

**CONSTITUTIONAL COUPS:  
ADVANCING EXECUTIVE POWER IN LATIN AMERICAN  
DEMOCRACIES**

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## **I. Introduction**

After celebrating the third wave of democratization at the end of the 20<sup>th</sup> century, many Latin American countries are experiencing a prolonged hangover. High expectations have led to frustration regarding democratic performance in many parts of the region. While early success with democratic procedures showed promise, there is growing consensus that elections are an inadequate threshold for democratic transition (Mainwaring 2003). Scholars are concerned about poor quality of governance with regard to institutional strength, representativeness, accountability, and the rule of law (O'Donnell 1993, Zakaria 1997). Backsliding to authoritarianism – the antithesis of democratic consolidation (Schedler 2008) – is a nagging threat. Within this context, many Latin American countries are rewriting their constitutions after having established democracy. While these efforts appear to be focused on social reforms, little comparative analysis has been made regarding institutional changes from one constitution to the next. How do these constitutional replacements change developing democracies, in particular for the person in charge?

Imagine playing a game where the most powerful player also makes up the rules of the game. Now imagine the game is government, the rules are the constitution, and the most powerful player is the president. This scenario would not be surprising under authoritarian rule, where elites enjoy near total control over institutions. Yet since 1934 in Latin America, 15 democratically elected leaders have completely replaced their country's constitution more than five years after regime transition – rather than (or in addition to) constitutional rewriting at the moment of regime change. Such replacements are not well accounted for by theories highlighting authoritarian leadership, regime change, and the creation of new states as important forces driving constitutional construction.

Some argue these new constitutions are attempts at reform, and indeed many of Latin America's new democratic constitutions promise broad socioeconomic rights, environmental protections, and provisions for regional and indigenous autonomy. Remarkably, however, many of these new charters also centralize more power into the hands of the executive – despite having been written during open, democratic rule. Why would players in a bottom-up constitution-writing moment allow the process to be dominated from the top, and why have so few noticed? I believe constitutional replacements that occur during democracy and outside of regime change are overlooked in the literature for three reasons: 1. They occur without a major upheaval, hence we expect less significant change; 2. They rarely occur in Western democracies, hence they garner less attention; and 3. They are only occurring very recently, primarily in developing democracies. We know few details about incremental change between sequential constitutional replacements, particularly regarding the key institution of executive power.

Enhancing executive constitutional powers has normative implications for democratic consolidation. Basic democratic theory suggests the need for checks and balances on all branches of government. Past and present scholars stress that the executive in a democracy should have limited powers, be dependent on other branches, and serve for a fixed term (de Tocqueville 2002; Dahl 1998). Some scholars define democracy in direct contrast to excessive executive authority, further arguing that democratic consolidation is attained only when a country avoids breakdown and return to authoritarianism (Schedler 1998). Therefore, we would not expect new, democratic constitutions to expand executive power.

I call the process through which executive-enhancing charters were written “constitutional coups.” Using a measurement scheme adapted from Shugart and Carey (1992), I find that ten of the 15 new constitutions adopted under democracy since 1934 included an

increase in executive power – one retained the same level of executive power and four experienced slight decreases. This finding is surprising considering years of literature warning that higher political instability, such as coups, is associated with regimes that have greater presidential control (Mainwaring and Shugart eds. 1997, Shugart and Carey 1992, Stepan and Skach 1993). Of the six democracies in this study, five currently have constitutions that increased executive power over the last constitution, four of them by 28% or more. I set a minimum threshold of 10% increase or more as sufficiently significant to qualify as a ‘constitutional coup’ – explained in detail later. This results in a total of eight coup cases.

Two aspects about timing and geography of these cases are compelling. The first is the chronology of constitutional coups. Six of the eight coups occurred after 1996. Uruguay is the outlier with two coups in 1934 and 1966, but Uruguay is unusual in Latin America for its early adoption and retention of democracy. With the sole exception of Colombia, the other five countries in this study are currently governed by constitutions that implemented increased executive power over the previous version. The findings imply that constitutional coups are a recent phenomenon occurring in third wave democracies. In addition, there appears to be a sub-regional trend: with the exception of the Dominican Republic, a Caribbean island country, all of the contemporary constitutional coups occurred in the Andes.

Extant theory, stating that constitutional replacements result from momentous economic and political change, does not fully account for constitutional coups. Elster (1995) argues “new constitutions almost always are written in the wake of a crisis or exceptional circumstance of some sort.” He lists eight circumstances that could lead to constitutional change,<sup>1</sup> most of which imply regime change (370). My findings show that macro-structural crises were not necessarily

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<sup>1</sup> Social and economic crisis; revolution; regime collapse; fear of regime collapse; defeat in war; reconstruction after war; creation of a new state; and liberation from colonial rule.

correlated with incidents of constitutional replacement, even in cases where executive power was enhanced. Instead, more deep-seated issues such as a history of replacing constitutions and the resurgence of populism, may facilitate – in some countries – a tendency to institutionalize a powerful executive. This new insight contributes to existing literature on constitutional design and the balance of institutional power, with potential implications for emerging democracies around the world. It dispels the myth that the global trend to write new, longer constitutions with broad socioeconomic rights necessarily creates more liberal and democratic charters. The devil is in the details.

This work proceeds by reviewing the literature on constitutional replacements in Section II. Section III explains the case selection and Section IV details the system developed for measuring presidential power in constitutions. Findings are presented in Section V with potential explanations developed in Section VI. Concluding thoughts are in Section VII.

## **II. Sequential Constitutional Replacements**

The literature on constitutional creation focuses almost exclusively on the event itself, or the events leading up to it, rather than the outcome. Studies emphasize how, when, and why constitutional replacement occurs, but largely neglect the details of subsequent change. Moreover, scholars focus overwhelmingly on constitutional replacements that accompany great regime change. Replacements within a regime type are often overlooked. While replacement of the constitution is an important symbolic gesture in and of itself, I argue it is just as important, if not more, to understand what institutional variations resulted from that change. This is especially true when the constitutional creators claim to maintain the same form of government, in this case democracy. This paper addresses this void by studying exactly how framers tweaked the

institutional design for this new version of democracy. It focuses specifically on how new constitutions empower the man or woman in charge.

The literature does not specifically account for change in presidential power from one constitution to the next, nor does it explain why such change would occur. This section looks more broadly at explanations for constitutional change to understand this oversight. The majority of literature on constitutional creation focuses on two overarching theories: 1) writing new constitutions tends to occur in waves; and 2) new constitutions are usually written to create a state or establish a new regime type.<sup>2</sup> Scholars largely ignore cases where constitutions were written outside of major transitions, perhaps because they are not expected or because they are assumed to result in little change, but I argue they could have important implications. A brief overview of the extant literature follows.

### *Waves of Change*

The key triggers of regime change or state creation often occur in more than one place at a time. The tendency for countries to share timing of major political events, resulting in waves of writing new constitutions, is well documented. Scheppele (2003) traces how constitutionalism emerged throughout history, as many countries shared similar episodes of writing a constitution based on corresponding political or economic changes. Elster (1995), focusing primarily on the West, describes seven historical waves of constitution making, beginning with the first experiences in the late 18<sup>th</sup> Century United States and Europe through the early 1990s fall of communism.<sup>3</sup> The waves are often a result of wars and revolutions having precipitated a regime

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<sup>2</sup> By 'regime,' I mean a form of government, such as democracy, socialism, or communism. Hence regime change is the establishment of a new type of government; this is separate from a shift in ruling political party. By 'state' I mean a given political entity, with people, territory, and a government system or regime-type. Regime change may or may not lead to the establishment of a new state.

<sup>3</sup> Elster's seven waves include: 1) late 18<sup>th</sup> Century American states' constitutions, the United States, Poland, and France; 2) in the wake of 1848 revolutions in Europe; 3) post World War I; 4) post World War II; 5) following

change and typically occur in clusters or in a chain reaction (372). This process also occurred in Latin America, where several separate rounds of constitution writing followed the evolution of independence and economic ideologies (De la Torre and Garcia 1976).<sup>4</sup> Again, scholars focus mainly on the constitutional event, rather than the resulting change from one text to the next, or how the events leading up to the change influenced the outcome.

A few scholars look very broadly at the outcome, suggesting that resulting constitutions share characteristics when written co-temporally. Since global waves often occur simultaneously with major ideological transformations, such as democratization, neoliberalism, or decolonization (Go 2003), countries catching the same wave often espouse similar ideological principles and economic goals in their new constitutions. Przeworski notes succinctly that in the democratization wave, “co-temporality induces homogeneity” (1991: 99). Perhaps the recent writing of new constitutions in Latin American democracies represents a wave and the new constitutions share common attributes, but the results have not yet been empirically examined. Segura and Bejarano (2004) offer an initial examination of constitutions written in Colombia, Ecuador, and Venezuela in the 1990s, all of which shared a more ‘open’ process of electing a constituent assembly and allowing public input in the drafting process. Despite these similarities, the results were not always more ‘democratic,’ as one might expect. In fact, they argue Venezuela’s new constitution is a perfect example of O’Donnell’s (1994) ‘delegative democracy,’ in which the president is selected by popular election and is then essentially handed all authority to rule without further citizen input or oversight. My study contributes to these

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decolonization of the French and British empires around 1940s to 1960s; 6) after the fall of dictatorships in the mid 1970s in Southern Europe; 7) post 1989 fall of communism (368-369). He admittedly ignores most of Asia, Africa, and Latin America. All these waves represent regime changes or establishment of new states.

<sup>4</sup> Constitutions writing began with the struggle for liberty from Spain in 1808, then more liberal provisions were espoused in constitutions near the mid-1800s, followed by new constitutions proclaiming sovereignty after foreign intervention, and lastly a wave of 20<sup>th</sup> Century constitutions that reflect attention to human rights principles, liberal economic provisions and increased social rights, which he calls social constitutions.

findings by quantifying change in presidential power from one constitution to the next, providing a better understanding of the type of transition that occurred.

### ***“Major Change” Constitutional Triggers***

Episodes of constitutional creation addressed in this study are largely unexplained in the literature because they occur *during* democratic regimes and maintain the same regime type. Explanations for such sequential replacements are traditionally lacking. This section reviews the dominant reasoning that anticipates new constitutions – following “major change” like revolutions or creation of a new state.

Ideology. Sometimes a society’s belief system alters so significantly that the existing government structure is no longer acceptable. This often prompts the writing of a new constitution. The change can happen fairly abruptly in a concentrated area, as with the fall of communism in Eastern Europe in the 1990s (Elster, Offe and Preuss 1998), or gradually in a more widespread area, as with the emergence of liberalism beginning in the late 1700s. It is intuitive to expect that a fundamental, widespread change in ideology would trigger a regime change and require a new constitution as the old constitution represents the old ideology.

Revolution or Civilian Revolt. Revolution is an obvious cause of regime change because it involves the overthrow and replacement of an existing regime. Most constitutional scholars assert that revolutions necessitate a new constitution (Ackerman 1997; Arendt 1965; Elster 1995; Ginsburg, Elkins, and Melton 2007; Hirschl 2004). Ackerman (1997) refers to a “new beginnings” scenario for writing new constitutions, which includes culturally significant events, such as revolutions. A “constitution emerges as a symbolic marker of a great transition in the political life of a nation” and signals the shift between “before” and “after” (778). Common examples include the American and French revolutions (780); India’s national independence

(782-783); and Carranza's constitution after Mexico's 1917 revolution (787). His categories all imply significant alteration to the existing regime type. In Latin America, however, full-scale revolutions are rare (with two noted exceptions being Cuba and Mexico<sup>5</sup>), but civilian revolts have caused government overthrow and triggered the writing of new constitutions (Negretto 2008).

Post colonialism and foreign occupation. Another cause of regime change leading to new constitutions is the conclusion of colonialism or foreign intervention. Two examples include post colonialism in the French and British empires (Go 2003) and independence from Spain or withdrawal of U.S. military intervention in Latin America (de la Torre and Garcia 1976). The decolonization process is also referenced more broadly as “the independence scenario” experienced in the former British colonies and newly self-governing states in Africa (Hirschl 2004: 7). These scenarios typically establish a new regime (or, sometimes in the case of Africa, a new state), which led to writing a new constitution. In some rare cases a new constitution is imposed on a country by foreign occupiers, as occurred in post World War II Germany and Japan. Feldman argues this still occurs today (2004-2005). Between 1994 and 2004, four countries wrote constitutions under de facto or de jure occupation (former Yugoslavia, East Timor, Afghanistan, and Iraq), marking the establishment of a new regime.

Federalism. Federalism triggers new constitutions when creating a new state by combining separate parts, or by the further separation of parts within a federation (Ackerman 1997: 775; Hirschl 2004). Examples of the first include when colonies combined to create the United States or when nations united to form a European Union (the proposed European Union

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<sup>5</sup> It is interesting to note that Cuba and Mexico, two Latin American countries having experienced “full-scale” revolutions, are among the Latin American countries with the fewest number of constitutions. Costa Rica, after abolishing its military in 1949, has also maintained the same constitution (Rosenn 1990).

constitution under debate). There can also be an evolution toward greater federalism in a state thus requiring a new constitution, such as in Canada.

Whether triggered by ideological upheaval, revolution, independence, or changes in degrees of federalism, the literature largely attributes the resulting regime change or creation of a new state as the underlying cause for a new constitution. Authors do not account for constitutional change within regimes. This could be explained by a strong bias to focus on more significant events, as “the literature on institutional change has underestimated the incidence of change unassociated with crisis” (Elkins, Ginsburg and Melton 2009: 4). By focusing on major upheaval as the explanation for constitutional replacement, the literature neglects to account for ‘quieter’ cases of sequential constitutional replacement that could lead to significant incremental change over time. Explanations for new constitutions that maintain an existing regime, as often occurs in Latin America, are rare. Yet most constitutional replacements in Latin America – 71 out of 98 since 1900 – occurred during an existing regime. Fifteen of the 71 within-regime replacements occurred during democratic regimes (See Table 1; data on constitutional events from Elkins, Ginsburg and Melton 2009). Those 15 new constitutions maintained democratic form of government, but little empirical research has been conducted on what institutional adjustments were made.

### *New Constitutions Written without New Regime or State*

Why, then, are new constitutions written when not otherwise warranted by a major upheaval? Perhaps non-regime changing constitutional replacement is only a recent phenomenon, particularly in democracies. A handful of authors note that since the 1990s, politicians are increasingly using constitutional reform to affect political goals (Hirschl 2004, Segura and Bejarano 2004). Bogdanor (1988) traces an increase in the use of constitutional

change to affect political change, focusing mainly on European countries<sup>6</sup> that rewrote their constitutions since 1970. In addition, most of the attention is on the West, where cases are rare. Elster (1995) cites Sweden in 1974 and Canada in 1982, but admits to ignoring Asia, Africa, and Latin America. McWhinney (1981) cites attempts in Canada and Belgium, where restatement of constitutional framework occurred without “revolution or internal political upheaval” (although in both cases the threat of breakup loomed) (13). It is worth studying recent sequential constitutional change in Latin America because it could reveal more than modest reforms. Although this study looks at complete constitutional replacement, a brief review of the theories on constitutional reform helps inform what might motivate constitutional change outside of major upheaval.

Judicial Review/Hegemonic Preservation. Some suggest that leaders seek to change the constitution to incorporate greater mechanisms for judicial review. The motivation could be to ensure fair treatment for minority political movements that are unsure of their future status in the government, as in Ginsburg’s “insurance theory” (2003), or to preserve the power of a majority from the vagaries of democracy, as in Hirschl’s “hegemonic preservation theory” (2000). If this holds true for amending the constitution, the argument could apply as a motivation for replacing constitutions. Leaders could be seeking to achieve a specific political result for an interested party, not just reacting to a necessity following major political transition.

Reform Path. Another possible motivation for a country to rewrite its constitution within an existing regime is when leaders seek reforms and it is easier for them to rewrite the constitution than to amend it. Only a few studies consider constitutional design as a potential factor in whether or not the constitution will endure, be reformed, or be replaced (Ginsburg,

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<sup>6</sup> His book looks at Belgium, Canada, the Netherlands, Portugal, Spain and Sweden. In Belgium constitutional revision is an ongoing process, Portugal and Spain occurred due to transition from dictatorship to democracy. The book cites other countries where constitutional commissions study reforms (the United States, Australia).

Elkins and Melton 2009). If constitutions are flexible and can adapt to changing circumstances, the risk of constitutional replacement decreases (Negretto 2008). In countries where the amendment process is rigid or the assembly is too fragmented to work together on reforms or the judiciary opposes reformers, it might be easier to rewrite the constitution altogether using a new constituent assembly and a popular vote. This of course has normative implications regarding institutional stability, to be discussed in the conclusion.

Path Dependence/Domestic Acceptance. In a similar example, countries could replace constitutions because society expects and allows such institutional change. In Ecuador, for example, it is not uncommon for leaders to call for a referendum to elect a constituent assembly and write a new constitution. Applying path dependence theory one could argue if a country's constitution was rewritten several times, there is less resistance to continuing down the same path again (Peters 2005, Pierson 2004). Proposing a new constitution in the United States, however, where the constitution has endured over 200 years, would likely be met with great opposition.<sup>7</sup>

Political Culture. A small sample in the literature credits political culture as a factor in government formation and constitutional duration. Rosenn and Karst (1975) list five characteristics of Latin America's legal culture, some of which could be applied to explain why many constitutions were replaced, rather than amended or reformed.<sup>8</sup> Rosenn (1990), when comparing the U.S. to Latin America, cites historical and cultural differences to explain the stark contrast in constitutional longevity and support for the constitution. He believes U.S. emphasis

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<sup>7</sup> This is not only true at the national level, where efforts to reform the U.S. constitution have met resistance, but also at the state level. Efforts to rewrite the California constitution, to address myriad serious government and budget problems, are likely to proceed very slowly.

<sup>8</sup> They include: idealism (the law is somehow divorced from reality); paternalism (the government is solely in charge of citizens' affairs); legalism (idea that society can be fixed by implementing rules); formalism (hyper concern for legal formalities, but neglect for actual impact); and lack of penetration (government inefficiency) (Huerta 1977).

on an independent judiciary, belief in widespread land ownership, and strong educational values are key to constitutional “success” or endurance; whereas in Latin America the lack of social class transformation, little belief in self government, and excessive military culture weakens constitutionalism. His argument could be furthered to explain why constitutions are commonly replaced in Latin America, where tendency is toward abrupt change, rather than amendment or reform.

Type of Government/Rigid Institutions. If the constitutional framework produces government institutions that are easily overthrown, new constitutions could result. When leadership is replaced, the new executive might impose their own rules by replacing the constitution or simply as a symbol of new leadership. In contrast to parliamentary systems, presidential systems make it difficult to remove the executive, hence they are twice as likely to experience coups (Stepan and Skach 1993). According to Stepan and Skach, pure parliamentary systems are more strongly correlated with democratic consolidation because they encourage mutual dependence – politicians must work together to stay in office, coalition members have incentive to cooperate to stay in government, and the system provides mechanisms to remove unpopular executives. In contrast, the presidential system lacks a constitutional mechanism to break impasse (like dissolution of parliament or vote of confidence). The resulting breakdown in governments leads to turnovers that could necessitate new constitutions, as the new government is likely motivated to write its own rules.

Political Maneuvering in Crisis. An additional cause motivating leaders to write a new constitution during an existing regime is to address demands from a restless or divided civil society. Facing overwhelming citizen demands, a leader might turn to constitutional change to implement desired policies, especially if attempts to work with the legislature have been

unsuccessful. A leader might seize this opportunity to increase executive capacity to address conflict, for example, by seeking permission for decree powers or allowance of reelection. Only one author I have found speaks directly to this possibility (and does so only briefly). McWhinney (1981) notes that some constitutions are created for reasons other than (or in addition to) establishing a government framework. Sometimes writing a new constitution is a “vain exercise in trying to resolve, by legal means and formulae, essentially non-constitutional problems of an ethnic-cultural, social, or economic character” (xi). For example, countries experiencing severe economic problems or civil unrest might turn “to constitution-making as a last resort to divert public attention from those other, more pressing non-constitutional problems and its own inability to develop viable solutions for them” (23). If this is the case, it could explain why some Latin American countries have so many constitutions. Each crisis is an opportunity for a leader to use constitutional replacement as a solution to the country’s problems.

If new constitutions are not to be expected outside of regime change, these studies suggest that political motivations could explain why constitutions were replaced in Latin America. While we cannot accurately measure leaders’ motivations to incite institutional change, we can at least measure the results to understand what kind of change was instituted. This study examines cases where constitutions were replaced without a regime change to gauge variation in the outcome on one variable of executive power.

### **III. Identifying Constitutional Coups – Case Selection**

Latin America not only provides ample cases to study constitutional change, it is a region where concerns about executive power are particularly warranted. I measure change in the institution of the presidency over sequential constitutions within democratic regimes. To date

this type of empirical analysis has been lacking. I focus on complete constitutional replacements, but future study would consider subsequent amendments as well. After careful measurement, I classify replacements that increased executive power by 10% or more as constitutional coups, because they gain more power for the president (explained in detail below).

The overwhelming majority of constitutional replacements in Ibero-American<sup>9</sup> countries since 1900 occurred *without* a regime change (defined as five or more years since transition from an authoritarian to a democratic regime, or vice versa) and without the creation of a new state. Of 98 new constitutions, only 27 accompanied a regime change. Interestingly, of the 71 non-regime change cases, 15 of them – more than 20% – occurred during democratic regimes. This is the pool of possible cases of constitutional coups. While there were times when executive-empowering constitutions were written during authoritarian regimes, this is to be expected. This paper addresses the less anticipated scenario of democratically elected leaders increasing executive power during a democratic regime through constitutional replacement.

Table 1 lists every distinct Ibero-American country, its regime type, and what year it adopted a new constitution – replacing the old one – from 1900 to 2010. The start date of 1900 was chosen because I am interested in democratic regimes, which primarily exist after the turn of the century in Latin America. A democratic regime is defined as one “(a) that sponsors free and fair competitive elections for the legislature and executive; (b) that allows for inclusive adult citizenship; (c) that protects civil liberties and political rights; and (d) in which the elected governments really govern and the military is under civilian control” (Mainwaring, Brinks & Pérez-Liñán 2007: 123). Transitions between “authoritarian,” “semi-democratic,” and

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<sup>9</sup> I consider Ibero-America to be all 18 Spanish and Portuguese speaking countries in the Western Hemisphere: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela. I exclude Cuba because data were lacking.

“democratic” regimes from 1945 to 2004 are based on a classification by Mainwaring, Brinks & Pérez-Liñán (2007) [referred to hereafter as MBP] and from 1900 to 1945 based on a classification by Smith (2005). For the three countries that adopted new constitutions since 2006, I classified the regime-type based on MBP criteria and each qualified as at least semi-democratic, meaning the new constitutions were included in the realm of possible constitutional coups.<sup>10</sup> I chose five years as a minimum indicator of sufficient distance from the transition to argue the constitutional change was no longer tied to regime change or the establishment of a new state. This is because a new regime would likely establish its own rules within five years. Also, five years is the typical duration of an executive term, signaling one transition under the established regime. The cases of constitutional replacements during an existing regime are depicted in bold, and further underlined if they occurred during democracy. I argue these replacements are not directly explained by regime change and are not systematically addressed in the current body of constitutional literature.

<b>Table 1 – Regime Type and Year of New Constitutions in Ibero-America 1900 – 2010</b>				
<b>Bold</b> = constitutional replacement without regime change (meaning five or more years after transition between authoritarian and democratic/semidemocratic)				
<b>Bold Underlined</b> = no regime change <i>and</i> during democracy – “potential constitutional coups”				
<b>Country</b>	<b>Regime start</b>	<b>Regime end</b>	<b>Regime classification*</b>	<b>Year of new constitution</b>
Argentina	1900	1915	A	(Most recent prior to 1900: 1853)
	1916	1929	D	
	1930	1931	A	
	1932	1942	SD	
	1943	1945	A	
	1946	1950	SD	
	1951	1957	A	

<sup>10</sup> When MBP list subsequent regimes of the same type, I combine the years to list them in one line. For example, Guatemala from 1954-1965, 1966-1969, and 1970-1985 are listed as three authoritarian regimes, which I present as 1954-1985 because it represents a period of the same regime type. Again, this study is interested in regime change, not a change in government administrations.

	1958	1961	SD	
	1962	1962	A	
	1963	1965	SD	
	1966	1972	A	
	1973	1974	D	
	1975	1975	SD	
	1976	1982	A	
	1983	2004	D	
Bolivia	1900	1939	A	(Most recent prior to 1900: 1880), <b>1938</b>
	1940	1942	SD	
	1943	1955	A	1945, 1947
	1956	1963	SD	1961
	1964	1978	A	1967
	1979	1979	SD	
	1980	1981	A	
	1982	2004	D	
	(KN clas.)	2009	SD	<b>2009</b>
Brazil	1900	1939	A	(Most recent prior to 1900: 1891), <b>1934, 1937</b>
	1940	1942	SD	
	1943	1946	A	1946
	1946	1953	D	
	1954	1955	SD	
	1956	1963	D	
	1964	1984	A	1967
	1985	2004	D	1988
Chile	1900	1932	A	(Most recent prior to 1900: 1833), <b>1925</b>
	1933	1972	D	
	1973	1989	A	<b>1980</b>
	1990	2004	D	
Colombia	1900	1937	A	(Most recent prior to 1900: 1886)
	1938	1941	SD	
	1942	1948	D	
	1949	1957	A	
	1958	1973	SD	
	1974	1989	D	
	1990	2004	SD	<b>1991</b>
Costa Rica	1900	1948	A	(Most recent prior to 1900: 1871), <b>1917</b>
	1949	1957	SD	1949

	1958	2004	D	
Dominican Republic	1900	1965	A	(Most recent prior to 1900: 1896), <b>1907, 1908, 1924, 1927, 1929.1, 1929.2, 1934, 1942, 1947, 1955, 1962, 1963</b>
	1966	1973	SD	1966
	1974	1977	A	
	1978	1993	D	
	1994	1995	SD	<b>1994</b>
	1996	2004	D	<b>2002</b>
	(KN clas.)	2010	D	<b>2010</b>
	Ecuador	1900	1939	A
1940		1943	SD	
1944		1947	A	1945, 1947
1948		1960	D	
1961		1962	SD	
1963		1967	A	1967
1968		1969	SD	
1970		1978	A	<b>1978</b>
1979		1999	D	<b>1984, 1993, 1996, 1997, 1998</b>
2000		2000	SD	
2001		2003	D	
2004		2004	SD	
(KN clas.)		2008	D	<b>2008</b>
El Salvador	1900	1983	A	(Most recent prior to 1900: 1886), <b>1939, 1944, 1950, 1983</b>
	1984	1993	SD	
	1994	2004	D	
Guatemala	1900	1944	A	(Most recent prior to 1900: 1879)
	1945	1953	SD	1945
	1954	1985	A	<b>1956, 1965, 1985</b>
	1986	1999	SD	
	2000	2001	D	
	2002	2004	SD	
Honduras	1900	1956	A	(Most recent prior to 1900: 1894), <b>1904, 1921, 1924, 1936</b>
	1957	1962	SD	1957
	1963	1970	A	1965
	1971	1971	SD	
	1972	1981	A	
	1982	1998	SD	1982

	1999	2004	D	
Mexico	1900	1910	A	(Most recent prior to 1900: 1857)
	1911	1912	D	
	1913	1916	A	
	1917	1918	SD	1917
	1920 (sic)	1923	A	
	1924	1928	SD	
	1929	1987	A	
	1988	1999	SD	
	2000	2004	D	
Nicaragua	1900	1983	A	(Most recent prior to 1900: 1893), <b>1905, 1911,</b>
				<b>1937, 1939, 1948, 1950, 1974</b>
	1984	1995	SD	1987
	1996	2004	D	
Panama	1900	1955	A	1904 (first), 1946**
	1956	1963	D	
	1964	1967	SD	
	1968	1989	A	1972
	1990	1993	SD	
	1994	2004	D	
Paraguay	1900	1988	A	(Most recent prior to 1900: 1870), <b>1940, 1967</b>
	1989	2004	SD	1992
Peru	1900	1933	A	(Most recent prior to 1900: 1867), <b>1920, 1933</b>
	1934	1947	SD	
	1948	1955	A	
	1956	1961	SD	
	1962	1962	A	
	1963	1967	D	
	1968	1979	A	<b>1979</b>
	1980	1982	D	
	1983	1984	SD	
	1985	1987	D	
	1988	1991	SD	
	1992	1994	A	1993
	1995	1999	SD	
	2000	2000	A	
	2001	2004	D	

Uruguay	1900	1918	A	(Most recent prior to 1900: 1830), <b>1918</b>
	1919	1933	D	
	1934	1938	SD	<b>1934, 1938</b>
	1939	1972	D	<b>1952, 1966</b>
	1973	1984	A	
	1985	2004	D	
Venezuela	1900	1945	A	(Most recent prior to 1900: 1893), <b>1901, 1904, 1909, 1914.1, 1914.2, 1922, 1925, 1928, 1929, 1931, 1936, 1945</b>
	1946	1946	SD	
	1947	1947	D	1947
	1948	1957	A	1953
	1958	1998	D	1961
	1999	1999	SD	<b>1999</b>
	2000	2001	D	
	2002	2004	SD	
* A=Authoritarian SD=Semidemocratic D=Democratic				
**MBP note a period of semidemocracy from 1945-1947				
Regime Type Sources: Mainwaring, Scott, Daniel Brinks, and Aníbal Pérez-Liñán. 2007. "Classifying Political Regimes in Latin America, 1945-2004." In Gerardo Munck, ed., <i>Regimes and Democracy in Latin America: Theories and Methods</i> , pp. 123-160. Oxford: Oxford University Press, 2007 (For 1945 - 2004); Smith, Peter H. 2005. <i>Democracy in Latin America</i> . New York: Oxford University Press. (For 1900 - 1945); For 2004 - 2010, three countries replaced constitutions: Bolivia, Dominican Republic, and Ecuador. These countries were deemed by the author to qualify as at least semi-democratic.				
New Constitutions Source: Elkins, Zachary, Tom Ginsburg, and James Melton. 2009. <i>Chronology of Constitutional Events</i> , Version 1.0. Comparative Constitutions Project. Last updated: December 1, 2009. <a href="http://www.comparativeconstitutionsproject.org/index.htm">http://www.comparativeconstitutionsproject.org/index.htm</a> . The author added three most recent new constitutions: Bolivia 2009, Dominican Republic 2010, and Ecuador 2008.				

The rigorous MBP regime classification was selected for several reasons. Its expanded standard for defining democracy, using four separate dimensions mentioned above, goes beyond minimalist versions that only consider elections. All four are dimensions necessary, and together they are jointly sufficient to qualify a regime as democratic.<sup>11</sup> Another advantage of the MBP classification is its categorical measure – I am interested in a label for the period, rather than a

<sup>11</sup> If there are one or more major violations of the democratic principles, the regime is classified as authoritarian (134-136). A partial failure in one or more of the principles earns the category semidemocratic. This includes "a variety of regimes that sponsor competitive elections but still fail to measure up to democracy" (138). Violations might include regimes with systematic electoral complaints, but incomplete proof of outright fraud or influence on outcome; disenfranchisement of some social groups, but not to the extent that alters electoral outcomes; intermittent censorship or human rights violations affecting the opposition in selected areas only; or when the military has significant influence over some policies not related to the military (136-136).

continuous scale. Also, it provides the most recent information. Other classification schemes were not chosen for several reasons, including the use of continuous measures, insufficient time span, less rigorousness, or overly complex (Freedom House, Polity IV, and Przeworski 2000).

For the years prior to 1945, the best available regime classification scheme is from Smith (2005). Like Przeworski (2000), Smith bases his categories heavily on elections, but he accounts for semidemocracy using similar criteria to MBP such as citizenship and source of power, therefore his scoring matches well. His scheme includes four categories:

- electoral democracy = free and fair elections at the national level
- electoral semidemocracy = elections free but not fair, or elections not the real basis of political power
- oligarchic republicanism (or competitive oligarchy) = elections fair but not free, limited to dominant elites and restricted to less than half the adult male population
- otherwise = nondemocracy (347)

I equate Smith's "electoral democracy" and "electoral semidemocracy" with MBP's "democratic" and "semidemocratic" and assign them the corresponding names for sake of simplicity on the table. I aggregate Smith's "oligarchic republicanism" and "nondemocracy" to correspond with MBP's "authoritarian" category.

Of the 71 non-regime change/new state constitutional replacements, 15 occurred during democratic regimes (year depicted in bold and underlined). These are the potential constitutional coups. I include in the realm of possible constitutional coups the replacements that follow transition from semi-democratic to democratic, because they are essentially the same regime-type, but a diminished version of democracy (e.g., Colombia 1991, Venezuela 1999). These shifts could provide insight into why the constitution changed in the direction that it did. Interestingly, more than half of the potential constitutional coups occurred in the Andes: eight cases in Bolivia, Colombia, Ecuador and Venezuela; the other seven cases are in the Dominican

Republic and Uruguay.<sup>12</sup> This could be explained by the fact that these countries share a particularly high number of constitutional replacements overall, with Colombia and Uruguay being the lowest of the bunch with ‘only’ eight and six constitutions respectively. Uruguay is somewhat out of place in this group due to the fact that its constitutional replacements took place well before the 1990s and it has since experienced arguably one of the highest levels of democratic stability in the region. Meanwhile, the remaining countries, four Andean and the Dominican Republic, have been characterized by episodes of institutional instability. Table 2 lists the constitutions that present potential coups by the years they occurred.

<b>Table 2 – Potential Constitutional Coups</b>						
Bolivia	(previous: 1967)	2009				
Colombia	(previous: 1886)	1991				
Dominican Republic	(previous: 1966)	1994	2002	2010		
Ecuador	(previous: 1984)	1993	1996	1997	1998	2008
Uruguay	(previous: 1918)	1934	1938	1952	1966	
Venezuela	(previous: 1961)	1999				

#### **IV. Measuring Constitutional Coups - Concept Clarification and Scoring**

A constitutional coup is not a traditional coup in the sense that it overthrows the existing government or regime, rather it throws out the existing constitution replacing it with one that enhances executive power. The same regime type is maintained, but with a new institutional design and usually a re-start of the government process (i.e., new elections, cabinet appointments, organic law, etc.). This process raises normative concerns because constitutional formulations affect government stability (Shugart and Carey 1992: 1-2). Empirical analysis reveals that “the most powerful presidencies also have been the most problematic regimes,”

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<sup>12</sup> There was recently what could have qualified as a “failed” constitutional coup. In Honduras in June 2009, the elected president sought to replace the constitution partly to enable re-election for the executive, but he ultimately was ousted by the military, in a move backed by the opposition.

meaning the stronger the executive, the more the country is prone to instability or government collapse (16). Observers of Latin American institutions have yet to look at whether sequential constitutions establish more power in the presidency, which could impact government stability. While some might question whether it matters what the constitution says, there are several reasons to study the document. The constitution is often the first source cited when political crises occur, particularly to determine whether use of power is legitimate (or at least constitutionally sanctioned) or not. Also, understanding of formal constitutional provisions is necessary to enable subsequent analysis of the actual implementation or *exercise* of power by the executives. Finally, once provisions are adopted in the constitution, they become much more difficult to change than normal legislation. I develop a methodology to evaluate executive power in the constitution and use it to measure change from one constitution to the next, thereby identifying constitutional coups.

A constitutional coup is defined as: 1) the complete replacement of a country's constitution 2) during a democratic regime 3) resulting in a constitution that enhances executive power (by 10% or more). To operationalize part three, I score constitutions on three components of executive power: political, economic, and judicial.<sup>13</sup> I measure whether executive power in the formal, written provisions increased or decreased from one constitution to another. There are 24 indicators of executive power, with a possible total aggregate score of 82, in the three categories: political power (15 indicators, scored from 0 up to 4 points each); economic power (four indicators, scored from 0 up to 4); and judicial power (five indicators, scored from 0 up to 4). To decide what point values were used for each indicator, I adopted directly from Shugart and Carey for the political power indicators they used. For the measures I added I attempted to match

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<sup>13</sup> The original scoring scheme included measures for social power as well, such as executive control vis-à-vis civic groups and the media, but there were insufficient data in most constitutions.

scoring values within the range they used. The same scoring was applied to each constitution to measure change from one to the next. Table 3 outlines the indicators and scoring. A detailed description of scoring for each indicator is provided in Appendix A. For this study I read 21 constitutions, scored each of them on the 24 indicators, and aggregated the points to generate an overall score for presidential power in each constitution.<sup>14</sup> The reason 21, not 15, constitutions were read is because the constitution preceding the first potential constitutional coup in each of the six countries needed to be scored for a baseline comparison. After that, many of the 15 constitutions were sequential in the same country, meaning one potential coup constitution led to the next, making it the baseline for comparing the next constitution.

<b>Table 3 – Constitutional Presidential Powers</b>		
<b>Concept</b>	<b>Indicator</b>	<b>Score</b>
<b>Political power -- re-election/ term limit</b>	Presidential election	0 - 4: 4 – constitution allows unlimited reelection; 3 – constitution allows one consecutive reelection; 1 – constitution allows reelection after sitting out one term (nonconsecutive); .5 - constitution allows reelection after sitting out two terms; 0 – constitution does not allow reelection ever
	Term length	0 - 2: +1 for each year term length over 4 years (six years = maximum found)
<b>Political power -- legislative power</b>	Package veto/override	0 – 4: 4 - veto with no override; 3 -veto with override requiring majority greater than 2/3 (of quorum) or one year or more delay; 2 - veto with override requiring 2/3; 1 - veto with override requiring absolute majority of assembly or extraordinary majority less than 2/3; 0 - no veto or veto requires only simple majority override
	Partial veto/override	0 – 4: 4 - no override; 3 - override by extraordinary majority; 2 - override by absolute majority of whole membership; 1 - override by simple majority of quorum; 0 - no partial veto
	Decree power	0 – 4: 4 - reserved powers, no rescission; 2 - president has temporary decree authority with few restrictions; 0 - no decree powers, or only as delegated by assembly
	Exclusive introduction of legislation (reserved policy areas)	0 – 4: 4 - no amendment by assembly; 2 - restricted amendment by assembly; 1 - unrestricted amendment by assembly; 0 - no exclusive powers
	Budgetary powers	0 – 4: 4 - president prepares budget; no amendment permitted; 3 - assembly may reduce but not increase amount of budgetary items; 2 - president sets upper limit on total spending, within which assembly may amend; 1 - assembly may increase expenditures only if it designates new revenues; 0 - unrestricted authority of assembly to prepare or

<sup>14</sup> Every effort was made to read all constitutions in the original Spanish and from the same source (Georgetown University’s Political Database of the Americas).

		amend budget
	Proposal of referenda	0 – 4: 4 - unrestricted; 2 - restricted; 0 - no presidential authority to propose referenda
<b>Political power – non-legislative</b>	Cabinet formation	0 – 4: 4 - president names cabinet without need for confirmation or investiture; 3 - president names cabinet ministers subject to confirmation or investiture by assembly; 1 - president names premier, subject to investiture, who then names other ministers; 0 - president cannot name ministries except upon recommendation of assembly
	Cabinet dismissal	0 – 4: 4 - president dismisses cabinet ministers at will; 2 - restricted powers of dismissal; 1 - president may dismiss only upon acceptance by assembly of alternative minister or cabinet; 0 - cabinet or ministers may be censured and removed by assembly
	Censure	0 – 4: 4 - assembly may not censure and remove cabinet or ministers; 2 - assembly may censure, but president may respond by dissolving assembly; 1 - "constructive" vote of no confidence (assembly majority must present alternative cabinet); 0 - unrestricted censure
	Dissolution of assembly	0 – 4: 4 - unrestricted; 3 - restricted by frequency or point within term; 2 - requires new presidential election; 1 - restricted, only as response to censure; 0 - no provision
	Number of ministries	0 – 4: 4 - president decides, unrestricted; 2 - president decides, restricted; 0 - congress or law decides
	Emergency powers	0 – 4: 4 - president declares, unrestricted, no review; 3 - president declares, unrestricted, but with review; 1 - restricted; 0 - no emergency powers
	Constitutional amendment	0 – 4: 4 - president proposes any time with no amendment and simple majority vote in referendum; 3 - president proposes with amendment; 2 - president and others propose; 0 - no presidential authority to amend constitution
<b>Economic power</b>	Nationalization of industry	0 - 2: (comparative/qualitative assessment) 2 - new constitution expands state domain/control over major industry; 0 - new constitution provides the same or less state control over industry management
	Control of central bank	0 - 4: 4 - president appoints central bank president without need for confirmation; 2 - president appoints with confirmation; 0 - no presidential authority to appoint
	Finance measures	0 - 2: 2 - president sets interest rate and exchange rate unrestricted; 1 - president sets but restricted; 0 - no presidential authority
	Private sector control	0 - 2 (comparative/qualitative assessment): 2 - new constitution allows state greater control over private property; 0 - baseline judged upon minimal state rights over private property
<b>Judicial power -- judicial independence</b> (scored for each high court)	Appointment of high court judges	0 - 4: 4 - president appoints; 2 - president nominates and assembly confirms; 0 - assembly nominates and confirms or judges are elected
	Decision over number of justices	0 - 2: 2 - president decides and appoints; 1 - president decides and nominates but assembly appoints; 0 - law decides or no provision
	Length of judicial appointment	0 - 3: 3 - set term and president appoints at will; 2 - set term and president appoints with assembly confirmation; 1 - life term, president nominates and assembly confirms; 0 - life or set term and assembly nominates and confirms

	Removal of judges	0 -3: 3 - president can remove without restriction; 2 - president can remove with assembly review/approval; president or assembly can remove with assembly review/approval; 0 - no presidential authority to remove
	Judicial review (potential for whether power of courts over president)	0 - 2: 2 - review of laws and decrees only in particular cases or controversy and applies only to that case; 0 - laws and decrees can be overturned by court at proposal of citizens, political parties, etc. and applies universally

Prior to scoring the constitutions, I set draft benchmarks so as not to bias the findings. My reasoning was that any change in executive power from one constitution to the next would be interesting, but it seemed useful to set a range to compare variation among constitutions. I set the threshold of 10% increase or more in presidential power to qualify as a coup. Whereas 5 – 10% change qualifies as meaningful, but not a coup, a 10 – 20% increase qualifies as a coup. Anything higher than 20% increase would be considered very significant in terms of change to the institution of executive power (perhaps a hard vs. soft coup). Selecting the threshold score of 10% may seem somewhat arbitrary because there is scant literature that attempts to quantify presidential power beyond control vis-à-vis the legislature, but it is a significant number because it represents at least two points difference in the score from one constitution to the next. Each point represents an important presidential power that could potentially add major power (such as dissolution of the assembly or consecutive reelection).

## V. Findings

Prior to this study we did not have an accurate understanding of what changes were being implemented in Latin America’s new constitutions with regard to executive power. Media reports focused on novel aspects such as socio-economic rights, indigenous autonomy, and presidential reelection, but did not provide an empirical account of executive power. My results show that a majority of constitutional replacements since 1900 during Latin American

democracies granted greater executive constitutional powers. Ten of 15 new constitutions scored higher, four went down, and one stayed the same. Over 50% of the new constitutions – eight out of 15 – contained a ten percent or greater increase in executive power, qualifying them under my definition of constitutional coup.<sup>15</sup> Again, a ten percent or higher increase means at the very least there were two points change from one constitution to the next, which could result in a significant new measure for the president.

Table 4 provides the scores and percent-changes in executive power for all 15 cases, keeping in mind the first constitution for each country is the baseline and then the subsequent constitution is the baseline for the next, if there is one. The greatest outlier was Uruguay's 1934 constitution, which scored a 239% increase from the 1918 version. The next highest was Venezuela's 1999 constitution, which scored 121% higher in presidential power than the 1961 constitution. Third was Bolivia's 2009 constitution with a 28% increase in presidential power over the 1967 version. These scores were significantly higher than anticipated when a 10 – 20% range was set prior to measurement. Three constitutional coups occurred in Ecuador alone, with the 1996 constitution scoring 14% higher than the 1993 constitution, the 1998 constitution 11% higher than the 1997 version, and the 2008 constitution with yet another 10% increase in executive power. It appears Ecuador's constitutions experienced a gradual, cumulative increase in presidential power, whereas change in the other countries was more abrupt. Based on these observations, it is not surprising that Ecuador's current 2008 constitution has the highest overall point value of all constitutions examined, with an aggregate score of 46 points out of a possible 82. This could be partly explained by the number and proximity of its constitutional replacements – each time the constitution did not change as drastically, but provisions were

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<sup>15</sup> Percentage of change was calculated by taking the difference in scores between the first and second constitutions and dividing the difference by the score of the first constitution.

added and changed, each with potential significance (discussed below). In contrast, Bolivia and Venezuela replaced older constitutions, so a higher number of significant changes occurred all at once. Again, each increment of change represents a potentially critical component of executive power, which is why the 10% threshold was chosen.

<b>Table 4 – Constitution Scores on Executive Power</b>			
<b>Country</b>	<b>Year*</b>	<b>Score</b>	<b>Percent change**</b>
Bolivia	1967 (+ amendments)	25	Baseline
	2009	32	<b>+ 28%</b>
Colombia	1886 (+ amendments)	23	Baseline
	1991	22	(4%)
Dominican Rep.	1966	26.5	Baseline
	1994	26	(2%)
	2002	26.5	+2%
	2010	37.5	<b>+42%</b>
Ecuador	1984	35	Baseline
	1993	35	0%
	1996	40	<b>+14%</b>
	1997	38	(5%)
	1998	42	<b>+11%</b>
	2008	46	<b>+10%</b>
Uruguay	1918	9	Baseline
	1934	30.5	<b>+239%</b>
	1938	31.5	+3%
	1952	22.5	(29%)
	1966	34.5	<b>+53%</b>
Venezuela	1961	19.5	Baseline
	1999	43	<b>+121%</b>
<b>Constitutional coups in bold.</b>			
*The first constitution for each country is the baseline, then for each subsequent one the previous constitution is the benchmark.			
**Difference between previous and next score divided by the previous score.			

Clearly all constitutional coups are not alike. There are interesting point differences within the areas that require disaggregating and exploring. Changes from Ecuador's 1998 to 2008 constitutions, with regard to executive power, were subtle in a formal sense, but have the potential to play out in a powerful manner. The new constitution only scored one point higher

with regard to the judiciary, but many changes were made. The 2008 charter sets term limits for Supreme Court judges, does not allow for their re-appointment, adds presidential input to the appointment process (through a confusing committee structure), and increases the number of judges to a whopping 21.

A similar situation occurred in Venezuela. Executive power over the judiciary did not appear to increase significantly in a formal sense, but the constitution-changing president benefited from being able to select the new judges during a period of the president's popularity – immediately following election. This is not reflected in the score, but would be captured in an analysis of subsequent exercise of powers. In Bolivia, the new constitution calls for popularly elected Supreme Court judges, rather than appointment by congress, as was previously the case. While this scored equal points on the executive power scale, the president could in fact benefit from such elections. The judges are now elected during the same period that led to the president's rise to power by majority vote. It seems unlikely that a judge in complete opposition to the president would be elected in the same time period that the president came to power. Therefore the score on executive power over the judiciary in Bolivia could be lower than it should be.

One small point change with a major potential for executive impact was addition of the president's power to dissolve congress. In three of the constitutional coups – Uruguay 1966, Ecuador 2008, and Venezuela 1999 – the power to dissolve the assembly was granted. Even if the president does not exercise this power, the threat of its use could have meaningful impact, tempering the assembly's behavior to avoid dissolution.

The change to allow consecutive reelection for the president was common across almost all new constitutions. In the baseline constitutions of Bolivia 1967 and Venezuela 1961, for

example, presidents could only run for office again after sitting out one term (in Bolivia) and after sitting out ten years (in Venezuela). This is a significant hindrance for executive power, particularly if there is a viable opposition. The new Bolivian constitution allows for one consecutive reelection for a five-year term, allowing a potential 10 years in office, and the new Venezuelan constitution states the president can be reelected for an additional six year term, allowing at least a possible 12 years in office. This is a significant increase from only one five-year term permitted in the previous Venezuelan charter. These measures represent a profound step toward empowering the office of the president by lengthening the term. Interestingly, the Venezuelan president later exercised his powers of referendum to amend the constitution and gained unlimited reelection.

Generally the constitutions that qualified as constitutional coups added provisions for government control over the economy and included new industries that became under state control. This was particularly evident in Bolivia, Ecuador, and Venezuela. To learn whether and how presidents implemented those economic powers is another area for subsequent investigation.

The findings discussed above are relevant not only for understanding change within countries, but are meaningful on a cross-national comparative analysis as well.<sup>16</sup> This is because the same indicators were used to compare constitutions in each country. Among contemporary constitutional replacements, Venezuela had the greatest *percentage* increase in presidential power – a 121% jump from 1961 to 1999. Yet its final *point* score of 43 (out of a total possible aggregate score of 82 points) is similar to contemporary constitutions in the other countries: 32 points in Bolivia, 37.5 in the Dominican Republic, and 46 in Ecuador (see Table 4). The average point score for the constitutions currently in place in the six countries studied is 35.8. Colombia

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<sup>16</sup> Caution should be exercised when making cross-national comparisons because overall, aggregate scores could include different indicators: the constitution in one country might specify certain provisions, but leave others for subsequent implementation.

is the only country in the study that did not experience a constitutional coup. Its contemporary constitution stands out with the lowest overall score, at 22 points. Despite a major overhaul in 1991, the level of executive power in Colombia's current constitution is four percent lower than the 1886 constitution, which scored 23 points. It is worth investigating whether respect for the Colombian constitution and constrained executive power there attributes to the relative institutional and political stability in that country's modern history.

Another interesting observation is the chronology of constitutional coups. With the sole exception of Colombia, the other five countries in this study are currently governed by constitutions that implemented increased executive power over the previous version. Six of the eight coups occurred after 1996. Uruguay is the outlier with two coups in 1934 and 1966, but Uruguay is unusual in Latin America for its early adoption and retention of democracy. The findings imply that constitutional coups are a recent phenomenon occurring in third wave democracies. In addition, there appears to be a sub-regional trend: with the exception of the Dominican Republic, a Caribbean island country, all of the contemporary constitutional coups occurred in the Andes.

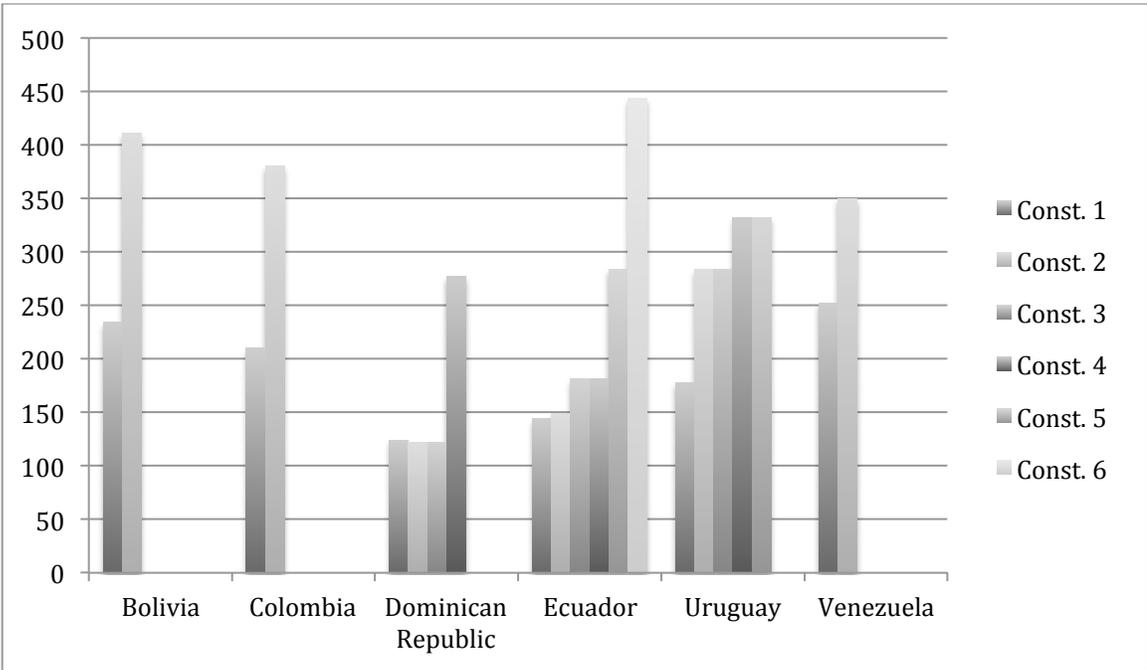
Finally, it is worth noting one obvious commonality across all constitutions studied – increased length. Chart 1, below, shows the length of each constitution in number of articles.<sup>17</sup> Perhaps this trend partly explains the remarkable increase of presidential power in Uruguay's 1966 and Venezuela's 1999 constitutions – the earlier versions simply did not contain details on many measures or left several issues open for interpretation or subsequent exercise. This could bias the findings somewhat because previous presidents may have exercised powers regardless of whether they were permitted constitutionally. In addition, many of the newer constitutions added

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<sup>17</sup> It would be more accurate to measure number of words than articles, because articles vary in length, but the data are missing for many older constitutions.

socio-economic rights, such as education, healthcare, environmental protections, and autonomy for specific groups. This calls for further study, but does not relate directly to executive power, which I measure. While these new rights could be viewed as decreasing presidential power by empowering society, they could also be viewed as a concession made by the presidents to gain popular approval for an executive power-enhancing constitution.

**Chart 1 – Number of Articles per Constitution**



Discovery of constitutional coups demonstrates the need for a better understanding of institutional change in third wave democracies more broadly. Certainly more attention should be paid to the impact of constitutional replacements going forward. Moreover, it is likely that the Andean region is neither the first place – nor the last – to experience constitutional coups. With this in mind, the next section seeks to identify why constitutional coups occur.

**VI. Accounting for Constitutional Coups**

This section explores factors that could account for constitutional coups. Perhaps the current phenomenon in the Andes and the Dominican Republic<sup>18</sup> represents a backsliding of democratic consolidation, possibly as a response to overall frustration with the challenges of representative democracy, a reaction to political and economic crises, or a trend toward a new style of government. Conventional wisdom would suggest that extreme conditions, such as severe political, economic, and social conflict, could help explain why democrats would replace the constitution with one that enhances presidential capacity. In addition, the literature suggests a wave of constitution writing could signal a political trend with shared outcomes across countries. Recently, many left-leaning, so-called populist presidents rewrote constitutions, perhaps because they enjoyed majority support and could use direct democracy mechanisms such as referenda to propose and gain approval for new constitutions. Three possible explanations are researched to see if the expected conditions facilitated constitutional coups.

The first obvious explanation considers macro-structural factors. The literature suggests some leaders write new constitutions as a significant and symbolic step to address major political and economic upheaval. To test this, I comprise a measure including two types of indicators: economic crisis (an index comprised of drop in GDP, rise in inflation, and rise in unemployment); and socio-political crisis (and index comprised of downgrade in regime-type from democratic to semidemocratic, incidence of civil violence, and previous incompleteness of presidential term). I compare coup to non-coup cases, expecting more crisis to be associated with the cases resulting in increased executive power.

In addition to macro-structural factors, a second factor that could account for constitutional coups involves the executive himself or herself. Recent constitutional

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<sup>18</sup> The Uruguay cases are largely overlooked in this section because they represent an entirely different era and much of the necessary economic, political, and electoral data are missing.

replacements in Latin America appear to have been led by so-called populist presidents. Weyland (2001) defined populism as “a political strategy through which a personalistic leader seeks or exercises government power based on direct, unmediated, uninstitutionalized support from large numbers of mostly unorganized followers” (14). Perhaps this style of government is more conducive to enhancing executive power. Much attention has surrounded current charismatic, “outsider” leaders in the region who tend to employ provocative rhetoric, often claim to represent the masses, and employ referenda and plebiscites that establish decisions through majority rule. There are few empirical measures for a presidential style, but at the very least such leaders require a strong electoral mandate to support their rhetoric and win direct democracy measures. I look at the percentage attained in the election prior to rewriting the constitution to see if the president enjoyed a particularly strong mandate.<sup>19</sup>

Third, cultural factors could help explain constitutional coups. Societal tendencies, such as working around established laws or a cultural acceptance of skirting the rules could facilitate leaders who seek to throw out the old constitution because it does not work for them, is too hard to follow, or does not permit their desired components (such as reelection). This measure is comprised of Transparency International’s corruption perception index, because corruption indicates a disregard for the rule of law, a survey question regarding tolerance of police acting outside the law, and a count of the number of previous constitutions in that country, indicating a tendency to dispose of the existing rules. I expect constitutional coups to be associated with higher corruption, tolerance of skirting the law, and many previous constitutional replacements.

Evidence for these initial explanations is provided in the following sections. See Appendix B for detailed data.

### ***Economic/Political Crises***

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<sup>19</sup> Future analysis could include whether and how many referenda were used and a measure of presidential rhetoric.

An obvious yet underexplored theory for why constitutions were replaced during an existing regime is internal crisis. Political scientists have long looked to macro-structural factors to explain regime change and quality of regimes, such as democracy (Dahl 1998, Przeworski 2005). McWhinney suggests constitutional change might be explained as a “vain exercise in trying to resolve, by legal means and formulae, essentially non-constitutional problems of an ethnic-cultural, social, or economic character” (1981, xi). I test this approach by measuring if economic deterioration and political crisis preceded constitutional replacements. Table 5 shows the economic conditions for the three years leading up to 15 constitutional replacements. The total score is comprised of an aggregation of three measures: 1. If there was a drop in GDP from  $t$  minus 2 to  $t$  minus 1 (two years before to one year before the new constitution) and from  $t$  minus 3 to  $t$  minus 2 (three years before to two years); 2. If there was an increase in inflation during the same years; and 3. If there was an increase in unemployment for those years. If there was a GDP drop during both times, it scored a two, if it went up one time and dropped the other, it scored a one, and if it went up both years it scored a zero (indicating no economic crisis on that measure). The same logic was used for rise in inflation and rise in unemployment, and the three combined for an aggregate measure of economic crisis, with a total possible score of six (a higher score meaning worse economic conditions). The shaded boxes differentiate constitutional coups. Economic indicators are not available for the first three constitutional replacements that occurred during democracy in Uruguay (1934, 1938, and 1952).

**Table 5 – Economic Crisis Measures**  
*(Shaded lines indicate constitutional coups)*

Country	GDP%change		GDP dn?	Inflation % chg		Infl. up?	Unmplmt % chg.		Unp. up?	TOTAL SCORE
	t3 - t2	t2 - t1		t3 - t2	t2 - t1		t3 - t2	t2 - t1		
BOL '09	-1.7%	4.3%	1	102%	60.9%	2	n/a	n/a		3 (+?)**
COL '91	1.4%	4.0%	0	-8%	12.4%	1	-11.9%	14.6%	1	2

DR '94	8.3%	5.2%	0	-91%	23.3%	1	4.0%	-3.9%	1	2
DR '02	4.0%	0.2%	0	18%	15.6%	2	2.9%	9.9%	2	4
DR '10	3.8%	2.0%	0	74%	-86.8%	1	n/a	n/a		2 (+?)
ECU '93	2.9%	-0.7%	1	1%	11.3%	2	-4.9%	53.4%	1	4
ECU '96	2.6%	-0.1%	1	-39%	-16.4%	0	-14.5%	-2.8%	0	1
ECU '97	-0.1%	0.7%	1	-16%	6.6%	1	-2.8%	50.7%	1	3
ECU '98	0.7%	2.4%	0	7%	25.4%	2	50.7%	-11.5%	1	3
ECU '08	4.7%	1.0%	0	25%	-23.3%	1	-1.3%	53.4%	1	2
UR '66	1.3%	0.0%	0	100%	35.7%	2	n/a	n/a		2 (+?)
VEN '99	4.3%	-1.6%	1	-50%	-28.4%	0	-14.5%	3.8%	1	2

\* Source: <http://data.worldbank.org/>  
\*\*The scores for Bolivia 2009, Dominican Republic 2010, and Uruguay 1966 could potentially be higher, but the data on unemployment is incomplete.

The economic evidence is inconsistent. There do not appear to have been more severe economic crises preceding executive-enhancing constitutions than the non-enhancing replacements. Each country had at least some incident of economic trouble leading up to all constitutional replacements (a score of one or higher). At all but one time (Ecuador 1996) there was a combined score of two or higher. These measures are admittedly blunt, since they are taken on an annual basis and at a national level. While GDP increased instead of decreased in some countries leading up to constitutional coups, perhaps economic conditions for the lower classes did not improve, hence inciting unrest. And it is possible that economic crises occur when the constitution was *not* replaced and therefore tell us little about the likelihood of constitutional replacement, whether executive-enhancing or not.<sup>20</sup>

The findings contradict common assumptions for why a constitution would be replaced with one that resulted in greater executive power. One might expect that a more severe economic crisis would be conducive to power grab by the president, with the justification being extreme problems call for strong measures. The economic crisis score was actually higher in the Dominican Republic (2002) and Ecuador (1993) leading up to constitutions that did not enhance

<sup>20</sup> This study looks at cases outside of regime change, although it would be worth finding what percent of regime change occurs due to economic crises.

executive power than it was leading up to constitutional replacements that enhanced presidential power in those countries. This suggests it would be useful to look further at the economic situation over a longer span of years, to compare economic conditions during years without any constitutional replacement.

Measures of political crisis are trickier to come by. First I look for any decline in the MBP regime-type rating in the two years leading up to the constitutional replacement to indicate a crisis of democracy. Only one country, Colombia, experienced a downgrading from ‘democratic’ to ‘semidemocratic’ leading up to the new constitution (ratings were not available for the most recent years: Dominican Republic 2010 and Bolivia 2009). Surprisingly, this was the constitution that did not enhance executive power. Next I check for major episodes of political violence using Polity’s measure for “intrastate episodes of civil violence” with a magnitude of 0-10 (Center for Systemic Peace 1946-2008). Seven of the twelve cases show some violence in the two years preceding the constitutional replacement, but it does not appear to be worse in the cases where the new constitution enhanced executive power. Lastly, I checked if the preceding presidency had been terminated prior to the end of the elected term, indicating some crisis leading to the ouster or removal of the executive. Each of the three indicators score one point, with a total possible score of three points (a higher score indicating worse political crisis). Results are shown in Table 6.

<b>Table 6 – Political Crisis Measures</b> <i>(Shaded lines indicate constitutional coups)</i>				
<b>Country</b>	<b>Regime-type change</b>	<b>Political Violence (t-1 / t-2)*</b>	<b>Terminated presidency?</b>	<b>TOTAL SCORE</b>
BOL '09	0	0/0	Yes	1
COL '91	1	3/3	No	2
DR '94	0	0/0	No	0
DR '02	0	0/0	No	0

DR '10	0	na/0	No	0
ECU '93	0	7/7	No	1
ECU '96	0	7/7	No	1
ECU '97	0	7/7	Yes	2
ECU '98	0	7/7	Yes	2
ECU '08	0	4/4	Yes	2
UR '66	0	0/0	Yes	1
VEN '99	0	4/4	No	1
* <a href="http://www.systemicpeace.org/inscr/inscr.htm">http://www.systemicpeace.org/inscr/inscr.htm</a>				

As with economic measures, the political crisis indicators are rather blunt for explaining type of constitutional replacement. Some countries experienced none of the political crisis measures leading up to the new constitution, while others did. There were some political disturbances leading up to most of the constitutional coups, yet there was likewise conflict in Colombia when a non-executive enhancing constitution was written. Again, Colombia was the only country that experienced a downgrade in MBP's ratings from 'democratic' to 'semidemocratic' leading up to the new constitution, one that did not qualify as a coup. Interestingly, Venezuela (1999) experienced a downgrade from 'democratic' to 'semidemocratic' *after* implementation of the new constitution – something to consider in subsequent study of the effects of constitutional coups.

All but one constitutional coup experienced at least one or two of the political crisis measures leading up to the event, suggesting there is a higher correlation of political turmoil than economic crisis preceding the replacements. This analysis requires a more qualitative research. Case-study could reveal the context of political and social climates leading up to constitutional replacement. In addition, a longer-term view of each country would help provide greater perspective. Regardless, there does not appear to be the anticipated correlation of political and economic crisis preceding a constitutional coup. While this would seem to be the most logical explanation, clearly other factors are at play.

### *Populist Style of Government*

One correlation among constitutional coups stands out. Countries where the new constitutions enhanced executive power were led by presidents elected immediately preceding the coup and with the highest electoral percentages. In Bolivia 2009, Dominican Republic 2010, Ecuador 1996, Ecuador 2008, and Venezuela 1999, the presidents each enjoyed well over 50% electoral mandate. In contrast, the non-coup constitutions were written by presidents that received less than 50% of the vote (shown in Table 8). This lends support to a potential explanation that leaders with majority support can achieve constitutional change that provides greater executive power. More measures for populist style of government are not readily available, but could be developed to further explore this theory.

<b>Table 8 – Presidential Mandate</b> <i>(Shaded lines indicate constitutional coups)</i>	
<b>Country/Const</b>	<b>% Vote</b>
BOL '09	53.74
COL '91	47.81
DR '94	42.3
DR '02	49.87
DR '10	53.83
ECU '93	57.8
ECU '96*	57.8
ECU '97	54.3
ECU '98	n/a
ECU '08	56.67
UR '66	n/a
VEN '99	56.2
*Same president	

### *Weak rule of law*

Political culture can be a powerful tool in explaining regime type and performance (Almond and Verba 1963, Inglehart and Welzel 2005, Putnam 1993). In addition, studies show

that citizens' values go a long way in explaining government support and legitimacy (Booth and Seligson 2009). I test next whether individual traits, as opposed to macro-structural factors, have an influence on the type of constitutional change that occurs in the region. Because comprehensive, micro-level research was conducted only relatively recently in the region, some of the data are missing and comparisons can only be made in certain cases. The first measure is perceptions of the rule of law. One could argue a culture that perceives it to be easier to go around the law than to adhere to existing rules, could be associated with a greater tendency to replace the constitution and grant power to one person that will get things done. To measure this I look at Transparency International's Corruption Perceptions Index (CPI), which measures citizens' assessment of their country's performance in adhering to the law, as well as a survey question regarding rule of law, and the country's history of constitutional replacement.

Rule of law scored very low in every country studied at all times data were available (see Table 7). On a scale from 10 (very clean) to 0 (very corrupt), the countries all scored between 2.1 and 3.44. Not exactly a stellar record. This was true for countries that enhanced executive power in the new constitutions (shaded rows) as well as those that did not. Clearly rule of law is poor during the years of each of constitutional replacement, but cannot alone account for increased executive power in the new charters. In addition, citizens appear willing to circumvent the law in order to address crime. A survey question asks if, in catching criminals, police must always respect the law or if there are occasions when it is OK to act on the margin (The Americas Barometer by the Latin American Public Opinion Project). While a majority preferred that police respect the rule of law, results were sometimes barely more than 50%. Uruguay was surprising with over 48 percent expressing tolerance of police acting on the margin. Ecuador's acceptance of skirting the law has increased in recent years.

<b>Table 7 – Rule of Law</b> <i>(Shaded lines indicate constitutional coup)</i>				
<b>Country/Const year</b>	<b>CPI Score</b>	<b>Must respect law/ act on margin OK</b>	<b>Survey year</b>	<b># of Consts</b>
BOL '09	3	61.93/38.07	2008	17
COL '91	3.44	69.72/30.28	2004	8
DR '94	n/a	n/a		31
DR '02	3.1	n/a		
DR '10	3	n/a		
ECU '93	n/a	n/a		22
ECU '96	n/a	n/a		
ECU '97	3.19	n/a		
ECU '98	n/a	61.19/38.81	2001	
ECU '08	2.1	54.84/45.16	2008	
UR '66	n/a	51.89/48.11	2007	6
VEN '99	2.3	68.60/31.40	2007	24

Finally, a tally of the number of past constitutions in each country reveals a tendency to replace the constitution. There was a high correlation among countries where constitutional coups occurred and a particularly high number of past constitutions. This could signal a lack of respect for existing rules. The constitutional coup countries not only had the highest number of constitutions among the six studied, but also have a high number compared to other countries in the region (Newman 2008). This speaks to the path dependent explanation mentioned earlier, implying that once a constitution has been changed several times, there is less resistance to changing the rules yet again. Overall, however, the cultural factors measured do not fully account for constitutional coups.

In sum, with the exception of populist style of government, these findings are unintuitive and do not support the expected explanations for constitutional coups. Contradictory to conventional wisdom, macro-structural factors, such as political and economic crisis, do not account for why constitutional coups occur. Also surprising, weak rule of law does not correlate with constitutional coups more than with non-coup replacements. Only presidential mandate

provides some consistent indication of conditions leading-up to a constitutional coup. These findings could point to a more deep-seated tendency toward strong rulers in the region. In-depth qualitative analysis could provide better insight on the extreme cases – Bolivia, Ecuador, and Venezuela – perhaps by contrasting them to Colombia. These four countries present an ideal laboratory for comparative analysis because of their proximity in year of constitutional replacement as well as many shared cultural characteristics (such as geography, languages, heritage, etc.). In addition, the extreme countries have the most number of constitutions historically. It is possible that constant constitutional replacement is path dependent, leading toward incrementally stronger executives *and* a likelier chance of the constitution being replaced yet again in the future – not a propitious sign for institutional stability.

## **VII. Conclusion**

This study advances our knowledge about an institution that is repeatedly cited for creating instability in the region – presidentialism. Despite concern in the literature about the effects of executive power, details about institutional change affected through constitutional replacement in Latin American democracies were previously unknown. One would not have expected that constitutions written during democracy, with citizen input in constituent assemblies, led by popularly elected presidents, would significantly strengthen the power held by one person. The fact that several democratic countries replaced their constitutions and increased presidential control by over 10%, and often much more, warrants closer attention. First, in the cases studied, the timing of the constitutional replacement is unexpected because they do not serve to establish a new regime nor do they mark the birth of a new state. Second, the extant reasoning for these constitutional replacements, namely severe political and economic crises,

does not correlate with reality. One factor that appears consistently among constitutional coups is the president leading the process remained in power. When looking at electoral mandate, higher among constitutional coup cases, this suggests that presidents will take advantage of changing the constitution to add provisions that strengthen their power. At a time when many countries struggle to leave authoritarianism behind and make democracy last, concentrating power in the executive has significant normative implications for democratic consolidation.

One concern regarding an empowered presidency is that popular discontent, as well as support, will be focused on that one office, rather than dispersed among government players such as political parties, members of congress, the judiciary, etc. Recent events demonstrate how crises play out at the top – jeopardizing the institution of the presidency and effecting overall government stability. Real coups (and coup-like events), such as the October 2010 police uprising/kidnapping of President Correa in Ecuador, the 2002 coup that briefly ousted President Chavez in Venezuela, and the 2009 ousting of President Zelaya in Honduras, could be more common in countries with constitutions that grant higher executive power. The first two incidents occurred after presidents enacted constitutions granting them more power, the third happened while a president sought to change the constitution (in part to gain reelection). If we believe past studies regarding the weaknesses of presidential democracies, this trend toward enhanced executive power could lead to further instability in already troubled countries.

Another concern regards how presidential power will be exercised. In Venezuela, for example, President Chavez has taken advantage of direct democracy measures, decree powers, and unlimited reelection to strengthen and lengthen his rule. In Ecuador, Correa is following suit with a controversial referendum to amend the constitution, partly to increase the executive role in appointing judges. In Bolivia, Ecuador, and Venezuela, government treatment of media freedom

has come under question during the new presidents' terms. Meanwhile, in all three countries the opposition and the judiciary struggle to perform an effective role in providing democratic checks and balances as well as ensure alternation in power.

In addition to normative implications, there are multiple administrative impediments to effective governance after leaders replace constitutions. New constitutions are complicated to implement, creating an immediate period of political and legal confusion. The judicial process was effectively on hold in Bolivia for two years while laws supporting the new constitution were enacted (LAWR 5/28/09). This is particularly troubling in countries where the political process and the rule of law are already under stress. Replacing constitutions also has potential long-term implications for institutional history. It is likely more challenging to establish the rule of law when the rules of the game keep changing.<sup>21</sup> A review of countries with the most constitutions reveals they tend to be the most unstable and corrupt (Newman 2008). Further uncertainty could arise as presidents struggle to manage new powers and responsibilities proscribed in the constitution, such as taking over certain industries and providing promised socio-economic benefits. If the government's efforts are deemed unsuccessful, citizen dissatisfaction will likely focus on overthrowing the person at the top. Finally, once the current presidents leave office, what are the chances new governments will want to keep the same constitution? A potentially vicious cycle ensues.

Four considerations regarding future study are worth noting. First, this methodology measures only specific, formal powers that are entrenched in the constitution, not subsequent *exercise* of the powers. Presidents will not necessarily use the powers granted in the constitution, which provides rich material for subsequent research. Nonetheless, the examining the text itself

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<sup>21</sup> While these countries largely practice civil law, they depend somewhat on precedent in case rulings. There is likely confusion after implementing a new constitution as to whether past case law may be considered.

was critical for measuring potential or at least constitutionally sanctioned power. First of all, even if the powers end up having perceived negative implications, if they are in the constitution, they are usually regarded as sanctioned. Second, controversial government actions will be judged as legitimate or not based on what is written in the constitution. Third, simply stating that the power is available in the constitution enables the president to threaten to use it, which could have an impact regardless of whether the president actually exercises the power. Fourth, every constitution stressed the importance of constitutional provisions, proclaiming the supremacy of its content over all other documents and stating that all subsequent law, decrees, etc. must comply with the constitution. Finally, powers are formally enshrined in the constitution are much more difficult to change than ordinary legislation. Therefore, the content matters.

A second consideration is that I do not address subsequent interpretation and implementing legislation that follows writing a constitution. Indeed, many declarations are made in a general sense in the constitution, but require subsequent legislation or judicial rulings to implement. In a sense, constitutional coups can be considered a two-step process. This paper looks at the first step – adoption of the constitution with formal articles that either enhance or diminish potential executive power. The second step, of interpreting and implementing organic laws, is an area for subsequent study. Once we have established what powers are provided formally in the constitution, it will be interesting to observe to what extent that power was exercised or interpreted by the judiciary. Two recent examples demonstrate particular relevance regarding executive term in office. Following enactment of Colombia's 1999 constitution, the court subsequently ruled that its wording could be interpreted as allowing presidential reelection. In Venezuela, a subsequent referendum approved a constitutional amendment allowing unlimited presidential reelection. These are but two examples of how subsequent interpretation matters.

Third, the scoring does not account for the significant issue of military power, obviously of great importance historically in Latin America. Generally, in democratic presidential systems the executive is considered to be the chief of the military branch. Details regarding important power relationships, such as contracting and military budget, are typically not included in the constitution. Research into the relationship warrants attention, but would likely not focus on the constitution, rather subsequent implementation. This work addresses non-military power; measuring the president's power vis-à-vis the military and its generals is beyond the current scope.<sup>22</sup>

Fourth, this methodology assumes a zero-sum approach to power, meaning that constitutional provisions granting presidential authority diminish authority of another sector and vice versa. This, too, is important for future studies on the impact of constitutional coups. Does increasing executive power affect democratic checks and balances by placing more power in the hands of the president and diminishing the role of the assembly, political parties, judiciary, civic groups, etc.?

A thoughtful examination of constitutional replacements, the changes from one to the next, and their implications could help identify issues that might block the path toward political stability in the Andes and beyond. These findings raise serious questions about institutional reforms in emerging democracies. Divining details of constitutional change could reveal subtle shifts that unexpectedly digress toward more authoritarian government.

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<sup>22</sup> However, after reading 21 constitutions in their entirety, I detected little obvious variation in the provision of executive power over the military.

## APPENDIX A

**This section describes the scoring for each of the indicators used to measure constitutional presidential powers, provided in Table 3.**

### *Political Power*

To measure political power, I assess constitutional provisions that designate control over the state in legislative and non-legislative arenas, adopted largely from Shugart and Carey (1992). In addition, I consider presidential term length and presidential reelection as important indicators of executive power.

First is the length of the *presidential term*, because it concretely defines the potential duration of executive power. A new constitution that allows for a longer executive term essentially gives the president power for more time. One point is added for each additional year in the presidential term over four years (four was a common baseline in most countries). Second is *reelection*, because it is a significant, legitimate method for executives to maintain power in an electoral democracy. Consecutive reelection scores higher than if the president must sit out a term, because sitting out could significantly reduce power and the likelihood the president will be reelected, especially if there is a viable opposition. It is important to note that this scoring method could reflect less power than actually awarded to the president for the first constitutional period, because even if the new constitution does not allow presidential reelection, new elections are usually held under the new constitution. Most constitutions did not state whether the sitting president is eligible to run, but in an overview of contemporary cases, the sitting president did indeed run for immediate election under the new constitution. Therefore, in those cases, the president gained power even if the score was not higher due to presidential election being granted in the constitution.

Next, Shugart and Carey's indicators measure constitutional provisions that specify separation of powers between the executive and legislative branches, and how cabinet officials are appointed and dismissed from office (106). Their legislative measures include six indicators of executive power (150). All six indicators gauge the balance of power between president and the assembly regarding the ability to create and adapt the laws of the country. The first is the *package veto and override*: whether the executive is allowed to veto legislation and whether the assembly has the power to override the executive veto with a majority or a two-thirds vote. A full veto without assembly recourse scores highest on executive power, with no veto or simple majority override scoring the lowest (full details on scoring from 0 – 4 for each of the measures provided in Table 3, above). Second is the *partial veto/override*: similar to the first, but where the executive has power to veto only part of a bill. Third is *decree power*. This includes the executive's non-emergency law-making authority without assembly input. Scoring is lower if assembly must provide approval. Fourth is whether the executive is allowed *exclusive introduction of certain legislation* without threat of amendment by the assembly. Scoring varies based on assembly power to amend. Fifth is *budgetary powers*: considering who has responsibility for preparation of the budget and whether there are limitations. Scoring is lower the more authority the assembly has to change the budget before approval. Sixth is *proposal of referenda*: whether or not there are restrictions on the executive's power to call for a national vote on critical decisions. Scoring is lower based on the assembly's ability to restrict the executive's actions.

To measure non-legislative executive political powers, I adopt four of Shugart and Carey's indicators (1992: 150), listed first, and add three more. *Cabinet formation* refers to whether the president appoints heads of ministries with or without confirmation by the assembly

(again, scoring justification from 0 – 4 points provided in Table 3). A higher score is awarded for less assembly participation. *Cabinet dismissal* refers to whether or not the executive can dismiss ministry heads without restriction or if it too requires assembly approval. Again, a higher score corresponds to greater executive freedom to dismiss ministers. *Censure* refers to whether or not the assembly may remove ministers and with what consequences. A high score is warranted when the assembly cannot censure. Fourth, *dissolution of assembly* refers to whether or not the executive can dismiss the entire assembly and whether and how such action is restricted. Obviously, provision of this power scores high, and lower points are assigned when the assembly has some recourse, such as call for a new presidential election corresponding with assembly dissolution. Fifth is *number of ministries*. Some presidents will add ministries in the new constitution, giving them power to appoint more cabinet members. If the president has unrestricted power to create ministries, a higher score is given. Sixth is *emergency powers*. Some constitutions add extraordinary powers, such as state of siege, allowing for greater control over the budget or decree power. This is scored based on the extent of restrictions or subsequent review of the presidents' actions. Seventh is *constitutional amendment*. This looks at whether the new constitution empowers or restricts the president to replace or amend the constitution in the future. The score is lower if other branches share the power.

### ***Non-political Powers***

The remaining two areas of executive power are judicial and economic. These topics are receiving increased attention in the literature as authors examine the global rise of judicial power (Ferejohn 2002) and evaluate the impact of economic reforms on developing countries (Naim 1994; Korzeniewicz and Smith 2000). Despite growing attention, these areas, to my knowledge, have yet to be empirically measured in constitutions in the political science literature, so I

develop my own. While there is abundant literature focused on presidents, parties, and assemblies, research on executive power vis-à-vis the judiciary is only recently emerging and it focuses largely on social justice and judicial politics (Kapiszewski and Taylor 2008). In addition, there is substantial attention on judicial independence from the perspective of courts and their independence from executive. I am essentially flipping the approach to look at executive control over the judiciary. Likewise, specific measures for executive power over the economy are lacking. The remainder of the section explains how these measures were devised.

### *Economic Power*

I measure executive economic power by evaluating four areas where constitutional provisions could grant the executive control over a large percentage of GDP.<sup>23</sup> One is *nationalization of industry* – whether constitutional provisions were added or enhanced that permit the president to change control or ownership of major industries. Nationalizing an industry gives the state – hence the executive – more power over the economic sector. The scoring on this measure was less concrete and required a qualitative assessment of the level of state power over major industry from one constitution to the next. If the new constitution changed significant sectors of the economy from private to state domain for ownership, regulation, and control, it scored a two. The second area addresses provisions designating executive *control over the central bank*. Appointment powers or oversight ability could greatly affect the bank’s independence. The president appointing the head of the central bank without confirmation scores higher than if the assembly confirms or appoints the central bank head itself. Third, I look at guidelines for controlling important *finance measures* not usually included in the

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<sup>23</sup> Note: this scoring is relative, meaning I compare it from one constitution to the next, which differs from absolute scoring on previous indicators, where an indicator was measured by itself – simply whether or not it existed in the constitution.

budget such as interest rates and exchange rates.<sup>24</sup> These measures are unofficially designated by the “Washington Consensus” as best controlled by market forces (Williamson 1990). Shifting control of these measures to presidential purview could signal an attempt to gain tighter executive control of the economy. Two points are assigned when the president alone sets these measures, one if the president sets but is restricted by the assembly, and zero if there is no presidential authority. Finally, the fourth area – *private sector control* – addresses provisions that provide tighter state control over private property. This, too, was scored as a qualitative measure, evaluating whether the new constitution increased conditions under which the state could access private property or eased regulations for the state to expropriate property. Such measures would significantly enable the president to control economic activity.

### ***Judicial Power***

Finally, I seek to gauge the executive’s power over judges and courts. I do this by looking at constitutionally-designated checks and balances, which can be separated into judicial independence and constitutional review (La Porta et al. 2003). There is no consensus on the exact definition or potential measures for judicial independence, but the concept generally refers to whether judges are free from external pressures and whether they are impartial (Landsberg 2007). Many indicators for judicial accountability to the executive are adopted from Kapiszewski (2007). I consider only what Feld and Voigt (2003) refer to as *de jure* measures of judicial independence, meaning those that are established in legal documents, such as the constitution. I focus primarily on the supreme court, because it can overrule lower courts, but I also measure constitutional courts in countries where they exist or were introduced.

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<sup>24</sup> Again, provisions for control over the standard national budget are addressed in the “political power” category under “legislative power” (whether the budget is controlled by the executive or the legislature and how).

I analyze five indicators of executive power over the judiciary<sup>25</sup>. First is *appointment of judges*, meaning who has the power to nominate and confirm high court judges. A higher score is given if the president appoints, lower if assembly confirmation is required or if judges are elected. Second is *decision over number of judges*. This refers to whether the president can control or change the number of high court justices (higher score) or whether it is set in the constitution (lower score). Third is *length of judicial appointments*. We might hypothesize that the longer a judge is in office, the more institutionalized and less susceptible to political leanings of incoming and outgoing administrations they become. If the president has the power to appoint judges for a short term, this provides the executive greater immediate power over the judiciary. Fourth, *removal of judges* refers to the president's power to dismiss judges. A lower score is given if the assembly must confirm removal or if there is no presidential authority to remove judges. Last is *constitutional review*. This refers to whether the court has the authority to review and judge the constitutionality of legislation and if so, what legislation can be reviewed. This could give the judiciary power to overrule the executive and/or the legislature. Since executive power vis-à-vis the legislature is already covered under political power, above, this section only looks at the relationship between the executive and the judiciary. If the judiciary has the power to review and overturn any law, the score is zero because the president's laws could thus be reviewed; if the judiciary's oversight is limited to only certain controversial issues, the president is more immune to of having his or her legislation overturned, hence a higher score.

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<sup>25</sup> Data were collected for the following additional indicators, but cut from the measurement due to insufficient detail (measures simply were not outlined in the constitutions) or later deemed of insufficient relevance to executive power: requirements for becoming a high court judge; control over the court's budget; control over judges' salaries; addition of an executive-appointed court; judicial power to impeach president; jurisdiction of the court versus the justice department; whether adoption of new constitution requires appointing new judges.

## APPENDIX B

*Please contact the author at [katjan@uci.edu](mailto:katjan@uci.edu) for a spreadsheet containing all data, which could not be formatted to fit this publication. In addition, spreadsheets are available containing the text of every constitutional provision pertaining to the executive power indicators measured.*

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