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978-0-521-86942-3 - Presidential Impeachment and the New Political Instability in Latin America

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Excerpt

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Institutional Crises in Presidential Regimes

The president's seat represents the dream job for most politicians. Presidents are power brokers, party leaders, role models, the daily focus of public opinion. Presidents speak for the nation, they are *primi inter pares* among national political figures. "They say," former Chilean president Patricio Aylwin once joked, "that the most difficult task after being president is getting used to not being president." Presidents, however, are not free from failure. And the completion of their terms, particularly in Latin America, is never guaranteed.

This book deals with an extreme form of political failure: presidential impeachment. Impeachment transforms the luck of the most successful politician in the country into a model of defeat. Presidents are deprived of honor and power, deserted by former allies and voters, prosecuted as ordinary citizens, and many times incarcerated or forced into exile.

In the 1990s, an unprecedented wave of impeachments swept Latin America. Dwellers of presidential palaces, from Carondelet to Miraflores and from Planalto to the House of Nariño, unexpectedly confronted this threat. In just over a decade, between 1992 and 2004, six presidents faced an impeachment process, and four of them were removed from office. Brazilian President Fernando Collor de Mello in 1992 and Venezuelan President Carlos Andrés Pérez in 1993 were accused of corruption and ousted on impeachment charges. In 1996, Colombian President Ernesto Samper was charged with receiving illegal campaign funds from the Cali drug cartel. Congress ultimately acquitted Samper, but his political leverage was greatly diminished as a consequence of the scandal. The following year, the Ecuadorian Congress confronted President Abdalá Bucaram and, in order to avoid the institutional intricacies of impeachment, declared the president mentally impaired. Paraguayan President Raúl Cubas Grau confronted an

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impeachment after releasing from prison a popular military leader accused of conspiring to kill the vice president. Cubas resigned and fled to Brazil in 1999, after a harsh confrontation with Congress. His successor, Luis González Macchi, was accused of corruption two years later. In a desperate attempt to prevent his fall, his party majority in Congress forestalled an impeachment and finally acquitted the president in early 2003.

These episodes inaugurated a new pattern of presidential instability in the region. Anticipating an impeachment process, Peruvian President Alberto Fujimori fled the country in November of 2000. Ecuadorian President Lucio Gutiérrez narrowly escaped an impeachment in November of 2004 and was ousted in April of 2005. Opposition protests forced the resignation of Argentine President Fernando de la Rúa in 2001, and of Bolivian Presidents Gonzalo Sánchez de Lozada and Carlos Mesa in 2003 and 2005.

Until very recently, the Latin American crises of the last fifteen years were treated in isolation rather than as part of a regional trend (for exceptions, see Bermúdez 1999; Carey 2005; Coslovsky 2002; Hochstetler 2006; Kada 2002; Pérez-Liñán 2000; 2003a; 2005; Valenzuela 2004; Whitehead 2002, 102–107). The concentration of multiple impeachment crises in a few years, however, has opened important questions that are difficult to ignore. Is this pattern indicative of a major change in Latin American democracies? Are impeachments a functional equivalent of old-fashioned military coups? Are we witnessing a turn in executive-legislative relations throughout the region? And if this is the case, why are some corrupt presidents impeached while others are not?

The lack of a comparative theory of impeachment has complicated the search for answers to these questions. Because impeachments are rare events (and have been particularly infrequent in this region in the past), the traditional literature on Latin American institutions for the most part disregarded them. A classic textbook of the 1950s noted in passing that “although there are a few instances in which presidents have been removed through this procedure, those cases are exceptional and in most countries no president or vice-president has ever been impeached” (Pierson and Gil 1957, 240). Published in 1992, the year in which Fernando Collor was removed from office, Shugart and Carey’s seminal book on *Presidents and Assemblies* – which devoted a whole chapter to discussing constitutional deviations from the principles of dual legitimacy and fixed terms in office – virtually ignored the issue of impeachment (Shugart and Carey 1992, Chapter 6).

This book argues that recent impeachments constitute the tip of the iceberg of a much broader emerging trend in Latin American politics. Latin

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America is confronting a distinctive pattern of political instability, one that represents a break from the past. As in previous decades, democratically elected *governments* continue to fall, but in contrast to previous decades, democratic *regimes* do not break down. Several reasons explain this paradox of democratic regime stability in the midst of government instability. Among them are the end of the Cold War, changes in U.S. foreign policy, the political lessons derived from the dramatic experience of military dictatorships in the 1960s and the 1970s, and the new role of international institutions. Because in this context civilian elites cannot invoke a military intervention, they have been forced to find constitutional mechanisms to solve their disputes. Presidential impeachment has emerged as the most powerful instrument to displace “undesirable” presidents without destroying the constitutional order.

Opposition politicians, however, are not always able to unleash an impeachment process against the chief executive. In the following chapters, I show that impeachments are likely when the mass media systematically investigate and expose political scandals *and* when the president fails to keep tight control over Congress, either because the ruling party is very small or because it is under the control of an adversarial faction. At the same time, the ability of the legislature to remove the president from office ultimately hinges on the degree of popular mobilization against the government. When a broad social coalition takes to the streets to demand the resignation of the president, the fall of the administration is usually in sight.

The new pattern of instability poses a major theoretical challenge for comparative studies of presidentialism. For more than two decades, the conventional wisdom in the field claimed that extreme forms of executive-legislative confrontation are likely to destabilize presidential democracies. Recent crises, however, have led to the downfall of elected presidents without triggering democratic breakdowns. In order to explain this phenomenon, some scholars have argued that Latin American presidential democracies are developing “parliamentary” traits (thus making presidential impeachments akin to votes of no confidence), while others have claimed that social movements are expanding the realm of democratic citizenship by fighting against neoliberal policies and toppling unpopular presidents. These interpretations are partly correct, but, as the following chapters will show, the contribution of recent presidential crises to the process of democratization has often been ambiguous, and we should probably avoid any overly optimistic assessment of this trend.

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This introductory chapter serves three purposes. In the first section, I explain why a better understanding of impeachment is essential if we are to update our theories of democracy and presidentialism in Latin America. The second part introduces my approach to impeachment as a particular outcome of executive-legislative crises. In the last section, I summarize the argument of this book and outline the contents of the coming chapters.

Impeachment as a Theoretical Puzzle

Recent cases of impeachment have challenged much of the common wisdom about democracy in Latin America. For years, the conventional view was that Latin American presidential democracies were unable to resist much executive-legislative conflict. In contrast to parliamentary regimes, where the prime minister (through the dissolution of the parliament) and the parliament (through a vote of no confidence) have constitutional tools to avert government deadlock, presidential regimes, where the two branches are popularly elected and their terms in office are fixed, were seen as prone to stalemate. According to this argument, attempts to overcome such stalemate in Latin America had usually led to political polarization and created the conditions for military intervention (Lamounier 1994; Linz 1990; Stepan and Skach 1993; Valenzuela 1994).

In the mid-1990s, this argument was recast in terms of an excess of “veto players” in presidential systems. George Tsebelis argued that “in regimes where government change is impossible (except for fixed intervals like in presidential regimes), policy immobilism may lead to the replacement of the leadership through extra-constitutional means (regime instability)” (Tsebelis 1995, 321–322). Thus, while divided government was expected to create policy stability in advanced presidential democracies, it was expected to promote regime instability in weakly institutionalized ones.

The critics of this perspective argued that some forms of presidentialism were more prone to interbranch confrontation than others, without questioning the underlying assumption that extreme executive-legislative conflict was dangerous for democracy (Jones 1995; Mainwaring 1993; Mainwaring and Shugart 1997a; Shugart and Carey 1992; for an interesting exception, see Cheibub 2002). Some of these studies even acknowledged the role of impeachment as a constitutional instrument allowing Congress to remove the president from office without disrupting the democratic process, but they claimed that this highly restrictive procedure was virtually

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impossible to activate in the context of an institutional crisis (Linz 1994, 10; Shugart and Carey 1992, 29).

History likes to scoff at political scientists. Just as this dominant view unfolded in the 1990s, presidential impeachment became a common mechanism used to overcome executive-legislative crises while avoiding democratic breakdown. This emerging pattern posed an important challenge for the prevailing argument about the perils of presidentialism. The fact that impeachment replaced military coups as the standard procedure to oust presidents throughout the region suggested that executive-legislative conflict could lead to democratic breakdowns only under certain historical circumstances that had changed since the 1980s (Pérez-Liñán 2003b).

The proliferation of impeachments also challenged another leading assumption among students of Latin American presidentialism – the idea that presidents are too strong and that legislators are unable to hold them accountable. Presidential dominance over Congress was a distinctive historical trait of Latin American politics (Pierson and Gil 1957, 240; for important exceptions, see Stokes 1945), and it persisted after an extended period of democratization during the 1980s. The inability of Congress to check the president's corruption or abuse of power has been characteristic of, but not exclusive to, what Guillermo O'Donnell called “delegative democracies” (O'Donnell 1994). To different degrees and for different reasons, horizontal (i.e., interbranch) accountability was absent from democratic regimes like the Punto Fijo system in Venezuela (1958–99); from semidemocratic regimes like the first Perón administration in Argentina (1946–52); and, not surprisingly, from authoritarian presidential regimes like the Stronismo in Paraguay (1954–89), the Somozas' rule in Nicaragua (1936–79), and the Trujillo era in the Dominican Republic (1930–61). Congressional weakness did not result solely from a concentration of formal constitutional powers in the chief executive. In most cases, the concentration of substantive political resources – control over state revenues, mass support, and loyal security forces – in the hands of the president made it very difficult for Congress to exercise strong checks and often encouraged opposition legislators to ally themselves with rebel military leaders in order to check the executive by undemocratic means.

Defying this tradition, the political events at the turn of the century proved that legislators were becoming increasingly capable and willing to serve as agents of democratic accountability. The new trend came as a surprise in a region where impeachment – despite having been contemplated

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in the constitutions – was virtually unknown. In the four decades preceding the 1990s, only one episode – the trial of President José R. Guizado of Panama in 1955 – could be considered a true case of impeachment, and the reasons for that trial remain obscure (Romeu 2000; Zúñiga Guardia 1957). The sudden multiplication of cases since 1992 suggests that the pattern of congressional weakness traditionally manifested in the lack of presidential accountability was also changing rapidly.

A comparative analysis of impeachment is also critical for the study of presidentialism beyond Latin America. The American Congress has considered impeaching the president at least seven times since 1832, and a prominent dweller of the White House was impeached just as this book was being written (Perkins 2003). Over the last decade, the specter of impeachment has also threatened presidents in Madagascar (1996), Nigeria (2002), the Philippines (2000), Russia (1998–99), Taiwan (2000), South Korea (2004), and Lithuania (2004) (for discussions of some of these cases, see Allen 2003; Baumgartner 2003b; Kasuya 2003; Ohnesorge 2006). Yet scholars and policy makers lack a comparative framework to interpret such cases;¹ and because impeachment is a rare event, they have been unable to deploy their powerful statistical arsenal to address this research problem.

The last decade and a half in Latin America offers an interesting laboratory for the development of a comparative theory of impeachment. The concentration of several cases in a short period allows us to trace the political conditions that trigger an impeachment crisis while “holding constant” cultural and historical factors. If this explanation travels well in time and space, it may serve as the basis for a more general theory of presidential accountability (Hinojosa and Pérez-Liñán 2007).

Impeachment as an Institutional Outcome

In presidential systems, the term “impeachment” describes a particular trial of the president by which Congress (sometimes with the necessary agreement of the judiciary) is allowed to remove the president from office. In the United States, the first country to adopt a presidential constitution, the process is initiated by the House of Representatives and the trial is conducted by the Senate. An impeachment is intended to be not a criminal trial but a political procedure allowing the Senate to remove the president from office

¹ For a recent attempt to offer such comparative framework, see Baumgartner and Kada (2003).

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in response to accusations of treason, bribery, or other “high crimes and misdemeanors.” Although other presidential systems have often modified the details of the procedure (for instance, placing the trial in the hands of the Supreme Court rather than the Senate) and the range of impeachable offenses (for instance, allowing Congress to impeach the president on grounds of “misperformance in office”), presidential impeachments are always initiated by the legislature.

The latter point deserves careful consideration. When analyzed in comparative and historical perspective, presidential impeachment emerges as one among many tools used by legislators to prevail in their occasional confrontations with the executive branch. A major contention of this book is that impeachment is one of the many possible outcomes resulting from a presidential crisis.

I use the concept “presidential crisis” to refer to extreme instances of executive-legislative conflict in which one of the elected branches of government seeks the dissolution of the other. The term “crisis” is chosen to describe a pressing political situation marked by a sense of “immediacy and urgency” among powerful actors (Kiewe 1994, xvii). The adjective “presidential” simply identifies the constitutional framework in which such crises take place. In parliamentary regimes, this kind of confrontation can be resolved through ordinary procedures (the fall of the government following a vote of no confidence or the dissolution of the parliament followed by an election), but such procedures are prevented in most presidential regimes by rigid constitutional rules.

Operationally, this definition covers any situation in which the president attempts to disband Congress, Congress attempts to remove the president from office, or in which either of the elected branches supports a military or civilian uprising against the other (Pérez-Liñán 2003b). The common denominator in all of these cases is an attempt by some elected politicians to remove other elected officials from office, thus compromising the principle of fixed terms in office that characterizes presidential constitutions. As I show in Chapter 3, presidential crises may lead to the activation of constitutional mechanisms (such as impeachment), or they may unleash unconstitutional actions (e.g., a legislative coup against the president).

The analysis of presidential crises allows us to explore two critical questions: when and why Congress is able to hold the president accountable, and when and why executive-legislative conflict leads to the breakdown of democracy. Between 1950 and 2004, some fifty-eight presidential crises took place in Latin America, but only six of them involved a serious attempt

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to impeach the president, and twenty-one of them involved a military coup.²

In order to address these questions, it is important to establish from the outset what presidential crises *are not*. From the definition outlined earlier, it is easy to infer that any presidential crisis constitutes an emergency situation for the president and his or her cabinet. The opposite, however, is not true. Presidential crises are defined here as a pattern of institutional conflict that affects the stability of the government (the executive *in relation to* the legislature) in the context of a presidential constitution. But not every major challenge demanding immediate action from the executive will fall into this category. Congress may not play a major role in some political crises, or it may cooperate with the president in the face of a national emergency.

This definition differs from one adopted in the literature on U.S. foreign policy. For authors like Windt (1973) and Kuypers (1997), crises are rhetorical constructs deployed by the president in order to frame the need for immediate policy action. Similarly, Kiewe (1994, xvii) describes them as characterized by the expectation of strong leadership qualities. This approach usually refers to policy crises rather than to institutional crises. As will become clear later in this work, policy challenges may lead to institutional turmoil, but this is not necessarily the case.

The previous discussion also suggests an important distinction between presidential crises as processes affecting the survival in office of particular elected officials and broader regime crises jeopardizing the stability of democracy. Government and regime crises may overlap, but they represent different analytical constructs in at least two ways. On the one hand, executive-legislative confrontation is not a necessary condition for regime instability. Quite often, the military have intervened against a ruling party controlling both the executive *and* the legislature. In fact, of forty-two military coups taking place in Latin America between 1950 and 2004, only twenty (48 percent) were related to a presidential crisis.³ On the other

² I describe the procedure employed to identify and code presidential crises in Chapter 3.

³ This figure includes only coups that took place in situations in which a presidential crisis was possible (i.e., when a president and a legislature coexisted at the time). I defined as a coup any episode in which the military successfully removed the president from office, closed Congress, or both. The cases are: Argentina (1955, 1962, 1966, 1976); Bolivia (1951, 1964, 1969, 1979, 1980); Brazil (1954 [an ambiguous case because President Vargas committed suicide in anticipation of the coup], 1955, 1964); Chile (1973); Colombia (1953); Cuba (1952); the Dominican Republic (1963); Ecuador (1961, 1963, 1970, 2000); El Salvador (1960, 1979); Guatemala (1954, 1957, 1963, 1982, 1993); Honduras (1954, 1957, 1963, 1972); Panama (1951, 1968, 1985, 1988); Paraguay (1954, 1989); Peru (1962, 1968, 1992);

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hand, presidential crises are not sufficient for democratic instability. About half (45 percent) of the presidential crises taking place in Latin America during this period led to some sort of military intervention, and 36 percent ended with a full-blown military coup; but this book is inspired by the fact that a vast majority of presidential crises over the last decade and a half have not been related to any form of regime breakdown.

Episodes of impeachment are thus presented in this book as a subset of the universe of presidential crises, in turn an extremely hostile form of executive-legislative interaction. This perspective suggests that impeachment is not just a legal recourse to remove presidents who are proven guilty of high crimes; it is often an institutional weapon employed against presidents who confront a belligerent legislature. This may be true even in well-established democracies like the United States (Perkins 2003, 21). The question about the proper use of impeachment – that is, its use for the purpose of punishing actual misdemeanors rather than for merely partisan reasons – is often difficult to confront, both for the contemporary observer and for the analyst claiming the advantage of historical hindsight.

In spite of this approach, the reader should not be tempted to assume that the only relevant actors in the drama are the executive and the legislature. Impeachment crises often involve subtle negotiations to appease the military, media investigations, popular protests, and attempts to manipulate the judiciary (Whitehead 2002, 104). In fledgling democracies, the military may play a crucial role in shaping the outcome of a crisis – even when the survival of the regime is not threatened, for instance, generals may act as mediators. In well-established democracies, other institutions such as the press and the judiciary may play powerful roles in the confrontation. Executive-legislative conflicts may implicate various third parties according to the circumstances, but they usually involve a complex structure in which both institutions seek the support of a third party against the other branch (on the role of third party players in different contexts, see Caplow 1968).

Consider, for instance, the strategies adopted by legislators seeking to oust the president. In some cases, they investigate presidential misdeeds originally exposed by the press. The Watergate scandal in the United States and the Brazilian crisis of 1992 illustrate this situation. In other

Uruguay (1973); and Venezuela (1958). Twenty other coups taking place in countries without an operating legislature (e.g., Ecuador in 1972) were excluded from the count. These events were identified using *The New York Times Index* and other historical sources (Fossum 1967; Needler 1966).

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circumstances, Congress confronts the executive in an attempt to contain a broader crisis triggered by the mobilization of the mass public. This was the case in Venezuela during 1993 and in Ecuador during 1997. Congress may even become a peripheral actor in a confrontation between the president and powerful groups, such as the military or social movements, acting simply to legalize the ousting of the president. In such cases, legislative action is a marginal event in a much larger shakedown of democracy. Here the role of Congress is typically reduced to swearing in the new president, preserving a minimum appearance of constitutionality. The crises of Ecuador in 2000, Argentina in 2001, and Bolivia in 2003 and 2005 (discussed in Chapter 7) represent this pattern.

I contend that the democratization process that took place in Latin America during the 1980s and early 1990s altered the relative weight of different political players. Military officers, once the arbiters of the political process, found themselves unable to remove civilian politicians from power. Media corporations, once vehicles of personal political ambitions or mouthpieces for the executive, claimed a new role as the guardians of public morality. Popular movements, once repressed or controlled by populist leaders, realized that politicians in competitive electoral systems could not ignore their grievances. These changes took place in parallel with major transformations in the model of economic development, as countries struggled to adopt neoliberal policies. The unexpected result of those realignments was a surprising erosion of presidential power.

About This Book

It has been more than forty years since Richard Neustadt distinguished between presidential “powers” (the legal or customary sources of presidential authority) and presidential *power* (the chief executive’s actual influence in politics) (Neustadt [1960] 1990). Important as it was to understand the workings of the American presidency, the distinction is of even greater relevance in most Latin American countries, where the gap between formal (legal) powers and informal (de facto) power deserves serious consideration (for some examples, see Casar 2002; Corrales 2002a; Hartlyn 1998; Helmke 2002; Helmke and Levitsky 2004; Siavelis 2002).

Over the last decade, important works (Mainwaring and Shugart 1997b; Shugart and Carey 1992; Shugart and Haggard 2001) have emphasized that Latin American countries differ in their institutional configurations and that the accuracy of some stereotypes (like the excessive concentration of