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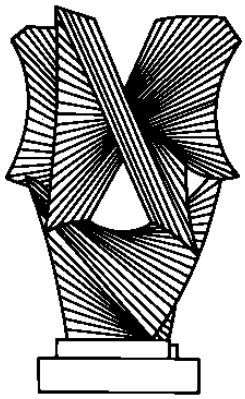

LATIN AMERICAN PRESIDENTIALISM IN COMPARATIVE AND HISTORICAL PERSPECTIVE

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Latin American Presidentialism in Comparative and Historical Perspective

José Antonio Cheibub,* Zachary Elkins,** & Tom Ginsburg***

Since the time of Aristotle, comparative scholars have developed various alternative typologies to classify constitutional systems.[1] One paradigmatic scheme focuses on executive–legislative relations. Some systems,[2] we are told, are "presidential," in which a directly elected president serves a fixed term as both head of state and head of government. Others are "parliamentary," in which a legislative majority determines who will lead the government and for how long. A third model combines features of the two and is called "semi-presidential."[3]

Each of these models of "government type" has an archetype: The United States is seen as the quintessential presidential system,[4] the United Kingdom as the parliamentary model,[5] and France as the semi-presidential model.[6] The models are also seen as systemic, in that each implies a certain institutional configuration. So, presidential systems are thought to include a host of features (e.g., an executive veto) that are not typically found in

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1. *See, e.g.*, Roberto Gargarella, *Towards a Typology of Latin American Constitutionalism, 1810–60*, 39 LATIN AM. RES. REV. 141, 142 (2004) (characterizing early Latin American constitutions as conservative, majoritarian, and liberal).

2. Patterns of executive–legislative relations are sometimes referred to as "forms" or "systems" of government. Scholars sometimes even summarize constitutions on the basis of these differences (e.g., labeling constitutions as either presidential or parliamentary), an indicator of the centrality of these features to constitutional structure more generally.

3. There is no consensus among scholars on the definition of forms of government, particularly with respect to semi-presidentialism. For a thorough review of the concept of semi-presidentialism and the definitional controversies therein, see Robert Elgie, *The Politics of Semi-Presidentialism*, *in* SEMI-PRESIDENTIALISM IN EUROPE 1, 1–14 (Robert Elgie ed., 1999).

4. *See* Keith E. Whittington, *Yet Another Constitutional Crisis?*, 43 WM. & MARY L. REV. 2093, 2127 (2002) ("Presidential systems are defined by the separate elections of the legislature and the head of the government (the president) and by the fixed term of the president. The United States is the classic example of such a system, and indeed is the longest enduring democratic presidential system in the world." (footnotes omitted)).

5. *See* Walter F. Murphy, *Designing a Constitution: Of Architects and Builders*, 87 TEXAS L. REV. 1303, 1317 (2009) ("The classic model for representative democracy is the British parliamentary system from 1867 through the United Kingdom's joining the European Union.").

6. Elgie, *supra* note 3, at 2–3 ("[In 1970], according to Duverger, the list of semi-presidential regimes comprised three Western democracies, Austria, Finland, and France . . . .").

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parliamentary systems.[7] In turn, heads of government in parliamentary systems are thought to be vested with powers that their counterparts in presidential systems do not have (e.g., decree power or legislative initiative).[8]

In a recent paper, we have argued that the conventional categories are *not* systemic in this sense.[9] Indeed, we found that stereotypes regarding presidentialism and parliamentarism are just that—stereotypes. When we looked at the distribution of several presumably systemic features, we found that only one of them could be described as a distinctive feature of one system or the other.[10] Our findings are captured by the following empirical insight from our analysis: *The century or region in which a constitution was written is a better predictor of institutional similarity (with respect to the studied features) than is its classification as presidential, parliamentary, or semi-presidential.*[11] The categories have a degree of internal cohesion, but not nearly as much as one would expect for categories that are thought to represent a fundamental and guiding set of choices for constitutional designers, especially given the tremendous scholarly literature built around them.[12]

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7. Thomas Weishing Huang, *The President Refuses to Cohabit: Semi-Presidentialism in Taiwan*, 15 PAC. RIM L. & POL'Y J. 375, 380 n.29 (2006) ("[P]residentialists argue that the existence of presidential independent powers, particularly the power to veto legislation, makes it a presidential system.").

8. *See* Charles Wallace Collins, *Constitutional Aspects of a National Budget System*, 25 YALE L.J. 376, 376 (1916) ("[In] the parliamentary system of government[,] the executive possesses the right of legislative initiative, actively participates in legislation on the floor of the legislature, and through the prime minister as party leader controls the legislative output.").

9. José Antonio Cheibub, Zachary Elkins & Tom Ginsburg, Beyond Presidentialism and Parliamentarism: On the Hybridization of Constitutional Form 20 (Feb. 28, 2010) (unpublished manuscript) (on file with the Texas Law Review). Other scholars have made similar arguments. *See generally* Richard Albert, *The Fusion of Presidentialism and Parliamentarism*, 57 AM. J. COMP. L. 531 (2009) (emphasizing functional similarities between the two types); André Krouwel, *Measuring Presidentialism and Parliamentarism: An Application to East European Countries*, 38 ACTA POLITICA 333 (2003) (arguing for the analysis of Eastern and Central European nations on a continuum of presidentialism rather than on a categorical basis).

10. Cheibub, Elkins & Ginsburg, *supra* note 9, at 26.

11. *Id.* at 25.

12. *See, e.g.*, TORSTEN PERSSON & GUIDO TABELLINI, THE ECONOMIC EFFECTS OF CONSTITUTIONS (2003) (discussing the empirical correlations of economic effects with different forms of government); Juan J. Linz, *Presidential or Parliamentary Democracy: Does It Make a Difference?*, *in* 1 THE FAILURE OF PRESIDENTIAL DEMOCRACY 3 (Juan J. Linz & Arturo Valenzuela eds., 1994) (discussing the role that parliamentary and presidential political institutions play in shaping democratic decisions); Scott Mainwaring, *Presidentialism, Multipartism and Democracy: The Difficult Combination*, 26 COMP. POL. STUD. 198, 222 (1993) ("[T]he combination of presidential government and a multiparty system is problematic."); Matthew Soberg Shugart & Scott Mainwaring, *Presidentialism and Democracy in Latin America: Rethinking the Terms of the Debate*, *in* PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA 12 (Scott Mainwaring & Matthew Soberg Shugart eds., 1997) [hereinafter Shugart & Mainwaring, *Rethinking the Terms of the Debate*] (defining presidential democracy in contrast to parliamentarism and analyzing the performance and effectiveness of presidential regimes); Alfred Stepan & Cindy Skach, *Constitutional Frameworks and Democratic Consolidation: Parliamentarism Versus Presidentialism*, 46 WORLD POL. 1 (1993) (arguing that parliamentarism is a more supportive constitutional framework for consolidating democracy than presidentialism); *see also* Albert, *supra*

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One implication of this insight is that scholars need to explore alternative conceptualizations of executive–legislative relations. The distinction between assembly-confidence governments[13] and directly elected, fixed-term governments represents an important dimension—but only *one* dimension—in a clearly multidimensional conceptual space. In this Article, we explore this multidimensionality in the context of Latin America. Latin America provides a useful context for exploring variety within constitutional forms because of its monotypic history: since the emergence of the first independent states in the region early in the nineteenth century, the region has been dominated by the presidential model.[14] Indeed, of the former Spanish and Portuguese colonies in the Americas, the only country that adopted a lasting nonpresidential constitution was Brazil, from 1824 to 1891.[15] This apparent uniformity presents an opportunity to examine internal diversity within a single overarching category of presidential systems.

When we explore the architecture of executive–legislative relations in Latin America, it becomes clear that region matters as much as government type in predicting the distribution of constitutional provisions. Latin American presidentialism, while sharing a fair number of features with the U.S. archetype, is very much its own breed. What appears to distinguish the Latin American variety is a high degree of what we might summarize as executive lawmaking powers. Specifically, Latin American constitutions are uniquely inclined to empower presidents to decree laws, initiate legislative proposals, and exert powers in emergency conditions. None of these powers is stereotypical of presidentialism—indeed, some of them are thought to be elective attributes of parliamentarism. Yet they are undeniably important powers with potentially significant consequences for political stability and the quality of democracy. Indeed, it may well be that the dimension of *executive lawmaking authority* is found to be as important as the executive-selection features that distinguish presidential and parliamentary constitutions.

I. The Shadow of the U.S. Constitution

We begin with a historical elaboration of the influence of the U.S. Constitution on Latin American constitutionalism as a way of orienting the discussion. The influence of the U.S. Constitution in Latin America was undoubtedly significant in the early nineteenth century. Among others,

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note 9, at 531 ("Parliamentarism and presidentialism are commonly, and correctly, set in opposition as distinguishable systems of governance that exhibit distinguishable structural features.").

13. *See* JOSÉ ANTONIO CHEIBUB, PRESIDENTIALISM, PARLIAMENTARISM, AND DEMOCRACY 36–37 (2007) (defining *assembly confidence* as a political system in which the government's authority is constrained by the continued approval and confidence of the legislative assembly).

14. *See infra* notes 32–42 and accompanying text.

15. *See* Keith S. Rosenn, *Separation of Powers in Brazil*, 47 DUQ. L. REV. 839, 840–42 (2009) (describing the legislative power under the 1824 constitution as parliamentary and noting that the 1824 constitution was Brazil's "most enduring").

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Venezuela's constitution of 1811, Mexico's of 1824, Argentina's of 1826, and Ecuador's of 1830 drew significantly on the American model.[16] Even when not adopted, American institutions were part of the mix of models considered. Argentina's constitution of 1853 was particularly close to the U.S. model, so much so that Argentinian judges routinely drew on U.S. constitutional jurisprudence in interpreting their own constitution for more than a century.[17] Indeed, there was so much borrowing that the great liberator Simón Bolívar was "moved to condemn the 'craze for imitation.'"[18]

To be sure, the U.S. model was only one of several on offer. Latin American elites were fully acquainted with enlightenment thought and drew on eclectic sources, including French and British thought and, notably, the 1812 Constitution of Cádiz, the embodiment of Spanish liberalism.[19] Nevertheless, several features of the U.S. model were particularly attractive. Federalism was the leading example, as it helped accommodate traditions of regional and municipal autonomy within the Spanish empire and served as an attractive model for rural elites fearful of domination by urban centers.[20] Venezuela's 1811 document drew directly and self-consciously on the United States' federal model.[21] Federalist thought was even influential in countries where it was not sustained, such as Chile.[22] As various independent states sought to combine into larger entities, federalism was a natural model. The Central American Federation, which encompassed much of that region from 1823 to 1840, was explicitly federal and drawn from the U.S. model.[23] Gran Colombia, which encompassed the territory of today's Colombia, Venezuela, Panama, and Ecuador from 1819 to 1831, was also a federal republic.[24] Today, Argentina, Brazil, Mexico, and Venezuela remain federal states.[25]

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16. Donald L. Horowitz, The Federalist *Abroad in the World*, *in* THE FEDERALIST PAPERS 502, 505 (Ian Shapiro ed., 2009); Robert J. Kolesar, *North American Constitutionalism and Spanish America: "A Special Lock Ordered by Catalogue, Which Arrived with the Wrong Instructions and No Keys"?*, *in* AMERICAN CONSTITUTIONALISM ABROAD 41, 53–54 (George Athan Billias ed., 1990); Miguel Schor, *Constitutionalism Through the Looking Glass of Latin America*, 41 TEX. INT'L L.J. 1, 15 (2006).

17. Kolesar, *supra* note 16, at 53–56. For a thorough discussion of this topic, see JONATHAN M. MILLER, BORROWING A CONSTITUTION: THE U.S. CONSTITUTION IN ARGENTINA AND THE HEYDAY OF THE ARGENTINE SUPREME COURT (1853–1930) (forthcoming 2012).

18. Horowitz, *supra* note 16, at 505 (quoting BERNARD BAILYN, TO BEGIN THE WORLD ANEW 146 (2003)).

19. Kolesar, *supra* note 16, at 42–43; *see also* Zachary Elkins, *Diffusion and the Constitutionalization of Europe*, 43 COMP. POL. STUD. 969, 984 (2010) (comparing the influence of different constitutional models on constitutions in Europe to that process in Latin America).

20. Kolesar, *supra* note 16, at 43–44.

21. *Id.* at 43.

22. *See id.* at 51 ("[D]uring the early years of independence, . . . North American constitutional principles came to be closely associated with federalism in Chile.").

23. Horowitz, *supra* note 16, at 505. For background on the Central American Federation, see LYNN V. FOSTER, A BRIEF HISTORY OF CENTRAL AMERICA 134–51 (2000).

24. *See* DAVID BUSHNELL, THE MAKING OF MODERN COLOMBIA: A NATION IN SPITE OF ITSELF 51–52 (1993) (describing the process by which Gran Colombia became a federal republic).

25. ZACHARY ELKINS ET AL., THE ENDURANCE OF NATIONAL CONSTITUTIONS 26 (2009).

Judicial review was also an American export. Many constitutions in the region adopted explicit provisions empowering the courts to exercise the power of judicial review, a power only implicit in the United States Constitution.[26] To be sure, there were limitations on its exercise. In the widely borrowed Mexican institution of *amparo*, courts could not strike a statute even if they found it unconstitutional; they could only correct its application in particular cases.[27] It is not surprising that, until the emergence of democracy in the late twentieth century, Latin American courts were hardly vigorous in using their powers of review;[28] but the similarity in constitutional form nevertheless set the region apart from other parts of the world.

Other institutions were adopted but then discarded. The right to bear arms existed in many early Latin American constitutions, but by the turn of the twentieth century it had almost been eliminated.[29] The electoral college was influential in early constitutions and survived perhaps longer than it should have, remaining in place in Argentina until 1995.[30] These modifications over time may have reflected a process of updating or modernization, as nations experimented with institutions and found that some worked while others did not.[31]

One of the major borrowings was, of course, the presidency. After a nonnegligible period of experimentation, Latin American countries stabilized under presidential constitutions in the nineteenth century.[32] The choice of a presidential form of government may perhaps be accounted for simply by the fact that it was a model that was available. At independence, Latin American countries were struggling with the same fundamental problem with which leaders of the newly independent United States struggled after 1776: how to constitute executive authority in a context where the monarch was no longer the ruler. Parliamentary government had not yet been codified as such and was in the process of emerging out of recently constitutionalized European monarchies.[33] Parliamentary constitutions in Europe emerged after a gradual

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26. *See* Keith S. Rosenn, *Judicial Review in Latin America*, 31 OHIO ST. L.J. 785, 785 (1974) ("A region of chronic political instability and short-lived constitutions with a civil law tradition would appear most infertile soil for the seeds of *Marbury v. Madison* to take root. Yet all of the Latin American republics, with the exception of the Dominican Republic, provide for some form of judicial review." (footnotes omitted) (citing Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803))).

27. *Id.* at 796.

28. *See id.* at 791–808 (surveying the historical development of mechanisms for raising constitutional questions within Latin American countries).

29. ELKINS ET AL., *supra* note 25, at 27 & fig.2.2.

30. Horowitz, *supra* note 16, at 505.

31. ELKINS ET AL., *supra* note 25, at 28.

32. CHEIBUB, *supra* note 13, at 150.

33. *See* Adam Przeworski et al., *The Origins of Parliamentary Responsibility*, *in* COMPARATIVE CONSTITUTIONAL DESIGN (Tom Ginsburg ed., forthcoming 2011) (manuscript at 150, 156–61) (on file with authors) (detailing the rise of parliamentary monarchies in Europe and tracing the "shift of the power to appoint governments from the crown to elected assemblies").

period of negotiation between the monarch and the nobles, in which the parliament ultimately displaced the monarchy as the center of effective governance.[34] In Latin America, by contrast, initial governments, whether revolutionary or not, emerged from a system of monarchy in which a single individual sat at the center of the political system.[35] Even Simón Bolívar, who cloaked his critique of federalism in a general reaction to borrowing from North America, was an admirer of the presidency as a model of a nonhereditary yet strong executive.[36] Thus, the drafters of presidential constitutions in nineteenth-century Latin America did not choose between the presidential and parliamentary models available today, but between a monarchy (headed by a hereditary leader) and a republic (headed by leaders with no claim to heredity).[37]

At that time, the United States represented the most successful republic and one that had emerged under similar circumstances.[38] France, after all, had not yet been able to settle upon a stable and coherent model of republican government.[39] Adoption of a presidential formula was perhaps a foregone conclusion.

At the same time, the *initial* choice of presidentialism does not necessarily explain the endurance of that model. After all, many other institutions were discarded over time through processes of amendment and constitutional replacement. There are reasons, however, to suppose that basic constitutional frameworks—such as the one embodied in the procedures for the selection of the executive—are subject to strong inertial factors. These broad institutions structure the expectations of the actors operating under them and, in order for them to be changed, actors must be willing to leap into the unknown. At the same time, constitutions serve as focal points and are rarely written on a blank slate; previous documents often serve as a template, even if changes are made to address issues identified as leading to crisis in prior systems of government. Thus, in spite of frequent

34. *See id.* at 156–57 (noting that although "[c]onstitutional monarchs were chief executives . . . who governed with the advice and consent of their ministers[,] . . . there were many instances in which parliamentary majorities forced monarchs to dismiss or accept governments against their will" and that "[t]he power of the parliaments stemmed from their control over legislation, particularly budgets").

35. *See id.* at 175–76 (describing the development of constitutions in Portugal and Spain and noting the central role of the monarch in each nation).

36. Kolesar, *supra* note 16, at 50.

37. CHEIBUB, *supra* note 13, at 151.

38. *See* Kolesar, *supra* note 16, at 44 (noting that the "social and economic success of the United States" prompted Latin American drafters to consider the principles embodied in the Constitution); *id.* at 58 ("North American constitutionalism was influential precisely because it embodied values and addressed needs shared by many [Latin] Americans.").

39. The first stable republican government in France emerged in 1875. *See* ELKINS ET AL., *supra* note 25, at 169 ("The constitution that emerged [in 1875] was a compromise that combined a strong chamber of deputies elected by universal suffrage and an upper house composed of senators selected by local notables or appointed for life terms. Combining both popular and conservative impulses, these institutions nevertheless facilitated the dominance of republicanism . . . .").

constitutional replacements in Latin America[40] that in theory would have provided many opportunities to reconsider presidentialism, and in spite of the existence of explicit and vigorous attempts to reform it,[41] the presidential form of government has survived and shows no signs that it will be abandoned any time soon.[42]

This does not mean, however, that when adopted by Latin American countries, presidentialism was taken as a package deal. If it is true that Latin American countries borrowed the presidential solution from the United States, it is not correct to assume that they also borrowed the set of ancillary institutions that structure the powers of the president and the specific ways in which the president is to interact with the legislature. Even if some such ancillary institutions were borrowed, they too might evolve over time to create new variants of presidentialism that bear little resemblance to the U.S. model. Finally, it could be the case that presidential systems are sufficiently internally diverse such that the overall category is hiding important variation. These are empirical questions that have not, to our knowledge, been systematically examined before. It is our purpose in this Article to do just that in the context of Latin America. We approach the issue of government type by examining several internal features that are seen to be essential components of presidential systems. It is to this issue that we now turn.

II. The U.S. Constitution as the Archetype of Presidentialism

As we stipulated above, scholars who focus on the study of political systems see presidential and parliamentary types as representing systems of institutions. As put by Moe and Caldwell, "Presidential and parliamentary systems come with their own baggage. They are package deals."[43] The precise list of attributes that is supposed to be associated with each system is subject to some variation. Some of these attributes may be accidental, while others may follow from the logic of presidential governance. Tsebelis, for example, asserts that "[i]n parliamentary systems the executive (government) controls the agenda, and the legislature (parliament) accepts or rejects proposals, while in presidential systems the legislature makes the proposals

40. *See infra* Appendix A.

41. *See* Scott Mainwaring & Matthew Soberg Shugart, *Introduction* to PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA, *supra* note 12, at 1, 2 (discussing the efforts of Brazil, Argentina, Colombia, Chile, and Bolivia to shift away from a presidential form of government).

42. We note, of course, that some prominent and recent episodes of constitutional design took up the issue of presidentialism versus parliamentarism, including Argentina in 1993 and Brazil in 1988. For a discussion of frequent replacement of constitutions by these two countries and others, see ELKINS ET AL., *supra* note 25, at 26.

43. Terry M. Moe & Michael Caldwell, *The Institutional Foundations of Democratic Government: A Comparison of Presidential and Parliamentary Systems*, 150 J. INSTITUTIONAL & THEORETICAL ECON. 171, 172 (1994) (Ger.).

and the executive (president) signs or vetoes them."[44] Others emphasize the following as key attributes of political systems: decree power,[45] emergency rule,[46] veto power,[47] legislative initiative,[48] cabinet formation,[49] and the power to dissolve the assembly.[50] This last feature is so closely linked with parliamentarism that some even include it as a defining attribute.[51]

The United States Constitution represents the archetypical presidential system in the sense that it is the model that represents, often implicitly, discussions of separation-of-powers systems. What defines the U.S. Constitution as presidential is that the executive is popularly elected and does not need the confidence of the legislature in order to remain in office.[52] Other features of the U.S. presidential system may or may not be unique and include the following: First, the U.S. President is unable to dissolve the assembly.[53] Second, the President lacks explicit lawmaking powers and has

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44. George Tsebelis, *Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism*, 25 BRIT. J. POL. SCI. 289, 325 (1995).

45. *See, e.g.*, Lee Kendall Metcalf, *Measuring Presidential Power*, 33 COMP. POL. STUD. 660, 663 tbl.1 (2000) (citing Timothy Frye, *A Politics of Institutional Choice: Post-Communist Presidencies*, 30 COMP. POL. STUD. 523 (1997)) (including the power to "[i]ssue[] decrees in non emergencies" among Frye's twenty-seven listed presidential powers).

46. *See, e.g.*, BRIAN LOVEMAN, THE CONSTITUTION OF TYRANNY: REGIMES OF EXCEPTION IN SPANISH AMERICA 5–6 (1993) ("Latin American constitutions almost always included provisions for 'emergency powers,' . . . to be used in times of internal strife or external threat.").

47. *See, e.g.*, Albert, *supra* note 9, at 542–43 (characterizing the presidential veto in the U.S. Constitution as a legislative power).

48. *See, e.g.*, José Antonio Cheibub, *Making Presidential and Semi-presidential Constitutions Work*, 87 TEXAS L. REV. 1375, 1386–88 (2009) (noting that "[a]lmost all presidential constitutions give some legislative powers to the presidency," including the "exclusive power to introduce legislation in some specified areas").

49. *See, e.g.*, Metcalf, *supra* note 45, at 660, 663 tbl.1 (citing Frye, *supra* note 45) (including the power to "[a]ppoint[] senior officers" among Frye's twenty-seven listed presidential powers).

50. *See, e.g.*, Krouwel, *supra* note 9, at 339, 342–45 (distinguishing presidential, semi-presidential, and parliamentary systems on several dimensions, including the ability of various political actors to dissolve the legislature).

51. *See, e.g.*, Stepan & Skach, *supra* note 12, at 3 (including the executive's ability to dissolve the legislature as one of two "fundamental characteristics" of a "pure parliamentary regime").

52. *See* U.S. CONST. art. II, § 1, cl. 1–3, *amended by* U.S. CONST. amend. XII (providing for a fixed presidential term of four years and popular election of the president through the electoral college).

53. *See* U.S. CONST. art. II, *amended by* U.S. CONST. amend. XII & XXV (defining the powers of the executive, which do not include the power to dissolve Congress). Although the power to dissolve the assembly is often considered to be an essential, even defining, feature of the separation of powers system, we do not take this position. Dissolution powers originated in monarchies and are compatible today with all forms of democratic constitutions. Just as there are presidential constitutions that allow dissolution under certain circumstances, there are parliamentary ones that do not. *Compare* CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR [ECUADOR CONST.] 2008, art. 148 (listing certain circumstances under which the president can dissolve the national assembly), *with* Przeworski et al., *supra* note 33, at 158 (noting Norway as an exception to the general rule that, in countries operating under a constitutional monarchy, kings can dissolve parliaments).

no constitutional power of executive decree.[54] Third, the President has formal, albeit modest, emergency powers.[55] Fourth, the President lacks the formal ability to initiate legislation but has the power to veto legislation, even if the veto can be overridden.[56] Fifth, the President has the ability to dismiss the cabinet without direct legislative involvement.[57] Sixth, the President has the power of pardon.[58] Seventh, the President is subject to explicit term limitations, although those limits were not formalized until 1951.[59] Eighth, the legislature has explicit powers of oversight over the President.[60] These presumably elective features of presidentialism are the focus of our inquiry.

We are aware that some of these features are not necessarily descriptive of how the U.S. presidential system works de facto. Some of the constraints presidents face might result from informal rather than formal limitations. For example, the two-term limit for presidents had long been observed before it was formalized by the Twenty-Second Amendment.[61] If presidents are formally prevented from setting the legislative agenda, it is not hard for them to find willing legislators to sponsor their bills. On the other hand, if the formal constitution provides for a president devoid of strong constitutional powers, in practice the U.S. President hardly seems weak (or, at least, seems to have gained strength over the years). The expansion in the scope and frequency of executive orders[62] and the ongoing debate about executive powers in times of war attest to this perception.[63] Our goal, however, is to investigate whether the constitutional documents crafted in Latin America correspond to the

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54. *See* U.S. CONST. art. I, § 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.").

55. *See infra* note 78 and accompanying text.

56. *See* U.S. CONST. art. I, § 7, cl. 1–2 (stating how legislation may be introduced by the House and the Senate, and laying out the President's veto power).

57. *See* Myers v. United States, 272 U.S. 52, 164 (1926) (holding that the President's power to appoint officers entails the power to remove them, but that the Appointments Clause does not require the Senate's consent to the removal).

58. *See* U.S. CONST. art. II, § 2, cl. 1 ("The President . . . shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.").

59. Tom Ginsburg, James Melton & Zachary Elkins, *On the Evasion of Executive Term Limits*, 52 WM. & MARY L. REV. 1807, 1819, 1834–35 (2011) (discussing the development of informal presidential term limits and the eventual ratification of the Twenty-Second Amendment).

60. *See, e.g.*, U.S. CONST. art. I, § 2, cl. 5 (granting the House the power to impeach executive officials); *id.* art. I, § 3, cl. 6 (granting the Senate the power to try all impeachment cases); *id.* art. II, § 2, cl. 2 (limiting the President's power to make treaties and appointments to those made "with the Advice and Consent of the Senate").

61. *See* Ginsburg, Melton & Elkins, *supra* note 59, at 1834–35 (explaining that George Washington's service of only two terms led to the creation of an "unwritten constitutional norm").

62. *See* WILLIAM G. HOWELL, POWER WITHOUT PERSUASION: THE POLITICS OF DIRECT PRESIDENTIAL ACTION 84 & fig.4.1, app. at 189–91 (2003) (demonstrating the increase in "significant executive orders" during the twentieth century across a diverse set of policy categories).

63. *See* Jide Nzelibe, *A Positive Theory of the War Powers Constitution*, 91 IOWA L. REV. 993, 996–97 & nn.2–4 (2006) (discussing the debate over executive powers as one between pro-President scholars, who stress the importance of strength and flexibility in an executive, and pro-Congress scholars, who argue that a legislative check on the President's foreign-policy power encourages democratic accountability).

archetypical U.S. model of a constitutionally weak president. It may be that Latin American presidents look, on paper, very much like their North American counterparts, in which case we would be tempted to think of presidentialism in a somewhat more systemic light. On the other hand, it is very possible that drafters of Latin American constitutions have sculpted a kind of presidentialism that bears a strong regional cast, which deserves more systematic description. How presidents stray from their constitutional prerogatives is, again, a matter that is left open.[64]

III. Latin American Presidentialism

To what degree can we speak of a Latin American style of presidentialism? Can we identify features of executive–legislative relations that are distinctly Latin American or distinctly *non*-Latin American? How closely do Latin American constitutions follow the United States archetype, or for that matter, other relevant models such as the Spanish 1812 (Cádiz) constitution? Is there, as Loveman claims, a set of provisions unique to the Latin American constitutions that enables the tyranny that has so frequently surfaced in these countries?[65]

Our basic sources are the constitutional documents themselves. We use the data assembled by the Comparative Constitutions Project (CCP), a comprehensive inventory of the provisions of written constitutions for all independent states between 1789 and 2006.[66] Collection of the data is ongoing, and for purposes of this Article, the dataset includes 647 of the 835 constitutional systems identified by Elkins, Ginsburg, and Melton.[67] Elkins, Ginsburg, and Melton include a large number of questions in their survey instrument, many of which have to do with the powers of the executive and the legislature.[68] It is this set of questions that constitutes the basic information we use here.

The period from independence through the end of the 1870s was one of intense constitutional experimentation in Latin America. From 1810 through 2007, the nineteen Latin American countries that exist today designed a total of 231 constitutional systems, 111 of which were written before 1880.

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64. We thank John Ferejohn for forcing us to clarify this point.

65. *See infra* note 80 and accompanying text.

66. COMPARATIVE CONSTITUTIONS PROJECT, http://www.comparativeconstitutionsproject.org. For details on the conceptualization and measurement of constitutions and constitutional systems, see *Conceptualizing Constitutions*, COMPARATIVE CONSTITUTIONS PROJECT, http://www.comparativeconstitutionsproject.org/conceptualizingconstitutions.htm.

67. A constitutional system consists of a constitution and all its amendments before the constitution is formally suspended or replaced. We use only one event per system in this analysis—typically a new constitution in the first year of its adoption.

68. *See* Zachary Elkins, Tom Ginsburg & James Melton, *The Comparative Constitutions Project: A Cross-National Historical Dataset of Written Constitutions (Survey Instrument)*, COMPARATIVE CONSTITUTIONS PROJECT, 18–81 (May 11, 2010), http://www.comparativeconstitutionsproject.org/files/surveyinstrument.pdf (devoting sixty-four pages to questions about the powers of the executive and the legislature).

Appendix A provides some sense of the population and our sample. Our sample includes 193 of the 231 systems, or 81%. The thirty-eight constitutions missing from our sample tend to be concentrated in the early years after independence.[69] Of the 111 systems adopted (and discarded) before 1880, our sample includes seventy-nine systems—roughly four-fifths of that population. These early years are precisely the years of institutional vacuum that followed independence, when there was the highest degree of constitutional experimentation. That this population of systems is underrepresented in our sample implies that our estimate of intraregional diversity may be biased towards increased homogeneity in the first decades of the nineteenth century.

We start by considering a set of thirteen attributes, ten pertaining to powers allocated to the executive and three to powers allocated to the legislature. Regarding the executive, we consider the following powers: to issue executive decrees, to assume emergency powers, to propose constitutional amendments, to propose the budget law, to initiate regular legislation, to veto legislation, to issue pardons, to appoint and dismiss the cabinet, and to dissolve the legislature. Regarding the legislature, we consider the legislature's power to remove individual ministers, to exercise oversight over the executive, and to override the executive veto (assuming the constitution provides for such veto).

Appendix B presents the proportion of Latin American constitutions with selected executive–legislative provisions over time. For the temporal dimension, we divide the region's history into five eras: (1) a period of economic and political disorganization (independence through 1870); (2) the period of agro-export development, during which most countries in the region were integrated into the international economy as exporters of raw material and importers of industrialized goods (1870–1918); (3) the period of crisis of the export model and emergence of import-substitution industrialization (1919–1945); (4) the period of dominance and then decline of import-substitution industrialization (1946–1979); and (5) the period of democratization and economic reforms (1979–2007).

This table displays a remarkable evolution in executive powers across Latin American constitutions. Let us start, however, with the less remarkable features of the table. Given that most Latin American constitutions have been presidential, it is not surprising that the number of constitutions that allow presidents to dissolve the legislature is relatively small. This number, however, is not trivial: overall, there have been seventeen Latin American constitutions that allowed the executive to dissolve the legislature; of these, eleven are classified as presidential. Equally unsurprising is the fact that close to 90% of the constitutions written since independence have granted the

69. Of the thirty-eight cases not sampled, thirty-two are constitutions that were written before 1860.

executive the power to freely appoint and dismiss the cabinet. And virtually every Latin American constitution grants the executive emergency power (although there is considerable variation regarding the specifics of this power, as we will see below). Finally, many constitutions have established relatively strong legislatures, at least when it comes to oversight of the executive (a feature that has been almost universal since 1870), removal of individual ministers (about one-half of all Latin American constitutions so allow), and override of an executive veto (almost all of the post-World War II constitutions provide for it).

The remarkable development, in our view, is the increase in provisions that grant the executive some lawmaking powers. A high proportion of executives have always been given decree powers in Latin American constitutions, but twentieth-century constitutions rendered this provision almost universal (although, again, there is considerable variation in the specifics of this power, as we will see below). Equally prevalent has been the executive's veto power: close to 90% for the whole period and universal for the post-1979 period. But, whereas less than 10% of the constitutions written in the nineteenth century allowed the executive to propose constitutional amendments, the proportion in the post-1979 period has soared to 90%. Although less dramatic, a similar pattern is evident with respect to the executive's capacity to initiate ordinary legislation and to propose budget legislation.

Thus, we see some convergence in Latin American constitutions in the sense of an expansion of the powers of the executive, particularly executive lawmaking powers. At the same time, powers that were relatively common in earlier constitutions either did not change much or have expanded in more recent times. This pattern can be observed in Appendix C, which plots the proportion of constitutions in force that provide for a given power. This convergence includes the features normally associated with presidential constitutions—the executive's power to appoint and dismiss the cabinet, and the inability to dissolve the legislature. One preliminary observation may be that the data suggest a contemporary pattern of Latin American constitutionalism that combines a strong legislature with a president possessing strong lawmaking powers. This contrasts with the earlier pattern of strong legislatures with presidents possessing few or no lawmaking powers.[70]

How unique is this pattern with respect to other presidential constitutions? Is the evolution of Latin American constitutions toward broader legislative power for the executive a region-specific development, or

70. Interestingly, the earlier pattern has been identified by Shugart and Carey as a configuration *conducive* to regime survival, while the current configuration is viewed by them as detrimental to successful governments. MATTHEW SOBERG SHUGART & JOHN M. CAREY, PRESIDENTS AND ASSEMBLIES 277 (1992). A test of this proposition is beyond the scope of this Article, but we note that the earlier period was associated with instability in constitutional form. *See supra* text accompanying note 69.

is it part of an overall trend, if not in all constitutions, at least in presidential constitutions outside Latin America? Appendix C, which also plots the Latin American trend against the trend in non-Latin American presidential systems, provides some answers to this question. Note that we plot the non-Latin American systems starting in 1940; before that time, there are not enough cases in that subgroup to justify any sort of generalization.[71] In eleven of the thirteen provisions plotted in Appendix C, we observe significant separation between the Latin American and non-Latin American presidential systems (panels 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, and 13). Six of these eleven differences are in the direction of more executive power for Latin American presidents compared with non-Latin American ones (panels 2, 5, 10, 11, 12, and 13); two additional differences are in the direction of more power to the Latin American legislatures over the executive compared with non-Latin American ones (panels 6 and 8). Only in provisions to dissolve the legislature do non-Latin American presidents appear to have an edge in power (panel 1), although this edge is seemingly disappearing. Furthermore, four of the five items in which Latin American presidents exhibit comparatively high power are provisions that can be broadly characterized as lawmaking powers—powers that are, in a sense, shared with the legislatures (panels 10, 11, 12, and 13).

We can explore these comparisons in more aggregate fashion by assessing the similarity between any two constitutions across dimensions of executive–legislative relations. We calculate this quantity simply by computing the proportion of the thirteen features that we considered in Appendix B for which any two constitutions agree (in that they both either include or exclude the provision in their constitutions). Appendix D describes the mean of these measures across various subgroups (all presidential constitutions, Latin American presidential constitutions, non-Latin American presidential constitutions, and non-Latin American, non-presidential constitutions). On average, any two constitutions in the data share nine of thirteen provisions for a score of 0.68. The first thing to note is that presidential systems in general are a more coherent category than either parliamentary or semi-presidential systems. Latin America accounts for the vast majority of presidential systems before 1945; indeed, it is possible that the overall coherence of the presidential category is driven by the similarity of constitutions within the region. After 1945, there is increasing divergence between Latin American and other presidential systems. Non-Latin American presidential

71. Before 1940, there were nine presidential constitutions outside of Latin America: the United States (1789), Haiti (1843 and 1935), France (1848), Germany (1919), Lithuania (1938), Liberia (1847), and the Philippines (1899 and 1935). Since 1940, there have been eighty presidential constitutions written in countries outside of Latin America. Note that the 1919 German constitution did not explicitly provide for a directly elected president, and for this reason it is not classified as a semi-presidential constitution. For the classification of constitutions as presidential, parliamentary, and semi-presidential, see generally Cheibub, Elkins & Ginsburg, *supra* note 9.

systems exhibit the same level of coherence as non-presidential systems after 1945, while presidential systems within the region seem to be becoming more similar.

The similarity between Latin American constitutions and the United States Constitution is not particularly high, relative to other models. The two other models that influenced Latin American constitution makers after independence were France's constitution of 1791 and Spain's 1812 (Cádiz) constitution.[72] Both of these constitutions (as well as their close cousins, the Portuguese constitution of 1822 and the Norwegian constitution of 1814) carved out a subordinated position for the monarch in an otherwise-republican document and represented the leading alternative model.[73] Latin American constitutions are not especially similar to any one of these documents. The mean similarity between Latin American constitutions across the sample and each of these documents is not significantly different from the mean similarity of any two constitutions. Thus, even though Latin Americans ultimately settled on the form of government conceived by their North American brethren—a president popularly elected for a fixed term in office—they did not necessarily adopt the same ancillary provisions regarding the specific allocation of powers between the executive and the legislature. This suggests that the adoption of presidentialism in Latin America was less the product of automatic or mechanistic borrowing from the U.S. Constitution and more the adoption of a particular institutional solution discovered by the North Americans to the problem that Latin Americans were facing: how to establish a national executive once the monarch had been removed. Nevertheless, the executive that they designed had as much in common with the Spanish Prime Minister as it did with the U.S. President.

IV. Executive Lawmaking Power as a Signature Feature of Latin American Presidentialism

To the extent that Latin American constitutions represent a distinct breed of presidentialism, the distinction is manifested in the strong lawmaking power that they vest in the president. By lawmaking power, we mean here the powers of emergency, decree, and the initiation of constitutional amendment and legislation. We examine these provisions in some detail below.

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72. *See* LOVEMAN, *supra* note 46, at 54 (acknowledging newly formed Latin American nations' incorporation of rights and liberties from the Cádiz constitution and French Revolutionary ideals).

73. *See* JOHN A. HAWGOOD, MODERN CONSTITUTIONS SINCE 1787, at 49–58 (Fred B. Rothman & Co. 1987) (1939) (comparing the Portuguese, French, Spanish, and Norwegian constitutions of the era, and noting the limits on the monarch's powers in each); LOVEMAN, *supra* note 46, at 40–45 (describing the limited role of the Spanish monarch under the Cádiz constitution).

A. Emergency Powers

A word is in order as to why we consider emergency powers to be legislative in nature. First, periods of emergency rule generally allow for the temporary delegation of considerable powers—including those normally vested in the legislature—to the executive.[74] The easier it is to declare a state of emergency, the more likely it will be that the executive will predominate and in some cases even usurp legislative authority strategically. Second, the executive may be able to act without legislative authorization, as Ferejohn and Pasquino recognized in their study distinguishing between constitutional and legislative models of emergency powers.[75] In their legislative model, ordinary legislation facilitates emergency power, and so there is not a true "regime of exception"[76] outside constitutional constraints.[77] But much depends on the specific assignment of powers to declare an emergency and then to legislate during one.

The U.S. Constitution provides for relatively narrow emergency powers. The relevant clause provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."[78] By contrast, Bolivia's 1851 emergency provision imagines broader powers for the president ("to assume extraordinary faculties") but also requires the consent through countersignature of all ministers of state in order to establish emergency conditions.[79] This is a model with a legal constraint, but it does not fit the legislative model fully because the legislature has no involvement. According to Loveman, it is precisely these sorts of expansive emergency provisions that

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74. *See* John Ferejohn & Pasquale Pasquino, *The Law of the Exception: A Typology of Emergency Powers*, 2 INT'L J. CONST. L. 210, 217 (2004) ("The legislative model handles emergencies by enacting ordinary statutes that delegate special and temporary powers to the executive."); Mark Tushnet, *The Political Constitution of Emergency Powers: Parliamentary and Separation-of-Powers Regulation*, 3 INT'L J.L. CONTEXT 275, 275 (2007) ("'Emergency powers' describes the expansion of governmental authority generally . . . , and the transfer of important 'first instance' lawmaking authority from legislatures to executive officials, in emergencies.").

75. Ferejohn & Pasquino, *supra* note 74, at 211–21.

76. *See* LOVEMAN, *supra* note 46, at 6 (establishing that many Latin American constitutions contained provisions allowing the invocation of "regimes of exception," wherein executive authority would be expanded, and constitutional protections, rights, and liberties would be temporarily voided).

77. *See* Ferejohn & Pasquino, *supra* note 74, at 219 ("[B]ecause the legislature—the part of the government closest to the people—actively delegates authority to the executive, the exercise of that power is more constrained and legitimate and is even, indeed, amplified and made more efficient by the fact that this exercise is supported by the legislature and, presumably, by the people.").

78. U.S. CONST. art. I, § 9, cl. 2.

79. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE BOLIVIA [BOL. CONST. 1851] Sept. 21, 1851, art. 76, cl. 26.

have threatened the political stability in the region almost from the beginning.[80]

Nevertheless, emergency provisions vary in important ways across Latin American constitutions. Appendix E, which reports the proportion of constitutions that contain various emergency provisions, demonstrates some of this variation. The variation spans at least three dimensions: (1) the identity of the actors (in addition to the executive) involved in the process of declaring the existence of an emergency situation; (2) the conditions under which emergency can be declared; and (3) limitations on the actions taken under emergency conditions. The last two rows of Appendix E present, respectively, the proportion of constitutions that require the legislature to play *some* role in the process of declaring an emergency (i.e., it must approve, or at least be consulted before, the declaration of an emergency), and the proportion of constitutions that explicitly specify the conditions under which an emergency may be declared. Across these dimensions, we focus on four specific aspects of emergency provisions: (1) the participation of the legislature in the emergency process; (2) the reference to internal security reasons as a justification for emergency powers; (3) the explicit provision for the suspension or restriction of rights during emergency; and (4) the prohibition of constitutional amendments during emergency rule.

Several patterns are worth noting. The first is that almost all presidential constitutions contain emergency provisions, whereas 73.6% of parliamentary and 81.0% of semi-presidential constitutions do. Indeed, every Latin American presidential constitution written since independence contains a provision for the executive to declare an emergency, compared with 94.4% of non-Latin American presidential constitutions.

The role of the legislature in the process of emergency declaration is smaller in presidential constitutions than it is in either parliamentary or semi-presidential ones. Only 19.0% of Latin American presidential constitutions require that the legislature approve the state of emergency, and an additional 1.9% require that the legislature at least be consulted, whereas 43.5% of non-Latin American presidential constitutions require some form of legislative participation (approval or consultation). There is a trend toward increasing the participation of legislatures in declaring emergencies, but this trend is weaker in presidential constitutions in Latin America than elsewhere: of the more recent (post-1979) constitutions, 36.8% of Latin American presidential constitutions require legislative participation, while 55.9% of non-Latin American, non-presidential constitutions do.

It is likely that the criteria stipulated in a constitution for identifying an emergency tell us something about the flexibility of the executive's power under these conditions. We can speculate that constitutions that limit

80. *See* LOVEMAN, *supra* note 46, at 6–9 (stating that while the clauses granting emergency powers "did not cause violence and dictatorship," they "are the constitutional foundation for tyranny almost everywhere in Latin America today").

emergencies to natural disasters are less flexible than ones that allow for emergencies for public security reasons. Further, we can speculate that constitutions that allow for emergencies in response to *internal* security issues are particularly broad, since they do not require an external trigger such as an invasion. We find that reference to internal security reasons as a justification for the state of emergency is more common in presidential than it is in parliamentary or semi-presidential constitutions; it is more common in Latin American than in non-Latin American presidential constitutions; and although it has become more common in all constitutions over the years, it is considerably more common in Latin American presidential than in non-Latin American, non-presidential constitutions. Emergency rule seems easier to invoke in Latin America than it does elsewhere.

Presidential and parliamentary constitutions are equally likely to contain an explicit provision allowing for the suspension or restriction of rights during emergency rule. Among presidential constitutions, however, those in Latin America are considerably more likely to allow for the suspension of rights than those outside of Latin America. The proportion of Latin American presidential constitutions with such a provision has hovered around 90% in the post-World War II period.

Finally, only a small proportion of all constitutions explicitly forbid legislative dissolution or constitutional amendments during emergency rule. It is not surprising that this proportion is much smaller in presidential than in parliamentary and semi-presidential constitutions, since assembly dissolution by the executive is not a common item on the ordinary menu of presidential powers outside assembly-confidence systems.[81] Latin American presidential constitutions, however, are about one-fifth as likely as non-Latin American presidential constitutions to contain a provision prohibiting legislative dissolution under emergency rule. We do not know if this distinction reflects the fact that a Latin American presidency is particularly empowered vis-à-vis the legislature (because it is free to dissolve the assembly) or disempowered (because it is never allowed to dissolve the assembly and so the constitution is silent about the rule during emergencies), but it is at least possible that the former is the case. To summarize, Latin American presidential constitutions are relatively less likely to require some form of legislative participation for the activation of emergency powers; more likely to permit internal security concerns as justifying the state of emergency; and more likely to explicitly allow for the suspension or restriction of rights. This is largely consistent with Loveman's claims.[82] It seems unlikely, however, that the presence of these provisions exhibits any causal relationship with the instability that has

81. *See* CHEIBUB, *supra* note 13, at 10 (remarking that the threat of dissolution is "absent, by design," from presidential constitutions); *cf.* Ginsburg, Melton & Elkins, *supra* note 59, at 1816 (noting that in popular-election systems, the legislature and executive are constituted independently, while in assembly-confidence systems, either branch can dissolve the other).

82. *See supra* note 80 and accompanying text.

characterized Latin American republics since independence, as Loveman suggests. Some of the features that might have been conducive to providing incentives for executive unilateral action—such as the lack of legislative involvement, the suspension of rights, and the reference to internal security—are relatively new developments; the early constitutions, which according to Loveman provided the foundations of tyranny in the region, did not possess all of these provisions.

B. Decree Powers

Executive decree powers give the executive the ability to issue binding rules with the force of law and are an important feature of modern governments,[83] being found in about two-thirds of all constitutions. The design of decree powers varies widely across cases, as illustrated in Appendix F, and their rationale and distribution depends on the broader political system: about 70% of both semi-presidential and presidential constitutions provide such power for the executive, while only half of parliamentary systems do so. In systems with fused governmental powers (parliamentary and some semi-presidential constitutions), the decree power for the executive is usually conceived as the exercise of delegated power from the legislature. The legislature, therefore, is frequently designated as the body that must approve an executive decree in those systems. In contrast, only 27.0% of presidential constitutions designate the legislature as the approving body of executive decree powers. Instead, such systems often require that the executive approve the decree, meaning in practical terms the cabinet in most cases. This is consistent with a conception of separation of powers and the notion of a discrete realm of executive lawmaking.

In neither system is it the case that executives are unconstrained in their ability to issue decrees. In fact, the difference between the three systems almost disappears when we consider whether the constitution specifies that some governmental body—be it the legislature or the cabinet—must approve executive decrees. The numbers (not shown in the Appendix) are 68.3% for presidential constitutions and 73.2% for both parliamentary and semi-presidential constitutions.

In keeping with the logic of fused powers and delegated authority, parliamentary and semi-presidential constitutions are twice as likely as presidential constitutions to stipulate that, once issued, executive decrees are immediately effective. Presidential constitutions are significantly more likely than parliamentary and semi-presidential constitutions to require that the approving body (the legislature or the cabinet or both) approve the decree before it becomes effective. Thus, at least in this respect, the executive is

83. *See* John M. Carey & Matthew Soberg Shugart, *Calling Out the Tanks or Filling Out the Forms?*, *in* EXECUTIVE DECREE AUTHORITY 1, 9, 15–19 (John M. Carey & Matthew Soberg Shugart eds., 1998) (defining *decree* as "the authority of the executive to establish law in lieu of action by the assembly," and discussing its appeal as a component of democratic government).

more constrained in presidential than in parliamentary and semi-presidential constitutions.

When it comes to the validity of the decree, there are two basic situations. In the first, the decree, once issued, is permanent unless it is explicitly rejected by the legislature; in the second, the decree expires after its pre-specified duration period unless it is explicitly extended by the legislature. The first situation favors the executive: the decree becomes the status quo and the legislature must act in order to change it. The second situation favors the legislature: the status quo ante is restored unless the legislature prefers the situation generated by the decree. The biggest difference we observe across systems is that presidential constitutions are less likely to specify who must act, and in what way, once the executive decree is issued: only 18.4% of presidential constitutions (as compared with 36.5% of parliamentary and 28.3% of semi-presidential) clearly state what must ensue after the decree is issued.[84] This, of course, allows for a degree of ambiguity, the result of which cannot be specified in the abstract. Our guess is that the lack of specification is a problem for the working of these constitutions.

As with emergency powers, some features of executive decree regulation seem to characterize a particularly Latin American model of presidentialism. First, constitutions with executive decree power are more frequent in Latin American presidential constitutions than in non-Latin American presidential constitutions. While almost half of non-Latin American presidential constitutions render the executive decree immediately valid upon issuance, only a small fraction (5.7%) of Latin American presidential constitutions do the same. However, when not left unspecified (as 42.7% of Latin American constitutions do), 46.8% of Latin American presidential constitutions require the action of the approving body before the decree becomes effective. This implies a routinization of presidential decree making, though we do not know the extent to which these formal constraints actually serve to prevent presidents from pursuing their preferred policies. Finally, Latin American presidential constitutions are far more likely (87.9%, as compared to 44.0% for non-Latin American presidential constitutions) to leave the issue of decree validity unspecified, remaining silent about what happens once the decree is issued. To the extent that the decree changes the status quo and the constitution is silent as to whether the status quo ante can be restored, we believe that this lack of regulation tends to favor the executive—though it is hard to be sure in the absence of more detailed information on de facto practices.

84. These numbers refer to the sum of the rows labeled "Permanent, unless repealed" and "Naturally expires, unless extended" in Appendix F.

C. Constitutional Amendment and Initiation of Legislation

It is not surprising that most constitutions provide some mechanism for their amendment.[85] But not all of them allow the executive to propose such amendments. As we can see in Appendix G, only 43.2% of the world's constitutions that specify amendment procedures allow the executive to propose constitutional amendments. This proportion is considerably higher in semi-presidential than in parliamentary and presidential constitutions; among presidential constitutions it is higher in non-Latin American constitutions, although almost 90% of the more recent post-1979 Latin American presidential constitutions allow the president to propose constitutional amendments.

In addition to constitutional amendments, a large proportion of constitutions provide for a legislative process involving budget bills. Again, this is not surprising since the budget is probably the most important piece of legislation that comes regularly before a legislative body. It is interesting to observe, however, that even though a large proportion of presidential, parliamentary, and semi-presidential constitutions provide for an explicit legislative process around the budget bill, almost half of presidential constitutions allow the executive to initiate the budget bill, compared to less than one-fifth of parliamentary and semi-presidential constitutions. Moreover, Latin American presidential constitutions are almost twice as likely as non-Latin American presidential constitutions to allow the executive to initiate budget bills. This is true for all historical periods and has increased in the more recent periods.

It is commonly argued that presidential constitutions do not provide a constitutional mechanism to break deadlocks or impasses between the legislature and the executive when they emerge.[86] The fixed nature of the legislative and executive terms, it is argued, deprives political actors of the opportunity to remove the government constitutionally when a crisis emerges.[87] Yet, as Appendix G indicates, at least when it comes to the budget, a large proportion of constitutions stipulate what should happen in case a budget is not approved. Whereas it is true that presidential constitutions—as compared to parliamentary and semi-presidential—are least likely to specify the default situation in case the budget bill fails, over half of these constitutions still do so. In presidential constitutions, the practice is to either adopt the previous year's budget or to adopt the budget that

85. In our sample, there are nine out of 444 (representing 1.99%) constitutions that do not explicitly provide for a revision mechanism; two are presidential, six are parliamentary, and one is semi-presidential. None of these is in Latin America.

86. *See, e.g.*, Shugart & Mainwaring, *Rethinking the Terms of the Debate*, *supra* note 12, at 32 (observing that constitutional mechanisms for resolving these kinds of conflicts are of "doubtful democratic legitimacy").

87. *See, e.g.*, *id.* at 30 (explaining that while most presidential systems with fixed executive terms have provisions for impeachment, "they offer less flexibility in crisis situations because attempts to depose the president can easily endanger the regime itself").

was proposed by the executive. Other solutions, including adopting the budget proposed by the legislature, are less commonly adopted.

As to the other types of laws—organic laws, finance, tax, and spending bills—a considerably smaller proportion of constitutions specify a legislative process to approve them, and among those that do so, the proportion that allows for the executive to initiate them is also relatively small, with the exception of spending bills. There is no discernible pattern across regime type and region when these processes are considered together. The only noticeable thing is that post-World War II constitutions are more likely to specify legislative processes around these various bills, and when they do so, they are more likely to allow the executive to initiate them.

Thus, the trend we identified earlier regarding increasing powers of legislative initiative granted to presidents in Latin America is primarily due to the fact that, in this region, presidents are allowed to set the agenda when it comes to constitutional amendments and budget laws. These are probably the two most important regular legislative activities in any political system, and granting the executive such powers is of great significance in terms of overall political impact. In short, the executive is a legislative leader in Latin America.

V. Is Presidential Lawmaking Desirable?

Our analysis has emphasized the concentration of lawmaking authority in the executive, a trend that has occurred over time in many political systems, but one that we have argued has been especially pronounced in Latin America. This is of course a major departure from the Montesquieuan conception of separated powers, in which lawmaking is done by the legislature and the only role of the executive is to *execute* the laws.[88] Such a conception was highly influential for the American founders, whose design of a constitutional scheme shaped the approach of subsequent constitution makers.[89] In the eighteenth century, the separation of powers scheme was

88. *See* M. DE SECONDAT, BARON DE MONTESQUIEU, THE SPIRIT OF THE LAWS 162–63, 172 (J.V. Pritchard ed., Thomas Nugent trans., Fred B. Rothman & Co. 1991) (1914) (noting that the legislative power enacts the laws and the executive carries out all functions of the state not reserved to the judiciary, but that the executive "has no other part in the legislative [power] than the privilege of rejecting").

89. *See* Carl T. Bogus, *The Battle for Separation of Powers in Rhode Island*, 56 ADMIN. L. REV. 77, 91 (2004) ("Montesquieu especially influenced the American Founders on the concept of separation of powers."); Susanna Frederick Fischer, *Playing Poohsticks with the British Constitution? The Blair Government's Proposal to Abolish the Lord Chancellor*, 24 PENN ST. INT'L L. REV. 257, 283 (2005) ("Montesquieu's views on the separation of powers are at least somewhat familiar to most Americans, because his writings had such a profound influence on some of the American Founders."); Ken I. Kersch, *Justice Breyer's Mandarin Liberty*, 73 U. CHI. L. REV. 759, 780 (2006) (book review) ("[T]he Constitution, . . . and the American people, were fully committed to government by elected representatives, an independent judiciary, [and] separation of powers more generally . . . , thanks in large part to the influential writings of [the] liberal French thinker, Montesquieu."). For a discussion of the influence of the American founders on other constitutional drafters, see Bruce Ackerman, *The New Separation of Powers*, 113 HARV. L. REV. 633, 634–42

seen as normatively attractive to prevent tyranny.[90] We thus must ask whether the erosion of this separation, particularly through the agglomeration of lawmaking power in the executive, enables tyranny. We also should try to understand why the agglomeration has occurred, so as to consider whether there are offsetting normative advantages.

In understanding the positive question of why the concentration of power has occurred, one can distinguish two broad positions that are not completely incompatible. One argument is that the concentration of lawmaking authority in the executive is a response to the exigencies of modern government. The other is that the concentration reflects a self-conscious power grab by the executive. These positions have very different normative implications: if we think concentration of lawmaking authority is functional in some sense, then it is obviously more attractive than if it merely reflects the self-aggrandizement of one branch.

Consider first the functional argument. With the rise of the administrative state, the scope of government activity has dramatically increased, with a need for regulation that can respond to changing conditions in technically complex areas. The executive is the head of the administration, which is staffed with bureaucrats who have the relevant policy expertise to make such decisions. Thus, the apparent concentration of lawmaking authority in the executive hides a dispersion of power within the larger administrative state. But the fact of administrative lawmaking is a necessary response to complexity.

This argument helps one to understand why we would observe the expansion of legislative initiative within the executive branch. Experts who are charged with solving problems and adjusting regulations to changing circumstances may want to be proactive in lawmaking and not simply wait for the generalist legislature to take the lead. A presidential initiative is an acknowledgement of the fact that it is the executive that will make the relevant decisions about the content of regulation.

Similarly, the expansion of executive decree power may in part reflect the need for technical regulation that every political system faces. Whether under delegated authority from the legislature or under powers assigned directly to the executive, the modern administrative state requires that the technical details of complex regulatory schemes be made by experts. Decree authority is one mode of such lawmaking.

The concentration of lawmaking in the presidency in particular provides for another functional advantage: accountability. In the United States, it has

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(2000); George Athan Billias, *Introduction* to AMERICAN CONSTITUTIONALISM ABROAD, *supra* note 16, at 1, 1–6.

90. *See* Douglas W. Kmiec, *Debating Separation of Powers*, 53 REV. POL., 391, 393 (1991) (book review) (describing how the delegates of the Constitutional Convention of 1787 relied on Montesquieu's notion of separation of powers to "devise a check upon legislative dominance that would not itself devolve into tyranny").

been argued that the rise of the so-called "plebiscitary presidency" has changed the structure of the office.[91] Presidents are typically the only figures elected by a national constituency and hence are more likely to reflect the preferences of the median voter.[92] Congress, in contrast, is seen as responding to a myriad of local interests, and hence it is not expected to produce policies truly in the national interest.[93] Furthermore, policy in Congress is produced through a complex process of committees, vote trading, and negotiation across houses, which makes it difficult to assign responsibility for any particular policy. When a single individual holds responsibility, the public clearly knows whom to blame or credit for policies. Executive lawmaking, in this view, facilitates accountability.

In contrast with these functional accounts, some have asserted that the concentration of authority in the presidency reflects a naked power grab. This is the view associated with Loveman and others who argue for the continuing relevance of the *caudillo* tradition in Latin America.[94] These scholars emphasize the use of the emergency power by Latin American presidents.[95] The emergency power, they show, has long been used to take power from the legislature and leads to periods of executive tyranny.[96] The assignment of decree power to the executive, in this view, also comes at the expense of the legislature, in that the executive can use that power not only with regard to the technical details of delegated lawmaking, but also for setting the broad outlines of policy.[97]

A full evaluation of these competing positions is beyond the scope of this Article, but we lean toward the view that there is something quite functional about the expansion of executive lawmaking authority. There are two reasons for our view. First, we observe the increasing power of single

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91. *See* Jide Nzelibe, *The Fable of the Nationalist President and the Parochial Congress*, 53 UCLA L. REV. 1217, 1224–31 (2006) (contrasting the modern plebiscitary vision of the presidency with the early Federalist vision, and surveying the modern scholarship and judicial conclusions regarding the structural implications of a plebiscitary presidency).

92. *See* INS v. Chadha, 462 U.S. 919, 948 (1983) (observing that the President brings a "national" perspective to the legislative process); Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2335 (2001) ("[B]ecause the President has a national constituency, he is likely to consider, in setting the direction of administrative policy on an ongoing basis, the preferences of the general public, rather than merely parochial interests.").

93. *Chadha*, 462 U.S. at 948 (citing Myers v. United States, 272 U.S. 52, 123 (1926)).

94. LOVEMAN, *supra* note 46, at 398; *see also* R.A. HUMPHREYS, TRADITION AND REVOLT IN LATIN AMERICA AND OTHER ESSAYS 220 (1969) ("[T]he caudillo tradition survives. Political creeds exist, and some of them are increasingly important.").

95. *See, e.g.*, LOVEMAN, *supra* note 46, at 5–6 ("Latin American constitutions almost always included provisions for 'emergency powers,' or 'extraordinary powers' . . . [that] might be exercised by presidents . . . .").

96. *See, e.g.*, *id.* at 6 ("[N]ormal constitutional protections were suspended, rights and liberties were temporarily voided, and the government's authority was greatly expanded.").

97. *See id.* at 21 ("[O]rdinary government procedures for legislation, administration, and judicial decision making may be replaced temporarily with special methods for making and implementing public policy.").

individuals even in pure parliamentary systems, where scholars have spoken of the presidentialization of the office of prime minister—a phenomenon that has resulted from the structure of political parties and the ubiquity of media coverage of politics.[98] This suggests that there is indeed something to the argument that having a single individual at the center of the political system enhances accountability. Second, the argument about tyranny is largely rooted in historical experience rather than contemporary reality. It assumes that long-run institutional patterns of behavior are enduring. For much of Latin American history, this was an understandable position. But we are now in an era of widespread democratic government in Latin America, with all the countries of the region observing formal norms of democracy. The trend toward democracy has accelerated since the 1980s, which covers part of the period in which we find enhanced powers of executive lawmaking. We do not assert that the two phenomena are causally related, but their contemporaneous occurrence suggests prima facie that democracy is not incompatible with expanded executive lawmaking. One can contrast the presidential systems in Africa, which form the bulk of our comparison group and in which democratic norms are much less frequently observed. As a normative matter, then, we believe the Latin American presidential pattern is one to be celebrated rather than condemned.

VI. Conclusion

We have analyzed the formal features of executive power in Latin America, a region long understood to be one amenable to strong executive rule. We have demonstrated that, although the presidency was inspired by the American model, other models were equally influential in structuring the precise contours of executive and legislative power in the region. We have also seen increasing convergence within the region along important dimensions of executive–legislative relations. We can thus speak of a Latin American model of presidential power that includes a powerful role in legislation as well as extensive emergency rule. This distinguishes the Latin American presidency from those in other regions of the world.

Our analysis has several implications for the study of comparative law and politics. First, it calls attention to geography as an important predictor of constitutional design. Second, our analysis emphasizes change rather than continuity and convergence over time. This approach contrasts with the recent emphasis in comparative law on "legal origins" as determinants of

98. *See* Thomas Poguntke & Paul Webb, *The Presidentialization of Politics in Democratic Societies: A Framework for Analysis*, *in* THE PRESIDENTIALIZATION OF POLITICS 1, 5–6 (Thomas Poguntke & Paul Webb eds., 2005) (explaining that the degree to which presidentialization occurs in any system, including parliamentary ones, depends on a range of factors including "changes in the social structure and the media system").

contemporary outcomes.[99] Finally, while the legal-origins analysts emphasize the importance of French law in Latin America,[100] our account shows that at a constitutional level, the influence of Spain and the United States was also significant in the early years. But while the legal-origins school argues for long-range consequences of initial choices, we observe a gradual process of constitutional updating in which constitutions within the region grow more similar to each other, and a move away from the models from which they were initially drawn.

99. *Cf. generally* Rafael La Porta et al., *Law and Finance*, 106 J. POL. ECON. 1113 (1998) (examining the origins of legal rules covering the protection of corporate shareholders and creditors in forty-nine countries, as well as the quality of their enforcement).

100. *See id.* at 1118 ("When the Spanish and Portuguese empires in Latin America dissolved in the nineteenth century, it was mainly the French civil law that the lawmakers of the new nations looked to for inspiration.").

Appendix A. Available and Missing Latin American Constitutions by Decade

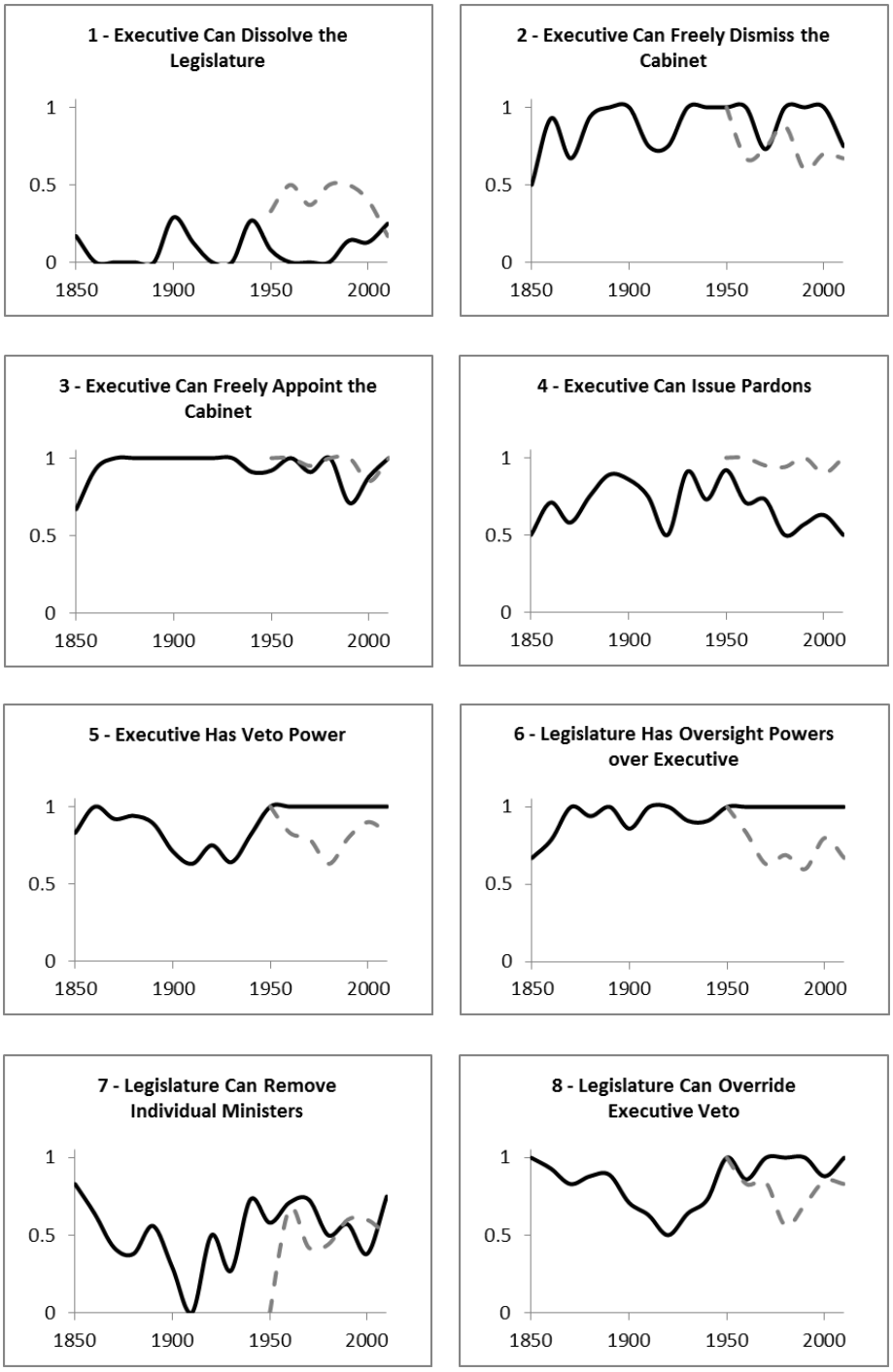
Country	1810s	1820s	1830s	1840s	1850s	1860s	1870s	1880s	1890s	1900s	1910s	1920s	1930s	1940s	1950s	1960s	1970s	1980s	1990s	2000s	Total
Argentina	**(1)**	1			1																3
Bolivia		1	3 **(1)**	1	1	2	2	1					1	2		2					17
Brazil		1							1				2	1		1		1			7
Chile		3	1									1						1			6
Colombia	**(1)**		2	1	2	1		1											1		9
Costa Rica		**(1)**		3 **(1)**	1	1	1				1			1							10
Cuba										**(1)**			1 **(1)**	1	1 **(1)**		1				7
Dominican Republic		**(1)**		**(1)**	3	2 **(1)**	6	2 **(1)**	1	2		4	1	2	1	4			1	1	34
Ecuador			2	1 **(1)**	2	2	1	1	1	1		1		2		1	1	1	4		22
El Salvador		**(1)**		1 **(1)**	**(1)**	1	2	3					1		1			1			13
Gran Colombia		**(1)**																			1
Guatemala		**(1)**		**(1)**	1		1							1	1	1		1			8
Honduras		**(1)**	**(1)**	**(2)**		1	1	1	1	1		1 **(1)**	1		1	1		1			15
Mexico	**(1)**	2	1	1	1						1										7
Nicaragua		**(1)**	**(1)**	**(1)**	2				1	1	1		1 **(1)**	1	1		1	1			14
Panama										1				2			1				4
Paraguay	1			1			1							1		1			1		6
Peru	**(1)**	2 **(2)**	2		1	2						1	1				1		1		14
Venezuela	**(2)**	**(1)**	1		2	1	1	1	2	3	2	4	2	1	1	1			1		26
United Provinces of Central America		**(1)**	**(1)**																		2
Uruguay		**(1)**	1								1		1		1	1					6
Total	7	22	17	17	18	14	16	11	7	10	6	13	14	15	9	13	5	7	9	1	231

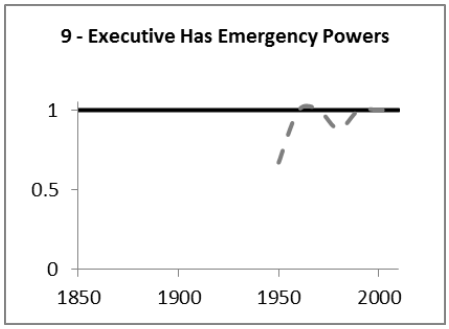
Note: Numbers in (parentheses) represent missing constitutions.

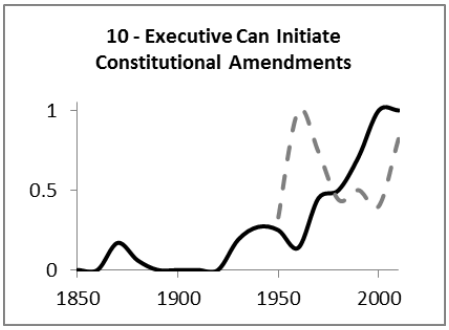
Appendix B. Percentage of Latin American Constitutions with Executive–Legislative Provisions by Year of Promulgation

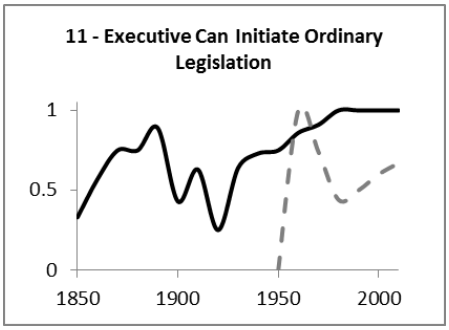
	Overall	**Pre-1870**	**1870–1918**	**1919–1945**	**1946–1979**	**Post-1979**
Executive can dissolve the legislature	9.5	6.4	6.2	17.2	6.3	20.0
Executive can freely dismiss the cabinet	89.5	82.5	91.3	96.6	90.6	95.0
Executive can freely appoint the cabinet	95.3	95.2	100.0	96.6	93.8	85.0
Executive can issue pardons	72.1	63.5	78.3	82.8	78.1	60.0
Executive has veto power	89.5	92.1	82.6	79.3	96.9	100.0
Legislature has oversight powers over the executive	90.0	77.8	95.7	93.1	96.9	100.0
Legislature can remove individual ministers	53.7	61.9	34.8	55.2	62.5	55.0
Legislature can override executive veto	85.8	88.9	78.3	75.9	93.8	95.0
Executive has emergency power	99.0	98.4	100.0	96.6	100.0	100.0
Executive can initiate constitutional amendments	23.7	7.9	4.4	27.6	37.5	90.0
Executive can initiate ordinary legislation	69.0	52.4	65.2	69.0	87.5	100.0
Executive can propose budget	42.1	19.1	21.7	51.7	81.3	85.0
Executive has decree powers	77.3	63.5	71.7	100.0	81.3	95.0
Number of constitutions:	190	63	46	29	32	20

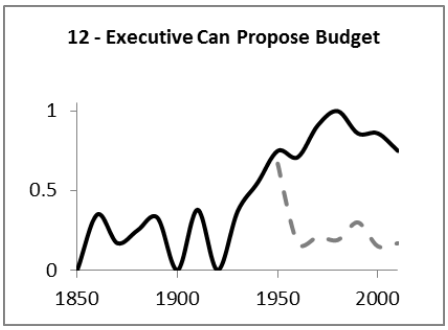
Appendix C. Trends of Executive–Legislative Provisions in Latin American and Non-Latin American Presidential Systems

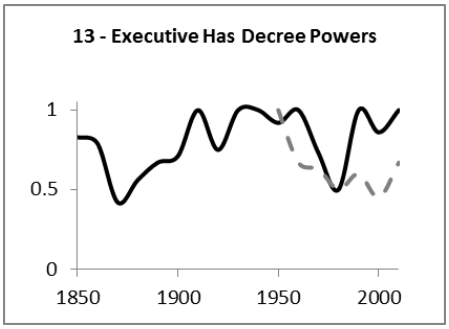












Solid line = Latin American constitutions
Dashed line = non-Latin American constitutions

Appendix D. Similarity Between Constitutions with Respect to Executive–Legislative Features

	Presidential			Non-Presidential	
Era	**All**	**Latin American**	**Non-Latin American**	**Same system***	**Different system***
Pre-1870	0.74	0.75	0.70		
	990	820	6		
1870–1918	0.74	0.75			0.43
	990	946			45
1919–1945	0.69	0.73	0.61	0.63	0.61
	528	378	10	106	744
1946–1979	0.66	0.78	0.65	0.63	0.58
	2,145	406	666	2,965	7,770
Post-1979	0.66	0.82	0.64	0.66	0.61
	1,431	120	703	2,088	6,491
All	0.68	0.73	0.63	0.64	0.59
	29,403	12,403	3,570	10,626	59,652

Universe: Constitutional dyads (1789–2007). Cells represent the mean proportion of features that match between two constitutions (above) and the number of dyads (below).

*"System" refers to the classification of constitutions as presidential, parliamentary, or semi-presidential.

Appendix E. Regulation of Emergency Provisions in Constitutions that Grant Emergency Powers to the Executive, 1789–2007

					Presidential		Latin American Presidential					Non-Latin American, Non-Presidential				
	All	Presidential	Parliamentary	Semi-presidential	LA	Non-LA	Pre-1870	1870–1918	1919–1945	1946–1979	Post-1979	Pre-1870	1870–1918	1919–1945	1946–1979	Post-1979
Constitutions with emergency provisions	87.2	98.0	73.6	81.0	100.0	94.4	100.0	100.0	100.0	100.0	100.0	91.7	90.0	65.0	75.3	83.8
Body that approves emergency declaration:																
Legislature must approve	27.4	25.1	33.7	39.7	19.0	36.5	7.3	18.2	15.2	25.9	31.6	9.1	11.1	24.2	25.0	44.1
Constitutional council must approve	14.5	18.9	12.4	8.8	22.8	11.8	31.7	18.2	23.2	18.5	26.3	6.1	11.1	16.1	10.3	8.6
Legislature must be consulted	6.3	4.1	6.7	22.1	1.9	8.2	2.4	2.3	1.8	0.0	5.3	3.0	0.0	1.6	10.3	12.9
Emergency can be declared:																
In case of external war/aggression	52.4	63.4	48.3	54.4	67.1	56.5	51.2	75.0	65.2	63.0	84.2	18.2	38.9	33.9	40.5	53.8
For internal security reasons	44.0	58.4	28.1	39.7	64.6	47.1	58.5	72.7	66.1	48.2	79.0	24.2	33.3	33.9	25.0	37.6
In case of natural disaster	16.8	21.0	23.6	19.1	22.2	18.8	2.4	4.6	8.0	37.0	84.2	0.0	11.1	6.5	6.9	30.1
In situations of general danger	27.2	37.9	30.3	10.3	42.4	29.4	39.0	29.6	36.6	51.6	63.2	6.1	11.1	17.7	19.8	19.4
Economic emergency	5.0	5.4	10.1	0.0	5.7	4.7	0.0	0.0	0.9	14.8	21.1	0.0	0.0	1.6	6.9	5.4
Left to nonconstitutional law	1.8	0.8	3.4	4.4	0.0	2.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.6	2.6	4.3
Not specified	12.9	7.4	23.6	16.2	4.4	12.9	2.4	6.8	5.4	3.7	0.0	0.0	5.6	11.3	2.6	18.3
Restrictions on emergency powers:																
Rights can be suspended or restricted	49.6	60.1	58.4	45.6	69.0	43.5	29.3	75.0	59.8	88.9	94.7	15.2	38.9	38.7	37.1	57.0
Legislature cannot be dissolved	6.6	4.5	10.1	19.1	1.9	9.4	2.4	0.0	1.8	3.7	0.0	0.0	0.0	0.0	12.1	11.8
Constitution cannot be amended	1.8	1.2	2.3	7.4	1.3	1.2	0.0	0.0	0.0	3.7	5.3	0.0	0.0	0.0	2.6	4.3
No restrictions are imposed	4.5	5.8	3.4	1.5	5.7	5.9	7.3	6.8	6.3	0.0	10.5	3.0	5.6	1.6	6.9	1.1
Legislature plays a role	32.6	28.8	38.2	58.8	20.9	43.5	9.8	20.5	22.2	25.9	36.8	12.1	11.1	38.5	31.9	55.9
Specification of conditions	65.7	77.8	62.9	66.2	82.9	68.2	75.6	84.1	81.5	85.2	94.7	27.3	50.0	50.0	54.3	66.7

Note: Entries represent the percentage of constitutions in each category (column) that provide for a given feature (row).

Appendix F. Regulation of Decree Powers in Constitutions that Grant Decree Powers to the Executive, 1789–2007

					Presidential		Latin American Presidential					Non-LA Pres.	
	All	Presidential	Parliamentary	Semi-presidential	LA	Non-LA	Pre-1870	1870–1918	1919–1945	1946–1979	Post-1979	1946–1979	Post-1979
Constitutions with executive decree powers	65.4	70.2	52.1	71.4	78.5	55.6	63.4	70.5	100.0	81.5	94.7	61.5	51.3
Decree Implementation													
Effective immediately once issued	17.3	17.8	41.3	41.7	5.7	48.0	0.0	3.2	0.0	18.2	11.1	41.7	60.0
Effective following a specified period during which an approving body can repeal it	1.1	1.7	0.0	3.3	0.8	4.0	0.0	0.0	0.0	0.0	5.6	4.2	5.0
Effective only after approval from the approving body	19.2	37.4	23.8	18.3	46.8	14.0	61.5	41.9	51.9	40.9	33.3	16.7	5.0
Not specified	27.5	37.9	38.1	43.3	42.7	26.0	34.6	51.6	44.4	36.4	44.4	25.0	30.0
Decree validity													
Permanent, unless repealed	7.3	8.0	12.7	10.0	4.0	18.0	3.9	3.2	0.0	4.6	11.1	16.7	20.0
Naturally expires, unless extended	10.5	10.3	23.8	18.3	3.2	28.0	0.0	0.0	0.0	18.2	0.0	25.0	35.0
Not specified	47.0	75.3	46.0	56.7	87.9	44.0	96.2	90.3	92.6	77.3	77.8	45.8	40.0
Decree approving body													
Executive	23.6	44.8	28.6	33.3	55.7	18.0	76.9	61.3	51.9	50.0	27.8	20.8	10.0
Legislature	24.8	27.0	61.9	51.7	19.4	46.0	7.7	9.7	22.2	36.4	27.8	37.5	60.0
Not specified	20.6	26.4	30.2	33.3	26.6	26.0	19.2	29.0	29.6	18.2	38.9	25.0	30.0
Executive is authorized to issue decrees . . .													
That pertain to war or conflict	5.8	12.1	6.4	13.3	12.9	10.0	7.7	6.5	11.1	18.2	27.8	8.3	0.0
During states of emergency, exception, siege, or urgency	17.6	24.7	44.4	4.0	24.2	26.0	7.7	12.9	25.9	50.0	33.3	25.0	30.0
On matters of foreign policy	0.8	0.0	3.2	3.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
When the legislature is not in session	11.1	12.1	28.6	11.7	10.5	16.0	7.7	6.5	14.8	18.2	5.6	16.7	10.0
Left explicitly to constitutional law	6.1	9.2	7.9	8.3	10.5	6.0	0.0	9.7	14.8	13.6	16.7	12.5	0.0
Not specified	21.4	33.9	19.1	31.7	35.5	30.0	50.0	25.8	44.4	27.3	27.8	20.8	40.0

Note: Entries represent the percentage of constitutions in each category (column) that provide for a given feature (row)

Appendix G. Constitutions that Grant Legislative Initiative to the Executive, 1789–2007

					Presidential		Latin American Presidential					Non-LA Pres.	
	All	Presidential	Parliamentary	Semi-presidential	LA	Non-LA	Pre-1870	1870–1918	1919–1945	1946–1979	Post-1979	1946–1979	Post-1979
Constitution provides for:													
Constitutional amendments	98.0	99.2	95.0	98.8	100.0	97.8	100.0	100.0	100.0	100.0	100.0	97.4	97.4
Budget laws	78.6	75.4	78.5	88.1	75.3	75.6	46.3	77.3	81.5	96.3	94.7	84.6	71.8
Organic laws	18.8	14.9	9.9	42.9	11.4	21.1	0.0	6.8	3.7	22.2	42.1	15.4	28.2
Finance laws	20.5	12.1	32.2	28.6	8.2	18.9	2.4	11.4	3.7	18.5	5.3	12.8	25.6
Tax laws	29.6	23.8	44.6	25.0	20.9	28.9	17.1	22.7	18.5	29.6	15.8	20.5	38.5
Spending laws	19.4	14.9	34.7	10.7	11.4	21.1	2.4	15.9	11.1	18.5	10.5	18.0	23.1
If the constitution allows for it, the executive can propose:													
Constitutional amendments	43.2	34.2	36.5	79.5	22.2	55.7	4.9	2.3	25.9	29.6	89.5	65.8	52.6
Budget laws	32.9	47.1	19.0	14.9	58.8	26.5	42.1	29.4	63.6	84.6	88.9	27.3	25.0
Organic laws	8.2	10.8	0.0	8.3	11.1	10.5	0.0	0.0	0.0	0.0	25.0	0.0	18.2
Finance laws	22.6	36.7	20.5	8.3	30.8	41.2	0.0	0.0	**	40.0	**	40.0	50.0
Tax laws	17.9	18.6	20.4	9.5	9.1	30.8	0.0	0.0	0.0	12.5	66.7	50.0	26.7
Spending laws	35.2	48.7	26.2	22.2	61.1	36.8	**	28.6	66.7	80.0	100.0	57.1	22.2
In case of the legislature's failure to pass a proposal, the budget defaults to:													
Executive's proposal	9.3	10.7	6.3	9.5	7.6	16.2	0.0	0.0	4.6	23.1	11.1	15.2	17.9
Executive's proposal, if proposed prior to failure	12.8	11.4	11.1	27.3	12.9	5.6	0.0	0.0	7.1	27.3	12.5	0.0	14.3
Previous year's budget	33.2	32.1	28.4	41.9	30.3	35.3	5.3	32.4	31.8	42.3	33.3	45.5	28.6
Other	14.9	9.1	23.2	18.9	4.2	17.7	0.0	0.0	9.1	7.1	5.6	24.2	10.7

Note: Entries represent the percentage of constitutions in each category (column) that provide for a given feature (row)

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