

I

Introduction

Institutional crises pervade the developing world. Nowhere is this more apparent than contemporary Latin America, a region notorious for failed presidents, heavily politicized courts, and legislatures that have either been summarily closed or effectively superseded. Although democratic regimes have largely endured over the last three and half decades, many of the region's main institutional actors have not. Since the third wave of democratic transitions began, nearly twenty elected Latin American leaders have been forced out of office early.¹ The list ranges from presidents elected in the 1980s, such as Bolivia's Hernán Siles Zuazo, who found his mandate cut short in the midst of major economic crises, to the seemingly textbook impeachments carried out against Presidents Fernando Collor de Melo in Brazil and Carlos Andrés Pérez in Venezuela during the 1990s to the more recent and controversial ousters of other democratically elected leaders such as Manuel Zelaya in Honduras in 2009, Fernando Lugo in Paraguay in 2012, Otto Pérez Molina in Guatemala in 2015, and Dilma Rousseff in 2016. As this book goes to press, the Venezuelan opposition is seeking signatures to remove Hugo Chávez's successor, President Nicolás Maduro.

Meanwhile, during the same period scores of judges on high courts throughout Central and South America have been sacked or had their

¹ Argentina 1989, 2001; Bolivia 1985, 2003; Brazil 1992, 2016; Dominican Republic 1996; Ecuador 1997, 2002, 2005; Guatemala 1993, 2015; Honduras 2009; Paraguay 1999, 2012; Peru 2000; Venezuela 1993. In addition, in the following countries interim presidents have been removed: Argentina 2001, 2002 (2); Bolivia 2005; Brazil 1987.

benches stacked – often repeatedly. Carlos Menem’s packing of the Argentine Supreme Court during the early 1990s quickly comes to mind. As do the multiple attempts by his opponents to “reverse the damage,” which eventually succeeded under Néstor Kirchner a decade later. Likewise, the longstanding control exercised over Ecuador’s Supreme Court by the Partido Social Cristiano (PSC), led for years by León Febres Cordero, ultimately fed into Lucio Gutiérrez’s spectacularly ill-fated effort to remake the courts in 2005. In Bolivia, Evo Morales’ repeated recent attempts to purge the judiciary resulted in the wholly untenable situation in which only a single justice, Silvia Salame Farjat, sat on the Constitutional Tribunal between 2007 and 2009. Similarly egregious attacks on national high courts have been carried out in Peru, Venezuela, Paraguay, and Nicaragua.

Nor have legislatures remained entirely unscathed. Although Latin American congresses have been subjected to institutional instability far less frequently than the other two main branches of government, their survival has also been called into question, particularly in the Andean countries. The signal case here is the *autogolpe* (self-coup) carried out by Alberto Fujimori in Peru in 1992, in which the president used tanks to surround and shut down Congress. A year later, Guatemala’s president, Jorge Serrano Elías, tried and failed to do the same. More recently, leaders such as Hugo Chávez in Venezuela and Rafael Correa in Ecuador have instead relied on constituent assemblies controlled by the president’s supporters to do their dirty work.

That inter-branch crises, which I treat throughout the book as the attempt by one branch of government to remove or otherwise take control over another branch of government, are now primarily the purview of civilian politicians rather than generals offers only partial consolation. Throughout the region, such crises are widely blamed for short-circuiting elections, undermining faith in existing institutions, and threatening investor confidence and economic growth. According to many observers, the widespread failure of institutions in the region is one of the most important and difficult challenges facing citizens and policy makers alike today. Noting the relative absence of the military in contemporary Latin American politics, former US Assistant Secretary of State for the Western Hemisphere Arturo Valenzuela lamented,

The ratcheting down of polarization and the military’s withdrawal to the barracks have not, however, ushered in an era of uniformly successful presidential governments. Instability remains a persistent problem.

(Valenzuela, 2004: 5–6)

And yet it is just as tempting to conclude that such instability may not be that problematic after all. If corrupt presidents or crooked judges are being impeached for their misdeeds, then shouldn't we instead simply infer that checks and balances are working properly? To cite an easy example, it is hard to dispute that the quality of democracy in the Dominican Republic was vastly improved by forcing fraudulently elected President Joaquín Balaguer to leave office early. Likewise, imagine how experts would have reacted had Fernando Collor de Mello not been impeached following revelations about the corruption endemic in his administration. Or consider recent events in Guatemala. Caught in the middle of a corruption scandal uncovered by the International Commission against Impunity (CICIG), pundits have applauded the stunning resignation of Guatemalan president Otto Pérez Molina, touting his downfall as a sign of a “democratic spring” in Central America.² More broadly, considering that one of the longstanding concerns about presidentialism in Latin America is its rigidity, and, hence, its vulnerability to regime breakdown, presidential crises might well be taken as a positive sign that these systems are adopting “parliamentary traits” (Carey, 2005; Pérez-Liñán, 2005, 2007; Marsteintredet and Berntzen, 2008).

Notwithstanding these important observations, there are at least two reasons why we should remain skeptical. First, as Chapter 2 will discuss in greater detail, in the vast majority of these instances the resolutions to such inter-branch crises have hardly been politically neutral. One branch can always generate seemingly valid reasons for going after another, but when we look closely at the process of succession and replacement it is hard to escape the conclusion that such actions primarily serve as partisan tools. Latin American presidents are famous for decrying the politicization and corruption of the courts and legislatures only to reconstitute them with their own loyal supporters. Likewise, legislatures are often all too quick to bypass vice presidents and replace ousted leaders with members of the opposition. Second, in line with the more general theoretical arguments developed below, it remains the case that checks and balances are designed primarily to serve as a deterrent. Thus, even if presidents who committed misdeeds are appropriately removed from office, we should still be concerned that institutions are failing *ex ante*, at least in this basic sense.

² BBC Monitoring *Latin America*, September 7, 2015.

Of course, even a casual glance at contemporary Latin American history shows that such institutional instability does not plague all countries or institutions equally. Since the 1980s, presidents have been routinely forced from power in Ecuador and Bolivia, but never in Chile, nor in Mexico. Legislatures have been closed in Peru and Venezuela, but not in Argentina or Brazil. Judges have been impeached in Argentina, Venezuela, Peru, and Bolivia, but have been allowed to remain relatively independent in Uruguay, Costa Rica, and Brazil. This variation provides the overarching empirical puzzle that motivates this book. Why do only certain countries get caught in instability traps, while others manage conflict in more “normal” ways? If some political actors in the region routinely fail to avert conflicts that threaten each other’s very survival, why do others succeed? Do the same factors that spawn a crisis in one branch of government spill over into other branches? And, if so, why, when, and how?

In seeking to answer these questions, this book contributes to a long and distinguished line of scholarship in comparative politics that focuses on problems of institutional instability and weakness in the developing world (e.g., Diamond and Linz, 1989; O’Donnell, 1994; Domínguez and Shifter, 2003). Scholars of Latin American politics, in particular, have made considerable headway over the last two decades in showing how different institutional configurations affect both regime stability (Linz, 1990, 1994; Mainwaring and Shugart, 1997; Cheibub, 2007) and the prospects for democratic consolidation (e.g., see Hagopian and Mainwaring, 2005). Along the way, academics and pundits alike have bemoaned both the inability of the region’s presidents to complete their terms and the frequency with which presidents meddle with legislatures and courts. However, aside from a growing number of empirical studies on presidential removals in Latin America and elsewhere (Carey, 2003; Valenzuela, 2004; Lehoucq, 2005; Mainwaring and Pérez-Liñán, 2005; Hochstetler, 2006; Negretto, 2006; Pérez-Liñán, 2007; Kim and Bahry, 2008; Hochstetler and Edwards, 2009; Llanos and Marsteintredet, 2010), systematic explanations of how and why inter-branch crises originate across all three branches of government are in short supply.

I aim to fill this gap by developing the novel intuition that inter-branch crises are theoretically analogous to inter-state wars. Leaving aside the rather obvious fact that domestic actors do not necessarily fight over territory nor suffer battle deaths, I shall argue that inter-branch crises ultimately pose the same theoretical puzzle that inter-state wars do. That is, assuming that political actors are rational – or at least

boundedly so – and that inter-branch conflicts are potentially costly and risky, such crises beg the fundamental question of why institutional actors fail to resolve their disputes through negotiation and compromise. To paraphrase Fearon (1995), inter-branch crises compel us to understand why certain domestic political actors fail to strike deals with each other that both would prefer to a costly institutional fight.

The answers that I explore in the rest of this book are rooted in the familiar problems associated with asymmetric information and the inability to make credible commitments. These mechanisms have been extensively developed in the formal theoretical literature in international relations to explain the emergence of war (Fearon, 1995, 1998; Powell, 1999, 2002; Wagner, 2000; Smith and Stam, 2006; Wittman, 2009; Fey and Ramsay, 2011). Here, I apply informally the insights provided by existing game theoretical models to illuminate why some domestic actors fall prey to inter-branch crises and others manage to avoid it. In so doing, I not only supply the micro-foundations for several familiar arguments about the importance of minority governments, social protests, and presidential powers, I also provide new insights into why certain types of institutional configurations lead to failure and how different types of inter-branch crises – presidential, legislative, and judicial – are fundamentally linked to one another.

1.1 THE LITERATURE

Inter-branch crises in presidentialist systems that rise to the level of one branch threatening the constitution of another are a conundrum for classic and contemporary theories of democratic institutions. Described in *Federalist 51* (Hamilton, Madison, and Jay, 1961 [1788]), America's founding fathers conceived of a system in which granting overlapping powers to the other branches of government serves as the primary means of keeping each branch in its place. Dispelling the notion that the Constitution of the United States was based on a pure separation of powers (SOP), Bernard Manin emphasizes that the system of checks and balances advocated by Publius was designed to create a self-enforcing equilibrium in which

... each [branch] would be discouraged from encroaching upon the jurisdiction of another by the fear of retaliation and the prospective costs of such an encroachment.

(Manin, 1989: 57)

Interestingly, however, *Federalist 51* makes no mention of the main sanctioning tool used to permanently remove actors in another branch of

government: impeachment. Madison's several "auxiliary precautions" designed to prevent the concentration of power in any one branch of government range from dividing legislative powers between the House and Senate to providing the executive with a legislative veto to erecting a federal government, which serves to multiply the interests of citizens and thus diminishes the likelihood of oppressive majorities forming. Within the most famous treatise on checks and balances, however, there is not a single reference to the legislature's capacity to remove either the president or the judiciary. Discussions of impeachment – and often only very brief discussions at that – are instead relegated to subsequent papers dealing with the specific powers of the Senate (*Federalist* 64 and 65) and the judiciary (*Federalist* 78 and 81).

Yet clearly the founding fathers viewed impeachment as a powerful legislative tool for preventing tyranny, as well as a power that could be misused for partisan or personal gain. With respect to the Senate's power to remove the executive, Hamilton warns,

A well constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective . . . In many cases it will connect itself with the preexisting factions, and will enlist all their animosities, partialities, influence and interest on one side or the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.

(1961 [1788]: 426)

Likewise, he cautions that allowing judges to be impeached on the basis of inability, as opposed to misconduct, exposes them to a similar danger:

An attempt to fix the boundary between the regions of the ability and inability, would much often give scope to personal party attachments and enmities to advance the interests of justice or the public good. The result, except in the case of insanity, must for the most part be arbitrary . . .

(1961 [1788]: 498)

Nevertheless, despite these dangers, the legislature's capacity to carry out impeachments was seen as a vital and necessary mechanism of the last resort for preventing the abuse of power. With respect to the executive, for instance, Jay invokes the specter of impeachment as the ultimate reason that presidents would refrain from making treaties that served their own private interests at the expense of the public good. He concludes *Federalist* 64 by observing,

... we have reason to be persuaded that the treaties they make will be as advantageous as, all circumstances considered, could be made; and so far as the fear of punishment and disgrace can operate, that motive to good behavior is amply afforded by the article on the subject of impeachments.

(1961 [1788]: 425)

In a similar vein, Hamilton addresses those fearful of instantiating the judiciary with too much power by simply stating that the constitutional check provided by impeachment is sufficient for ensuring that the judiciary will not encroach on legislative authority. “This is alone a complete security,” he succinctly writes (1961 [1788], 509).

In sum, the logic of constitution crafting that is so eloquently captured by the *Federalist Papers*, and which later spread out to the Americas and beyond, describes a world in which the threat of impeachment acts chiefly as a deterrent. Simply put, impeachment prevents tyranny *ex ante*, rather than punishes it *ex post*. It provides a clear motive for good behavior on the part of presidents and judges based on the desire to avoid a negative and costly outcome. Impeachment thus operates no differently from other general deterrence models, at least ideally.

To see this logic at work, consider the following stylized scenario captured in Figure 1.1. In this game there are two players, the executive and the legislature. The executive makes an initial decision about whether to engage in misconduct or not. Here, for the sake of simplicity we assume that what constitutes misconduct is clear to both players. The legislature then makes a subsequent decision about whether or not to impeach the executive. This leads to four possible outcomes, labeled as A to D. A obtains if presidents abuse their powers and the legislature impeaches them for doing so. B occurs if presidents abuse their powers and get away with it. C is defined by the president respecting the rule of law but getting punished by the legislature anyway, an infelicitous scenario that neatly captures the politicized outcome articulated by Hamilton above. Finally, D (deterrence) arises when presidents stay within the bounds of their power and keep their posts.

Assuming complete information (i.e., each player knows each other’s preferences, each player knows that the other player knows his or her preferences, and so on), what is required for deterrence to work? In other words, what needs to be true about the players’ preference ordering in order for D to be the unique subgame perfect equilibrium to this elementary game?

The answer is straightforward. First, presidents must prefer remaining in power to getting impeached ($B > A$; $D > C$). Given the various attempts

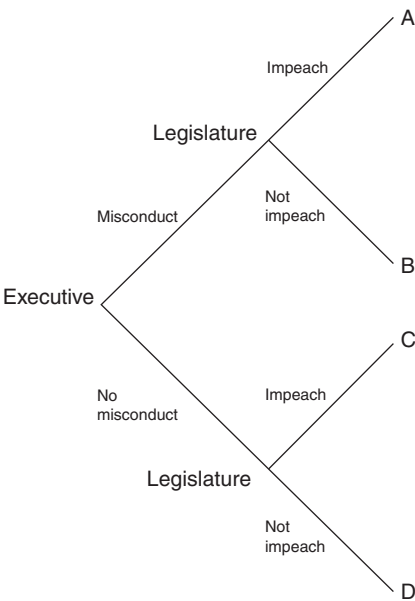


FIGURE 1.1: The impeachment game.

made by Latin American presidents to overturn term limits and remain in office, this hardly seems an unreasonable assumption to make about executive preferences. That Latin American presidents also routinely face criminal prosecution or exile once they leave office (e.g., see Carey, 2009) only further underscores the plausibility of this assumption. Second, however, we must also assume that the legislature opts for impeachment only when the president has actually overstepped his or her bounds ($A > B$; $D > C$). As long as Congress punishes transgressions and only transgressions, and the president knows this and wishes to keep his or her post, then he or she will be compelled to respect the rule of law. As in other versions of the standard deterrence model, the core implication is that impeachment remains entirely in the shadows.

A similar logic of deterrence also drives the slightly more nuanced SOP games. Pioneered by rational choice scholars of American politics, the standard SOP approach employs a basic spatial model to show how one branch of government – the president, the courts, or the bureaucracy – can be compelled to modify its behavior to avoid sanctions at the hands of the branches of government. In one of the more familiar applications of this approach, scholars treat US Supreme Court justices as policy seekers who face having their decisions overturned by a joint effort between the

1.1 *The Literature*

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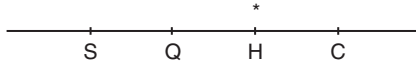


FIGURE 1.2: The separation of powers game.

House and the Senate (Gely and Spiller, 1990; Ferejohn and Weingast, 1992; Epstein and Knight, 1998; Harvey and Friedman, 2006). Assuming that the Court prefers to have its decisions stick, judges are thus forced to locate their decisions within the range (i.e., the win-set) that both legislative bodies find mutually acceptable.

Figure 1.2 depicts these three institutional actors on a single policy dimension running from left to right. For the US courts, this dimension is generally assumed to be the standard liberal-conservative dimension, where policies located on the far left correspond to the most liberal position and policies on the far right correspond to the most conservative position.³ Assuming that actors try to maximize their preferences, that they know each other's preferences, and that preferences are single-peaked, the key to predicting judges' behavior lies in knowing the relative location of the various actors' preferences. In Figure 1.2, where Q is the status quo, and C, H, and S represent the ideal points for the Court, the House, and the Senate, respectively, the equilibrium of the game is again obvious. Because the Court is constrained to make decisions that fall within the win-set, or within the interval between H and S, the model tells us that the best the Court can do is set policy at H. Although the Court is able to move policy a bit closer to its ideal point, it is effectively constrained from setting policy anywhere it pleases.

Taken together, the virtue of the two models presented thus far lies in their simplicity and generality. They force us to be clear about the assumptions that are necessary for deterrence to work: complete information and a clear ordering of actors' preferences over outcomes. Yet the limitations of applying these standard theoretical models to contemporary Latin American politics are also immediate and obvious. Namely, these models consistently predict that the very sorts of crises that we have been describing cannot occur in equilibrium. Reality disagrees: actors who should adjust their behavior to avoid costly consequences somehow

³ In some contexts, two dimensions may make more sense. For instance, in their recent analysis of the Mexican Supreme Court, Sánchez, Magaloni, and Magar (2011) reveal the importance of legal philosophy as a second salient dimension.

repeatedly fail to do so, leading to a world marked by gross inefficiencies and suboptimal outcomes. Inter-branch crises, like labor strikes, presidential vetoes, and wars, thus would seem to represent another version of the familiar Hicks paradox (cf. Cameron, 2000).

If traditional and modern SOP theories – theories that were, after all, born in the US context – wildly underpredict inter-branch strife, the standard comparative literature on Latin American presidentialism risks erring in the opposite direction. Starting with Juan Linz’s seminal work on the perils of presidentialism, a prominent strain in the literature has long argued that presidentialist systems are inherently prone to conflict and institutional breakdown (Linz, 1990, 1994; Przeworski et al., 2000; Valenzuela, 2004, but also see Shugart and Carey, 1992; Mainwaring, 1993; Mainwaring and Shugart, 1997; Cheibub, 2007). In Linz’s archetypal formulation, such systems suffer from a litany of intrinsic problems, ranging from the winner-take-all quality of elections to the ongoing dilemmas of dual legitimacy between the executive and legislative branches to the rigidities imposed by fixed terms.

Presidentialism, according to this view, is an institutional arrangement fraught with contradictions: the president is elected to represent the “whole people,” but he or she is simultaneously a member of a particular political party. Likewise, a president is expected by his or her supporters to rule effectively, but is inevitably limited by the legislature, which also rightly claims to represent the people. Fixed terms compound these problems: presidents who manage to successfully navigate their jobs are forced to eventually leave office, whereas those who are miserable failures ostensibly have to remain for the duration. According to Linz and his followers, it was precisely for this last reason that presidential democracies throughout the mid-twentieth century tended to suffer from more regime breakdowns than did parliamentary systems. With no equivalent mechanism to the vote of confidence for getting rid of ineffective or highly unpopular presidents, militaries were that much more tempted to step in to end the associated gridlock and chaos that inevitably characterize such systems.

A decade on, Arturo Valenzuela (2004) astutely observed that even with the military now safely relegated to the barracks, elected governments throughout Latin America still remain vulnerable to many of the same vagaries and dysfunctional relationships outlined by Linz. Because of the enormous popular expectations placed on the office of the president, leaders often find their administrations blamed for any and all policy failures. Protests against specific policies therefore have a dangerous tendency to morph into the general demand of “Que se vayan todos!”