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0521810450 - Stuffing the Ballot Box: Fraud, Electoral Reform, and Democratization in Costa Rica

Fabrice E. Lehoucq and Ivan Molina

Excerpt

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Introduction

Central Questions

Why do politicians reform the institutions that keep them in power? Why do they relinquish the ability to rig electoral results? The nonfraudulent 2000 Yugoslavian elections triggered the collapse of President Slobodan Milosevic's nationalist regime. The fairness of the 2000 elections in Mexico signaled the end of the PRI's sixty-year stranglehold on the presidency. Yet, for every occasion when dictators respect the results of the ballot box, there are many examples of regimes that rig elections in their favor. Why incumbents would consent to having – and respecting the outcomes of – fair elections, however, is far from clear.

This book explains the development of fair electoral practices in Costa Rica to shed light on the politics of institutional reform. As in Chile, England, Sweden, and Uruguay, politicians in nineteenth century Costa Rica gradually transformed a competitive but fraud-ridden republic into a modern democracy – one that, since 1949, has held regularly scheduled, fair elections and where every adult is entitled to vote.¹ Party politics took

¹ For recent discussions of the postwar political system, see John A. Booth, *Costa Rica: Quest for Democracy* (Boulder, CO: Westview Press, 1998); Fabrice Lehoucq, *Lucha electoral y sistema político en Costa Rica, 1948–1998* (San José: Editorial Porvenir, 1997); and Bruce Wilson, *Costa Rica: Politics, Economics and Democracy* (Boulder, CO: Lynne Rienner Pubs, 1998). For studies that place the Latin American cases in broader perspective, see Jonathan Hartlyn and Arturo Valenzuela, “Democracy in Latin America since 1930,” in Leslie Bethell, ed., *Latin America: Politics and Society since 1930* (New York: Cambridge University Press, 1998), pp. 3–66, John Markoff, *Waves of Democratization* (Thousand Oaks, CA: Pine Forge Press, 1996), John A. Peeler, *Building Democracy in Latin America* (Boulder, CO: Lynne Rienner Pubs, 1998), J. Samuel and Arturo Valenzuela, “Los orígenes de la democracia: reflexiones teóricas sobre el caso de Chile,” *Estudios Públicos* (Santiago de Chile), No. 13 (Spring 1983), pp. 3–37.

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off in 1889, when the incumbent liberals, under pressure of a popular uprising, reluctantly ceded power to an opposition liberal-clerical alliance. Since the turn of the century, politics became increasingly competitive even as presidents and their opponents did not stop using fraud and violence to shape election results.² Indeed, the widespread use of fraud often threatened to snowball into armed confrontations between government and opposition forces.

Yet, throughout this period, politicians passed several key reforms, including the establishment of direct elections in 1913 and the enactment of the secret franchise in 1925. By 1946, parties wrote a new Electoral Code that cleaned up the registry of voters and made election administration a responsibility of a semi-autonomous court system. Negotiated in an atmosphere of political polarization, this Code remains the foundation of electoral legislation in Costa Rica.

We also analyze a unique database on electoral fraud to assess the impact of reform on political competition. From the 123 petitions to nullify electoral results parties submitted to Congress between 1901 and 1946, we extract more than 1,300 individual accusations of ballot rigging. Charges range from parties accusing their adversaries of procedural violations of electoral law to complaints detailing the brazen intimidation of opposition voters. Our study of the petitions generates a portrait of electoral fraud many social scientists thought impossible to obtain. Furthermore, we look at the geographic distribution of fraud to determine whether regions with different ethnic and social structures had dissimilar experiences with ballot-rigging. By allowing causal factors to vary across space and time, we can assess the impact of social structure and institutional arrangements on the nature and rhythm of electoral fraud.

Our study of electoral reform and fraud therefore contributes to the study of institutions that has taken on increased importance in comparative politics. We expand the institutionalist concern for measuring the impact of legal change on behavior by analyzing activities that were not supposed to have left their footprints on the historical record. We combine this account with a theoretically grounded explanation of why parties relinquish their ability to manipulate election results for partisan advantage. By

² Fabrice Lehoucq, "The Institutional Foundations of Democratic Cooperation in Costa Rica," *Journal of Latin American Studies*, Vol. 26, No. 1 (May 1996), pp. 329–55 and his *Instituciones democráticas y conflictos políticos en Costa Rica* (Heredia: EUNA, 1998).

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pursuing both goals, we explain why parties transform fraud-ridden political systems into full-fledged democratic regimes.

This introduction begins by showing how the structure of Costa Rican presidentialism encouraged executives and their opponents to use violence and fraud during electoral competition. In this section, we also examine several approaches that seek to explain why parties would limit their ability to rig the ballot box. In the second section, we review our findings about the impact of institutional reform on ballot-rigging. The third section discusses how the “new institutionalism” and the study of prereform, republican systems shaped our own approach of electoral fraud and reform. We conclude with an overview of the remaining chapters of the book.

Presidentialism, Collective Dilemmas, and Institutional Reform

Government and opposition factions might have preferred to live in a world where rigging the results of the ballot box was not possible. The threat of violence and civil war would conceivably dissipate, and politics, with fixed institutional arrangements, would become a more predictable affair. Yet, the long-term interest in political stability held by citizens and many politicians did not necessarily coincide with the short-term interests of parties and machines. Unless *all* parties were going to respect new rules governing electoral competition, *each* had an interest to defect from an agreement that it may have judged not to be in its interests.³ Few liked the idea of surrendering favored practices for a roulette wheel whose results were unknowable, uncontrollable, and, in all likelihood, worse. There was no guarantee that, under new electoral laws, every faction would continue to prosper, much less exist. Predictions of defeat could no longer trigger efforts to stuff the ballot boxes, orchestrated either from the presidency or from civil society.

³ By framing issues in this way, we are using some elementary game theoretic notions to identify the issues that merit empirical analysis. For a defense of this strategy, see Randall L. Calvert, “The Rational Choice Theory of Social Institutions: Cooperation, Coordination, and Communication,” in Jeffrey S. Banks and Eric A. Hanushek, eds., *Modern Political Economy: Old Topics, New Directions* (Cambridge, UK: Cambridge University Press, 1996), pp. 216–67. The fundamental text of this literature remains Mancur Olsen, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard University Press, 1965). Also, see Russell Hardin, *Collective Action* (Baltimore, MD: Johns Hopkins University Press, 1982). A recent attempt to grapple with this problem is Mark Lichbach, *The Rebel's Dilemma* (Ann Arbor, MI: University of Michigan Press, 1995) and his *The Cooperator's Dilemma* (Ann Arbor, MI: University of Michigan Press, 1996).

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Political Competition and Electoral Reform in Costa Rica: An Overview

By the end of the nineteenth century in Costa Rica, politicians jostled for power in what was becoming a highly competitive political system. A vaguely worded property requirement facilitated the enfranchisement of most males twenty years or older.⁴ In 1885, 63 percent of adult males were registered to vote; by 1913, nearly 100 percent of all men twenty years or older were registered to vote.⁵ Voter turnout rates also were comparatively high: An average of 71 percent of the electorate voted in presidential elections between 1897 and 1948.

Citizens cast ballots for both chief executives and legislators in Costa Rica. Presidents were elected to four-year terms and could run for reelection, though not consecutively. A candidate needed to attract the support of an absolute majority (more than 50 percent) of electors or, after 1913, of the popular vote to become president. Should no one meet this requirement, the constitution empowered members of the new Congress – half of whom ran for office with the president – to select the president in early May from among the two individuals receiving the largest pluralities of the vote.⁶ Legislators, however, could stand for consecutive reelection and represented one of the seven provinces of the republic. Until 1913, provincial Electoral Assemblies selected the other half of Congress, though citizens voted for these electors only every four years. Through-

⁴ Men only needed to have an “adequate” standard of living, either because of property or employment, to become eligible to vote. Comparing the numbers of registered voters with those from census-based estimates of the economically active male population twenty years or older – which is the population possessing suffrage rights – indicates that, in ten of fifteen elections, demographic estimates are 5.4 percent above or below the number of registered voters. Our figures tend to be slightly lower than the official size of the electorate because census limitations prevent estimating the number of men eighteen years or older who were constitutionally empowered to vote if they were married or “professors of some science.” Such a discrepancy also suggests that the electoral rolls were only slightly padded with the names of nonexistent citizens or with citizens who had passed away – a charge frequently made about this period, but about which no reliable figures exist. See Iván Molina, “Estadísticas electorales de Costa Rica (1897–1948): Una contribución documental,” *Revista Parlamentaria* (San José, Costa Rica), Vol. 9, No. 2 (August 2001), pp. 354–67; see also <http://ns.fcs.ucr.ac.cr/~historia/bases/bases.htm>.

⁵ Iván Molina, “Elecciones y democracia en Costa Rica (1885–1913),” *European Journal of Latin American and Caribbean Studies*, No. 70 (April 2001), pp. 45–50.

⁶ After 1926, a runoff popular election would be convened by Congress should no party obtain an absolute majority of the vote. This threshold was lowered to 40 percent in 1936. Since then, candidates become president if they obtain this minimum share of the popular vote and more votes than their rivals. No runoff election has been necessary since this constitutional reform.

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out the period under study, a *de facto* closed-list system of proportional representation selected approximately four-fifths of all deputies running in multimember (three members or more) districts.⁷ Parties that obtained pluralities won the remaining deputies, who ran in one- or two-member districts.

The 1871 constitution invested the executive with the administration of elections and Congress with the certification of election results. By splitting the organization from the approval of the vote, legal theorists hoped to encourage executives to be impartial by empowering Congress to review their work. Yet, in a world of competitive political parties, the separation of these functions led presidents to manipulate electoral laws to pack the legislature with their followers. Electoral law, for example, authorized the secretary of the interior (whom the president appointed) to select the local officials responsible for producing the Electoral Registry. They also made this secretariat responsible for organizing polling stations. Finally, the laws made the executive responsible for the initial tally of the vote.⁸ As we shall see, the classical approach to electoral governance heightened partisan

⁷ We say “*de facto*” because proportional representation did not allocate some seats during this period and because closed lists became necessary only after 1946. If a province was sending three or more deputies to Congress, seats were allocated by proportional representation; if a province sent one or two representatives to San José, deputies were elected either by absolute or relative majorities. Since 1946, all deputies have been elected through the largest remainders version of proportional representation in seven provincial electoral districts. For more discussion of these rules, see Fabrice Lehoucq, “The Origins of Democracy in Costa Rica in Comparative Perspective,” unpub. Ph.D. Dissertation (Duke University, 1992), pp. 62–3, 71–3. Few voters chose to vote outside of party lists before closed lists became a legal norm in 1946. See Iván Molina, “Estadísticas Electorales de Costa Rica (1897–1948),” pp. 345–435.

⁸ This paragraph draws upon Fabrice Lehoucq, “Can Parties Police Themselves? Electoral Governance and Democratization,” *International Political Science Review*, Vol. 23, No. 1 (January 2002), pp. 29–46. The president, with the support of the Permanent Commission (an agent of Congress), could also declare states of siege – a practice that, until 1910, the executive typically used during election campaigns. A more detailed examination of how the executive suspended the constitutional order is Orlando Salazar Mora, “La Comisión Permanente y la suspensión del orden constitucional,” *Revista de Ciencias Jurídicas* (San José, Costa Rica), No. 44 (May–August 1981), pp. 19–48. Also, see his book, *El apogeo de la república liberal en Costa Rica, 1870–1914* (San José: EUCR, 1990), esp. pp. 171–241. The Permanent Commission was dismantled in 1910; a related constitutional reform also forced the president to seek the approval of Congress for any suspension of the constitutional order. For comparative notes on this topic, see Brian Loveman, *The Constitution of Tyranny: Regimes of Exception in Spanish America* (Pittsburgh, PA: University of Pittsburgh Press, 1994) as well as, more recently, José Antonio Aguilar, *En pos de la quimera: reflexiones sobre el experimento constitucional atlántico* (Mexico City: Fondo de Cultura Económica, 2000).

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animosities and, in hotly contested elections, failed to produce the impartial verdicts necessary to generate compliance with democratic institutions.

In a society without severe class or ethnic conflicts, the concentration of authority in the executive transformed the race for control of this office into the central cleavage of politics. As Dana Munro noted long ago, control of the executive and other state offices led to employment, pork, and the kind of distributive politics public authority typically conferred.⁹ Loss of the presidency, in contrast, deprived parties of access to such goods and the use of administrative levers to consolidate their hold on state power. Incumbents, as a result, faced few incentives to hold fair electoral contests.

Excluded from power, opposition parties fought back by attempting to overthrow the president. Between 1882 and 1948, opposition movements launched twenty-six rebellions against central state authorities – three of which succeeded in installing new incumbents to the presidency.¹⁰ Chronic political instability, however, encouraged presidents to begin to trade access to Congress for consent to their rule. During this period, presidents were much less likely to become targets of coups as the number of opposition politicians in Congress increased.

Seeking to deter additional rebellions against his rule, President Cleto González (1906–10) of the National Union Party (PUN) did not prevent the Republican Party (PR) from increasing its share of Congressional seats in the 1908 midterm elections and from winning the 1909 general elections. Once in power, PR President Ricardo Jiménez (1910–4) endorsed fundamental changes, including the creation of the secret ballot. Despite the PR's control of both branches of government, reformers were forced to settle for a constitutional amendment establishing direct elections for all public officials and in promulgating a new, slightly revised electoral law.

Upon returning to the presidency a decade later, Jiménez (1924–8) managed to obtain legislative approval of two new electoral laws. Safeguards against the use of fraud increased in 1925 with the creation of a tribunal to adjudicate electoral conflicts, with the development of a national registry of

⁹ Dana Gardner Munro, *The Five Republics of Central America*, 2nd ed. (New York: Russell, 1967), pp. 185–203. To judge from bibliographies, few studies of twentieth century Central American politics have relied upon this classic – which is a pity. It remains a foundation of ideas, observations, and hypotheses about the political trajectories of Central America countries.

¹⁰ Lehoucq, “The Institutional Basis of Democratic Cooperation in Costa Rica.”

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voters and, most important, with the enactment of the secret ballot.¹¹ The 1927 Law of Elections eliminated the ability of local electoral juntas to include names in or strike names from the Civic Registry. This law also centralized the production of paper ballots within the secretariat of the interior. This innocent enough sounding provision stripped parties of their ability to distribute ballots and thus to monitor the behavior of voters.

Despite the promulgation of these reforms, existing laws did not deter parties and machines from trying to subvert the results of the ballot box. Despite the requirement that citizens needed to exhibit photographic identification on election day, governments continued to postpone this reform. Unless public officials waived this requirement, politicians argued that it would unfairly deprive voters not possessing identification cards of their suffrage rights.

These facts make the promulgation of the 1946 Electoral Code a remarkable achievement. Under the threat of an opposition-led insurrection, President Teodoro Picado (1944–8) and his secretary of the interior, Fernando Soto, sponsored a reform bill that promised to overhaul the electoral registry and require voters to provide photographic identification. The bill also strengthened the newly named National Electoral Tribunal (TNE) by making it entirely responsible for the organization of the electoral process. The 1946 Electoral Code remains the cornerstone of electoral legislation, even though most accounts of the 1948 civil war and the 1949 constitution neglect to discuss it.¹² Table 1 summarizes these reforms.

Theories, Approaches, and Hypotheses

Political scientists possess two main types of theories to explain the behavior of parties and politicians. Office-seeking theories suggest that the desire to hold office shapes the behavior of parties. In the words of Anthony Downs, the first exponent of this approach, parties develop policies to win elections, not the other way around.¹³ By assuming that parties

¹¹ Some useful notes on the origin of a national registration system are contained in Rafael Villegas Antillón, “El Registro Civil y el proceso electoral en Costa Rica,” *Estudios CIAPA*, No. 2–3 (1980): 48–62.

¹² A legal analysis of the current law, though slightly out of date, makes this point. See Rubén Hernández Valle, *Derecho electoral costarricense* (San José: Editorial Juricentro, 1990).

¹³ This remark is from Anthony Downs, *An Economic Theory of Democracy* (New York: Harper & Row, 1957). This paragraph draws from Michael Laver and Norman Schofield, *Multi-party Democracy: The Politics of Coalition in Europe* (New York: Oxford University Press,

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Table 1. *Principal Electoral Reforms, 1913–49*

Year	Electoral Reforms
1913	Direct elections held
1925	Secret franchise enacted Electoral registry established Grand Electoral Council established
1927	A single paper ballot printed
1946	Electoral registry revamped Electoral tribunal strengthened and renamed
1949	Supreme Tribunal of Elections made completely autonomous of the executive branch and legislature

will do whatever is necessary to obtain and hold public office, office-seeking accounts suggest that parties hold no ideological allegiances. They search for support wherever they can get it. They are pragmatic or, in the words of their critics, opportunistic.

Though office-seeking theories were not initially formulated as explanations of institutional change, they imply that parties will only endorse reforms that favor their ability to obtain or retain control of public offices. They will maintain prevailing arrangements or, at most, create “efficient” institutions, that is, changes that benefit all parties. If this approach is valid, parties will support “efficient” reforms because they expect their political standing to improve with tendered reforms. However, parties are unlikely to agree to back “redistributive” reforms because these changes promise to benefit other parties at their expense.¹⁴ Parties will also oppose bills whose consequences are uncertain because they want to avoid the possibility of suffering a reduction in their share of state power.

That, over a fifty-year period, almost three-quarters of all presidents and their legislative counterparts never proposed electoral reforms

1994), which distinguish between office-seeking and policy-making theories. Policy-making theories hypothesize that parties seek office to transform their preferences into public policy. Though similar in formulation, these theories lead to different sorts of expectations. Policy-making theories imply that parties are accountable to constituencies. Unless they deliver on their promises, they will lose electoral support.

¹⁴ We borrow this way of characterizing institutions from George Tsebelis, *Nested Games: Rational Choice and Comparative Politics* (Berkeley, CA: University of California Press, 1990), chap. 4.

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upholds the validity of office-seeking perspectives. Furthermore, only a handful of presidents obtained legislative approval of reform bills. By emphasizing their interest in maximizing access to state power, office-seeking models of party behavior therefore do explain why most politicians did not seek to change the status quo. Nevertheless, they cannot explain why *some* presidents did break ranks with their counterparts and members of their party. Nor is it clear if they can explain the behavior of legislators during key periods of reform, when enough of them decided to back far-reaching institutional changes.

Sociological approaches start from the premise that office-seeking approaches cannot explain why parties adopt reforms with long-term benefits *and* short-term costs. That parties make such choices, according to proponents of this line of reasoning, is evidence against office-seeking theories of institutional change. A social class might spearhead institutional change as part of a larger strategy to obtain political power. An oligarchy can veto reforms that threaten to reduce its control of the political system. The adoption of certain reforms in some countries can make them more acceptable in many other countries. Or reform could simply be the result of the actions that visionary leaders take. A variety of background and cognitive factors can therefore generate preferences for reform not reducible to the logic of electoral competition.¹⁵

If these approaches are useful, parties that consistently support electoral reform should also be those that support social reform. Similarly, certain reforms – like, for example, expanding suffrage rights – should become more attractive as politicians in advanced countries enact them. These factors can also congeal to explain the counterintuitive behavior of strategically placed individuals.

As we will see, efforts to combine electoral with social reform dissipated by the early 1910s, when the Republican Party largely abandoned calls to help peasants and workers. Furthermore, during this and subsequent periods, the party's respective positions on social reform and property rights could not distinguish the friends from the foes of electoral reform. The international diffusion of ideas about the practice of republican

¹⁵ The work of Seymour Martin Lipset is perhaps the most representative of this approach. See, for example, his "The Centrality of Political Culture," *Journal of Democracy*, Vol. 1, No. 4 (Fall 1990), pp. 80–3, as well as his *Political Man: The Social Bases of Politics*, 2nd ed. (Baltimore, MD: Johns Hopkins University Press, 1981). His latest thoughts on democratization are to be found in *Three Lectures on Democracy* (Norman, OK: University of Oklahoma Press, forthcoming).

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politics also did shape public debates about electoral reform. While proponents of democratic reform referred to such changes in other countries, their arguments did not blunt the opposition of those who openly rejected these arguments. Furthermore, while key reformers such as Jiménez may have been extraordinarily gifted individuals, they had to struggle in a world with politicians concerned with reelection and the distribution of pork. Both powerful ideas and remarkable individuals helped the cause of reform. Nevertheless, they did not determine when, why, and how presidents and legislatures agreed to transform the rules governing access to state power.

To explain counterintuitive choices, institutionalist models factor in the impact of the rules governing the acquisition and retention of electoral offices. A key assumption of such studies is that reforms, like any other type of legislation, require politicians to make choices. Depending on the rules governing access to state offices, politicians – even those from the same party – will face different incentives. Institutional constraints, therefore, may very well encourage politicians to make choices that seem irrational for other public officials.¹⁶

A powerful way to explain political outcomes is by using formal models – abstract representations of the key features of a political system that identify behavioral patterns and trends. In an analysis of civil service reform in presidential systems, Barbara Geddes argues that legislators enact far-reaching reforms when two or more evenly balanced coalitions dominate Congress. Her game-theoretic model suggests that a stalemate produces an equilibrium where key factions have equal access to political patronage.¹⁷ As a result, each party may consider supporting major reforms because each believes that proposed changes will not benefit its rivals at its expense.

As we will see, electoral reform in Costa Rica offers support for these propositions. With one exception, evenly balanced coalitions existed in the

¹⁶ This is the central message of the new institutionalism. See Tsebelis, *Nested Games*, chap. 4, which also emphasizes the importance of institutional arrangements for theories of reform. Also, see Kenneth Shepsle, “Institutional Equilibrium and Equilibrium Institutions,” in Herbert Weisberg, ed., *Political Science: The Science of Politics* (New York: Agathon Press, 1986), pp. 51–81, and his “Studying Institutions: Some Lessons from the Rational Choice Approach,” in James Farr, John S. Dryzek, and Stephen T. Leonard, eds., *Political Science in History: Research Programs and Political Traditions* (Cambridge, UK: Cambridge University Press, 1995), pp. 276–95. Also, see Randall L. Calvert, “The Rational Choice Theory of Social Institutions.”

¹⁷ Geddes, *Politician's Dilemma: Building State Capacity in Latin America* (Berkeley, CA: University of California Press, 1994).