

**TOWARDS A REPRESENTATION REVOLUTION**  
**Constitutional Reform, Electoral Systems,**  
**and the Challenges to Democracy in Latin America**

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## **TOWARDS A REPRESENTATION REVOLUTION**

### **Constitutional Reform, Electoral Systems, and the Challenges to Democracy in Latin America**

After many dark years of repressive military rule and through the tireless efforts of the opponents of authoritarianism, democracy made a remarkable comeback in Latin America in the 1980s and 1990s. While there have been few overthrows of democratically elected governments, as the 1990s wore on it became clear to even the most casual observers that something is amiss. Most of Latin America's democracies suffer from obvious defects in the "quality" of democratic rule.

While the qualitative measures of democracy are notoriously elusive, Latin America's elected governments have often proved incapable of generating the expected level of respect for civil liberties (Magaloni 2000). They have been slow to make progress against vast social and economic disparities, sometimes only further entrenching the dominance of traditional elites (Hagopian 1996). Clientelism—the subordination of voters in exchange for material benefits (Fox 1994)—often continues to be rampant in elections. Alarming, two of the oldest democracies in the region, Colombia and Venezuela, at best barely continue to meet minimal democratic criteria, while in Ecuador (the third oldest democracy in South America) an elected president was overthrown in 2000 by a civil-military alliance. Frustration with limited democracy is a resurgence of highly personalized rulership whereby a leader employs a discourse of opposition to the "corrupt" political establishment and gains electoral support only to entrench himself in power. This phenomenon, dubbed "neopopulism" (Roberts 1995), is most manifest in Peru under Fujimori and Venezuela under Chavez.

One indicator of the degree of discontent is the frequency with which nations have turned to replacing their constitutions as a panacea. Since 1990, constitutional replacements have occurred in Argentina, Colombia, the Dominican Republic, Ecuador, Peru, and Venezuela. Several of these constitutional replacements have occurred within the context of dramatic clashes between the executive and legislative branches—including a presidential "self-coup" in Peru and a former coup-plotter circumventing all established checks on his power in Venezuela.

In this paper, I argue that conflicts such as these can be understood only within the context of a failure of pre-existing political institutions to reflect the values and demands of the broad citizenry. That is, they are failures of representation. More concretely, they are failures of electoral systems to generate adequate representation. In the case of all the replacements that involved the most serious president-congress conflicts—Colombia, Ecuador, Peru, and Venezuela—presidents used a rhetoric of congress as a bastion of corruption and an impediment to the president's reform programs. It is my argument that this discourse was essentially accurate, but that the means chosen to "correct" the flaws are unlikely to render democratic institutions more representative and stable. In fact, in the two countries that underwent the process of constitutional replacement earliest, Colombia and Peru, there is obvious disenchantment already. In Colombia in the year 2000, only nine years into the life of the new constitution, a serious interbranch crisis sprang up over the failure of political institutions to mitigate corruption and facilitate political and economic reform and further a stalled peace process with the country's guerrilla armies. In Peru, the very legitimacy of

the government itself is at question, owing to the ways the president used the pliable political parties, congress and nominally independent agencies to achieve his third term.

Constitutional reform certainly has not been a panacea in Colombia and Peru. Nor has it been so in Ecuador, where the new constitution could not contain the conflicts of that country or prevent a crisis in early 2000 that led to the extra-constitutional overthrow of an elected president. Some of the crises confronted by these countries may not have an institutional solution. For instance, a better electoral system would not resolve the guerrilla war in Colombia or the stark regional and ethnic conflicts of Ecuador. Nonetheless, I would argue that reforms of the “right” type to electoral systems could be crucial pieces of an overall “representation revolution” that would help stem the crises of democracy in the region. In fact, over thirty years ago, Giovanni Sartori (1968: 273) referred to electoral systems as “the most specific manipulative instrument of politics.” He referred to electoral system design as “political engineering” and argued that it was a critical part of political development. Over thirty years later, his words still ring true.

Yet, while there has been much constitutional reform in Latin America in the last decade, there has been little electoral reform, and hence little effort to correct major flaws in the ways in which politicians relate to their (supposed) constituents. Focus has been placed on executive authority, eligibility of the president for reelection, as well as on a proliferation of supposedly “autonomous” entities to check executive and legislative powers. Unfortunately, electoral reforms have either been almost nonexistent in the process of institutional reform (Colombia, at least up until 2000, as well as Peru), halfhearted or incomplete in their execution (Venezuela), or even counterproductive (Ecuador).

The policy-making processes of many Latin American countries are markedly inefficient. Too much of a burden of policy-making is placed on the executive, while congress tends to be primarily a forum for dispensing patronage rather than for debating and seeking solutions to fundamental political problems. Given the presidential model of government in Latin America, an efficient policy-making process requires that the congress, as well as the president, reflect the *broad preferences of the national electorate*. It does not require that the two elected branches be in agreement on exactly what the political problems are that face the country, much less on the solutions to them. Indeed, because of the separate elections and fixed terms of the legislature and executive, a very high degree of interbranch agreement is probably possible only if legislators are accountable to the executive rather than to the voters. Such an arrangement, which existed for many years in Mexico (Weldon 1997), cannot be considered democratic and is emphatically not what I am proposing. What I am suggesting is that the democratic process in most Latin American countries would benefit from an injection of greater “efficiency” into the legislative process, whereby legislators were responding to national programs and issues to a far greater degree than they do today. To achieve this efficiency requires fundamental electoral reform and cannot be achieved solely by altering the powers or terms of the executive (though doing so can be helpful in some respects that I shall elaborate on below) or by creating more autonomous “third branches” of government (though these can be important pieces of an overall reform project, too). The basic idea is that to create a democracy that more accurately addresses national problems requires a legislative branch that is a partner in the effort, rather than an almost certain obstacle. Achieving a legislative

branch with an incentive to cooperate on issues of broad national salience requires reform of the legislative electoral process above all else.

### **A sketch of the problem: Towards a representation revolution**

I focus this paper primarily around the cases of the northwest portion of South America in which the most dramatic constitutional replacements have occurred (Colombia, Ecuador, Peru, and Venezuela). In other work (Crisp, Moreno, and Shugart 2000) I have termed these processes cases of “Bolivarian replacement” to reflect the drama of the executive as the “man on horseback” seeking to “liberate” his people from the corruption of stifling political institutions and practices, and because of the sub-region in which they have occurred. I will show that the party systems of the Bolivarian cases were all “extreme” in the sense of distorting the ability of congress to reflect the preferences of the broad electorate. Electoral reform could significantly reduce the this extremeness, but instead of electoral reform, new constitutions have focused on what are essentially side issues meant to cope with extremeness rather than reduce or even eradicate it.

Electoral systems affect the nature of the relation between the represented citizenry and its representatives. Many of the electoral systems in use in Latin America undercut the accountability of legislators to citizens and hinder the development of party systems that can effectively articulate collective preferences of broad citizen groups (i.e. programmatic parties). The electoral systems in use undercut the representation of broad citizen interests in a number of ways. For instance, some, as in Colombia, promote sub-party factions that cater to narrow interests, exchanging favors for personal votes rather than votes based on a party label that is associated with a package of policy offerings. Others so concentrate authority within parties that average citizens feel they have no voice within the party. Elsewhere electoral systems promote regional fragmentation into multiple parties, each with a bastion in one or more regions, at the expense of integrating a national party system. Many are highly malapportioned such that less populated and typically poorer and more parochial regions are severely underrepresented relative to more populous and typically more economically dynamic and cosmopolitan areas.

These flaws, which are present to varying degrees in several Latin American countries, will need to be corrected by future rounds of reform if democracy is to prosper. I do not claim that electoral reform will somehow transform underperforming democracies into paragons of democratic practice. Latin American social and economic problems are simply too deep for us to expect such dramatic progress to result from institutional reform. However, I do wish to argue that absent fundamental electoral reform, the democratic progress of many countries of the region is likely to stagnate as presidents find themselves continually frustrated in efforts to modernize government service-provision and further open the economy and as citizens feel more and more unrepresented. Under such conditions, the legitimacy of democracy itself suffers and presidents seek to bypass democratic institutions. That is, we see the phenomenon of “neopopulism” as discussed in Roberts’s contribution to this project.

Fundamental electoral reforms would constitute nothing less than a “representation revolution” if fully adopted. While the prospects are not bright for such a revolution in the short run, there are glimmers of hope. For example, in Colombia, nearly a decade of political life under a new

constitution (adopted 1991) that failed to stem rising corruption and cynicism about democracy has crystallized a belief among much of the political elite and opinion leaders of the country that the electoral system must be reformed. A proposal meant to bring about greater collective accountability by enhancing the role of parties in what is currently almost a party-free electoral system is under debate. In Venezuela, the new constitution calls for democratization of party nomination procedures, although with power currently overwhelmingly in the hands of the diffuse “movement” around President Chavez, the prospects for implementation of these provisions appear dim. In Bolivia—a case of political reform to have proceeded in a transactional manner, rather than as a product of unilateral executive action—a new electoral system was adopted with the explicit goal of improving legislators’ connections to the communities they represent (Culver 2000). These are small steps, and need to be followed up with deeper changes in the resources available to legislators and in citizen and NGO involvement with political parties, but these steps could constitute the beginnings of a representation revolution. I now turn to a definition of what the goal of this revolution should be—electoral “efficiency.”

### **Extreme Party Systems**

In other work (Shugart 2000) I have identified the notion of “extreme” party systems and contrasted it to an “efficient” ideal in which electoral institutions and parties structure clear programmatic choices for the electorate. As an ideal type, efficiency is not fully realized anywhere, but some democracies approximate it more closely than others. Deviations from the ideal may occur in either of two dimensions: interparty and intraparty.

On the interparty dimension, an “efficient” system is one that permits the aggregation of parties into two blocs, each presenting a prospective legislative program, such that one of them will receive majority backing from the electorate. An electoral process fails this criterion if one of two conditions obtains. In one extreme deviation, no party obtains a majority of votes yet one party obtains a majority of seats as well as executive power, thereby allowing it to implement its program even though a majority of voters may oppose it. This type of system may be termed *pluralitarian* (because a plurality, rather than a majority, rules). There have been no such systems in Latin America; hence this type will not concern us further.<sup>1</sup>

The opposite deviation on the interparty dimension is one in which multiple parties do not aggregate into identifiable blocs. That is, voters cannot reasonably empower a legislative coalition because such coalitions—in presidential systems such as in Latin America—will be pieced together on an ad hoc basis by the president, rather than formed as a result of the election outcome. In a system of multiple fragmented parties it is not feasible for voters to hold any governing team accountable for its actions and hence elections turn on efforts by specific parties to extract as much as possible for their own regional or sectoral constituency. I term such systems *hyper-representative*. Fragmented multiparty systems are especially difficult under presidentialism (Mainwaring 1993), because presidents and congress are both elected to (formally) fixed terms, but

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<sup>1</sup> The Mexican electoral systems of 1991 and 1994 were designed to assure the largest party a majority of seats even if it won less than a majority of votes. Thus they were intended to be pluralitarian if the PRI failed to secure its electoral majority. See Molinar and Weldon (2000).

the president is unlikely to have more than a small contingent of seats held by his own party. Thus it is not surprising that some of the most troubled Latin American democracies, including those in which presidents or congresses have sometimes failed to complete their terms, have been hyper-representative systems: Brazil (especially under Sarney and Collor), Peru after 1990, and most notably Ecuador.

On the intraparty dimension, an “efficient” system is one in which the incentives of individual candidates are aligned at once with the voters to whom they are accountable via elections and to the programs of the parties in which they operate and with which they vote on legislative divisions. Extreme deviations from the efficient ideal take place when either a closed party elite, on the one hand, or individual candidates, on the other hand, dominate the electoral process. When party leaders hand-pick candidates who run in large multi-seat districts, legislators have no incentive to seek to learn what voters want because their own attempts to be responsive to a constituency of voters has virtually no effect on their electability. Instead they must merely obtain an electable rank on the party list and thus are responsive to an “internal constituency” within their own parties. Under certain circumstances, the leaders themselves can become self-perpetuating, such that there is no accountability link between them and their voting constituents. The Venezuelan system, especially before electoral reforms in 1993, is the paradigmatic case of this extreme, which may be termed a *hyper-centralized* system.

At the opposite extreme, when individual candidates dominate, I call it a *hyper-personalistic* system. Under such conditions, candidates of the same party compete with one another resulting in party labels being relatively unimportant (or, at the extreme, irrelevant) in the voter’s choice. Instead, candidates seek to supply targeted patronage to voters in order to capture their votes and thus survive the frenzied intraparty competition. The Colombian party system is the best example of this phenomenon in Latin America, and perhaps the most hyper-personalistic system in the world.<sup>2</sup>

As two co-authors and I argue at greater length elsewhere (Crisp, Moreno, and Shugart 2000), extreme party systems are prone to Bolivarian constitutional reform because their inefficiency means they are likely to be troubled in the first place and because it also means they are unlikely to be responsive to calls for political reforms that would moderate their extreme party systems. Unfortunately, when the executive pushes forward significant political changes, the reformers focus principally on symptoms of inefficiency that manifested themselves in interbranch relations rather than on the electoral rules that are at the root of their extreme nature.

### **The Cases: “Bolivarian” and transactional constitutional replacements**

Table 1 shows the six constitutional replacements in Latin America in the 1990s. Clearly, Bolivarian cases—in which a process of drafting and ratifying a new constitution is imposed under

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<sup>2</sup> In both hyper-representative and hyper-personalistic systems, a basic difficulty arises in that legislators demand patronage and “pork-barrel” payoffs in exchange for supporting presidential proposals. There is a critical difference, however. In a hyper-representative system, distinct parties tend to stand for often mutually exclusive regional or sectoral preferences over the distribution of public funds, with little (aside from the president) to aggregate across them. Presidents tend to be in a clear minority situation vis -à-vis congress. In hyper-personalistic systems like that of Colombia, on the other hand, individual members seek to bring pork home to their districts, but still tend to work together under the framework of their party in such matters as electing a common presidential candidate and organizing the internal business of the congress.

presidential emergency order—go with extreme systems, while transactional replacements—in which a new constitution is negotiated in a bipartisan or multipartisan fashion and ratified through established procedures—are found in non-extreme systems. The appendix to this paper shows the derivation of efficiency indicators for the Latin American cases.

It must be noted that not all extreme party systems result in Bolivarian replacements, but rather that the Bolivarian mode has occurred only in extreme systems. For instance, Table A.1 in the appendix shows that Bolivia and Brazil both have extreme hyper-representative systems, yet there has been no constitutional replacement in these cases. There have been significant constitutional amendments that touch on the concerns of this paper—a new electoral system in Bolivia and presidential reelection in Brazil. Both followed a transactional process. There is not the space here to devote to a detailed consideration of why these extreme systems did not produce a crisis that resulted in Bolivarian replacement. I would argue that Bolivia experienced a transactional reform (short of replacement) in large part because it has a hybrid constitutional form that enforces greater interparty cooperation than the presidential systems found in our other cases (Gamarra 1997, Mayorga 2000). Thus Bolivian politics may have been predisposed to follow a more cooperative approach, and also to focus on the means by which politicians are held accountable (i.e. electoral reform), rather than the balance of executive–legislative powers, as in the Bolivarian cases.

In Brazil, there were periodic threats of unilateral action under the interim presidency of Itamar Franco, but none were carried out. Ultimately, the center-right parties forged a coalition behind the candidacy of Fernando Henrique Cardoso that may be seen as transcending—at least temporarily—the hyper-representative character of the system and making reform (again, short of replacement) possible through cross-party transaction. The most likely proximate cause for this higher level of interparty cooperation was the presence of a threat from a cohesive left-wing opposition that showed already in 1989 that it was capable of obtaining over 40% of the national vote in a presidential runoff. No impetus of this sort was present in the other extreme systems.

I now turn to capsule descriptions of the conditions that preceded Bolivarian constitutional replacement in the other two hyper-representative cases, Ecuador and Peru, as well as the hyper-centralized case of Venezuela and the hyper-personalistic case of Colombia. I then describe the conditions that preceded the transactional replacements in Argentina and the Dominican Republic.

Ecuador. Ecuador has been plagued by a deep regional cleavage reflected in a party system in which there are essentially no national parties, but rather two regional subsystems (Mejia n.d.). A fragmented party system made the creation of executive coalitions difficult, especially after midterm elections that regularly saw the president's own party decimated in terms of its seat share (Mejia n.d.). A ban on immediate reelection—repealed in 1994—coupled with easy registration of new parties often encouraged legislators to establish their own parties that they could lead from outside congress in the next term (Conaghan 1995, Pachano 1991). Defectors from parties were often lured by offers of government patronage. Against this backdrop, sustaining policy coalitions was extremely difficult and presidents had such unreliable support that they could not even count on finishing their (supposedly fixed) terms—for example, the unpopular Abdala Bucaram, a minority president seeking to implement neoliberal reforms, was dismissed by a congressional majority on grounds of mental incompetence in February, 1997. His successor, Interim President Fabio Alarcon,

convened a referendum to bypass congress and install a new constitution. Although the 1979 constitution gave the president the authority to call a referendum under certain conditions, carrying out fundamental constitutional reform via referendum was not provided for in the constitution.

Peru. Peru also was a hyper-representative system at the time of its crisis in the early 1990s. Fujimori was elected as a result of the great fragmentation of the party system in the 1990 election and the broad opposition to Vargas Llosa's proposals for a neoliberal economic restructuring (Schmidt 1996). Whereas in the 1980s Peru had three strong political parties or alliances (the populist APRA, Accion Popular, and the United Left), which had assured presidents a congressional majority or nearly so, the 1990 election gave Fujimori's loose alliance of associated candidates scant support in congress, the result of a highly fragmented and polarized party system. Fujimori's ambitious economic reform program—strikingly similar to that of Vargas Llosa whom he had defeated—and his counterinsurgency program were bogged down in congress by 1992 (Schmidt 1998). Fujimori responded by staging a coup and closing the congress, leading up to the writing of a new constitution that would guarantee him reelection and greater powers.

Venezuela. The literature on Venezuelan politics is rife with descriptions of parties dominated by a small clique of leaders—what Venezuelans call the *cogollo* (Coppedge 1994, Martz 1992). Legislative candidates' names did not appear on ballots as voters voted only for a party symbol, districts were relatively large (with an average of around 7 seats, much larger in the most populated states), and candidate ranks on ballots could be determined by central leadership in Caracas despite the nominally federal character of the system. Thus legislators had no contact with their supposed constituents. As Coppedge notes, the Venezuelan presidents from the 1960s to the late 1980s did not even have the capacity to set their own agendas. Rather, the policy agenda was almost entirely dictated by the party leadership. Whatever the merits might be of strong parties, this situation is highly unusual for a presidential system, where the presidency is ordinarily seen as having a mandate to articulate the policies he believes are preferred by his constituency. As Naim (1993) notes, when a president (Carlos Andres Perez, after 1989) sought to govern outside his party, the policy-making institutions of the Venezuelan state were so weak that he lacked mechanisms to consolidate support for the new direction in economic policy. In the instability that resulted from the dislocation of economic reforms after 1989, there were two coup attempts. One was led by Hugo Chavez, who later, in 1998, would be elected president with a mandate to do as chief of state what he had failed to do as coup leader: overturn the existing political and institutional order and establish a new constitution.

Colombia. The Colombian party system is hyper-personalistic in that the allocation mechanism does not take parties into account at all (Cox and Shugart 1995). Rather, voters vote for personal candidate lists headed by local leaders who compete with copartisans for voter support, mainly by offering patronage. Successive presidents had ambitious reform agendas vetoed by a congress more concerned with sources of patronage than with national programs (Archer and Shugart 1997). Ultimately, President Virgilio Barco declared a state of siege in 1990 during which he called elections for a constituent assembly to draft a new constitution.

Argentina. The constitutional replacement in Argentina began with what looked to be a Bolivarian pattern, as President Menem threatened to call a referendum to bypass congress and

circumvent the existing constitutional ban on reelection. However, a rupture in the institutional order was averted when the principal opposition party, the Radicals, agreed to a pact with Menem that led to the convening of a constitutional convention that was authorized by bipartisan congressional majorities. This ultimately transactional path was perhaps made possible by the non-extreme nature of the party system, whereby each of two parties competes for the support of a majority of the Argentine electorate, and parties are not so tightly controlled from the center but rather the arena of provincial politics constrains national leaders (Jones 1997, Eaton N.d.). The resulting constitution granted Menem his right to run for reelection, but also codified presidential powers in a way that restrained them relative to their apogee under Menem's first term (Jones 1997).

A neopopulist quasi-dictatorship resembling those of Peru and Venezuela was a real possibility in Argentina in the early 1990s, but such a threat now appears remote. The most important lesson of the Argentine case is that interparty cooperation can produce a more consolidated democracy. Had the Radicals not agreed to negotiate with Menem and had Menem not agreed to back down from his referendum threats in the face of a cooperative opposition, the outcome could have been very different. Constitutional reform may not have been a panacea—in fact, if anything was, it was the presence of a non-extreme party system that served to constrain the neopopulist president in unexpected ways and produced a workable institutional order.

Dominican Republic. On the intraparty dimension, although the Dominican Republic has a closed-list electoral system like Venezuela (and many other Latin American countries), its parties are far less institutionalized than Venezuela's were. The "neopatrimonial" nature of politics in the Dominican Republic (Hartlyn 1998) precludes the extreme centralization in party structures that developed in Venezuela. On the interparty dimension, a two-party system (until recently) ensured majority support for most presidents. Thus the systemic crisis that led to constitutional replacement did not arise from an extreme party system. Instead, it arose from an attempt by the incumbent president to engineer a fraudulent election. The disputed election of 1994 was potentially regime-threatening, but was resolved through cross-party negotiations leading to a new constitution being ratified by congress.<sup>3</sup> New provisions include a move to off-cycle elections, a ban on immediate presidential reelection, and the adoption of a two-round formula to elect the president, as well as only a two-year term for the president elected in 1994. These new measures were responses to a specific crisis as well as to the rise of a significant third party. In this sense, although no reforms were adopted to the legislative electoral system, they were appropriate institutional responses the problems faced.

### **Why do Bolivarian reformers focus on the powers and terms of the executive?**

I have identified a specific mode of constitutional replacement that has occurred exclusively in extreme party systems. I now turn my attention to the reasons why, when a president undertakes this mode of political reform, it takes the path not of reforming electoral and party systems to make them less extreme, but instead focuses on the powers and terms of the executive. A key puzzle is: Why have politicians in these systems failed to recognize that electoral reform would help solve

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<sup>3</sup> A survey of the events of 1994 may be found in Hartlyn (1998).

many of the problems of congresses that are recalcitrant or outright corrupt in the face of executive attempts at policy innovation?

In extreme parliamentary systems—Italy, Japan, and New Zealand—reformers focus directly on the right target: the electoral system. These three countries had extreme party systems, and since the adoption of mixed-member electoral systems in the 1990s, efficiency has increased (Shugart 2000). However, in presidential systems, where the executive arises directly from the voters rather than from the parliamentary party system, reformers are less likely to recognize the reasons why the political system cannot overcome its systemic crisis. That is, they see a president elected by the nation, yet frustrated by the legislative branch, and conclude that what ails the system is the inability of the president to get things done. They are right of course, but the wrong implications are derived from that—the problem is seen as residing in the powers and terms of the executive itself, rather than in the incentive of the congress to address the very problems that ail the system. In a nutshell, the powers and terms of the executive are a more identifiable target of reforms; however, reformers would get “more bang for their buck” if they would focus on the ways in which legislators are held accountable. Reform of electoral systems is more difficult in that it requires consensus among the very parties in congress that benefit from the existing electoral system. Thus, reformers (who are themselves generally located in the executive branch) have sidestepped the problem by focusing on the other branches, including both the executive and nonelected branches.

### **The Content of Reforms in Bolivarian Constitutional Replacements**

Presidents and their advisors are likely, as I’ve noted above, to see the institutional problem as lying in presidential powers that are inadequate and presidential tenure in office that is too short. Table 2 provides an overview of these changes, as well as changes in the cameral structure of congress, which are also related to the ability of the executive to get things done. I discuss in this section how the reforms in each case were connected logically to the perceived failures of the extreme party system. After reviewing changes to executive–legislative relations and cameral structures, I then turn to reforms affecting so-called independent branches. My premise throughout is that all these reforms can be seen as means of coping with extremeness without attacking the source of the extremeness itself.

#### Powers of the presidency

The formal constitutional tools that presidents have to shape the output of the legislative process may be subdivided into proactive and reactive powers (Carey and Shugart 1998, Shugart and Mainwaring 1997). Proactive powers are powers that allow presidents to establish a new status quo unilaterally, i.e. without the consent of congress, such as decree authority. Reactive powers allow the president to preserve the status quo against actual or potential congressional efforts to change it. These include vetoes and provisions granting the president the exclusive right to initiate bills concerning certain policy areas. Following Crisp, Moreno, and Shugart (2000), I expect that the constitutional powers of the executive will tend to be increased in hyper-representative (e.g.

Ecuador and Peru) and hyper-centralized (e.g. Venezuela) and systems, but will tend to be reduced in hyper-personalistic systems (e.g. Colombia).

Ecuador and Peru. In hyper-representative systems, the problem is a political system that is too fragmented, with legislators primarily interested in securing particularistic favors for their regional bailiwicks. The presidency is the one source of unified power in the system, so the tendency would be to use an extra-congressional reform process as a means to strengthen the executive's ability to resist legislative politicking. With greater *reactive* powers, presidents can reduce the tendency of congress to engage in logrolls, amending bills and enhancing spending to attract small parties and individual legislators, especially those representing specific localities of a regionally diverse country, to legislative coalitions.<sup>4</sup> As detailed in Table 2, the new constitutions of both Ecuador and Peru provide the president with new reactive powers, especially in provisions that limit the ability of congress to logroll and increase spending or offer tax breaks on behalf of their regions. The Ecuadorian president's veto has been fortified, too. In both countries, these reforms reduce congressional opportunities to engage in logrolling without removing the incentives for legislators to logroll on behalf of their regions or parties. Thus presidents will continue to have to provide payoffs to win congressional support as long as the electoral incentives are unchanged. They will simply be able to control more than they could before which members receive payoffs.

Venezuela. In hyper-centralized systems, reformist pressure is likely to focus on strengthening the presidency because the legislature is perceived to be the preserve of the parties—the *partidocracia*, as it was known in Venezuela. The presidency was perceived as too weak to break the stranglehold of strong party elites on the legislature, yet it is the presidency that is most “above parties” by its very nature. Hence reformers are likely to expand the *proactive* powers of the presidency, in order that the president can bypass the strong parties and the congress in the enactment of national policy. The new Venezuelan constitution clearly seeks to make the presidency, rather than the parties, the locus of policy-making initiative in the system. Its proactive powers are greater in two respects. First, the legislature may grant the president the right to make laws by decree in any substantive area, not just economic and financial matters as the 1961 Constitution did, and the president now has decree authority during states of exception, which the president alone may declare.<sup>5</sup> Second, the president's proactive powers have been enhanced by a provision that permits the president to call a referendum to approve of decrees that he has issued under delegated authority. The practical effect of this provision is to allow the president to exceed the scope of legislative intent in the use of his authority to rule by decree, because even if congress might object to a specific decree, the president can appeal over their heads to the electorate to obtain approval for the measure. The president also has the authority to call a referendum to overturn any law passed by congress, which gives him a reactive power that, while more cumbersome and time-

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<sup>4</sup> Brazil, which has a party system that is both hyper-representative and the second most personalistic system in Latin America (after Colombia), already entered its current democratic period with a constitution that granted the presidency strong reactive powers (especially in budgeting) and proactive powers (in the form of the provisional measure).

<sup>5</sup> The decree declaring a state of exception must be submitted to congress for its “consideration and approval” within 8 days (Article 338). The constitution is mute on what happens if the decree is not submitted to congress, if congress fails to act on the decree, or congress votes against the establishment of a state of exception. Varying forms of exception can last 30, 60, or 90 days, and each type can be renewed for an equal amount of time with congressional approval. During the state of exception, the president assumes legislative decree authority in all related matters.

consuming than an ordinary veto, also gives him the opportunity to play to his popular support against the parties. These two referendum provisions in the new Venezuelan constitution in a real sense institutionalize the “neopopulism” of the *chavezazo* by allowing the president to rule over the heads of the parties and the congress. On the other hand, provisions in the constitution intended to increase the accountability of members of congress by decentralizing nomination procedures look unlikely to be implemented soon.

Colombia. In hyper-centralized systems, given their weak parties, constitutional design tends to establish a strong executive with proactive legislative powers (Shugart 1998). Distinct from all the other cases discussed here, the Colombian constitution that was replaced in 1991 already had a strong presidency as a counterweight to the hyper-personalistic party system. Thus, reforms centered on *reducing* the powers of a presidency that was described variously by Colombian scholars as a “Demi-God” (Cepeda 1985) and as “almost the totality of the state” (Vázquez Carrizosa 1986:15). As in the other Bolivarian cases, reformists centered their attention on the perceived imbalance of executive–legislative powers. The difference is that in Colombia, they saw a president too strong rather than one too weak. Whereas a political problem in Colombia was that much lawmaking was left to unilateral executive action (Archer and Shugart 1997), reformers sought to force congress to tackle national policy, rather than ducking responsibility and hiding behind the president. The 1991 constitution greatly reduces the range of policy areas in which policy-making may be done by decree, and enhances congressional authority to overturn decrees. Moreover, congress may now delegate powers only when requested by the executive. In the past, congress had delegated powers for its own purposes—i.e. to evade responsibility for difficult policy choices or as an easy way to overcome its own internal decision-making problems—even when such power was not desired by the president. Finally, the delegation of decree powers also must pass by a majority of all members, instead of by simply a majority of those present. The 1991 constitution also reduced reactive presidential powers, by permitting an absolute majority to override vetoes.

While Colombia still has a very powerful presidency, it has been significantly weakened. This may seem counterintuitive: reforms carried out by a unilateral Bolivarian process have resulted in a diminution of the president’s ability to act unilaterally. The explanation for this unusual result is that it was the ability of the president to act unilaterally, and congress’s preference for unilateral presidential action, that motivated the reform in the first place. The crisis of a hyper-personalistic system is the difficulty of sustaining policy-oriented coalitions in the legislature, because of legislators’ dependence on clientelism and pork. The new constitution is thus an effort to force congress to deal with national policy issues, yet without giving it the electoral incentives to do so— incentives that can only come from significant reform to the electoral and party procedures.

### Term of the presidency

Among the most widely publicized changes to Latin American constitutions in recent years has been the apparent trend towards permitting immediate reelection of the president, raising the specter of *continuismo*. The new constitutions of Peru and Venezuela permit consecutive terms for the president. The move towards permitting longer presidential tenure is consistent with the overall

goal of enhancing presidential power in these cases because a popular president who can run for a second consecutive term is likely to have greater sway with congress than one who becomes a lame-duck as soon as he takes office. In Ecuador, on the other hand, while presidential power was increased, the lifetime single-term limit on the presidency was retained. In Colombia, a lifetime single-term limit was imposed, which is consistent with the overall reduction in presidential powers in this case.<sup>6</sup>

Finally, in the non-Bolivarian cases, Argentina provided for immediate reelection, but to a term one third shorter. This is in stark contrast to Venezuela, where reelection was permitted but to term 25% longer. The Argentine example is consistent with its more transactional pattern: while the president gained the possibility for an overall longer tenure, he had to trade off a shorter term. Moreover, when Menem, like Fujimori later, sought to have a third term (on the grounds that the first term did not count because it began under a now-defunct constitution), he was unable to prevail. A stronger party system—notably the presence of rivals within his own party—constrained Menem in ways that Fujimori (and, presumably in the future, Chavez) would not face.

In the Dominican Republic, a ban on immediate reelection was imposed on the presidency where no limits existed before. Finally, the case of Brazil must also be mentioned. A constitutional amendment (not a new constitution), adopted through transactional politics granted the right to immediate presidential reelection effective in 1998. However, as in the other transactional case in which reelection was permitted, Argentina, the Brazilian amendment contained a tradeoff in the form of a shorter term. In addition to affecting presidential tenure, this reform also had another important effect on electoral efficiency by making all future presidential and congressional elections concurrent (as had been the case in 1994, but would not have been again till 2014). Concurrent elections enhance efficiency because the voting patterns for president and congress are more likely to resemble one another when the elections are held concurrently than when they are not (Shugart and Carey 1992).

This discussion of changes to terms of office suggests that, contrary to what may be the popular perception, there is no trend towards *continuismo*. Although we have three new constitutions and one constitutional amendment that grant presidents the right to immediate reelection, two of those do so for a shortened term, and these cases are balanced by three new constitutions that either leave presidential reelection provisions unchanged or impose new restrictions. Rather than a trend towards *continuismo*, the Fujimori and Chavez situations are the product of specific Bolivarian episodes that have taken place in the context of a near-total breakdown of partisan constraints on presidential action.

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<sup>6</sup> It is worth noting that the constituent assembly in Ecuador had a much greater share of seats held by the established parties than in Peru or Venezuela (where transitional parties were virtually absent from the assembly). This same condition also applies to Colombia. It may be that traditional politicians prefer to keep the presidency rotated as much as possible in order to open up opportunities for their own leaders or themselves to advance to the highest office. In Peru and Venezuela, on the other hand, most members of the constituent assembly owed their prospects for a political career to the incumbent president himself.

### Cameral structure

There have been changes to the cameral structure of congress in each Bolivarian case. Obviously these are reforms to the legislative branch, but they are connected primarily to the executive–legislative balance, by altering the constituencies of legislators, rather than affecting how legislators relate to their constituents. Two cases in which presidential power was enhanced also made their legislatures unicameral, while the case in which presidential powers were reduced changed the senate to a single nationwide constituency (see Table 2).

The adoption of unicameralism in Peru and Venezuela is consistent with the overall move towards greater presidential influence in the sense it eliminates one veto point against presidential proposals. In both countries, the house that was abolished was the one that had the constituency that was least congruent with the president’s national constituency.<sup>7</sup> This change is thus consistent with easing the passage of presidential legislative proposals.

Cameral change in Colombia, where presidential powers were reduced, took the form of a single nationwide constituency for the senate. Thus at the same time that the president’s role as a veto player was diluted, a legislative chamber that shares the president’s national constituency was established as a veto player that should be able to resist the greater particularistic pressures coming from the still-malapportioned lower house.

Only in Ecuador does the cameral change not conform to the logic of changes in presidential powers. Cameral change in Ecuador was minor compared to the other cases, but it went in the opposite direction of what would be expected when the goal of reformers is to improve presidents’ prospects of finding congressional support. The national constituency that previously comprised under 20% of the chamber was abolished, meaning that the congruence of constituencies between the presidency and the congress is somewhat reduced.<sup>8</sup>

### Nonelected branches: Achieving accountability “horizontally”?

Several of the new constitutions adopted in Latin America in recent years have been notable for their proliferation of so-called independent branches. Colombia established a Fiscalía, a Procuraduría, and a Defensoría del Pueblo, and increased the independence of the Controlaría. Peru established a Defensoría, as did Venezuela. These entities and others like them are established for specific oversight and sanctioning functions outside of the executive and legislative branches. They are the entities that O’Donnell (1998) has in mind when he refers to so-called horizontal accountability, which he defines as

The existence of state agencies that are legally enabled and empowered and factually willing and able to take actions that span from routine overseeing to criminal sanctions or impeachment in relation to action or omissions by other agents or agencies of the state that may, presumably, be qualified as unlawful.

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<sup>7</sup> See Lijphart (1999) on congruence of chambers in bicameral parliaments. The same concept can be applied to the nature of congressional constituencies vs. that of the president (Shugart and Haggard 2000).

<sup>8</sup>The greater presence of politicians from established parties, compared to Peru and Venezuela, may offer an explanation. That is, it may be seen as a tradeoff: granting more powers to the presidency, but retaining the congress a forum for over-represented regional interests. Of course, such a change does not augur well for “governability.”

Elsewhere I have argued that the term *accountability* is misleading for the roles performed by these institutions (Shugart, Moreno, and Crisp 2000). Accountability should be understood as the right of a principal to deny its agent the continued exercise of delegated rights previously assigned by the principal. Few of the entities that O’Donnell appears to be referring to meet this criterion. Nonetheless, it is clear that independent agencies can play an important role in restraining the actions of the elected branches, for instance by pulling “fire alarms” that warn the voters or congress of malfeasance by executive officials or in some cases by initiating criminal proceedings before the Supreme Court. The proliferation of these “independent branches” presumably reflects popular disgust at widespread corruption and human-rights abuses, and the inability or unwillingness of legislatures and voters to hold the culprits accountable. The basic argument that I would make is that while these entities can be useful counterweights to the elected branches, they are unlikely to be particularly effective if legislative accountability itself is defective. That is, if one desires democratic governments that are reflective of the values and demands of the citizenry, one needs to alter the incentive structure under which elected officials are held accountable (i.e. *vertically*, to voter-principals) rather than create new and supposedly more independent bodies of appointed elites charged with oversight of defective elected bodies. A prime reason for my pessimistic assessment of the role of these nonelected oversight and sanctioning entities is that, as we shall see, very few of them are really *independent* of the legislative power in the first place. Few of these nominally independent entities enjoy as much formal independence as the executive and legislative branches have vis-à-vis one another in presidential democracies. What gives the executive and legislative branches mutual independence is their separation of origin and survival (Shugart and Carey 1992)—specifically, that both receive delegated authority as agents of the same principal, the voters, and have fixed terms of office. An additional consideration is that what makes them capable of checking one another—as presidential democracy requires—is countervailing ambitions, achieved by drawing their constituencies differently or having different term lengths, etc.

Other branches, such as the judiciary, are different in that they are not elected by the voters. Usually they are chosen in a process that involves legislators and often the executive. Thus their independence is already compromised, as politicians who may have a stake in the outcomes of decisions of these branches are directly involved in choosing the officials of these branches. Increases in the independence of nonelected branches obtain, then, to the extent that they enjoy separation of origin and survival vis-à-vis the elected branches.

For nonelected branches, separation of origin increases the more the appointing entity extends beyond the president or the legislative majority. Involving both the president and the legislative majority increases separation of origin to the extent that the president and congress represent different constituencies. That is, it separates not at all if a unified party controls both branches, or quite substantially if the legislative chamber that must agree with the president on the appointment is controlled by a different party or is elected in constituencies that do not mirror the national constituency of the president. Thus formally identical appointment procedures for Supreme Court judges in Mexico and the United States resulted in no judicial independence in Mexico (till both the appointment process and the degree of political pluralism changed recently—see Magaloni

2000) but substantial independence in the United States. Further separations may be achieved by requiring an extraordinary majority or involving such devices as judicial councils, for example. Separation of survival boils down to the length of terms and how easily the term can be shortened by action of the elected branches. First of all, if the dismissal process is easier than the appointment process, or if a single actor may both appoint and dismiss the officials, then the entity in question meets none of the conditions of separation to qualify it as an independent branch. It may still enjoy some degree of constitutional standing, perhaps fiscal autonomy, but if the officials who direct the entity can be removed by the same process through which they were appointed (or an easier process), then we are speaking of an “agency” rather than a “branch” of government. If, on the other hand, the officials enjoy a long term of office and the dismissal process is cumbersome and involves actors other than the appointing entities, the degree of separation of survival is enhanced.

In Shugart, Moreno, and Crisp (2000), we show that many of the so-called independent branches lack the criteria for independence, or are at best only marginally independent. Even some supreme courts—notably those of Guatemala and Honduras—lack separation of either origin or survival. Some countries have separate constitutional tribunals to rule on the constitutionality of laws, and often these have less separation than the supreme court. An example of this situation is Peru, where President Fujimori took advantage of the easy process of dismissing members of the Constitutional Tribunal in order to overturn a ruling against his quest for a third term (Flores 2000).

Figure 1 shows the degree of independence of nonelected branches or agencies charged with checking or overseeing the elected branches, as well as the direction of some recent changes. Moves downward or to the right indicate increases in independence, while moves upward or to the left indicate reductions in independence. Only in the shaded area of the figure can the branch in question be expected to be genuinely independent. On the vertical dimension are different procedures for appointing officials of the nonelected branches. The farther one goes downward, the more separation there is from one or the other elected branch. The logic of the order is that involving more than one elected branch increases separation, as does requiring an extraordinary majority. Some—especially recent—constitutions require that a council of the magistracy select officials. These councils can be either apolitical such that their involvement substantially increases separation, or they can be only once removed from the legislative majority that selects them. For instance, in Ecuador (and, formerly, Colombia) vacancies on the Supreme Court are filled by decision of the remaining justices. This establishes a self-perpetuating court that is as free from political influence as possible. In fact, one could argue that it goes too far, tending to create a court that is very homogeneous and potentially cut off from the citizenry it ultimately is supposed to serve. Such an argument has been made by Correa Sutil (1993) regarding the similar Chilean court appointment procedure. On the other hand, there are councils of magistracy that are themselves made up of politicians, political appointees, or officials selected by the legislative majority. One example is in the current Venezuelan constitution, where a council called the *Poder Ciudadano* is composed of several officials, including the Human Rights Defender and Public Prosecutor. This council nominates candidates to the very same positions that comprise the council, and the nominees are confirmed by the congressional majority. Thus there is very little separation of origin.

The horizontal axis of Figure 1 shows a “term ratio,” which is simply the ratio of the official’s term to the term of the elected branch that is involved in appointing. Life terms are coded as 20 years, and when there are two elected branches (or two legislative chambers) involved, the one with the shorter term is used.<sup>9</sup> Thus, for example, the US Supreme Court’s term ratio would be  $20/4=5$ , because justices are appointed for life terms by a president who has a four-year term. The Senate, which must confirm appointments, has a longer term, at six years, and hence is not included in the calculation, though its involvement shows up on the vertical axis. If an official heading one of these nonelected branches can be dismissed by a legislative majority, the term is considered effectively zero. Term ratios of 1.00 or less imply essentially no independence, because each legislature (or president) has an opportunity to replace the official. Term ratios from 1.01 to 1.49 provide only slightly more independence, because every other legislature (or president) is likely to have a chance to replace or reconfirm the official. Longer fixed terms increase the opportunities for independence by an official of a nonelected branch by enhancing the attractiveness of the post as a career option and by making more remote punishment by elected officials.

Figure 1 shows that there have been substantial increases in the independence of supreme courts in Argentina and, especially Ecuador.<sup>10</sup> Venezuela increased its highest court’s independence, but the appointment process remains rather politicized. Very small increases in independence may be enjoyed by the prosecutors general in Ecuador and Venezuela. The appointment process for the Colombian controller general has been substantially depoliticized, but the term remains no longer than that of congress. However, not all changes have been in the direction of greater independence. For instance, there was a slight reduction in the independence of Colombia’s Supreme Court in 1991. In Peru, congress alone now appoints the controller general, which makes the entity more independent of the executive, but less so vis-à-vis congress in the sense that the potential for countervailing ambitions between president and congress to be represented in the appointment process is now absent.

On the other hand, what is especially striking is how the supposedly independent bodies created in several new (and some older) constitutions to monitor human rights abuses and to prosecute corrupt officials in fact enjoy very little independence. For example, Figure 1 shows the position of the prosecutor general in Colombia and the human rights defenders in Bolivia, Colombia, Peru, and Venezuela. None are in the shaded area where an entity enjoys a high degree of independence accorded to a separate branch of government.

Thus the record with respect to independent branches set up to monitor or check the activities of elected branches (and their subordinates in their respective bureaucracies) is mixed. There is some tendency towards increasing the constitutional separation of the highest courts, but other entities charged with what O’Donnell calls horizontal accountability generally have such limited independence that their ability to take on malfeasance must be questioned. If these entities are dependent on political branches for their origin and survival, then creating more and more of them

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<sup>9</sup> The elected branch with the shorter term is used because the more frequently elected branches turn over relative to nonelected, the more independent the latter will tend to be vis -à-vis the elected officeholders of the day.

<sup>10</sup> In Peru there also, at first appearances, a large increase in the independence of the supreme court. However, the process of removal of a justice is so simple (a majority of Congress suffices, upon accusation by the Permanent Committee of the Congress), that the independence is hollow.

can be only a poor substitute for establishing legislative accountability to the citizenry. That is, if legislators do not care about (and perhaps even benefit from) executive corruption or are not motivated by their own accountability to the voters to rein in human rights abuses, then it is probably too much to ask of officials that are accountable to them to do so. Thus, for the remainder of this paper, I return to the prospects for electoral reforms that would increase the chances that legislators see their role as representing the values and preferences of the broad national citizenry.

### **Enhancing legislative accountability: Towards a second wave of institutional reform?**

I have noted that the systemic failures that befell the extremely inefficient polities in Colombia, Ecuador, Peru, and Venezuela led to a fixation on constitutional reform as an attempt: (1) to make the passage of executive-inspired policy proposals easier; and (2) engender accountability “horizontally.” I have argued that a more promising means of reforming the policy-making process of these systems would be to adopt electoral reforms that would reduce the extremeness of the party system and generate greater (vertical) accountability of legislators to the programmatic preferences of the electorate. Thus far, little progress has been made in this direction, but the prognosis is not completely bleak. For instance, in Bolivia, a package of constitutional amendments was adopted by cross-party consensus in 1996, including a new, mixed-member electoral system. As I shall review below, this new system offers promise of generating enhanced electoral efficiency. Venezuela’s constitution likewise appears to mandate the retention of the mixed-member system that was adopted in 1993. It also calls for decentralization of nominations, but this latter provision remains unimplemented. I now turn to measures that could address the problem of poor legislative accountability, before concluding with an assessment of the likelihood of a “second wave” of reform that would involve the adoption of the kinds of reforms I recommend.

#### Some key reform proposals

The following include some proposals that would help increase electoral efficiency in one or both dimensions.

**?National pooling of party votes**, through a tier of allocation superimposed above regional allocation, in at least one house. With votes pooled over the national territory, parties have an incentive to look for votes outside of traditional strongholds and thereby also have an incentive to articulate national themes rather than primarily regional appeals. Currently only a few Latin American countries have such a tier, including Mexico and Nicaragua. Some other countries have national party vote pooling, but not in a tier that is overlaid on another tier of regional allocation, but rather in a single nationwide district. This may be a viable solution for one house or in a smaller country (as in Uruguay) but is not to be recommended for the sole chamber, especially in a large country (as in Peru), because then it threatens to overwhelm any local connection and accountability of legislators. On the other hand, if not accompanied by a reasonable threshold (around five percent of national votes) a single nationwide district can simply be a means for regional parties to gain seats even with votes from only one small part of the territory.

**?Reduction in malapportionment**, especially in lower houses. Latin America includes some of the severest cases of underrepresentation of a country's most populous regions. Upper houses, at least in federal states, are often intended to be malapportioned by design—though even here, many Latin American countries are quite extreme. Lower houses, on the other hand, are expected to represent the population. Yet, many in the region do so poorly (Samuels and Snyder 1999). Incorporating a national tier of party vote pooling, as discussed above, reduces malapportionment and hence is a recommendation both for what it does for party strategies and what it does for overall representation of the population.

**?Mixed-member systems**. In a mixed-member system, around half the members of a legislative house are elected in single-seat districts, while the rest is elected from party lists by proportional representation (PR). Recent research has suggested that these systems can indeed provide a “best of both worlds” in that larger parties are favored by the single-seat districts while smaller parties' representation is preserved by the PR tier (Shugart and Wattenberg 2000). On the intraparty dimension, these systems encourage some members to specialize in representing the parochial interests of localities, while others specialize in the priorities of the party. There is a strong incentive for parties to seek to perform well in both portions of the system, especially if the two tiers are allocated mostly or entirely separately (rather than if the PR tier simply compensates for the disproportionality of the single-seat tier), and if the PR tier is allocated nationwide. Regional notables that might be able to win seats in individual single-seat districts can enhance their presence in the legislature by combining forces in a party that can qualify for PR seats, while parties can increase their representation by linking up with local forces that can win single-seat districts. In a study of the Russian party system, which shares many of the characteristics of the less institutionalized Latin American party systems, Moser (2000) has shown that these incentives of the mixed-member system are working as expected.

Mixed-member (MM) systems currently are found in three Latin American countries: Bolivia, Mexico, and Venezuela. Bolivia adopted its MM system as part of transactional process of political reform in 1996. So far, little consolidation is evident on the interparty dimension; Bolivia remained a hyper-representative system after its first election under the new system. Parties might be expected to begin to consolidate around the single-seat contests over time, but the effect would be more pronounced if the two tiers were partly or completely de-linked. That is, the current system guarantees department-by-department proportionality even if a given party is underrepresented in the single-seat districts. Moreover, the incentives of regional parties to seek votes outside their dominant department would be greatly enhanced if the PR portion were allocated nationwide rather than in each department (as noted above).

The value of reducing the linkage between tiers and employing nationwide allocation in the PR tier can be illustrated briefly by reference to the Mexican case.<sup>11</sup> Party-building in Mexico, especially since 1988, has been aided by the incentives of parties to maintain a presence in local districts; the single-seat districts helped the victorious PAN gain a more-than-proportional share of

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<sup>11</sup> The Russian system also had these features: no linkage of allocation between tiers, and nationwide allocation of the PR seats.

seats in 2000. At the same time, the nationwide allocation of the PR seats allows each party to retain a national identity, thereby helping overcome regional variations in votes distribution, as a vote cast anywhere helps a party's overall seat allocation even if it is a minor presence in a given locality. The nationwide allocation also allows minor national parties that could not win seats in a system of exclusively single-seat districts (or even small regional multiseat districts) to win representation. The Mexican electoral system, as it has existed since the 1997 election, thus could be a viable model for other Latin American countries to emulate.

Venezuela adopted its MM system in 1993, too late to stem the burgeoning crisis of representation in that country. More importantly, when MM was adopted, nothing was done to change the centralized nomination procedure (Kulisheck and Crisp 2000). Thus the new system represented minimal change rather than the major change that the crisis demanded. Nonetheless, it is encouraging that the new constitution continues to call for an MM system to remain in place. It also calls for primary elections to decentralize nominations; however, this provision unfortunately remains unimplemented thus far.

**?Balance between personal and party vote.** It was noted earlier that if seat allocation is too party-based or too candidate-based, the system can tend towards the extreme. There are, however, hybrids between the hyper-centralized closed-list system of Venezuela and the hyper-personalized non-party allocation procedure of Colombia. Mixed-member systems, just discussed, are one example in that they balance personal-vote seeking in the single-seat districts (provided nominations are not too centralized) with party-vote seeking in the PR tier. However, a mixed-member system may not be desirable or appropriate in all settings—for instance, where many single-seat districts would tend to be won by small pluralities in fragmented multiparty competition<sup>12</sup> or by non-party independents.

If, instead of a mixed-member system, PR in multiseat districts is retained, it is important to recognize that there are ways to balance party and candidate voting. The key is not to allow the share of the party's vote—or the total vote—needed for election to be so small that simply providing pork or clientelistic services to a very narrow constituency is sufficient to win a seat. For example, the Chilean system is obviously compatible with meaningful party labels despite its provision for candidate preference voting. No doubt the strength of Chilean parties derives in part from their significant connections to social groups (Valenzuela 1978, Scully 1995), but even a party with a strong social identity must develop a strategy for coping with intraparty competition when the electoral system requires it. Post-Pinochet, there is not actual *intra-party* competition, because the two-seat districts have encouraged alliances that nominate only one (at most) candidate of any one component party in each district. However, from 1958 through 1969, interparty alliances were not common and the district magnitude was greater than two, yet the preference voting did not undermine party labels.

The key to how to generate a workable mix of intraparty competition and meaningful party labels can be discerned through a brief comparison of some key features of proportional

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<sup>12</sup> A runoff can be held to deal with this situation, but aside from the costs associated with second rounds, the winner still comes from only one of several parties notwithstanding his having received votes from those who favored other parties in the first round.

representation (PR) systems that use preference votes as the sole criterion for determining the intraparty ranking of candidates. Such systems are found in Latin America in Brazil, Chile, and Peru. Outside Latin America, Italy (before 1993) and Finland are examples. One distinction is between “quasi-list” systems in which the preference vote is mandatory and open-list systems in which it is not (Taagepera and Shugart 1989). Finland and Chile use the quasi-list, while Brazil, Peru and formerly Italy use the open list. When the preference vote is mandatory, the average share of votes per candidate is simply the party’s vote ( $V$ ) divided by the number of candidates ( $c$ ):  $V/c$ . When the preference vote is optional, the average vote per candidate may be far smaller than  $V/c$  (because many voters choose not to rank candidates but instead cast only a party vote, yet the order of election is determined only by preference votes). Thus under the quasi-list it is not possible for candidates to be elected with only a very small share of their party’s electorate, but under the open list, it is.

District magnitude—the number of seats elected per district—is also a critical factor in determining how narrow a personal-vote constituency may be sufficient to elect a candidate (Carey and Shugart 1995). The larger the magnitude, the more copartisans one candidate must face, and thus the smaller is  $V/c$ . Thus the low magnitudes in pre-Pinochet Chile (average 5, largest 18) imply larger personal-vote constituencies than the very high magnitudes in Brazil (average almost 20, largest 70)<sup>13</sup> or Peru (single national district of 60). Systems of intraparty competition can be consistent with the countervailing ambitions of both local personal vote-seeking and allegiance to a party where the district magnitude is relatively low because it is not possible to win with extremely narrow personal-vote constituencies—party incentives can counter the personal-vote incentives.

**?Democratic internal party procedures.** Parties must be required to nominate their candidates and conduct their internal affairs in transparent, democratic, and neutrally administered procedures. If parties are subject to capture by narrow elites, citizens lose a crucial opportunity to influence government policy. Such capture can occur at either extreme on the intraparty dimension. In a hyper-centralized system, where central party leaders hand-pick candidates and determine their rank on closed-list ballots, there is no direct connection between candidates/legislators and voters. In a hyper-personalistic system, the capture by narrow interests can occur because of the near absence of policy- or party-based campaigning as members seek patronage as a way to distinguish themselves from other candidates (including copartisans); as a result, traditional, even familial, ties tend to be magnified in importance because they cement the kinds of one-on-one clientelistic relationships that are crucial to vote-garnering in situations of intraparty competition in which party cues are insufficient.

Participatory nomination procedures are thus important for ensuring that candidates are broadly representative of the constituency base of the party. Participatory nominations can take the form of primary elections in which voters themselves choose candidates for the general election ballot, or nominating conventions which rank-and-file members may attend. Primaries and conventions alike should be regulated by law and, like other aspects of the electoral process,

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<sup>13</sup> In Brazil, the share of votes needed to win is made even smaller by a provision that permits parties to nominate one-and-a-half times as many candidates as there are seats in the district.

overseen by an autonomous agency. Absent regulation by an autonomous agency, internal party procedures may tend towards oligarchy even when formal rules prescribe democratic participation.

### A representation revolution?

Earlier I indicated that Latin America needs to undergo a “representation revolution,” in the sense of adopting fundamentally reformed electoral systems that enhance electoral efficiency, that is, the articulation of programmatic preferences of the electorate. Are there prospects for such a revolution in a second wave of institutional reform? I believe that there are, at least in some countries.

One case is Colombia. After a decade under the new constitution, it has become widely recognized that the failure to transform the electoral system in 1991 was a mistake. The fundamental inability of the congress to find the political will for needed policy changes has led President Andres Pastrana and others to take the initiative in crafting a proposal to create unified party lists to replace the personal lists that now provide for intraparty competition. The proposal would establish party vote-pooling at the national level in the senate and at the departmental level in the lower house, provide for a balance between candidate preference voting and party list order in the allocation of seats to candidates within parties, and provide for the internal democratization of parties. That is, it would encompass several of the recommended reforms detailed above. Thus far, however, the proposal remains mired in the unwillingness of congress to reform itself, and in increasingly bitter interbranch conflict.

That Colombia would be the scene of the first serious attempt at major electoral reform among the extreme systems is not entirely surprising. First of all, it had the first Bolivarian constitutional replacement (1990-91). Second, it has a distinct institutional trajectory. As noted in the discussion of the content of reforms, Colombia entered its Bolivarian phase with an already very strong presidency in terms of its legislative authority. The new constitution reduced presidential powers in an effort to encourage congress to take on more policy-making responsibility. However, it did not give legislators the *incentive* to take on such responsibilities, as the electoral logic remained one of patronage politics. Thus, in a sense, the relative strength of parties and of the executive were put out of equilibrium, as strong presidential powers no longer compensated for weak partisan powers (Mainwaring and Shugart 1997, Shugart 1998). Colombia may be in the process of completing a reequilibration of the two powers: enhancing partisan powers through electoral reform to balance a now-weaker presidency. Is there much of a chance of other countries following suit?

No other extreme case appears as ready for reform as Colombia. For instance, in Ecuador, the constitutional reform of 1996 actually weakened parties by mandating a personalistic electoral system. The enhancement of presidential powers ought to increase the ability of the president to provide a national scope to legislation that is otherwise missing, while the increase in legislative personalism increases that branch’s demand for the president’s patronage. These are efficiency-*reducing* reforms, and the change in electoral system is particularly counterproductive. Nothing has been done to enhance the stability of the executive office itself—which has been a fundamental problem of recent Ecuadorian history. And nothing has been done to generate incentives for a

national party system to emerge, such as implementing a substantial national tier of seat allocation for congress.<sup>14</sup>

In the Peru and Venezuela, the prospects for electoral reform are probably bleak at the moment. Fujimori has every incentive to keep parties weak in order to keep legislators dependent upon his patronage rather than capable of mounting a challenge to him. In fact, it was the very weakness of parties that allowed him to craft a working majority in spite of his Peru 2000 list's failure to secure a majority of seats on election day. In Venezuela, similarly, Chavez is likely to count on a weak congress willing to trade with him on a patronage basis.

## Conclusion

The argument here is not that the constitutional revisions have been irrelevant, even if they have not focused on “the most specific manipulative instrument of politics,” the electoral system. For instance, strengthening the independence of courts, a prominent feature of many new constitutions, was long in coming, and perhaps the new oversight branches can make a contribution to reducing corruption and shedding light on official abuses of citizen rights. With regard to executive–legislative relations, given how strong the presidency was in Colombia, weakening it was a good thing. Yet someone has to make policy, and congress still lacks the electoral incentives to focus on policy. In Ecuador and Peru, presidents, with their new reactive powers, should now be more capable than before to hold the line on spending priorities. Yet they still must provide patronage to congress to get legislative majorities in a fragmented congress. In Venezuela, the president is able to do more than ever before via unilateral action, but the experience of neighboring Colombia shows that a strong presidency is insufficient to governing a complex country in the absence of coherent national parties—something Venezuela now appears to lack. In each case, fundamental electoral reform is needed.

Latin America currently has several indigenous models of constitutional structure, including provisions that have been reviewed here such as presidential authority to restrict congressional legislative activity and separate constitutional branches of government for oversight functions. On the other hand, it has few indigenous models of electoral reform. However, it is worth reiterating the promise of the Mexican model (how ironic, given prior trajectories!). The star of the Mexican mixed-member electoral system (with its allocation priority to the single-seat districts and nationwide allocation of PR seats) might shine more brightly as Mexico consolidates its own democracy.<sup>15</sup> Proposals for mixed-member systems continue to be floated in Brazil (de Souza 1999) and Argentina. On the other hand, reforms aimed at reducing malapportionment do not appear

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<sup>14</sup> Indeed, a previous national tier was abolished. That tier comprised less than 20% of the seats, so was insufficient to generate incentives for parties to seek votes nationally. In fact, absent any threshold of national votes, most seats in that tier were won by parties that obtained most of their votes in one region, anyway. Electoral reform in Ecuador should strive to increase the share of seats allocated nationally. Unfortunately, the most recent reform went in the exact opposite direction. The current rules are not only personalistic—undercutting party labels—but are also highly majoritarian, meaning the opportunities for parties to win seats outside their strongholds has been reduced. See Pachano (1998).

<sup>15</sup> In Mexico, immediate reelection of members of congress is prohibited. This feature obscures, rather than enhances, accountability, and it is not recommended that it be emulated.

likely to take root in these two countries—which have the worst two-chamber malapportionment in the world (Samuels and Snyder 1999).

Electoral reform always runs up against the interests of those politicians who prosper under existing rules. Where impetus for reform of the sort proposed here might come from is not immediately clear. It is one thing to prescribe; another to develop strategies for actual reform. I will conclude by noting that the goals of those who have participated in the re-design of constitutions are not so very different from the goals I have articulated. I will leave to one side the obvious goals of a Fujimori or a Chavez to aggrandize his own power and tenure in office. I will assume that to at least some degree this desire itself comes from a sincere desire to improve the lot of their people. But democracy cannot rest on the whims of one man. If Latin American democracies are to move past the impulses of neopopulism, and to generate popular support for much-needed structural reform of society and economy—that is, if they are to fully integrate into the contemporary world of liberal, democratic capitalist states—they must ultimately construct legislative party systems that link executive projects with citizen demands. Of course, electoral reform is not a panacea, either, but thoughtfully conceived electoral reform at least could bring about the necessary conditions for the representation of the values and demands of the broad citizenry. Other changes will be necessary, too, including civic education, greater involvement of nongovernmental and nonpartisan voluntary associations, and the provision of independent resources to legislators. Each of these, to be effective, requires an electoral process that links legislators to popular preferences, yet each would enrich the representative process. That is, they are components of a virtuous cycle of a potential representation revolution. It can be hoped that with further dissemination of knowledge about the means of enhancing the capacity of legislators to participate in national policy formulation there will be a second wave of institutional reform in Latin America.

## Appendix: The Components of the Efficiency Index

Interparty efficiency. The index of interparty efficiency has three basic components: Identifiability (ID), Majority Approximation (MA), and Plurality Enhancement (P).

Identifiability captures the degree to which a given election approximates the ideal of a clear choice between two competing governmental options. ID=1 when elections present voters with a clear government vs. opposition choice, with one or the other party (or pre-election coalition) assured of fully controlling the government if it wins the election. ID=0 when multiple parties are arrayed in such a way that it is not clear what the consequences of the vote would be on government formation, as in a hyper-representative system. In presidential systems, both elected branches must be accounted for. The ideal of ID=1 is reached only in the case of concurrent elections to the two branches that pit two parties or blocs against one another, as in Costa Rica. Most Latin American systems score somewhat lower, notwithstanding the fact that the executive is directly elected.<sup>16</sup>

Majority Approximation, for presidential systems, measures the degree to which the party of the president approximates fifty percent of the seats in congress. In the case of the president's party having a majority of seats, MA=1. Otherwise, it is defined as the seat share divided by 50%. Thus, if the party of the president obtains 45% of the seats, it receives a score of MA=.9, indicating that it completed ninety percent of the distance to majority status.

Plurality Enhancement captures the degree to which, in a given election, the largest party or pre-election coalition that forms the government has found its plurality of votes enhanced through the seat-allocation process. The equation that defines this indicator contains two terms, one of which measures the ratio of the largest party/bloc's seats to the majority marker of 50% and the other of which does the same for votes. The seats term is then subtracted from the votes term:

$$P = (s/.5) - (v/.5).$$

This indicator tends to take a value near zero in the case of bare majority of seats that is "earned" on the basis of a majority of votes. Typical cases of manufactured majorities, where the seat share is in the range of .55 to .65 despite a votes share of only .35 to .45, take values between about .2 and .5.

These three components are then combined to arrive at the indicator of interparty efficiency. First, ID and MA are averaged to arrive at a figure for Electoral Linkage (L). Then, L and P are combined as follows:

$$E_{\text{inter}} = L - 1 + P,$$

where  $E_{\text{inter}}$  is the interparty efficiency, L is electoral linkage, and P is plurality enhancement. Negative values place a system on the representative side of the efficient midpoint, while positive values indicate a system that is on the majoritarian side of the midpoint. The most efficient system thus scores  $E_{\text{inter}} = 0$ . Scores for interparty efficiency in each Latin American country are given in Table A.1.

Intraparty efficiency. Unfortunately, there is as yet no way to derive an index of intraparty efficiency from output data of an electoral system, as is done for the interparty dimension. Thus this index is ordinal, derived from a theoretical ranking of electoral formulas by the degree to which they promote personalization vs. centralization. The details of the index may be found in Shugart (2000). For present purposes, the following definitional points are in order.

The intraparty efficiency scale runs from 1.00 (hyper-centralized) to -1.00 (hyper-personalistic). A hyper-centralized system scores .85 or higher and is one in which: Ballot access is tightly controlled within the highest leadership of the parties; voters have only a choice between party lists and not for individual candidates; and votes are pooled across multiseat districts. Party-centered systems that are not as extreme may have one or more of these characteristics, but not all of them together.

A hyper-personalistic system scores -.85 or lower and is one in which: Ballot access is open, which means at the extreme that parties do not control which candidates use the party label; voters mark their ballot for one or more of several candidates competing under the party name in multiseat districts; and votes are not pooled across the multiple candidates or lists of the party, such that every candidate or list is in a zero-sum competition for the party's voters. Candidate-centered systems that are not as extreme (such as open-list proportional systems) may have one or more of these characteristics, but not all of them at once.

No system receives the ideal score of  $E_{\text{intra}} = 0$ , but some variants of single-seat districts come close because they combine the more efficiency-enhancing features of centralization (party-controlled ballot access, categorical party choice) with the more efficiency-enhancing features of personalism (direct candidate accountability to voters, without intraparty competition).

<sup>16</sup> The phenomenon of midterm elections deserves special comment. Whenever an election for one branch is held during the term of the other, the election necessarily fails to offer voters a categorical choice between one governing option and another. Thus, for example, every four years, when there is a concurrent election, the U.S. receives a score of ID=1, but in off-year elections, the score is only ID=.5, because only half the policy-making structure—the congress—is up for reelection.

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**Table 1**  
**Extreme systems and constitutional replacements**  
**in Latin America since 1990**

	Transactional process of replacement	Bolivarian process of replacement
Extreme party system		Colombia 1991 Peru 1993 Ecuador 1996 Venezuela 2000
Non-extreme party system	Argentina 1994 Dominican Republic 1998	

**Table 2**  
**Constitutional Replacements:**  
**Changes Incorporated into New Constitutions**

Country	Powers of the presidency	Term of the presidency	Cameral structure	Congressional elections/terms
<b>Bolivarian cases</b>				
Colombia	Reduced proactive powers: restrictions on delegation of decree powers and invocation of emergency powers. Reduced reactive powers: majority for veto override lowered.	Lifetime single-term limit.	Change from congruent to incongruent bicameralism—upper house elected in single nationwide district	--
Ecuador	Increased reactive powers: president can refer bills to Constitutional Court, suspending promulgation; Elimination of Congress's authority to call referendum on vetoed bill; President exclusively introduces budget, restrictions on congressional amendments.	None	National constituency for portion of congress abolished	Terms for deputies elected in provincial districts increased from two to four years
Peru	Increased reactive powers: president exclusively introduces budget and tax laws, amendments by congress restricted	Immediate reelection permitted.	Change from bicameral to unicameral (lower house abolished); sole house elected in a single nationwide district.	--
Venezuela	Increased proactive powers: expanded provision for delegated decree authority; legislative authority in state of emergency; president may call referendum to approve decrees. Increased reactive power: president may call referendum to revoke law.	Term lengthened from five to six years; Immediate reelection permitted.	Change from bicameral to unicameral (senate abolished).	Provision for primary elections for congress left for legislation to implement.
<b>Transactional cases</b>				
Argentina	Codified existing de-facto powers of emergency decree and partial veto	Term shortened from six to four years; two consecutive terms permitted.		Senate terms shortened from nine to six years; Direct election of senators and president
Dominican Republic	None	Ban on immediate reelection.	None	Congress elected at presidential midterm.

**Figure 1**  
**Independence of Nonelected Branches**  
**(With Direction of Change in New Constitutions)**

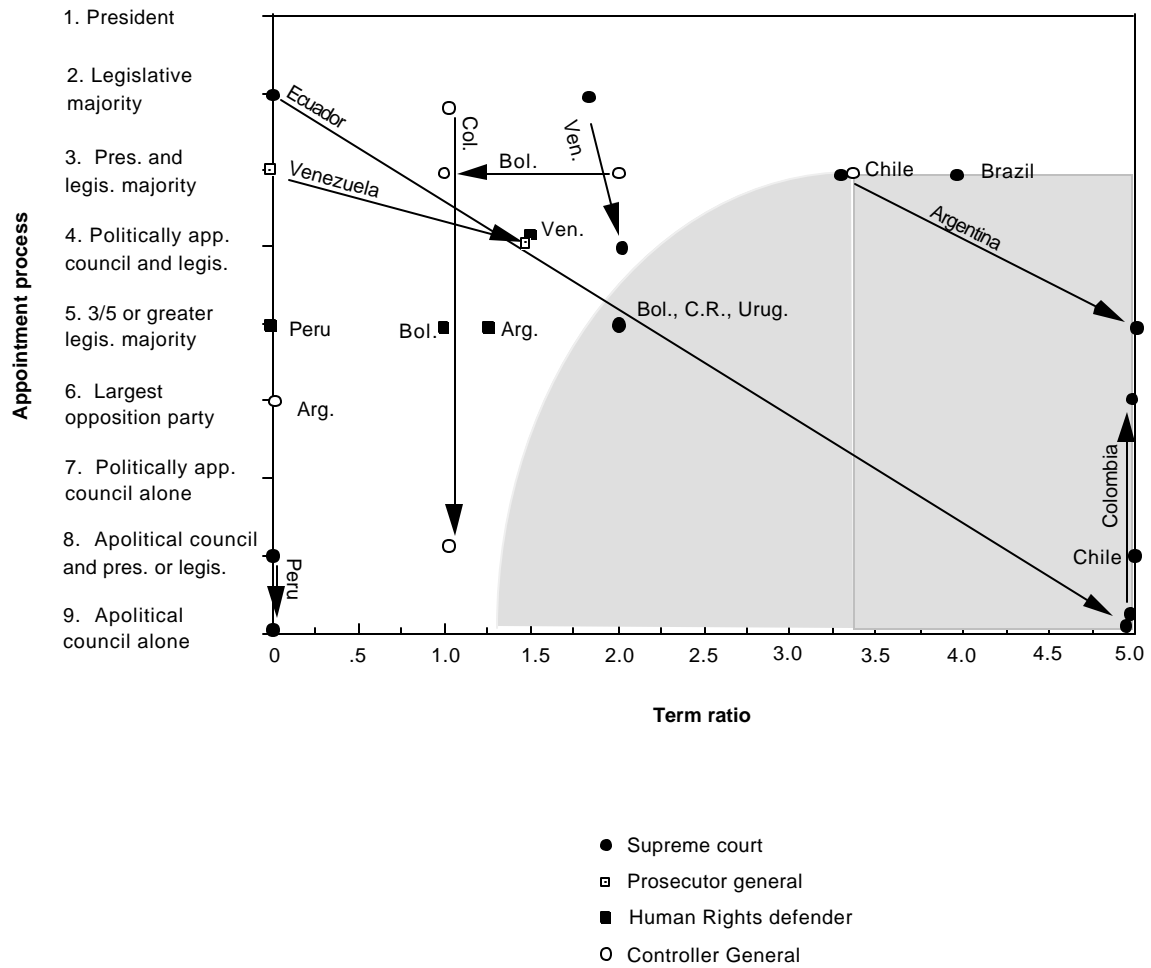


Table A.1  
Interparty Efficiency Scores in Latin America

Country	Years	ID	MA	L	P	E <sub>inter</sub>
Argentina	1983-93	.75	.89	.82	.11	-.07
Bolivia	1985-93	0	.65	.33	.08	-.60
Brazil	1989-98	.50	.21	.36	.11	-.53
Chile	1989-99	1.00	.92	.96	-.19	-.23
Colombia	1974-90	1.00	.98	.99	.04	.03
Costa Rica	1966-94	1.00	.97	.99	.08	.07
Dominican Rep. I	1978-94	.88	.89	.89	.07	-.04
Dominican Rep. II	1994-98	.38	.97	.68	.07	-.26
Ecuador	1979-96	.24	.45	.35	.05	-.61
El Salvador	1982-99	.46	.84	.65	.04	-.31
Honduras	1981-97	.90	.94	.92	.07	-.01
Mexico II	1997	.88	.96	.92	.16	.08
Nicaragua	1984-96	1.00	.97	.98	-.02	-.04
Paraguay	1989-98	.92	.96	.94	.03	-.03
Peru I	1980-85	1.00	.93	.96	0	-.04
Peru II	1990	.25	.45	.35	.02	-.63
Uruguay	1984-94	.75	.77	.76	.01	-.23
Venezuela I	1968-88	1.00	.89	.95	.15	.09
Venezuela II	1993-98	.75	.60	.68	.05	-.28

ID                    Identifiability  
MA                   Majority approximation  
L                     Electoral linkage  
P                     Plurality enhancement  
E<sub>inter</sub>               Index of interparty efficiency