

## CAN PARTIES POLICE THEMSELVES? ELECTORAL GOVERNANCE AND DEMOCRATIZATION\*

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### I. INTRODUCTION

At the dawn of the twenty-first century, electoral fraud continues to plague many political systems. Peruvian President Alberto Fujimori claimed victory in the 2000 elections that international and domestic observers decry as irregular and stacked against anti-government critics (Schmidt, 2001). Even in the stable United States, an extremely close election generates a storm of protest as election procedures in Florida fail to produce an unambiguous victor (Issacharoff, Karlan, and Pildes, 2001; Washington Post, Von Drehle, and Nakashima, 2001). Indeed, the entire world has looked upon the US 2000 election in disbelief as local canvassing boards (tallying agencies), elected and appointed officials, state and federal courts entered the fray to decipher the general will—with confusion and uncertainty being the principal results.

Far from being a set of activities consigned to the dustbin of history, electoral fraud and administrative irregularities are very much problems of the present. Yet, aside from numerous anecdotes, we know very little about the nature and dynamics of electoral fraud (Cox and Kousser, 1981; Eisenstadt, 1998; Lehoucq forthcoming; Lehoucq and Molina, 2002; Mo-

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lina and Lehoucq, 1999; Posada-Carbó, 2000a). We also do not understand very much about its cures. Though much of electoral legislation consists of procedures to reduce fraud and irregularities, our knowledge of election governance consists of lessons learned from particular circumstances to guide the design of neutral and fraud-free election procedures (Choe, 1997; López-Pintor, 1999). Both Latin American (Nohlen and Sabsay, 1998; Orozco-Henríquez, 1998) and North American (Issacharoff, Karlan, and Pildes, 1998) legal scholars, in fact, call for the development of electoral law to fill this lacuna.

This article contributes to this emerging field of study by examining the origins and consequences of electoral tribunals or, as they are now typically called, electoral commissions-independent court systems responsible for the organization of elections, the tally of the vote, and the adjudication of conflicts about procedures and outcomes. I chart the origins of commissions in the Americas because parties, by the second decade of the twentieth century, began to establish them to solve incessant partisan conflicts about election results. Though framers first gave these bodies constitutional status within the Austrian (1920), Czechoslovakian (1920), and the Greek (1927) constitutions, politicians and parties most fully developed electoral commissions in Latin American countries-places often (and incorrectly) depicted as all unstable, violent, and having little to contribute to constitutional law. Indeed, one of Latin America's most important contributions to the architecture of constitutional democracy is to isolate the "electoral function" from the executive and legislative branches of government. This often unnoticed institutional innovation is, in fact, the model that most third wave democracies adopt (Elklit, 1999; Elklit and Reynolds, 2000; Pastor, 1999).

Historically, liberal and republican constitution-makers invested executive bodies with the administration of elections and legislatures with the final approval of election results (for an overview, see Gros-Espiell, 1990: 11-59; Orozco-Henríquez, 1998). By splitting the tally from the certification of the vote, legal theorists hoped to encourage executives to be impartial by empowering congressional bodies to review their work. Furthermore, the defense of parliamentary prerogatives in nineteenth century Europe led legislators to demand that they—and not some Royal commission—be responsible for the election of their own members. Whatever the precise justification, the classical approach to electoral gov-

vernance remains alive and well in advanced, industrial democracies. Robert Pastor (1999: 7) finds that parties in three-quarters of first world democracies continue to split electoral governance between the executive and legislative branches of government.

This essay outlines the political consequences of using or not using the classical approach to electoral governance. The first section argues that establishing fair electoral procedures is a key question of institutional design. As a question of choice —though one very much made under constraint— institutions need to be examined politically. Fair electoral governance, as a key characteristic and guarantor of democracy, does not simply emerge as a byproduct of economic modernization. The second section offers a highly stylized model of political competition, one that reflects essential features of politics in separation of powers systems. The objective of the model is to identify the consequences of establishing or not establishing electoral commissions.

In brief, I hypothesize that the classical approach generates reasonably acceptable election results under divided government. When two different parties control the executive and legislature, the nonpartisan world eighteenth-century constitution-makers assumed to exist is roughly approximated. In a world without parties, there are good reasons to believe that representatives would be motivated to maximize the interests of their respective branch of government. Once politicians form parties, however, their loyalties fundamentally change. Indeed, in a world of partisan competition (and especially in economically underdeveloped settings), the classical approach encourages executives to pack the legislature with members of their parties. When unified government exists, parties will collude to prevent the rivalry between the branches of government necessary for mutual monitoring to occur.

I then offer a sketch of political developments in the Americas to assess my claim that the creation of electoral commissions had profound implications for democratization. I argue that the devolution of electoral governance to independent court systems eliminated much of the conflict surrounding regularly scheduled elections in separation of powers systems. Commissions strengthened confidence in electoral democracy. Where parties established genuinely independent court systems, they discouraged the use of violence to settle disputes about the allocation of state power. The absence or presence of electoral commissions, of course,

is not the only reason why democratic instability or stability exists. Instead, I argue that there are good reasons to think that they are one of the central institutional developments that made democratization stick in some places, but not in others.

## II. DEMOCRATIZATION AND INSTITUTIONAL DESIGN

A reason why electoral commissions go unnoticed is that some of the most important theories of democratization neglect to discuss institutional issues. A plethora of studies demonstrate a relationship between economic development and democratization, even as the exact nature of this relationship remains under dispute (Burkhart and Lewis-Beck, 1994; Diamond, 1992; Lipset, 1963; Przeworski *et al.*, 2000). Some social scientists argue that modernization produces a working and middle-class that spearhead the struggle for democracy (Collier and Collier, 1991; Collier, 1999; Rueschemeyer, Stephens, and Stephens, 1992). All privilege social forces with establishing democracy.

It is certainly the case that social movements play a pivotal role in amplifying the reach of democracy by, for example, pressuring the status quo to expand suffrage rights (Markoff, 1996). Even in the absence of formal political organization, public opinion can promote democracy by rewarding public officials that regularly consult with the public. Whether state officials listen to society, however, depends upon institutional arrangements. And, the nature of formal political institutions will shape, for example, the nature of the party system (*e. g.*, Cox, 1997), the nature of economic policy (*e. g.*, Bates, 2001), and the very responsive of government policy to public opinion (*e. g.*, Powell, 2000).

Furthermore, the most systematic study of modernization theory points to the vital role that institutional arrangements play in democratic consolidation. Przeworski and his collaborators (2000) demonstrate that economic development does not produce democracy. Many economically developed societies remain authoritarian. Przeworski suggests that politicians and parties are just as likely to start democratizing their systems in poor as in rich countries, even if the life span of democracies varies positively with levels of economic development.

Even when controlling for levels of development, Przeworski finds that institutional arrangements shape the success rates of political regi-

mes. Independently of levels of economic development, parliamentary systems are more stable than presidential ones. One explanation for this relationship is that, as Juan Linz (1990) argues, the threat of a vote of no confidence encourages Prime Ministers to moderate their policies to retain parliamentary support. Once executives fail to placate parliamentary majorities, they must seek reelection or step aside while another party (or coalition) governs the country. In presidential systems, fixed terms for executives and legislators remove the incentive to moderate policy differences during periods of divided government.

Another, not necessarily contradictory, explanation of the greater instability of presidential systems is that the classical theory of electoral governance encourages presidents to monopolize state power. Seeking to maximize their power, executives will manipulate administrative procedures to impose their successors on the presidency and to create pliant legislative majorities. To the extent that election races are close and/or shrouded in accusations of fraud, the classical approach can produce gridlock and rancorous debate between the executive and legislative branches of government. The absence of impartial agencies can even transform procedural flaws into constitutional and political crises that threaten the stability of the body politic.

### III. POLITICAL COMPETITION IN SEPARATION OF POWERS SYSTEMS: A MODEL

This section sketches a model to explain why the classical theory does not deliver impartial, widely accepted electoral returns. It assumes that political agents wish to maximize their power. It relies upon a stylized version of the separation of powers to depict the world in which agents operate. I then extract several hypotheses from this model that identify when parties will and will not respect the results of the ballot box.

Assume a world where political agents are motivated to capture and to retain state power. Some want power to enact policies that promote the development of their societies. Others covet the state to enrich themselves and their followers. Whatever their precise goals, each finds control of the state beneficial. Political agents therefore value political survival; without the state, it is much more difficult for agents to advance their particular goals. Assume, further, that these agents must gain the

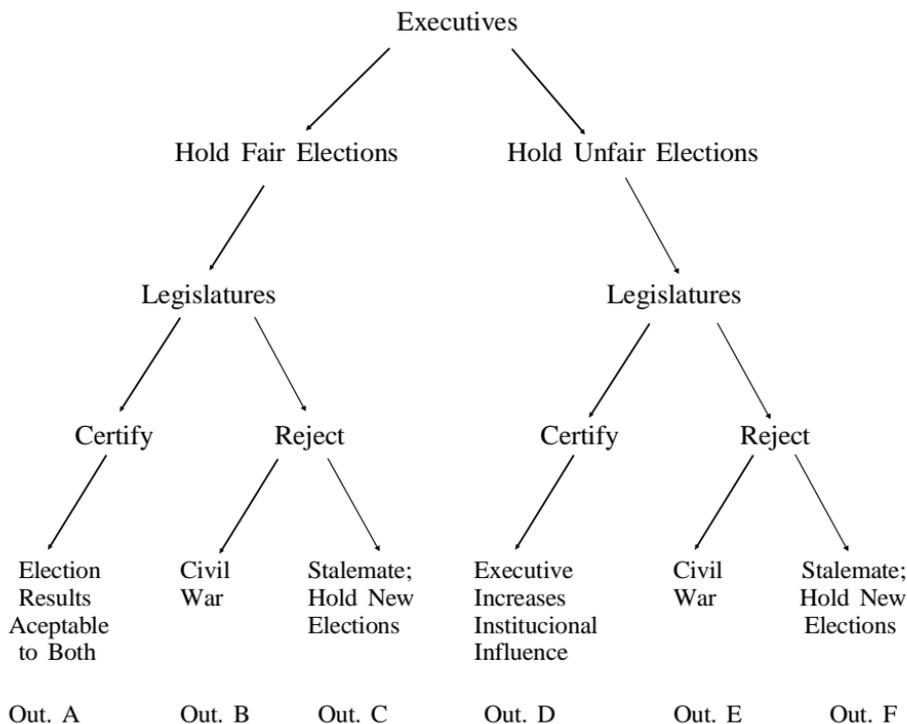
approval of an electorate to hold public office. They must, in other words, compete for the support of the citizenry in regularly scheduled intervals to govern the republic. Call the forces in control of government incumbents. Those not in government are members of the opposition.

Suppose that the political system also has two branches of government: the executive and the legislative. Assume that constitution-makers created a system of checks and balances so that both branches must cooperate to promulgate state policy. Suppose, too, that they have carried over their theory of power into the very crucial responsibility for allocating state offices to rival contenders. Faced with the challenge of devising a fair system of rotating state offices to interested parties, they split election governance into “purely” bureaucratic functions and (semi? completely?) political ones. Executive officials take responsibility for placing polling stations in accessible places, devising procedural rules for receiving votes from citizens, tallying the vote, and the like. To encourage executive honesty, constitution-makers empower legislators to certify electoral results. They, in other words, rely upon the classical theory of electoral governance to encourage executives and legislators to hold fair elections.

Finally, assume that the state does not have a very powerful military or police. The armed forces concentrate upon defending national sovereignty from external attack. The police maintain law and order. Neither is very large. Both are large enough, however, to deter reckless military adventures. Whether they could (or would) crush a rebellion with popular backing is uncertain.

In such a world, what would incumbents do? What would their opponents do? Given the aforementioned assumptions, incumbents will hold elections. Figure 1 contains a game in extensive form that presents the micro-logic of the classical theory of electoral governance. It models how the legislature will react given how the executive organizes the election. Each decision node depicts the choices each faces. According to this game, the executive would gravitate toward holding fair elections because it leads to Congressional certification and widely acceptable election results (outcome A). Incumbents prefer outcome D, of course, but do not really expect the Congress to certify unfair elections. Congress also prefers outcome A to outcomes that might lead to civil war or simply require holding new elections.

FIGURE 1  
EXTENSIVE FORM GAME OF OPTIONS FACING EXECUTIVES  
AND LEGISLATURES



*Preference Rankings:*

For Executives:  $D > A > C > F > B > E$

For Legislatures:  $A > F > C > E > B > D$

Government and opposition, however, are not above circumventing the legal process to retain or capture state power —this is, in fact, why the executive prefers outcome D to A. Both would, for example, pad the registry with the names of nonexistent citizens. They would name loyal party members to key administrative posts. They could suspend the constitutional order to restrict the movements of their adversaries (Aguilar Rivera, 2001; Loveman, 1994). Both would distribute false identification cards to followers to vote as many times as possible in different electoral

precincts. Some might even pay members of rival parties to stay at home on election day (Cox and Kousser, 1981).

Executives would meet with more success with electoral shenanigans because they could deploy the resources of their branch for partisan advantage. They could fill government positions with followers or even partisan rivals. State employment could become an excellent way of co-opting moderate or undecided members of the opposition. Incumbents could also dole out lucrative state contracts to key followers and, to undercut their opponents, to key members of the opposition. They could also increase public spending before election day to create good-will among the electorate (Ames, 1987).

As long as most believe that the number of fraudulent votes is less than the incumbent's margin of victory, the opposition is unlikely to organize an insurrection against the government. Since the probability of overthrowing the government is unknown (the converse of the government's probability of defeating the opposition), they will most likely refrain from deploying the force of arms to gain control of government. And, to the extent that they send their candidates to the legislature, their interest in overthrowing the existing system diminishes. Uncertainty regarding the use of violence, along with their stake in prevailing institutional arrangements, encourages the opposition to accept the results of less than perfect elections.

What if, however, the number of illicit votes is equal to or greater than the margin of victory? What if, in other words, one side reverses the will of the people? If the victim of fraud holds a legislative majority, then the legislature will refuse to certify election results. If, in the unlikely event, incumbents yell fraud and their adversaries control the legislature, the government is left with the option of using force to prevail in the political arena. They will repress the opposition if the probability of success times the benefits of retaining state power is greater than the benefits of joining the opposition. To the extent that they have elected more than a handful of representatives, they will likely agree to work (and to protest) within the system.

If, in the more likely event, the opposition is the target of fraud in a close race, then only a legislative majority has any chance of legally stopping the executive from retaining state power. Through backward induction, we know that the executive will refrain from excessively ma-

nipulating the electoral arena for partisan advantage since all outcomes but D lead to civil war or repeating elections (see figure 1). Since the success of deploying force is unknown, incumbents may decide to relinquish control of the state. Their decision also will be a result of an expected utility calculation: they will turn over the executive if the benefits of holding onto power times the probability of crushing the opposition is greater than the benefits of taking their seats in the legislature. Should the opposition hold a legislative minority, its calculations will be similar to its decision-making when it perpetuates fraud and is unwilling to accept the executive's refusal to recognize these results.

There, however, is a fundamental difference between these situations facing the opposition. When the incumbent stops the opposition from carrying through its fraudulent designs, public opinion will likely side with the executive. When the opposition is the target of an arbitrary executive, public opinion will be supportive of the opposition. With public opinion on its side, the opposition will stand a better chance of toppling the government. More supporters will come out into the streets to protest government arbitrariness. As support for the opposition increases, the security forces may withdraw their support of an unpopular incumbent. Like other bureaucratic or political sectors, the military and the police do not want to become identified with the losing side in politics. Government and opposition, as a result, will rely upon a bit of chicanery to come to power, but are unlikely to use a lot of it.

Note that these arguments do not require an electorate that "values" democracy. Citizens oppose fraud not because they hold values congruent with democratic norms, but because fraud undermines their ability to constrain the actions of state officials. Public opinion protests electoral fraud for self-interested reasons: to the extent that public officials can corrupt the electoral process, they are less accountable to the electorate. Servants become masters. In this stylized model of political competition, voters oppose governments that threaten to enslave them. The electorate—the principals—withdraws consent from governments—their agents—that do not act in accordance with their preferences.

The first implication of this model is that uncertainty about the use of violence is a necessary condition for genuine electoral competition. There must be, in other words, a balance of power among government and opposition forces for democracy to exist. Neither side must be mi-

larily dominant. No one must really know if the armed forces can rule through repression. Uncertain about the use of violence, agents play democracy.

A second implication of this model is that tiny perturbations in the balance of power can unleash potentially catastrophic chains of events. During critical junctures or periods of partisan realignment, the electorate can deliver a resounding victory to one party: one agent can gain control of the executive and possess a large legislative majority. Under unified government, incumbents can manipulate electoral laws for partisan advantage. Knowing that the legislature is unlikely decertify election results, it will manufacture as much fraud as possible to maintain its grip on power. If political competition upsets the partisan distribution of power, the classical theory of electoral governance will fail to mediate differences about future electoral contests. Governments and their opponents will begin to rely upon the force of arms to settle their differences about political succession. Political competition will revolve around the estimating the probability that one side will prevail in an armed conflict.

Another important way in which the classical theory of electoral governance can fail to preserve the peace is through miscalculation. Both or each of them can fabricate too many votes. The blatant use of fraud, especially if its magnitude is greater than the margin of victory, can trigger time-consuming litigation. If the victims of fraud face a united government, then they will seek recourse on the battlefield or in the barracks. Again, the stability of electoral politics will hinge upon the efficacy of the use of violence.

If these implications are plausible (and my assumptions are true and/or useful), then we should expect political competition to oscillate between periods of stability and instability. When the same party gains control of the executive and legislative branches of government, I hypothesize that the classical theory of electoral governance will break down. It will not produce impartial verdicts acceptable to major political forces. Indeed, insurrections, coups, and street protests will vary with the share of legislators belonging to the president's party. As modeled in Figure 1, incumbents will unfairly increase their share of state power; opposition movements will therefore begin to plot against the government. Politics, in other words, will become more unstable during periods of unified

government. Until one party succeeds in cementing its rule (because it has tipped the military balance of power in its favor), these systems will be chronically unstable.

When different parties control the two branches of government, the classical theory will manufacture election outcomes acceptable to dominant parties. These results may not necessarily be impartial, but the checks and balances of the separation of powers will work to protect the interests of major parties. Politics therefore will be less unstable than in single-party dominant systems. Partisan verdicts, however, will encourage some forces to withdraw their consent of existing political arrangements. Excluded groups will protest against the regime and its decisions. If conditions are ripe, these forces will also foment barracks revolts or organize insurgencies against the dominant forces of their society.

#### IV. UNIFIED AND DIVIDED GOVERNMENTS: PATTERNS AND EVIDENCE

There are two ways to end the chronic instability that the classical theory helps to create. One side can try to shift the balance of military power in their favor. They can invest in violence. They can try to disarm their opponents. They can, in other words, try to reduce the uncertainty of the use of violence to retain or to capture state power. Alternatively, they can begin to surrender their ability to distort election results. They can credibly commit themselves to permit nonpartisan forces to adjudicate conflicts about elections. They can, in other words, establish electoral commissions.

Establishing electoral commissions depoliticizes election governance. Delegating responsibility for allocating state offices to a third party is an institutional strategy diametrically opposed to the classical theory of election governance. Instead of harnessing the struggle for power between the executive and legislature, it removes both from the organization and the tally of the vote. It entrusts a neutral body of officials with the task of adjudicating conflicting claims about election outcomes. It generates consent of election outcomes—and thus regime legitimacy—by making the electoral process transparent and fair. Impartiality is what empowers electoral commissions to deter allegations of fraud.

It is no surprise that three of the most stable presidential systems also have the oldest electoral commissions. In 1925, constitution-makers in Chile created the Tribunal of Election Certification to issue official election results (Cruz-Coke, 1984: 104; Jaramillo, 1998: 207, 236). It both ran elections for all public offices and judged the validity of allegations of fraud. In 1924, Uruguayan parties formed an Electoral Court as an agent of the bicameral legislature. Congress entrusted the Court with the task of reviewing all election results before the Senate and the Chamber of Deputies, in line with the constitution, certified final election results. Eight years later, a new constitution made the Electoral Court completely responsible for election governance. Until 1934, the Senate, however, remained responsible for choosing the president; after this date, a General Assembly selected presidents. Since the 1952, when parties wrote another constitution, the Electoral Court has been entirely responsible for running elections, tallying the vote, and arbitrating conflicts about election outcomes (Gros Espiell, 1990). Politics in Chile (Scully, 1992) and Uruguay (González, 1991) involved a multiplicity of parties competing in regularly scheduled elections.<sup>1</sup>

In 1925, Costa Rican politicians established the Grand Electoral Council to oversee the tally of the vote. Slightly more than two decades later, parties converted the Council into a tribunal. They made it completely responsible for the governance of elections, the supervision of the Electoral Registry, and the preliminary tally of the vote (Lehoucq, 1995; Lehoucq and Molina, 2002). In 1949, a year after a civil war fought to contest Congress's nullification of the 1948 general election, constitution-makers stripped the legislature of the power to certify election results. By removing the last vestige of the classical theory from election governance in Costa Rica, the Constituent Assembly made the Supreme Tribunal of Elections completely responsible for electoral affairs in this country. Since the mid-twentieth century, parties have competed in re-

<sup>1</sup> That democracy collapsed in Chile (Valenzuela, 1978) and in Uruguay in 1973 (Gillespie, 1991) does not disconfirm my argument. No one has argued that electoral fraud led to the crises that led to the rise of military governments in both countries. Indeed, Gros Espiell (1990: 10-11) argues that a tradition of fair elections facilitated the return of democracy in Uruguay and, I would argue, in Chile. Presidential-congressional conflicts, social and economic crisis, and institutions that did not do a very good job of keeping the military subordinate to civil authority are the reasons that led to the breakdown of democracy.

gularly scheduled elections (Lehoucq, 1998). And, it was the Supreme Tribunal of Elections, I suggest, that helped maintain the peace between government and opposition during the 1950s. Both winners and losers of the 1948 civil war spent the following decade struggling for supremacy—a conflict that involved charges of fraud, a foreign invasion, and repeated confrontations between executive and legislative authority (Bowman, forthcoming).

In all of these cases, long-term experience with divided governments encouraged incumbents and opposition movements to invest in institutional reform. In Chile, a highly fragmented party system and a hotly contested general election in 1920 (Heise González, 1974; Millar Carvacho, 1982) generated a severe political crisis. After returning from exile, President Jorge Alessandri got a reluctant Congress to convene elections for the Constituent Assembly that produced the 1925 Constitution. In Uruguay, stalemate between colorados and blancos led to depoliticization of electoral governance. And, in Costa Rica, a split legislature allowed ambitious presidents to remove the executive and the legislature from electoral affairs (Lehoucq, 2000).

Where parties did not devolve responsibility for election governance to electoral commissions, parties spent decades competing in fraud-tainted elections that often ended in military coups, insurrections, and popular protests. This, in fact, is the history of most presidential systems. Indeed, I suggest that instability in most Latin American countries and one-party dominance in others stems precisely from the institutional defect of splitting election governance between the two political branches of government. And, as I will show, the central predictions of my model also explain why election governance has been so enormously contentious in state-level separation of powers systems in the United States. Ahistorical, theoretically uninformed visions of democratization have failed to recognize that US parties used violence and fraud to monopolize power as often as stereotyped images of Latin America suggest Latin Americans have.

Consider the case of Colombia, which confounds sociological images that cannot explain why dependent development did not create the identifiable phases of politics we associate with Latin American politics (Collier and Collier, 1991). Instead of liberal oligarchies giving way to populist coalitions in the 1930s, periods of Liberal or Conservative hegemony

shape the contours of political development in Colombia. Regularly scheduled elections and the partisan control of government is what drives the length of these periods, the issues at stake, and the very nature of politics in this separation of powers system. And, the politics of electoral governance is key, I argue, to unraveling Colombian party dynamics.

In line with my hypothesis, unified governments in Colombia encouraged incumbents to exclude their opponents from the political arena even as they left the opposition with no choice but to come to power through the force of arms. After twenty-seven years of liberal dominance, Conservatives regained control of both branches of government in 1886 (Bergquist, 1978). They created a new constitution that centralized power in Bogotá. Conservatives also used fraud and violence to retain control of the branches of government; excluded from power, liberals gradually organized revolts that culminated in the devastating War of a Thousand Days (1899-1902). Though Liberals lost the War (and Colombia lost control of the Panama Canal), they signed a peace agreement that dramatically increased Liberal Party representation in Congress and municipal government. The enormous cost of the war, along with Conservative uncertainty about the future fortunes of their party, encouraged them to increase institutional safeguards for their adversaries.

For nearly forty years, modifications to the classical theory and other power-sharing agreements maintained the peace. Throughout this period, Congress enacted five electoral laws (and numerous amendments) that established courts, councils, and registries to reduce the executive's discretionary authority in electoral affairs (Registraduría Nacional del Estado Civil, 1988: 20-23; also see Posada-Carbó, 2000b). Appointed by both houses of the legislature and/or the executive, some laws empowered electoral councils to issue the official tally of the presidential vote. Even though the 1886 constitution established courts to adjudicate conflicts about the initially tally of the vote, certification of legislative results remained the prerogative of this body (Orozco-Henríquez, 1998: 720-1).

The return of Liberals to Congress, in fact, temporarily revived the (slightly modified version of the) classical theory of electoral governance. With one party no longer dominating the executive and legislative branches of government, splitting responsibility over electoral governance between them, as I hypothesize, did produce election results they found

acceptable. When the Conservative Party split and fielded two candidates in the 1930 general election, Liberals were able to win the executive peacefully. In 1946, the Liberals themselves split, lost the election, and turned power over to the Conservatives as, however, partisan tensions were escalating. By 1948, the partisan management of electoral governance and the political system as a whole snowballed into “La Violencia” —a decade-long civil war between Liberals and Conservatives that took the lives of an estimated 100,000 individuals.

After a short-lived military dictatorship (1953-7), Liberals and Conservatives brokered another peace agreement that parcelized the state between them. Under the “National Front”, they alternated control of the presidency for a sixteen-year period that they extended for an additional four years (Hartlyn, 1988; Berry *et al.*, 1980). They also split cabinet portfolios, legislative, and senate seats among themselves. They, in other words, precluded partisan warfare by eliminating uncertainty about election results. In line with my second hypothesis, the duopolization of Colombian politics left their opponents —the Left— with few options but guerrilla struggle to influence state policy. Indeed, the Liberal-Conservative cartelization of politics led to the development of two Colombias that so many find puzzling to classify —that of a quasi-democratic urban Colombia alongside a violent, rural Colombia almost under continuous states of siege since the 1960s (Archer, 1995).

The oscillation between violence, fraud, and stability also characterizes the politics of many other presidential systems. Conservative hegemony led to Radical insurrections in turn of the century Argentina (Alonso, 2000; Rock, 1975). Electoral reform in 1912 that established a centralized electoral registry, the secret franchise, and compulsory voting that led to a Radical triumph in the 1916 general elections (Botana, 1979).<sup>2</sup> In line with my hypotheses, Radicals deployed the powers of the executive to keep conservatives from contesting their tactics in the national Congress. Like their conservative predecessors, they also took advantage of another constitutional provision —that of federal intervention— to retain control of both political branches of government. The power of federal intervention empowers the national executive to replace

<sup>2</sup> The 1912 Sáenz Peña Law did not establish universal manhood suffrage. This is a common misunderstanding in the literature (*e. g.*, Waisman, 1999: 75). All male citizens could vote since 1857. For more on these issues, see Sabato and Palti (1990).

provincial governors if threats to public order exist. Increasingly marginalized in a system they once dominated, conservatives supported a military coup in 1930 (Potter, 1981).

The Argentine case also illustrates why military politics came to exist alongside of or, in a few cases, replace electoral competition in separation of powers systems. Unified governments and the absence of transparent and widely acceptable election results encouraged incumbents and opponents to use violence to retain or to gain control of the state. Partisan manipulation of the armed forces, however, often led to military factions deciding to usurp state power to promote their own corporate interests. Indeed, the Argentine military ruled alone or in alliance with key political forces for much of the twentieth century (for an overview, see Waisman, 1999). Similar outcomes obtained in Bolivia (Klein, 1969; Malloy and Gamarra, 1988), the Dominican Republic (Hartlyn, 1998), and Nicaragua (Munro, 1967; Walter, 1993). In these cases, conflicts over election outcomes also led to military strongmen freeing themselves from partisan control to create dictatorships.

This pattern is by no means restricted to the past. President Alberto Fujimori (1990-2000) in Peru, for example, managed to subvert democratic institutions, even though the 1979 constitution created an autonomous system of courts to administer elections and tally the vote. After unconstitutionally closing Congress in 1992, Fujimori engineered the election of a Constituent Assembly in 1993 possessing a favorable pro-government majority. General elections, held two years later, kept him in the presidency and delivered another legislative victory for government forces. With control of both political branches of government, Fujimori's regime gradually consolidated its hold on the judiciary, television, and split the electoral commission into three malleable agencies. As Gregory Schmidt (forthcoming) points out, unified government was the key to the regime's longevity; along with significant levels of popular support, control of the branches of government allowed the regime to manipulate the electoral arena for partisan advantage. Charges of an unfair playing field began to surface with the 1995 elections (Schmidt, 2000). By the 2000 elections, regime opponents unearthed a scam to use thousands of forged signatures to register a pro-government party. They also alleged that the regime was padding the electoral registry to have Fujimori win in the first round. An international outcry, the oppo-

sition's abstention in the runoff election, and videos showing the internal security chief bribing opposition deputies wrecked the government's military support (Schmidt, 2001).

Yet, parties hit upon the formula to stay in power for decades in some presidential systems. Some parties became so adept at monopolizing the executive and legislative branches of government that the institutional elixir of their success is lost from sight. The most famous case of a party that overcomes factional disputes to gain legislative certification of executive manipulation is Mexico under the Institutional Revolutionary Party (PRI). A much less well-known set of cases is the eleven states of the U.S. South.

Exactly how the PRI's predecessors coalesced to obtain federal and state governments to consolidate their grip on Mexican politics is not well understood. Chroniclers, historians, and sociologists have produced lots of personality or class-oriented accounts about how, in the decades after the revolution (1910-7), generals and politicians formed the party that gradually overcame factional infighting to solidify as the pri by the 1950s. How the classical theory of electoral governance aided their efforts is not understood, even if its results have been the staple of Mexicanist reflection for decades (for a review, see Molinar Horcasitas, 1993; also, see Eisenstadt, 1998; Molinar, 1987).

Thanks to Kousser's (1974) seminal contribution, we have a much better idea of how the Democratic Party used fraud and violence to regain control of politics from their Republican and Populist rivals two to four decades after the end of the Civil War (1861-5). Once in control of governorships and state legislatures, Democrats reformed electoral laws and state constitutions to enact poll taxes, literacy tests, and other measures to prevent African-Americans and poor whites from voting and supporting their partisan opponents. Through the deft analysis of election statistics and census returns, Kousser shows how voter turnout rates went from an average of 64 percent in the 1880s to 30 percent in the first decades of the twentieth century. What partisanship and the classical theory of election governance permitted, suffrage reform cemented—the Democratic monopolization of power that remained in effect until civil rights protests and federal intervention ended with the passage of the 1965 Voting Rights Act (Davidson and Grofman, 1994).

Elsewhere in the United States, the classical theory of electoral governance led to widespread charges of fraud, instability, and efforts at reform. Just as Democrats were beginning to consolidate their grip in the South, Republicans were trying to expand the reach of the 1870 Federal Supervisory Act. Among other things, the Act set up an embryonic commission to review complaints lodged against elections, mostly in northern cities and southern states (Argersinger, 1992: 116-7). As the Democratic Party increased its use of fraud and violence in succeeding decades, Republicans and Populists struggled to strengthen national-level safeguards as a way to prevent their Democratic rivals for consolidating their hold on the south and possibly of the House as well as of the Senate.

The fragile balance of power upholding the Act and the competitiveness of southern politics began to crumble with the highly controversial election of Republican Rutherford Hayes (Governor of Ohio) to the presidency in 1876. Like election 2000, both Republican Hayes and Democrat Samuel J. Tilden (Governor of New York) needed a handful of votes to win Florida's delegates to the Electoral College. When Floridians sent two set of delegates to Washington, Democrats and Republicans arduously negotiated a compromise that put Hayes in the presidency allegedly in exchange for, among other things, the withdrawal of remaining federal troops from the South. These actions weakened the federal government's commitment to enforcing the Thirteenth, Fourteenth, and Fifteenth Amendments, all of which aimed to safeguard the civil and franchise rights of African-Americans.

By 1875, the Supreme Court also refused to enforce the Fifteenth Amendment—which prohibits the use of race to deny suffrage rights. In a reaffirmation of the classical theory of electoral governance, the high court struck down provisions of the Federal Supervisory Act as unconstitutional enlargements of legislative power (Issacharoff, Karlan, and Pildes, 1998: 68-78). In 1890, enough Republicans joined Democrats to defeat the Lodge Bill, which promised to extend the 1870 Act to cover “every Congressional district in which 100 citizens petitioned to have the law go into effect (Kousser, 1974: 29-30)”. In 1894, after several years of declining to rule on complaints of electoral fraud in southern states, the Senate and the House voted to disband what was left of the Act (Kousser, 1974: 31). The US experience with a rather limited version of a depoliticized electoral governance was over.

As voter turnout rates began to drop both in and outside of the south, interest in establishing electoral commissions gradually declined. In control of governorships and state legislatures, southern Democrats opposed all efforts to reverse the evolving status quo. Progressives championed secret ballots, tighter registry laws, and other reforms to eliminate fraud from elections that also had the effect of reducing voter turnout rates in many states (Piven and Cloward, 2000). By creating other opportunities to accumulate wealth, economic development also decreased the saliency of elections in social life. As the importance of the state as a source of employment and benefits declined, resolving conflicts about election returns simply became less important. To the extent that parties needed neutral authorities to adjudicate claims about election results, parties relied upon the courts to come to their rescue on or after election day. Regressive and “progressive” reform, turnout decline, and the decreasing role of the state in economic life, oddly enough, gradually reduced the size of the coalition in favor of depoliticizing election governance in the oldest presidential democracy.

The cumulative effects of these reforms and trends are to preserve an eighteenth century theory of election governance in the United States. Often unknowingly, US citizens and public officials rely upon elected officials to police themselves before and on election day—an institutional fact that sets them apart from most other separation of powers systems. Reliance upon the classical theory of electoral governance explains why drawing district boundaries, selecting polling officials, and adjudicating conflicts about electoral law still largely remain in the hands of state executives and legislatures. The role that judiciaries play in electoral governance should not obscure this fact; while parties will rely upon judges to settle some disputes about electoral law, they retain the power to make decisions about the way elected posts are allocated among themselves.

## V. CONCLUSIONS AND IMPLICATIONS

This paper began with two observations. The first is that eighteenth and nineteenth century constitutions split authority over election governance between the executive and legislative branches of government. The classical approach entrusted executives with the responsibility for

organizing elections. It empowered legislatures to certify the tally of the vote. Mutual monitoring and the competition between both branches, this theory argues, generates election results acceptable to the people's representatives. Secondly, many presidential systems have had a tough time obtaining this goal. Especially when elections are close, separating the purely "administrative" from the "certification" functions leads to conflict. Indeed, the history of separation of powers systems—both among US subnational and Latin American national states—is one of fraud, violence, exclusion, and instability.

This paper explains why the first is causally linked to the second. I argue that the classical theory of electoral governance does not work well because it is apolitical. Working at a time when parties simply did not exist, eighteenth- and nineteenth-century constitutional theorists assumed that the people's representatives would jealously guard the integrity of their respective branch of government. Yet, in a world of parties, I point out, politicians face powerful incentives to collude. Hoping to maximize their share of state power, parties—networks of leaders and followers united by blood, friendship, and, above all, interest in obtaining state power—will want to gain control of the political branches of government. If they unify control of both, they will disable the classical theory of electoral governance. The benefits to such an arrangement are potentially large enough that executives will use their discretionary authority to pack the legislature with their supporters. Indeed, in a world of partisan interests, the classical theory has perverse effects: the possibility that rivals could establish unified governments encourages incumbents to retain state power. Given the uncertainty about the results of fair elections, ruling parties can give into temptation because defeat means that they might very well become victims of an arbitrary executive when they join opposition ranks. Especially in underdeveloped societies, where power is the key to stable employment, contracts, and other favors that public authority typically confers (Bates, 2001), the incentives to stay in power are enormous.

What sets Costa Rica, Chile, and Uruguay apart from most other separation of powers systems is that parties established independent electoral commissions to eliminate the executive and legislature's role in electoral governance. Since parties devolved electoral governance to commissions (circa 1920-40s), political competition has been much

smoother in these societies. Indeed, each has become renown for regularly scheduled, clean, and typically hotly contested elections. The danger that fraud could determine the results of close elections rapidly declined in systems where partisan officials were no longer responsible for organizing and certifying election results. By correcting a flaw in the architecture of classical constitutional design, parties set the stage for much cleaner elections and more stable government.

Analysis of the consequences of the classical theory of electoral governance therefore permits reinterpreting political developments in the Americas. All presidential systems rely upon an eighteenth century theory of institutional design to adjudicate conflicts about the allocation of state offices. In the North and South, the classical theory worked reasonably well as long as different parties controlled the executive and legislative branches of government. Yet, even in these systems, there were constant reports of fraud, allegations of official collusion, and conflicts that undermine the effectiveness of the franchise. When one party unified control of government, however, exclusion and violence became the order of the day. Indeed, what is distinctive about US southern politics between 1900 and 1960 is not that Democrats monopolized power for so many decades. In comparative perspective, what is uncommon is that the Democrats disenfranchised the electoral base of their Republican and Populist rivals. They reformed Constitutions and laws to deprive African-American and poor whites of their suffrage rights —anti-democratic outcomes that protests and federal intervention only changed in the 1960s.

By the 1990s, Mexicans had largely eliminated the last vestiges of the classical theory of electoral governance in their country. Starting the 1980s, they negotiated a series of electoral reforms, including an independent court system to oversee all aspects of election administration (Becerra, Salazar, and Woldenberg, 2000; Eisenstadt, 1998; Schedler, 1999). By the turn of the millennium, a well-organized and popular opposition party managed to slay the PRI (Schedler, 2000). Thanks to an impartial set of independent commissions, Vicente Fox of the National Action Party (PAN) became President. Reliance upon the classical theory in the US, however, led to the election of a Republican president whose margin of victory (in Florida) is less than the number of miscounted votes (Washington Post, Von Drehle, and Nakashima, 2001) —and subs-

tantly less than his Democratic rival's national majority. A Republican governor (no less than the new president's brother), Secretary of State, and state legislature certified Republican George W. Bush's Florida victory. In the end, the courts were unable to devise recount procedures for a highly decentralized voting system that partisan officials ran (Is-sacharoff, Karlan, and Pildes, 2001).

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