chávez.

## **Ecuador - Rafael Correa**

### *Background*

Ecuador's political system has never displayed the same degree of institutionalization or rigidity as the Venezuelan system. On the contrary, since its transition to democracy in 1979 Ecuadorian politics have been tumultuous, with extreme volatility in the executive branch, recurring executive-legislative conflict, weak and uninstitutionalized parties, and a general lack of respect for existing constitutions. The last Ecuadorian president to complete a full term was Sixto Durán Ballén in 1996. Since then, three presidents - Mahuad, Bucaram, and Gutiérrez -

have been removed through impeachment or coups. Each of these three ‘*pueblazos*’ were initiated by extensive mobilization on the part of Ecuadorians, but institutional conflict also played a role.<sup>21</sup> “The action of Congress in the removal of Bucaram, just like the action of the military in the overthrow of Mahuad, were proceeded by social mobilizations, in the same way that it lead to the termination of the mandate of Lucio Gutiérrez” (Pachano 2005).<sup>22</sup>

The removal of presidents was facilitated by “severe partisan fragmentation in Congress, [and the fact that] important sectors of society were still left outside of formal representation channels” (Mejía Acosta, Caridad Araujo, Pérez-Liñán and Saiegh 2006, 7). Conflict between the executive, the legislative branch, and even the military was a recurring theme in Ecuadorian politics during the democratic period. As a result, policy making has suffered. “The proliferation of relevant veto players... in the national arena, the polarization of their policy preferences and the lack of institutional mechanisms to facilitate, maintain and enforce political agreements over time are key elements help that explain poor policy performance in Ecuador” (Mejía Acosta et al. 2006, 9). Institutional conflict and political instability was exacerbated by the 1998 constitution which, in many ways, served to further weaken parties and representation.

Since the early- to mid-nineties, the growth of ‘outsider’ candidates has lead to exponential growth in the number of candidates in any one election, often from 6 to 12. As a result, “candidates can often pass on to the second round with 15-20% of the national vote in the first round. Therefore, instead of building a broad national consensus in the first round, candidates can pinpoint a specific population or region that will actively support them” (Hammond 2004, 80). These dynamics have translated directly to the party system as a whole. “In one way or another, all parties in Ecuador ultimately depend on *caudillo* politics instead of promoting national political agendas... Though parties with a regional strength still exist, national parties do not” (Montúfar 2007). “The proliferation of relevant veto players (actors whose consent is needed to implement policy changes) in the national arena, the polarization of their policy preferences and the lack of institutional mechanisms to facilitate, maintain and enforce political agreements over time are key elements help that explain poor policy performance in Ecuador” (Mejía Acosta et al. 2006, 9).

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<sup>21</sup> Pallares (2006) uses the term ‘*pueblazos*’ to refer to popular mobilizations that lead to the toppling of democratically-elected presidents.

<sup>22</sup> Original text: “Tanto la acción del Congreso en la destitución de Bucaram, como la actuación de la facción militar en el derrocamiento de Mahuad, estuvieron precedidas por movilizaciones sociales, del mismo modo que estuvo la terminación del mandato de Lucio Gutiérrez.

In the first round presidential elections in 2006, Correa ran alongside twelve other candidates. He was unknown in Ecuadorian politics prior to 2005, but this was a huge asset as he built a campaign around his ‘outsider’ status. Correa ran under the banner of a party he had founded, the *Movimiento Patria Activa I Soberana* (MPAIS) or Movement for a Proud and Sovereign Fatherland. In the first round, Correa’s strategy was to play on “widespread anti-system sentiments by turning political reform into a central issue” (Conaghan 2007, 824). Early on, he espoused a strident anti-institutional agenda. He made true progress in the polls when he announced that MPAIS “would not run a list of candidates in the congressional election. Denouncing Congress as a ‘sewer’ and legislators as ‘mafiosos,’ Correa promised voters he would clean up government corruption and incompetence by asking voters to approve a proposal for a constituent assembly to write a new constitution” (Conaghan 2007, 826).

This strategy allowed Correa to garner the support necessary to make it into a runoff with Alvaro Noboa of the *Partido Renovador Institucional Acción Nacional* (PRIAN). Correa received 22.8% of the vote in the first round, and Noboa 28%, a function of the large number of candidates running for office. In the second round however, Correa emphasized bread-and-butter issues, winning with 56.7% of the vote, over Noboa’s 43.3% (Conaghan 2007, 826). As a result of the runoff system, Correa won the presidency with a mandate while, at the same time, having no representatives of his party in Congress. Here, Correa was taking a huge risk in a way that made obvious his commitment to pursuing this strategy.

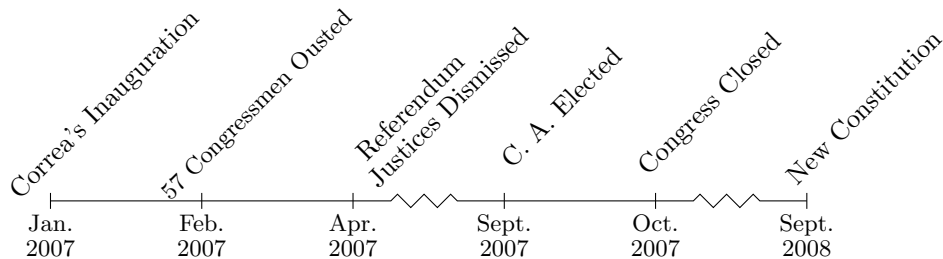


Fig. 8: Timeline - Ecuador

Correa, like Chávez, wasted no time in setting in motion the closure of Congress through constitutional reform. He issued an executive decree for a referendum on the day of his inauguration. “Like Chávez and Morales, Correa came to office with the view that winning the presidency was, at best, a prelude to a more profound struggle for political power, one that would involve confronting rivals both within the state and in society at large” (Conaghan 2008, 46-47). His immediate and unilateral action was condemned by the opposition as unconstitutional, basing

their argument on a series of relatively unclear articles in the 1998 constitution.<sup>23</sup>

Correa also based his claims for the constitutionality of a Constituent Assembly in the vague language of the constitution. He claimed that he was entitled to bypass Congress and to hold a referendum on issues of ‘transcendental importance’ (Conaghan 2008, 51). Correa submitted his decree to the *Tribunal Supremo Electoral* (TSE) for approval, along with powerful threats to mobilize people against the TSE if they failed to rule in his favor. A part of the judiciary, the TSE is the highest court that oversees voting in Ecuador. Hence, early in Correa’s term, it looked as though Ecuador would be facing yet another executive-legislative crisis, putting democracy in jeopardy. “A war of nerves and a convoluted legal battle ensued; it ended when the electoral tribunal reversed its opposition to the referendum and scheduled the referendum on the constituent assembly for April 15, 2007” (Conaghan and de la Torre 2008, 274). This controversial ruling sparked a battle between Congress, the Supreme Court, and the TSE. The congressional majority first voted to replace the head of the TSE, and the TSE responded by removing 57 legislators.

On April 15, 2007, the referendum on the formation of a constituent assembly was held. It asked: “Do you approve of the convocation and installation of a Constituent Assembly with full powers under the appended Electoral Statute, to transform the State’s institutional framework and elaborate a new Constitution? (*Consejo Nacional Electoral - Ecuador* 2010).<sup>24</sup> The referendum passed with 81.7% of voters responding ‘yes’ *Election Guide* (2009). It was a huge victory for Correa and his bases of support, bolstering his confidence in his ability to fight other branches of government. In late April, the institutional crisis continued, with the Supreme Court attempting to reinstate 51 congressmen. Correa sent police to prevent their return and immediately dismissed all 9 members of the Supreme Court.

Elections to fill the Constituent Assembly were not held until several months later, in September of 2007, but they served as another rallying point for Correa’s supporters and a public display of his widespread popularity. Correa’s newly renamed alliance, Alianza PAIS, won 69.5% of the vote and abstention was only 26.7% (Carr 2010). As a result, the alliance held 80 of 130 seats in the Constituent Assembly (Conaghan and de la Torre 2008, 274). Broad partisan control over the Constituent Assembly was incredibly important to Correa because he knew that a failure to control the body could mean his removal from office, like so many Ecuadorian presidents

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<sup>23</sup> The 1998 constitution used very vague language to describe the reform process. Amendments were allowed through Congress or referendum (Article 280) although the document does not detail the process of amending through referendum. General reform of the constitution could take place through the legislative branch with 2/3 vote (Articles 281). Furthermore, in cases of ‘urgency,’ the president could make amendments to be confirmed via referendum (Article 283), though again the language was rather vague on procedure.

<sup>24</sup> Original text: “¿Aprueba usted, que se convoque e instale una Asamblea Constituyente con plenos poderes de conformidad con el Estatuto Electoral que se adjunta, para que transforme el marco institucional del Estado y elabore una nueva Constitución?”

before him. It was through his domination of the Constituent Assembly that Correa effectively managed to eliminate “what remained of party and institutionally based opposition” (Conaghan and de la Torre 2008, 274). The Constituent Assembly closed Congress in October of 2007, just one month after its election.

### *Mobilizational Leverage*

Correa has been the first president to truly integrate the interests of the Ecuadorian electorate, boosting his popularity tremendously in comparison to previous presidents, and leading to very high levels of mobilizational leverage. Table 2 demonstrates both the degree of political instability in Ecuador over the last ten years, as well as the tendency for Ecuadorian presidents to have a mandate because of the two-round system of presidential elections. However, where Correa stands out among past presidents is in the level of presidential approval he was able to maintain over the course of his first term. He has enjoyed the highest average levels of presidential approval since the inception of democracy in 1979.

Table 2: Ecuadorian Presidents, 1997-2010

| Year | President       | Party        | Winning |            | Term Approval |      |      |
|------|-----------------|--------------|---------|------------|---------------|------|------|
|      |                 |              | Votes   | Abstention | Low           | Avg  | High |
| 1997 | Fabián Alarcón  | FRA          | n/a     | n/a        | 28.6          | 43.3 | 63.1 |
| 1998 | Jamil Mahuad    | DP           | 51.2    | u          | 20.2          | 36.0 | 53.7 |
| 2000 | Gustavo Noboa   | DP           | n/a     | n/a        | 46.3          | 53.3 | 65.8 |
| 2003 | Lucio Gutiérrez | PSP          | 54.8    | u          | 22.3          | 39.4 | 47.4 |
| 2005 | Alfredo Palacio | (IND)        | n/a     | n/a        | 28.8          | 44.8 | 52.0 |
| 2007 | Rafael Correa   | Alianza PAIS | 56.7    | 24.0       | 54.3          | 76.7 | 83.5 |

Note: All values are percentages; u - data unavailable; n/a - not elected. Sources: *Election Guide* (2009); Carlin, Hartlyn and Martinez-Gallardo (2009).

As figure 9 makes clear, Correa’s approval rating was especially high during the time period when he attempted this process, denoted with a black box. Presidential approval stood at 84.4% in the fourth quarter of 2007 when congress was closed (Carlin, Hartlyn and Martinez-Gallardo 2009). These high levels of approval made Correa’s threats of public mobilizations against Congress more credible. For example, Correa issued direct threats to both the Congress and the opposition with respect to his decision to hold a referendum, asserting that “his commitment to the constituent assembly was ‘non-negotiable’ and that his government would call for a mass mobilisation to pressure the new Congress if necessary” (Conaghan 2007, 827). Public opinion polls corroborated Correa’s ability to accomplish this, showing that 73% of the population supported a Constituent Assembly and 59% supported Correa’s plan to bypass Congress (Conaghan 2008, 51). Correa knew that he had unprecedented level of support and could use

this mobilizational leverage in his favor. It also gave him the confidence that he could win both the referendum to create a Constituent Assembly and perform well in the elections to fill the body.

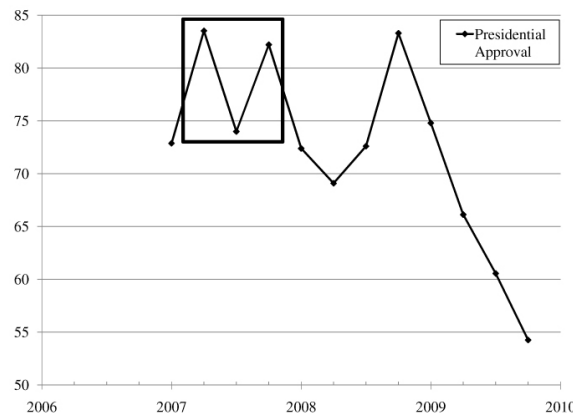


Fig. 9: Presidential Approval in Ecuador: Rafael Correa

Source: Carlin, Hartlyn and Martinez-Gallardo (2009)

These high levels of approval are owed in large part to Correa’s development of a ‘permanent campaign’ (Conaghan and de la Torre 2008). A permanent campaign is the president’s directed efforts to utilize the media, public opinion polls, and other political marketing techniques to maintain high levels of popularity while in office. The ‘honeymoon’ period can often be extended when presidents approach campaigning and governing as one process. “With so much riding on the president’s standing in the polls and at the ballot boxes, the permanent campaign became, by necessity, a critically important feature of how these presidencies function” (Conaghan and de la Torre 2008, 270). Lately, this has become more important in the region as whole with the introduction of presidential reelection. However, it was especially true for Correa as he embarked on radical constitutional reform and his attempt to close Congress through the tools of direct democracy.

A key component of Correa’s ‘permanent campaign’ was the development of an anti-institutional agenda. He was very open about his intentions from the beginning, campaigning on the promise to close Congress. This helped Correa to win over many marginalized and disgruntled sectors of society. Correa’s bases of support are similar to Chávez’s - members of the lower socio-economic strata - with one important exception. Correa managed to gain the support of the powerful and well-organized indigenous movement.<sup>25</sup> The main indigenous organization in Ecuador is the *Confederación de Nacionalidades Indígenas del Ecuador* (CONAIE). It is a politically active social movement that has arisen in order to fill the gaps in basic services that

<sup>25</sup> In Venezuela, the indigenous population is still really a minority and is not nearly as well-organized or influential as its Ecuadorian counterpart.



the government has failed to provide its indigenous populations over the years and to fight government policy that goes against the interests of the indigenous. However, it also has a political wing, the *Movimiento de Unidad Plurinacional Pachakutik Nuevo País* (MUPPNP). The MUPPNP joins “together the indigenous movement, several other social organizations, and civil and people’s movements” (Tenenbaum 2006, 171).<sup>26</sup>

Historically, the Ecuadorian indigenous movement has been a driving social and political force for change. “In 1994, they fought against the approval of neoliberalism in agriculture; in 1997, they participated actively in the overthrow of President Abdalá Bucaram, and to convene a National Constituent Assembly; in 1998 they marched on Quito against gas prices and fuel” (Tenenbaum 2006, 170).<sup>27</sup> Most recently, they played a central role in the 2005 removal of President Lucio Gutiérrez. For this reason, it was especially important for Correa to have their support while moving forward with his attempt to close Congress.

### *Institutional Leverage*

Overall, Correa’s institutional leverage was high. First of all, he was able to avoid conflicts with the Ecuadorian military. The Ecuadorian military, unlike militaries in many other Latin American countries, has not been discredited. When the military junta led Ecuador from 1972 - 1979, it was not nearly as repressive as its counterparts in the southern cone. Regardless, the military has “remained one of the most popular institutions in the country, according to opinion polls. It maintains a fundamental commitment to nation building, moreover, and is deeply involved in civic action projects” (Danopoulos and Zirker 2006, 4). Overall, Correa was able to maintain a working relationship with the Ecuadorian military. Furthermore, the military has been reluctant to intervene directly in democratic processes and, in recent years, has only done so when urged to by highly mobilized social movements who were critical of the current administration.<sup>28</sup> Thus, Correa knew that by harnessing public opinion he would insulate himself from military intervention.

A second component was the exceptional dependence of the Ecuadorian judiciary. From 1960 until 1995, the average tenure of a Supreme Court justice in Ecuador was only 3 years (Stein et al. 2005, 86). While the 1998 constitution tried to give the judiciary the independence it had never had by giving judges lifelong term limits, this reform “did not isolate the judiciary from

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<sup>26</sup> Original Text: “reúne en su seno al movimiento indígena, a varias otras organizaciones sociales, y a movimientos cívicos o ciudadanos.”

<sup>27</sup> Original Text: “En 1994, se produjo la lucha contra la aprobación del neoliberalismo en el agro; en 1997, participaron activamente en el derrocamiento del presidente Abdalá Bucaram, para convocar a una Asamblea Nacional Constituyente; en 1998 marchan sobre Quito contra los precios de gas y los combustibles.”

<sup>28</sup> This was most clearly seen in the military’s removal of Mahuad in 2000, which was brought on by widespread protests by indigenous Ecuadorians.

political dynamics, but rather the opposite: it entrenched existing political alignments within the Court” (Mejía Acosta et al. 2006, 26). In turn, this has led to the increased removal of justices not amenable to the current government’s policies, and their replacement with those more agreeable to the government of the day. Thus, in spite of having lifelong tenure, the legislative branch unconstitutionally removed 27 of 31 judges in 2004 (Mejía Acosta et al. 2006, 27). Ecuador scored 0.39 out of 1 on the measure of de facto independence constructed by Feld and Voigt (2003), where 1 indicates full independence and 0 full dependence. Similarly, the World Economic Forum’s (2004) measure gives Ecuador a score of 1.9 out of 7, where higher values indicate more judicial independence (Stein et al. 2005, 88).<sup>29</sup>

Correa was also aided by the fact that, since the inception of democracy, Ecuadorian constitutions have not been highly respected by the different branches of government. The 1998 constitution was no exception. “The discretionary use of the Constitution and its policy prescriptions has enabled the systematic violation of the modern principle of division of powers; a recurring tendency in Ecuadorian politics that has been marked by the volatility of party majorities and that has translated into a high degree of reversibility of judicial decisions” (Echeverría 2008, 15-16).<sup>30</sup>

Lastly, Correa had timing on his side. Like Chávez, Correa proposed a referendum to form a Constituent Assembly at his inauguration. Thus, his institutional leverage over the TSE was increased because he acted quickly in pressing for a referendum. Although initially blocked by the Supreme Court, Correa was able to pressure the TSE to approve the measure as constitutional within just a few months of taking office.

### *Summary*

The Ecuadorian case displays several pre-conditions which increased the likelihood that Correa would make an attempt to close congress. These included incentives, a favorable international and domestic climate, and Correa’s perception of a high probability of success. That success was ultimately made possible by high levels of mobilizational and institutional leverage. Correa utilized a stridently anti-institutional agenda and a permanent campaign to build his mobilizational leverage. He then used this mobilization leverage to place greater pressure on institutions which could have blocked his referendum. In 2007, Correa succeeded in closing the

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<sup>29</sup> For the purposes of comparison, the mean for all of Latin America in 2004 was 2.7, showing both that Ecuador fall near the low end of the spectrum of judicial independence in Latin America, and that Latin America as a whole shows a lack of judicial independence in relation with the rest of the world.

<sup>30</sup> Original Text: ...el uso discrecional de la Constitución y de sus preceptos normativos ha permitido violentar sistemáticamente el moderno principio de la división de poderes; una tendencia recurrente en la política ecuatoriana que ha sido acentuada por la volatilidad de la mayorías partidarias y que se ha traducido en una alta reversibilidad jurídico normativa.

opposition-dominated Congress and maintained his firm grip on the Constituent Assembly and constitutional reform process.

## **Honduras - Manuel Zelaya**

### *Background*

In 1982, Honduras returned to democratic rule after twenty years of nearly uninterrupted military rule. In the early 1980s, the military realized that in order to retain control over the country, they would need to increase repression. It opted instead to hold elections and return to civilian rule. While these military dictatorships never perpetuated the same degree of repression as some other Central American regimes at the time, Honduras experienced an array of political violence - terrorist actions, kidnapping, murder, and torture - some of which continued well into the democratic period (Canache 1996, 553). Furthermore, the military retained a great deal of political power and evaded civilian control until the mid-1990s, delaying full democracy (Booth, Wade and Walker 2006, 143).

While historically Honduras has had two stable parties that have dominated politics, the country's political system is still highly uninstitutionalized. The traditional parties are the *Partido Liberal de Honduras* (PL) and the *Partido Nacional de Honduras* (PN), which date back to the late nineteenth century and have alternated in power since its latest transition to democracy in 1981. These two parties "typically display very little ideological differences and are both centrist to conservative" (Taylor-Robinson and Diaz 1999, 591). They are both extremely clientelistic. Several smaller, ideologically distinct parties have emerged recently, but they have not been able to secure a substantial number of seats. In the most recent elections, they averaged less than 10% of the seats in Congress (*PARLINE Database* 2009).

### *A Failed Quasi-Attempt to Close Congress*

I refer to the attempt in Honduras as a 'quasi-attempt' because we may never know what Zelaya's intentions were in holding the referendum to form a Constituent Assembly. Unlike Chávez in Venezuela or Correa in Ecuador, Zelaya's efforts were thwarted before he could even hold the referendum. If he had succeeded in holding it, and if he had managed to control the Constituent Assembly through elections, then Honduras may have very well followed a similar path as the previous two cases. An examination of the dynamics of this failed, quasi-attempt is still useful because it can help to shed light on the conditions which preclude success.

Zelaya ran for president as a PL candidate. His campaign slogan was 'El Poder Ciudadano' or 'Citizen Power' and "he understood it in terms of participatory democracy and transparency"

(Tenenbaum 2006, 229).<sup>31</sup> It was mildly anti-institutional in the sense that it centered on the elimination of government corruption under a “citizens’ empowerment” plan. In this way, it diverged slightly from the typical center-left campaign promises of the PL. Moreover, Zelaya made concrete promises like the development of a transparency law and the establishment of a civil assembly to monitor the government (*PARLINE Database* 2009). He also stressed social issues which made him more popular with Honduras’ poor. However, unlike Chávez and Correa, Zelaya did not display the same tendency to issue direct threats against institutions in his campaign.

In the November 2005 elections, Zelaya won with 49.9% of the vote, just shy of a mandate. He edged out the PN’s candidate, Porfirio Lobo Sosa, who was also the incumbent Speaker of the Congress. Legislative elections were held in conjunction with presidential elections and Zelaya’s party, the PL won 48% of the seats (*PARLINE Database* 2009). Almost immediately after taking office in 2006, Zelaya began developing a relationship with Chávez and began ‘drifting leftward.’ “Publicly backed by Mr Chavez, Bolivian President Evo Morales and former Cuban leader Fidel Castro, Mr Zelaya began to lose the support of his own party” (*President Zelaya voted in as Liberal turned into ally of Chavez ALBA* 2009). In many ways, Zelaya’s agenda began to break more and more with the traditional discourse of the PL, and people took notice. His agenda took on an increasingly anti-institutional nature, blaming the rigid, outdated *partidocracia*, of which the PL was an integral part.

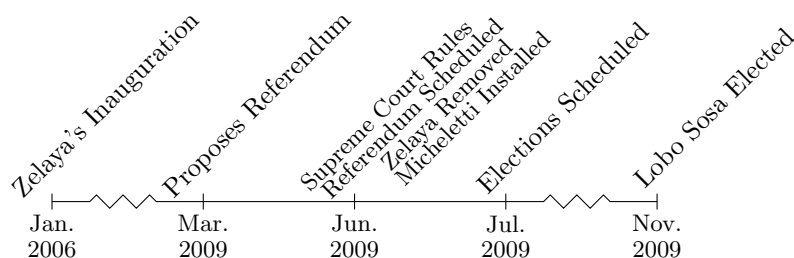


Fig. 10: Timeline - Honduras

Zelaya began publicly suggesting that he would like to remove restrictions on presidential reelection and also form a Constituent Assembly to reform the constitution. In March 2009, Zelaya formally proposed to hold a referendum on the formation of a Constituent Assembly. Previous constitutions revisions had take place through Constituent Assemblies in Honduras, but they had never been convened through a referendum before. Furthermore, The 1982 Constitution permitted only legislative reforms and did not allow for any kind of citizen action.<sup>32</sup> Not only

<sup>31</sup> Original Text: “El Poder Ciudadano fue la consigna central de su campaña electoral. Se lo entiende en términos de democracia participativa, y de transparencia.”

<sup>32</sup> Article 373 stipulated that reform could be initiated only through 2/3 vote in Congress.

did the opposition react negatively to Zelaya's insistence on convoking a Constituent Assembly, but members of Zelaya's own party refused to support his efforts. Over the course of his term, Zelaya struggled with internal divisions within the center-left-leaning *Partido Liberal*, which did not wholeheartedly support his increasingly radical agenda.

The international community, but especially the United States, played a direct role in trying to avoid political crisis. For a long time, the United States has had close ties to the Honduran military, even helping to train its forces (Cooper and Lacey 2009, A1). In light of this, the United States tried to play a central role in preventing confrontation. On June 2, 2009, Secretary of State Hillary Clinton traveled to Honduras to meet with President Zelaya to discuss his plan for a referendum and to express concern over the constitutionality of such attempts (Cooper and Lacey 2009, A1). Although Zelaya was insistent and would not back down, American officials did not expect the situation to escalate the way that it did.

The final straw came when Zelaya unilaterally scheduled a *nonbinding* referendum for June 28th, despite a Supreme Court injunction against it and widespread objections from both the Congress and the military. When the military refused to distribute the referendum ballots or provide security for the vote, Zelaya responded by firing the leader of the armed forces. In fact, he was so determined to hold the referendum that he procured the illegal ballots, rumored to have been printed in Venezuela, by seizing them from an Air Force base with the intention of distributing them anyway (*The Crisis in Honduras* 2009, 6). The text of the referendum, and Zelaya's decree, was published in the official 'gazette,' *La Gaceta*, or public record. It read: "Do you agree, in the general election of November 2009, to install a fourth ballot box through which the people decide the convocation of a Constituent Assembly?"<sup>33</sup> (*'Mel' publica decreto de encuesta en la Gaceta* 2009). This language differs from the referenda employed in Ecuador and Venezuela in the fact that it is nonbinding. If it passed, it would only mean that another referendum would be held in conjunction with the 2009 elections to form a constituent assembly. Zelaya himself insisted that it was only meant "to gauge the receptiveness toward a constituent assembly" (*Honduran Congress Names Provisional President* 2009). This may have been Zelaya's way of testing the waters to try to find out how much public support this unconstitutional tactic would garner. He may even have thought that it would serve to boost his support, as it did in the case of Chávez and Correa before him.

The night before the referendum was scheduled to be held, Zelaya was detained at his home by members of the Honduran military and immediately flown to exile in neighboring Costa Rica. Those in Honduras who deny that Zelaya's removal was a coup include the Supreme

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<sup>33</sup> Original text: ¿Está de acuerdo que en las elecciones generales de noviembre del 2008 se instale una Cuarta Urna en la cual el pueblo decida la convocatoria a una Asamblea Nacional Constituyente?

Court. Justice Rosalinda Cruz, explained that “the court issued a sealed arrest order for Zelaya [passed unanimously by 15 justices]... charging him with treason and abuse of power, among other offenses” (Goodman and Schmidt 2009). After Zelaya was removed from the country, Congress voted him out of office and installed Roberto Micheletti, the former Congressional leader and a member of the *Partido Liberal*, for the remainder of Zelaya’s term. Micheletti insisted that his presidency was not the result of a coup but rather a legal transition (Weisser and Cuevas 2009, 3) because of the unconstitutionality of Zelaya’s proposed referendum. A former Honduran Supreme Court Justice, Guillermo Pérez-Cadalso, echoed this statement, “the military is not in charge of Honduras. The constitutional order of Honduras remains intact. Our Government continues to be led by a civilian executive branch, a duly elected Congress, and our judicial branch, guided by our 1982 Constitution and the rule of law. Indeed, it was the proper application of our Constitution, the rule of law and Presidential succession that initiated the recent events in Honduras” (*The Crisis in Honduras* 2009, 24).

Micheletti was determined that the November 2009 presidential elections should proceed as originally scheduled, despite Zelaya’s protests that his removal was illegitimate. Much of the international community, including the United States, joined Zelaya in condemning the coup. However, the United States was mostly concerned with brokering a deal to return Zelaya for the remainder of his term, and less concerned with trying to stop the November elections. While abroad and, later, from within the Brazilian Embassy in the capital, Tegucigalpa, Zelaya insisted that the November elections could not be considered legitimate. He appealed to his supporters to abstain from voting (Malkin 2009, A16).

Though its classification as a coup is broadly debated within Honduras, the removal of Zelaya was the first military coup in Central America since the end of the cold war. Unlike pre-cold war coups in Latin America, it did not lead to rule by a military junta but rather immediately replaced the ousted president with another civilian politician. A similar coup occurred in Ecuador in 2000 with the ousting of Jamil Mahuad. The Ecuadorian military junta lasted only a matter of hours before, under intense international pressure, the vice-president was sworn in as president. The legitimacy of the action taken by the Honduran military was widely debated over the following year. Elections were held on schedule in November 2009, and Porfirio Lobo Sosa, who had run against Zelaya in 2006, won the presidency.

### *Mobilizational Leverage*

Zelaya won the 2006 elections with just shy of an electoral mandate, as can be seen in table 3. However, once in office, Zelaya attempted to bolster his support, like Chávez and Correa, by

establishing a ‘permanent campaign.’ “Emulating what Chávez had done in Venezuela, Zelaya issued an executive decree mandating that the private stations carry 2.5 hours a day of talk shows hosted by pro-Zelaya journalists who interviewed pro-Zelaya guests” (Buckman 2010, 20). Likewise, Zelaya adjusted his discourse, taking on a growing anti-institutional tone over the course of his time in office. It’s clear that he thought this message would resonate well with supporters and perhaps help him to gain more support. However, approval ratings indicate that this new message really did not help him appeal to a wider base of support.

Table 3: Honduran Presidents, 1982-2010

| Year | President          | Party | Winning |            | Term Approval |      |      |
|------|--------------------|-------|---------|------------|---------------|------|------|
|      |                    |       | Votes   | Abstention | Low           | Avg  | High |
| 1982 | Roberto Suazo      | PL    | 53.9    | u          | u             | u    | u    |
| 1986 | José Azcona        | PL    | 51.0    | 16.0       | 38.2          | 42.0 | 45.2 |
| 1990 | Rafael Callejas    | PN    | 52.3    | u          | 38.6          | 44.2 | 52.1 |
| 1994 | Carlos Reina       | PL    | 53.0    | u          | 25.3          | 30.2 | 40.2 |
| 1998 | Carlos Flores      | PL    | 53.7    | 0.3        | 48.1          | 56.2 | 63.1 |
| 2002 | Ricardo Maduro     | PN    | 52.2    | 33.7       | 36.6          | 44.6 | 67.4 |
| 2006 | Manuel Zelaya      | PL    | 49.9    | u          | 36.2          | 49.0 | 61.8 |
| 2009 | Roberto Micheletti | PL    | n/a     | n/a        | u             | u    | u    |
| 2010 | Porfirio Lobo Sosa | PN    | u       | u          | u             | u    | u    |

Note: All values are percentages; u - data unavailable; n/a - not elected. Sources: *Tribunal Supremo Electoral - Honduras* (2009); Carlin, Hartlyn and Martinez-Gallardo (2009).

Zelaya was not nearly as successful as Chávez or Correa in bolstering support and maintain higher levels of approval over time. Not even halfway through his term, it was becoming apparent that Zelaya was swiftly losing political support. His approval ratings, which had reached above 60% at one point, slipped back under 50% (Carlin, Hartlyn and Martinez-Gallardo 2009). Figure 11 demonstrates the downward trend in Zelaya’s approval. Again, the black box signifies the point in time when Zelaya attempted to hold the referendum. Just prior to the attempt, when Zelaya began publicly calling for a referendum, his approval rating reached an all-time low.

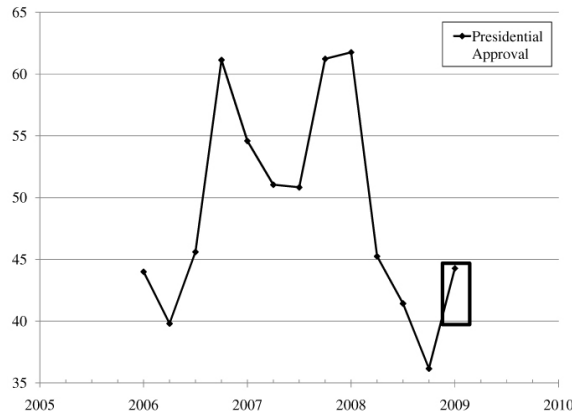


Fig. 11: Presidential Approval in Honduras: Manuel Zelaya

Source: Carlin, Hartlyn and Martinez-Gallardo (2009)

Furthermore, the opposition appeared to have a much stronger institutional and popular base of support than Zelaya. At a hearing in the U.S. House of Representatives, Pérez-Cadalso stressed that, in the United States, “there has been a great misunderstanding about the extent of support for Mr. Zelaya. There is a broad consensus in Honduras that Mr. Zelaya violated the law and our Constitution. The Honduran Supreme Court voted 15 – 0 that he broke the law. The national Congress voted 124 out of 128 that he broke the law, including every Member of Congress from his own party” (*The Crisis in Honduras* 2009, 24). Thus, there were signs, both before *and* after the controversial referendum, that Zelaya’s support had been slipping.

Thus, Zelaya’s mobilizational leverage was low at the time that he decided to push for a referendum. He had waited until nearly the end of his term to pursue this strategy. Thus, being temporally distant from his election, the electoral mandate might have mattered less. Moreover, he acted outside of the ‘honeymoon’ period of presidential approval, and did not retain sufficient support, even within his own party.

### *Institutional Leverage*

Zelaya had low institutional leverage at the time of his attempt. First, the Honduran military had historically evaded civilian control and upon peacefully handing power over to a civilian government, it retained a great deal of influence in the political arena. This continued well into the democratic period. According to Ruhl, the Honduran armed forces “actually reached the zenith of their power *after* civilian rule was formally reestablished in the 1980s” (1996, 34). Of course, in the mid-1990s, the growth of civil society and international pressure from the U.S. helped civilian politicians to limit the role of the military more than ever before. Despite these improvements, there were many indications that the military was still concerned with the



direction of Honduran politics. Zelaya had by no means neutralized the ability of the armed forces to pose a threat. In fact, Ruhl cautioned that “civilian politics is still evolving in Honduras, [and] the United States must remain actively engaged as a promoter of democracy and opponent of military intervention. Even though democratic forces in Honduras continue to grow stronger, they still require the support of a strong ally... in containing and limiting the authoritarian tendencies of a segment of the civilian political class and will for many years to come” (Ruhl 1996, 58).

Another component of institutional leverage was also lacking in Honduras: the compliance of the judiciary. Overall, the Honduran Supreme Court is highly dependent on the executive, despite efforts to insulate it from outside influences. Shortly after the democratic transition, the court was the subject of a great deal of criticism over corruption among justices. From 1960 until 1995, the average tenure of a Supreme Court justice in Honduras was only 4 years (Stein et al. 2005, 86), displaying a great deal of instability. However, in 1992 constitutional “provisions [were] changed in order to guarantee a career... [and reverse the] long-lasting tradition of political intervention” (Correa Sutil 1999, 275). Still, although term limits were increased, efforts to shield the court from partisan influences have largely failed. The World Economic Forum rated judicial independence in Honduras a 1.9 out of 7, the same score as Ecuador and lower than the region’s average score (Stein et al. 2005).<sup>34</sup>

In light of this, Zelaya’s timing was poor. Again, he waited until he neared the end of his term to try to hold a referendum. By this point, he lacked mobilizational leverage because his approval ratings had dropped, and so he could not place pressure on the court in any concrete fashion. Thus, the Honduran Supreme Court would be expected to ‘strategically defect’ and rule against him, in favor of the opposition who they fully expected to take office in November of 2009. In fact, the court was so adamant about denying Zelaya the right to hold a referendum that the military’s arrest orders came directly from the Supreme Court.

### *Summary*

In the case of Honduras, pre-conditions were present which increased the likelihood that Zelaya would make an attempt to close congress, including incentives and a favorable international and domestic climate. However, the analysis here suggests that Zelaya did not have a high probability of success. After seeing the successful examples of Venezuela, Ecuador, and Bolivia, it is possible that Zelaya had an inflated sense of his own mobilizational and institutional capacity. However, he likely knew that he was undertaking a huge risk by pursuing this strategy. By

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<sup>34</sup> The measure by Feld and Voigt (2003) was unavailable for Honduras.

the end of his term, he had very few hopes of advancing his increasingly radical agenda; this seems in many ways a last-ditch effort to potentially gain reelection and another term during which to consolidate power. Ultimately, Zelaya's failure was a result of his inability to sustain public approval over time, despite his attempts at an anti-institutional agenda and attempts at a 'permanent campaign.' Likewise, he had not adequately neutralized threats from the military and the judiciary. Lastly, he waited much too long to make an attempt at this process. Zelaya is considered a failed case because he was not able to carry out his attempt at a referendum before he was removed from office and exiled. The continuation of Micheletti's interim presidency through the election of Lobo Sosa sealed Zelaya's fate.

## **Nicaragua - Daniel Ortega**

### *Background*

Nicaragua's transition to democracy, like Honduras's transition, occurred relatively recently. The Somoza family ruled Nicaragua for forty two years until 1979, when the *Frente Sandinista de Liberación Nacional* (FSLN) overthrew the dictator Anastasio Somoza Debayle. A Junta of National Reconstruction governed until 1985. Although it was comprised of five members from diverse partisan backgrounds - Daniel Ortega (FSLN), two left-wing representatives, and two right-wing representative, including Violeta Chamorro - the quasi-socialist FSLN effectively held control. At first, the revolution offered hope of democracy. Elections were held in 1984 and Ortega became president. In 1987, a new, democratic constitution was implemented. However, in the midst of the bitter, U.S. supported Contra War, "Daniel Ortega... and his brother Humberto, who headed the Sandinista military, concentrated more and more power in their own hands" (Feinberg and Kurtz-Phelan 2006, 78). In his first term, Ortega often ruled by decree under a state of emergency, within the context of the Contra War. In 1990, Ortega lost power to Violeta Chamorro, who headed a coalition called the *Unión Nacional Opositora* (UNO), in a surprising election. Despite Ortega's increasingly authoritarian tendencies, he had thought that he would be able to win relatively fair elections.

The War of Liberation (1978 - 1979) and the Contra War (1981-1990) had incredibly divisive effects on Nicaraguan society. Between these two wars, Nicaragua lost 3% of its population (Walker 2003, 59). As a result, society retained a great deal of bitterness toward the United States for supporting the Contras and for its continued interference in domestic politics. The 1990s were marked by intense political conflict and polarization among socioeconomic classes that, at times, became violent. The economy was devastated and what had always been a impoverished and unequal society became worse. The only positive legacies of this period were

the degree of political competition and grass roots mobilization, “representing the poor majority of Nicaraguans” (Walker 2003, 61).

The Nicaraguan political system has displayed minimally institutionalized parties and a high degree of electoral volatility since the 1980s. There are currently four parties sharing power in Congress, but only three of them have a significant portion of seats: the *Alianza Liberal Nicaragüense* (ALN), the *Partido Liberal Constitucionalista* (PLC) and the *Frente Sandinista para la Liberación Nacional* (FSLN). In recent decades, bargaining, negotiation, and pacts have played a large role in Nicaraguan politics, as the PLC and the FSLN have each “controlled a large enough bloc of votes in the legislature and exercised sufficient influence in society that it would be difficult to govern without making deals” (Walker 2003, 166).

Rather than fading from Nicaraguan politics in 1990, Ortega continued to run for president - albeit unsuccessfully - in 1996 and again in 2001. He remained the face of the FSLN, despite internal divides within the party and the breaking away of dissidents to form the *Movimiento de Renovación Sandinista* (MRS). In 1999, Ortega negotiated a pact with the president at the time, Arnoldo Alemán (PLC). Despite the vast ideological differences between the two politicians, the pact was mutually beneficial, allowing for split control of the nation’s basic institutions (Bresnahan 2006). Even when Alemán was convicted of corruption charges and sent to jail in 2003, the pact between the PLC and the FSLN continued.

#### *No Attempt to Close Congress*

Nicaragua is another negative case; however, in Nicaragua, Ortega has not made an attempt to close Congress. I consider the case here in order to investigate some of the pre-conditions for attempting this process. It is also an interesting case because he recently amended the constitution to increase term limits. This could be Ortega’s way of testing the water for future, more drastic reforms. Furthermore, Nicaragua has seen growing executive-legislative tension over the course of Ortega’s term.

Eventually, in 2006, Ortega won the presidential election with just a plurality of the vote - 38.7% (*PARLINE Database* 2009). This victory was not necessarily due to Ortega’s popularity, but rather to factionalism and splits on the right. It was also owed in part to Ortega’s pact with Alemán, which revised legislation to lower the threshold in presidential elections to 35% from 45%. If not for this pact, Ortega would have faced a runoff in 2006. Given the experience with Ortega’s first term in office (1985-1990), many people were concerned about whether he might develop authoritarian tendencies during his second term. As a result, “his victory worried democrats on the left as much as those on the right, even as it thrilled many of Nicaragua’s

poorest citizens” (Anderson and Dodd 2009, 153).

For the first few years in office, Ortega relied upon his pact with the PLC in order to govern. “Politically, the former revolutionary has walked a tightrope between democracy and autocracy, tolerating a democratic system and its institutions while seeking to acquire as much power as possible. Although his desire for control is comparable to that of other Latin American ‘delegative’ presidents who have evaded democracy... Ortega has faced greater institutional opposition... and thus far has been unable to amass... much power” (Anderson and Dodd 2009, 157). However, over time, Ortega’s actions became increasingly overt as he began to directly challenge some of the country’s basic institutions.

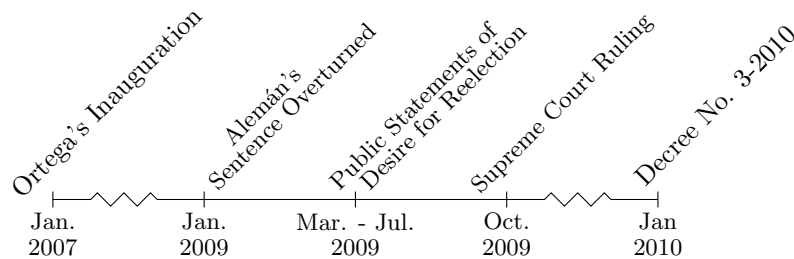


Fig. 12: Timeline - Nicaragua

In 2009, Ortega began openly talking about his desire to stand for reelection in 2011. In an interview in March 2009, he was asked whether or not he had intentions of attempting to lengthen term limits as his political ally, Chávez, had succeeded in doing in Venezuela. Ortega responded:

In the constitution of 1987 there was no limitation in terms of successive candidacies. It was in 1995 that the constitution was actually amended under a right-wing government to prevent that. It was partially to prevent the people from being able to exercise their right to elect authorities as they felt was fit, that electoral change. Since 1996, we have felt there was a need in Nicaragua to change this again in order to implement what we call direct democracy, which means that the citizens of our countries are permitted to exercise direct democracy. And we have felt strongly that we need to change our presidential system to a parliamentary system that would then not have these constraints for successive elections (Frost 2009).

Though his language was vague, Ortega was clearly trying to equate his ability to be reelected with the people’s ability to express themselves democratically. In fact, at the celebration of the thirtieth anniversary of the Sandinista Revolution in July of 2009, Ortega openly declared his intentions to hold a referendum to change the constitution to allow for his reelection, just as Zelaya had attempted a month earlier. “At the time, it was thought constitutional change would have to be approved by the National Assembly... or be backed in a public referendum” (*Nicaragua court backs re-election* 2009). However, after several months, Ortega decided to approach the Supreme Court directly, backed by a petition signed by 100 mayors. On October 20, 2009, all six

justices in the Constitutional Chamber of the Supreme Court, supporters of Ortega's Sandinista party, ruled that the ban on reelection was "unenforceable" (*Nicaragua court backs re-election* 2009). Ortega never commented on why he opted for this route, but the opposition speculated that it was because he did not control a majority in Congress and would not have the popular support necessary to win a referendum. The consensus from the opposition has been that the Supreme Court's ruling openly contradicts the 1995 Constitution.

Over the course of Ortega's term, there has been mounting executive-legislative tension. The seriousness of the conflict is most starkly exhibited by the recent problem of the Congress's inability to elect new Supreme Court justices, members of the *Consejo Supremo Electoral* (CSE), and other officials, all of whose terms have expired. No party has the number of votes necessary in Congress to elect new officials unilaterally and "negotiations between the PLC and the FSLN are currently stalled over the FSLN's desire to reelect the Chief Justice of the CSE" (Córdoba 2010).<sup>35</sup> Ortega responded by issuing Decree No. 3-2010, effectively overriding Congress. It states that, because the Congress has not been able to name officials to these posts in a timely manner, all officials that previously held these posts will be renewed, effective immediately, so as to avoid a power vacuum (Ortega 2010, 5).

The constitutionality of the decree is being widely debated. Overall, it has been interpreted by the opposition as a stern warning. First of all, Ortega is saying, "Let us agree, because I am prepared to govern in this way, despite violating the constitution" (Córdoba 2010).<sup>36</sup> Secondly, the decree sends a clear message to the Congress that: "If you create a power vacuum, ...I will assume it because I was elected by the people" (Córdoba 2010).<sup>37</sup> The PLC is currently seeking to repeal the decree but, again, does not have the necessary number of votes in Congress to do so.

Interestingly, as Ortega has become more confident in his ability to overrun Congress through decrees, he has also distanced himself from Alemán and the pact they made twelve years ago. According to Virgilio Godoy Reyes, an ex-Vice President and member of the *Partido Liberal Independiente* (PLI), the FSLN has decided that the Liberals have been exhausted as a useful political ally. He suggested that now Ortega will need to look for another party with which he can negotiate and enter into a pact (Villarreal Bello 2010).<sup>38</sup> However, if Ortega can win

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<sup>35</sup> Original Text: "las negociaciones entre el Partido Liberal Constitucionalista, PLC, y el Frente Sandinista están estancadas porque esta última agrupación insiste en reelegir al magistrado presidente del CSE"

<sup>36</sup> Original Text: "Pongámonos de acuerdo, porque estoy dispuesto a gobernar de esta manera, a pesar de violar la Constitución"

<sup>37</sup> Original Text: "El otro mensaje es, si crea vacío de poder, (Ortega dice) 'yo lo asumo porque he sido elegido por la gente'", agrega Aráuz.

<sup>38</sup> Original Text: "Ya el PLC está agotado para el Frente, ahora los sandinistas tienen que buscar otro alternador (con quien negociar). Lo consiguen o lo inventan", enfatizó Godoy Reyes."

another term and continue his attack on democratic institutions, he may not need to look for another partner.

### *Mobilizational Leverage*

Ortega came to power as a minority president, with a right-controlled Congress. However, his pact with Alemán helped him keep some control over Congress but the FSLN only controlled approximately 42% of the seats. “The cleavages on the right have not kept the legislature from shaping policy or from obstructing Ortega when he seeks to overturn democratic procedures” (Anderson and Dodd 2009, 157). Furthermore, Ortega has met with some of the fiercest criticism from fellow members of the FSLN and the left. An especially vocal group has been the “Sandinista mayors, including Pedro Caldern in Estel and Eduardo Holman Chamorro in San Juan del Sur. The best example, of course, is Herty Lewites<sup>39</sup> whose popularity showed the extent to which municipal politics could produce independent political leaders who might rise to national prominence and challenge Ortega” (Anderson and Dodd 2009, 161).

Table 4: Nicaraguan Presidents, 1985-2010

| Year | President        | Party | Winning |            | Term Approval |      |      |
|------|------------------|-------|---------|------------|---------------|------|------|
|      |                  |       | Votes   | Abstention | Low           | Avg  | High |
| 1984 | Daniel Ortega    | FSLN  | 67.0    | 24.6       | u             | u    | u    |
| 1989 | Violeta Chamorro | UNO   | 54.7    | 13.7       | 13.4          | 23.6 | 40.5 |
| 1996 | Arnoldo Alemán   | PLC   | 51.0    | 22.9       | 25.1          | 30.3 | 37.5 |
| 2001 | Enrique Bolaños  | PLC   | 56.0    | u          | 22.1          | 32.8 | 53.7 |
| 2006 | Daniel Ortega    | FSLN  | 38.0    | 33.2       | 19.5          | 25.7 | 46.7 |

Note: All values are percentages; u - data unavailable. Sources: *Election Guide* (2009); *Cómo votó Nicaragua? Los resultados electorales* (1990); *Cómo votó Nicaragua?* (1996); *PLC: ganador rotundo en las urnas y en el pacto* (2001); Carlin, Hartlyn and Martinez-Gallardo (2009).

Ortega’s anti-institutional agenda only developed to its full extent after taking office and, unlike the other cases discussed here, he was never as unwaivering in his message. First of all, Ortega was not a political ‘outsider.’ On the contrary, he was a member of a traditional party and a former president with a controversial past. Moreover, he was and remains openly willing to make pacts with other members of ‘the establishment.’ This deeply affects the validity of his claims to be fighting against corruption. Overall, his first year in office proved that he is “an enigmatic politician - part national political leader, part populist demagogue and party strongman, part autocratic *caudillo*” (Anderson and Dodd 2009, 156-157). This message did not resonate well with the Nicaraguan population overall.

Also unlike Chávez, Correa, and Zelaya, Ortega did not adopt the strategy of a ‘permanent

<sup>39</sup> Lewites was a major challenger to Ortega for the presidency but he died of a heart attack before he could run for office (Feinberg and Kurtz-Phelan 2006, 76)

campaign.’ “Despite the narrow victory of the FSLN, Daniel Ortega’s performance during 2007 was not exactly discreet nor zealous in the search for consensus<sup>40</sup> (Martí I Puig 2008, 289). His increasingly anti-institutional stance even alienated members of his own party. As figure 13 shows, his approval ranks dropped dramatically during his second quarter in office, reaching their lowest point (19.49%) in the second quarter of 2008.

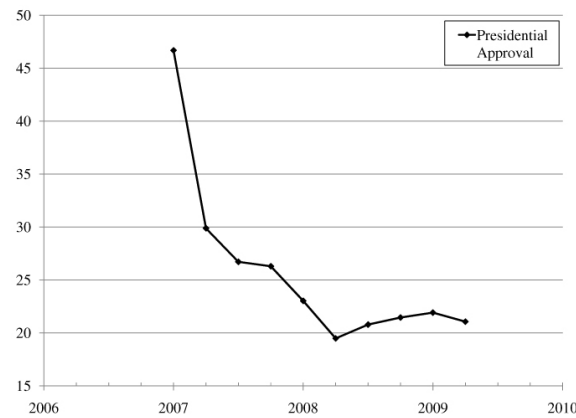


Fig. 13: Presidential Approval in Nicaragua: Daniel Ortega

Source: Carlin, Hartlyn and Martinez-Gallardo (2009)

Alienation of the popular sectors of society has been an ongoing problem for Ortega. “On the one hand, Ortega announced a ‘social turnaround’ in the area of social policy but, on the other hand, he showed - despite anti-imperialist rhetoric made in international forums - a total continuity on macroeconomic and trade policies<sup>41</sup> (Martí I Puig 2008, 292). Whereas, shortly after the revolution, Ortega’s unwavering militancy bought him the image of the ‘savior-of-the-people’ in Nicaragua’s urban slums, people have now grown tired of largely empty promises (Feinberg and Kurtz-Phelan 2006, 79). This tendency is reflected in Ortega’s very low levels of mobilizational leverage.

### *Institutional Leverage*

Overall, institutional leverage is also low in the case of Ortega in Nicaragua. Though Ortega does not openly acknowledge it, he no longer has the same relationship with the military as he possessed in years past. After the 1979 revolution, the National Guard was replaced with the *Ejército Popular Sandinista* (EPS) or Sandinista’s People’s Army.<sup>42</sup> The EPS grew to be one

<sup>40</sup> Original text: “[y] a pesar de la ajustada victoria del FSLN, el desempeño de Daniel Ortega durante el 2007 no fue precisamente discreto ni celoso en la búsqueda de consensos.”

<sup>41</sup> Original text: “Por un lado anunció un “giro social” en el ámbito de las políticas sociales pero, por el otro, mostró -a pesar de la retórica antiimperialista formulada en los foros internacionales- una total continuidad respecto a las políticas macroeconómicas y comerciales.”

<sup>42</sup> The Nicaraguan National Guard helped to perpetuate the Somoza family’s dynasty until 1979. It was not professionalized, but rather the individual tool of civilian politicians and political parties (Ruhl 2003, 118).

of the largest military forces in Central America with approximately 86,000 members and it was decidedly tied to the FSLN. Well into the 1990s, much of the FSLN leadership retained their posts within the military. Most notably, Daniel Ortega's brother, Humberto, remained the head of the military. Hence, Ortega has often claimed that he believes that he has the military's full support because of its ties to the FSLN and its historic role in the Sandinista Revolution.

Yet, the current military differs greatly from the EPS. With the intervention of Chamorro and the 1995 Constitution, the force was downsized, professionalized, and renamed the *Ejército de Nicaragua* or National Army of Nicaragua. With the aid of foreign political pressures, Chamorro was able to "persuade a pragmatic military leadership to sever its ties to the Sandinista party, downsize the army by 85 percent, and accept a series of statutory and constitutional reforms that narrowed the armed forces' de jure autonomy" (Ruhl 2003, 134). In 1995, Humberto Ortega was removed from his post as head of the military. Though Ortega does not openly acknowledge it, he no longer has the same relationship with the military as he possessed in years past. While Nicaragua does not have the same history of professionalized military intervention as some other Latin American countries, there is potential for future intervention. The current military force is only very recently professionalized, and it retains a higher degree of autonomy, having still not been fully subjected to civilian control (Ruhl 2003, 134). Thus, this evidence is suggestive of the fact that Ortega has not sufficiently neutralized potential threats from the military.

However, Ortega has a much firmer grasp on the judiciary. Despite a longer average judicial tenure than Ecuador and Honduras, Nicaragua's Supreme Court is one of the most dependent in Latin America. From 1960 until 1995, the average tenure of a Nicaraguan Supreme Court justice was 8 years (Stein et al. 2005, 86). However, Nicaragua scored a 1.6 out of 7 on the World Economic Forum's index of judicial independence. Likewise, Feld and Voigt (2003) assessed Nicaragua's *de facto* independence as a 0.32 out of 1. Thus, judicial independence is incredibly low. These measures seem to have validity given Ortega's ability to pressure the Supreme Court in the past. A good example is the reversal of the corruption sentence against Ortega's ally, Alemán or the ability to manipulate the court to push through an amendment on presidential term limits. Though Ortega currently holds a lot of influence over the Supreme Court, his institutional leverage is likely to dip as he approaches the end of his term in late 2010. Ortega will not be able to retain his influence over the court unless he can demonstrate that he is likely to win in the 2011 elections. If an opposition victory looks promising, the Supreme Court may decide to 'strategically defect' from ruling in Ortega's favor.



## *Summary*

In the Nicaraguan case, one can see that Ortega has evaluated the strategies available to him, choosing the one most likely to allow for the successful advancement of his agenda. Ortega clearly lacks mobilizational leverage but retains some institutional leverage over the Supreme Court.<sup>43</sup> Thus, he has avoided holding a referendum to enact sweeping changes and resorted to more promising strategies on an issue-by-issue basis, such as submitting a petition to the Supreme Court to remove the ban on reelection. As a result of this, his actions have been much less clearly democratic. Without a referendum, Ortega's actions do not have the same degree of legitimacy and, because he has avoided constitutional reform, many have pointed out that he is clearly overstepping the bounds of the 1995 Constitution. It is impossible to say with any certainty what the future holds for Nicaragua but Ortega now has the ability to seek reelection in 2011. If he can still rally the popular support necessary to win those elections, executive-legislative crisis might be imminent. He has already thoroughly demonstrated his willingness to pressure and override the power of other institutions and branches of government. However, if Ortega was to attempt to close Congress through a referendum and a Constituent Assembly, it is doubtful that he would have the necessary mobilizational leverage to do so.

## **SYNTHESIS & INTERPRETATION**

These four cases - Venezuela, Ecuador, Honduras, and Nicaragua - have helped to distinguish several pre-conditions which increase the likelihood of an attempt. They have also shed light on two important mechanisms which are individually necessary and jointly sufficient for a successful attempt. In this section, I draw together the findings from these four cases in order to answer the questions at the heart of this analysis.

First of all, these cases have shown that presidents are more likely to attempt to close Congress through the tools of direct democracy under certain conditions. First of all, they are likely to attempt this when they have the incentive to do so, or when they are blocked in Congress. In all three cases where an attempt was made, the presidents had incentives to close Congress. Even in the case of Nicaragua, where action has not been taken to date, there are indications that these mechanisms are potentially at work. Ortega has increasingly demonstrated his willingness to overstep the Congress, rather than allow them to prevent him from pursuing the FSLN's goals.

Furthermore, presidents are influenced by the chances for success of this process in relation to alternative options. They will also weigh their willingness to undertake a risky strategy.

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<sup>43</sup> It is unclear the extent to which he can neutralize any threats that may come from the military.

Both Chávez and Correa most likely understood that their levels of popular support were high and they may have had some indication that they would be able to influence non-legislative institutions. Ultimately, they decided to undertake this strategy with high-risks but also the potential for large rewards. Correa went so far as to ban candidates from Alianza PAIS from running in the legislative elections. However, as the contrasting case of Honduras has shown, presidents may sometimes inaccurately assess their mobilizational and institutional leverage, or even just be desperate enough to undertake a large risk toward the end of their term. Ortega, on the other hand, appears to be aware of the fact that he cannot raise the support necessary to achieve his goals via referendum. Thus far, he has proven unwilling to undertake such high risk strategies. This may ultimately explain his decision to switch strategies - from referendum to unilaterally approaching the Supreme Court - to lift the ban on reelection.

Diffusion effects are also clearly at work in all four of these cases. These leaders are political allies. Their respective countries belong to the *emph*Alternativa Bolivariana para las Américas (ALBA), an attempt at regional economic integration proposed by Chávez as an alternative to counter the U.S.-driven Free Trade Area of the Americas (FTAA). It is based on a vision of social welfare and mutual economic aid, rather than trade liberalization. There is also increasing evidence that Chávez may have played a financial role in Zelaya and Ortega's campaigns and many deals have transpired between all four presidents. There is no doubt that each president's attempt at closing Congress has served as a learning experience for subsequent attempts. At the same time, it has served as a learning experience for the opposition. The swiftness and harshness of the Honduran Supreme Court and military's actions indicate that the opposition is beginning to recognize this process. The result was a preemptive strike to prevent Zelaya's referendum from being held, even though this meant acting before the president had actually contravened the constitution in any concrete way.

In table 5 below, I summarize the findings of these case studies with respect to the two types of leverage: mobilizational and institutional. These mechanisms are determinants of the ultimate success or failure the president's attempt.

Table 5: Summary of Four Latin American Cases

|                         | Positive Cases              |                           | Negative Cases             |                             |
|-------------------------|-----------------------------|---------------------------|----------------------------|-----------------------------|
|                         | Venezuela<br>Chávez<br>1999 | Ecuador<br>Correa<br>2007 | Honduras<br>Zelaya<br>2009 | Nicaragua<br>Ortega<br>2009 |
| Mobilizational Leverage | High                        | High                      | Low                        | Low                         |
| Institutional Leverage  | High                        | High                      | Low                        | Medium                      |
| Attempt                 | Yes                         | Yes                       | Yes                        | No                          |
| Success                 | Yes                         | Yes                       | No                         | --                          |

In Venezuela and Ecuador, where mobilizational and institutional leverage were high, Congress was successfully closed. In both cases, mobilizational and institutional leverage helped the president in convoking a Constituent Assembly and filling it with a partisan majority through elections. Chávez effectively pioneered this strategy in Venezuela in 1999, albeit with a few previous examples of similar though not exact processes in Colombia and Guatemala. Correa followed suit in Ecuador nearly 10 years later. It is more than likely that Correa learned from Chávez, thus completing an even more seamless transition between Congress and Constituent Assembly. Correa barely even experienced a dip in his approval rating. During the three quarters after his closure of Congress, Correa's approval slipped approximately 17 points. However, the quarter following the ratification of the new Constitution, Correa's approval jumped 17 points, right back to where it had started (Carlin, Hartlyn and Martinez-Gallardo 2009). Correa finished out his term maintaining the highest levels of popularity in Ecuador's democratic history.

In the Honduran case, Zelaya had very low levels of mobilizational and institutional capacity by the time he made an attempt. At the United States' House of Representatives hearing, Zelaya was described as "a man who refused to listen to the Honduran Supreme Court, a man who refused to listen to the Honduran Attorney General, a man who refused to listen to the Honduran Congress. ...who tried to undermine the legislature, the judiciary, the Attorney General, the Human Rights Commission, business associations, and four of the five political parties represented in the National Congress, including his own party" (*The Crisis in Honduras* 2009, 6). Zelaya faced a myriad of institutional constraints to success. Likewise, although he had a loyal group of supporters, Zelaya was not capable of producing the massive mobilizations that were necessary in order to place pressure on these institutions. For these two reasons, Zelaya failed in his quasi-attempt.

The Nicaraguan case demonstrates that, through accurate perceptions of mobilizational and institutional capacity, a president can avoid a fate similar to that of Zelaya in Honduras. However, at the same time, Ortega shows signs of radicalizing his anti-institutional agenda. He has increased term limits by manipulating the Supreme Court. If Ortega was to make an attempt, his lack of mobilizational and institutional capacity would certainly undermine his success, just as in the case of Zelaya. However, there are indications that Ortega is aware of this fact, although he does not publicly admit to it. His decision to avoid holding a referendum to change restrictions of reelection demonstrates his concern over the level of popular support he now holds.

Thus, mobilizational and institutional leverage are individually necessary and jointly sufficient for success in an attempt to close congress through the tools of direct democracy and constitutional reform. Figure 14 shows the relative approval ratings for each of the four cases. This graph is particularly illustrative of both the effect of high levels of approval on success and

the danger in waiting too long to begin an attempt. The highest levels of approval in all four cases can be found toward the beginning of the president's term.

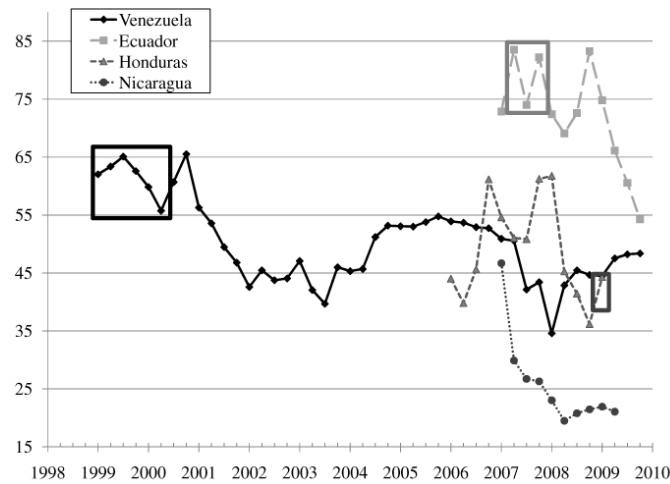


Fig. 14: Presidential Approval in All Four Cases

Source: Carlin, Hartlyn and Martinez-Gallardo (2009)

On the other hand, institutional leverage is a bit more complex. The level of institutional leverage depends on the president's ability to neutralize threats from the military and the Supreme Court. With respect to the Supreme Court, judicial independence is important. More generally, one can assume that a low rule of law enhances the president's ability to influence the court's decision.<sup>44</sup>

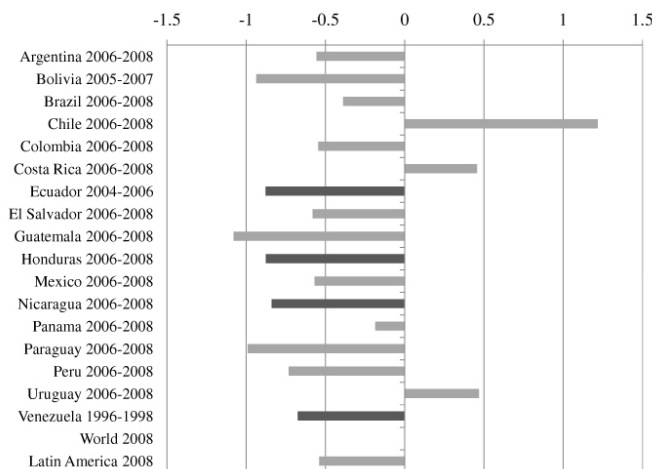


Fig. 15: Average Rule of Law

Source: *World Governance Indicators* (2009)

As can be seen in figure 15, all four cases included in this study display low levels of

<sup>44</sup> Judicial independence is one component compromising the World Governance Indicators' Rule of Law measure.

rule of law within Latin America. Furthermore, Latin America as a whole displays low levels of rule of law in comparison with the rest of the world. Thus, judicial independence can be taken as low in all four of the cases I am examining here. This also indicates that judicial independence alone cannot explain the variation in institutional leverage across these cases.

The key in understanding the varying degrees of institutional leverage across these four cases is the timing of the attempt to hold a referendum. Difference in timing can be seen in figure 16. More specifically, figure 16 shows the percentage of the president's term completed at the time of the referendum to form a Constituent Assembly. In the case of Ortega, in Nicaragua, it shows the percentage of the term completed at the time of Ortega's direct appeal to the Supreme Court to extend term limits. Chávez in Venezuela and Correa in Ecuador, made attempts to hold a referendum early on, allowing them to exert significant influence over non-independent courts. On the other hand, Zelaya in Honduras was not able to influence the court, despite its lack of independence, because the end of his term was nearing. According to the current constitution, he could not be reelected. Therefore, the court had little strategic incentive to rule in favor of Zelaya. I include Nicaragua here, although there was no referendum, in order to give a comparison of Ortega's institutional leverage at that point in time. This is useful in imagining what Ortega's institutional leverage might have been like *if* he had decided to attempt to hold a referendum instead of directly appealing to the Supreme Court. It appears that, because Ortega is only a little over halfway through his term, he retains a great deal of influence over the Supreme Court. Now that reelection is possible in Nicaragua, Ortega's influence over the court in the future will depend on the likelihood of his reelection. If the Court perceives that he will not be reelected, they may strategically defect from ruling in his favor.

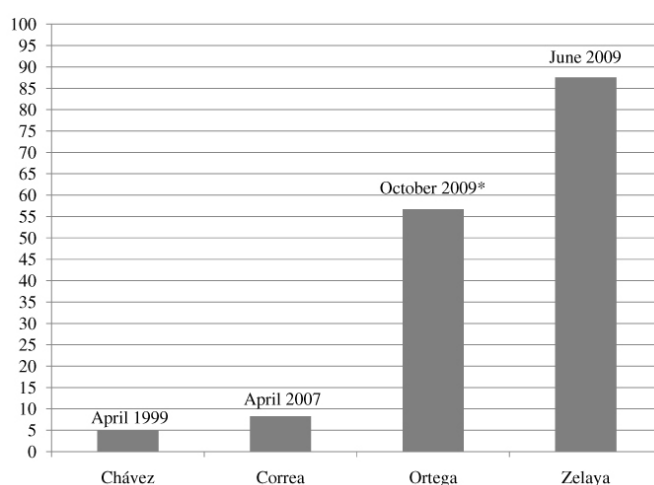


Fig. 16: Percentage of Term Completed at Time of Referendum

Note: \* Ortega approached the Supreme Court about extending term limits

Thus, when courts lack independence, institutional leverage depends upon the timing of the president's attempt to influence the Supreme Court. If the president is near the beginning of his or her term or is expected to win reelection, then the president's ability to influence the courts will be higher. Thus, institutional leverage will be higher in these situations. The timing component of this argument is amplified when considering success in the attempt to close congress overall. This is because *both* institutional and mobilizational leverage are generally higher at the beginning of the president's term.

## CONCLUSION

My aim here was to identify antecedent conditions which increase the probability of an attempt to close congress through the tools of direct democracy and constitutional reform. I also sought to explain the success and failures of these attempts. The cases of Venezuela, Ecuador, Honduras, and Nicaragua help shed light on the dynamics of this relatively new phenomenon. Still, this investigation is only a first step toward understanding the process and leaves many other important research questions for later exploration.

Admittedly, cases where this process has been attempted are exceptional within the realm of Latin America and the world as a whole. However, this process is extraordinarily dramatic and can have a profound effect on the organization of politics and society, even where the attempt is not successful. Thus, it is important to develop a deeper understanding of the closure of congress through constitutional reform, despite the fact that it has only been witnessed in a relatively small number of cases.

This investigation was purposely limited in scope, targeted toward a deeper understanding of the process in Latin America. There remain a number of broader avenues to be explored in relation to this topic. How sustainable is the trend that we are witnessing in Latin America? What are the implications for the quality of democracy in cases where it has been attempted? Does the potential exist elsewhere in the world for this process to take place?

First, my investigation has suggested that perhaps this phenomenon will not persist in the region. Learning takes place not only on the part of the leaders who choose to use this strategy but also on the part of the opposition. This is most clearly seen in the case of Honduras where, at the first sign of a potential referendum to establish a Constituent Assembly, the opposition and the military reacted by removing Zelaya from office. In light of these recent developments, we might expect the use of this strategy to be temporally limited by the fact that the opposition is starting to recognize the process and its potential for the long-term consolidation of power in the presidency. However, only time will tell whether or not leaders may attempt a similar

process elsewhere.

Secondly, this strategy is not clearly democratic or undemocratic; on the contrary, it is ambiguous. Whereas an *autogolpe* clearly suppresses the will of the people and subverts democratic processes, these more recent closures of congress have been rooted in a popular referendum to establish a Constituent Assembly. As shown previously in figure 3, this process is different in that it does not cause an immediate breakdown of the regime. However, it allows the president to consolidate power in the executive branch and to remove horizontal checks on his or her power. Thus, in the short-run, this process leads to a deterioration in the quality of democracy. However, the long-term consequences for democracy ultimately depend upon the president's choice of how to use his or her newly consolidated power. It may eventually, but does not necessarily, lead to democratic breakdown. The long-term consequences are uncertain.

Considering the Venezuelan case - ten years removed - suggests a particularly dismal outlook for the future. Chávez's Venezuela exhibits the extreme potential for regime deterioration in the wake of this process. In many ways, the closure of the Venezuelan Congress was the first in a long series of steps through which Chávez consolidated power, approximating the delegative democracy O'Donnell (1994) described. Following the closure of congress, Chávez was able to advance his radical policy agenda and maintain high levels of support. However, he has also used his consolidated power to marginalize the opposition and prevent them from participating. Recently, Freedom House gave Venezuela a score of 4 in terms of political rights and civil liberties, indicating that the case is only "partly free" by their classification. Country experts also gave Venezuela a "downward trend arrow," due to the "politically motivated disqualification of opposition candidates and the abuse of state resources by incumbent politicians during state and local elections" (*Freedom in the World* 2009). Likewise, Chávez continues to consolidate control over the judiciary. The National Assembly, where Chávez holds a secure majority, is now able to appoint and remove Supreme Court justices. Corruption is rampant, as is violence, polarization, and a lack of press freedom.

On the other hand, it is difficult to assess more contemporary cases such as Ecuador and Honduras because not enough time has passed. Ecuador is considered "partly free" by Freedom House, yet it received the same score before Correa became president (*Freedom in the World* 2009).<sup>45</sup> In this case, the quality of democracy was relatively low to begin with and so it is even more difficult to assess the degree to which this process has caused a process of deterioration. In Honduras, although the attempt at this process failed, one might still expect to see long-term consequences for the quality of democracy. The removal of Zelaya has drawn a great deal of

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<sup>45</sup> Ecuador remained at a score of 3 for political rights and 3 for civil liberties both before and after Correa's successful attempt to close Congress.

international condemnation. Since the beginning of 2010, Honduras has seen a rise in murders of journalists, thought to be linked to the growing political intolerance and polarization since Zelaya was removed (Freedom House 2010). However, at this moment, it is difficult to assess whether this reflects the beginnings of a slow process of regime deterioration, as has occurred in Venezuela over the last ten years. Future research will need to delineate more clearly and systematically the consequences of this process for democracy.

Lastly, there exists the potential for a similar process to develop in other regions of the world, especially in regions with high levels of inequality and where the institutions of representative democracy have been discredited. While the use of coups and self-coups is relatively common in regions like Africa and Asia, this new process has not really been identified in other regions. However, as the democratic imperative becomes more of a reality around the world, we might expect leaders who would have once resorted to a self-coup to consider a strategy that will allow for the closure of congress but without immediate breakdown.

Africa is home to a case which has displayed striking similarities to the Latin American cases presented here. In 2008, Niger's President Mamadou Tandja publicly declared his intention to seek a third term, even though presidents are limited to two terms by the 1999 Constitution. Tandja proposed the rewriting of the Constitution, which would establish a 'Sixth Republic' in Niger. When the move was opposed by Parliament, Tandja dissolved it and assumed emergency powers in May of 2009. His discourse is markedly similar to those of Latin American leaders who have attempted similar processes. In an interview broadcast on Radio France Internationale in June of 2009, Tandja said:

We have a constitution that has a semi-presidential system - that is to say the Prime Minister has real power, the National Assembly also has power, as well as, of course the President of the Republic. In the 53 countries in Africa, only our country has this type of constitution. That may mean we are the best or the most inferior in the democratic world. This is the reason why we would like to make a new constitution. A constitution in which the people have a real power to express themselves. But in the present constitution, what we have does not allow the president to do anything since he cannot decide by himself. It is like he is tied and bound. Politics is about those who are in power and those who are in the opposition. What we see today is... The opposition says no and, when they are in power, they say yes - and the only way to get out of this impasse is to go to the referendum, and the one who obtains the majority of the vote emerges the winner (*Niger President Justifies Plans for New Constitution in Exclusive Interview* 2009).

Overall, Tandja expressed dissatisfaction with the current institutional structure of Niger, the need to concentrate more power in the presidency, and the right of the people to arbitrate and wield power. The topic was particularly polarizing in Niger, where demonstrations occurred on both sides of the issue. However, Tandja's draft constitution was approved by referendum on August 4, 2009, allowing him to maintain power (*A Brief History of Niger* 2010). The one main



difference with the Latin American cases has been that a referendum was not held to establish a Constituent Assembly but only to ratify the draft of the Constitution. In October of 2009, Tandja won reelection but just four months later, he was removed in a military coup and replaced by a military junta on February 18, 2010 (*A Brief History of Niger* 2010).

The case of Niger, coupled with other anecdotal evidence from Africa, are suggestive of socioeconomic and political dynamics similar to the Latin American cases.<sup>46</sup> These similarities could signal the potential for congressional closure through constitutional reform in other regions as well. As the democratic imperative sweeps other regions, we may see even more attempts to move from blatantly undemocratic strategies, such as coups, to more subtle methods of changing the institutional balance of power. With time, we will need to devote more attention to looking for similar patterns in other regions of the world. These investigations will be integral to the development of a deeper understanding of the future trajectory of both direct and representative democracy around the world.

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<sup>46</sup> Over the last two years President Ahmed Abdallah Mohamed Sambi of Comoros and President Paul Biya of Cameroon both engaged in constitutional reforms to extend term limits. Sambi did so through a constitutional referendum, while Biya relied upon the Congress to pass the reform.

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