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Controlling Political Corruption in Latin America: Institutional Constraints on Executive Power

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CONTROLLING POLITICAL CORRUPTION IN LATIN AMERICA: INSTITUTIONAL CONSTRAINTS ON EXECUTIVE POWER

by

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A dissertation submitted to the Graduate College in partial fulfillment of the requirements for the degree of Doctor of Philosophy
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CONTROLLING POLITICAL CORRUPTION IN LATIN AMERICA: INSTITUTIONAL CONSTRAINTS ON EXECUTIVE POWER

George G. Lluberes, Ph.D.

Western Michigan University, 2017

Corruption has remained resilient in Latin America. In just two decades, six Latin American executives from five distinct countries have faced impeachment processes resulting in removals from office due to issues surrounding corruption. Certainly, corruption has been a longstanding challenge to Latin American democracy and good governance. This study analyzes this phenomenon while discerning between grand and petty corruption. By focusing on executive corruption specifically, this study creates a more nuanced understanding of what affects corruption at high-levels of government in Latin America.

Why have political corruption levels in Latin America remained stagnant in spite of significant gains in political and economic liberalization? In answering this question, I examine the institutional conditions that lead to differences in levels of executive corruption. A quantitative analysis of 17 countries over 20 years (1996-2016) finds that constraints imposed by the judiciary on the executive are a key element in explaining differences in executive corruption levels. Next, a qualitative analysis of two cases, Uruguay and the Dominican Republic, seeks to shed light on the causal mechanism(s) through which judicial constraints lower executive corruption. An in-depth examination of individual components of judicial independence revealed the importance of judicial selection procedures and how constraints imposed on executive power are effective in curtailing executive corruption.
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This has been an arduous intellectual endeavor, one which has tested me in more ways than I could have imagined. I am forever indebted to those who pushed me every step of the way, those who offered words of encouragement and advice, those with whom I debated my ideas, as well as those that challenged them. To all of you I say thank you.

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George G. Lluberes
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PART I

CHAPTER I

The Problem of Executive Corruption in Latin America

Introduction

Why have political corruption levels in Latin America remained stagnant in spite of significant gains in political and economic liberalization? Political corruption has remained resilient in the Latin American region and little has changed in terms of corruption (Whitehead, 2002). In 2015 former Guatemalan president Otto Perez Molina faced incarceration following his resignation amid a corruption scandal. In 2016, another corruption scandal commonly known as “Lava Jato,” sparked the beginning of an impeachment process of Brazil’s president, Dilma Rouseff, which ended in removal. In the same year, a multi-national bribery scheme that affected 12 Latin American countries was also unraveled, perpetrated by the construction conglomerate, Odebrecht. In December of 2016, Argentina’s ex-president, Cristina Fernández, was indicted on corruption charges. Certainly, executive corruption has been a longstanding challenge to Latin American democracy. This study hopes to aid in the reduction of executive corruption by analyzing how executive power concentration may lead to a weakening of checks and balances that decreases the costs of committing corruption.

This dissertation will focus on the phenomenon of political corruption in Latin America. In 1977, 19 countries were governed by authoritarian regimes; Costa Rica and Venezuela being exceptions to the rule. Today, although Cuba remains under dictatorship and Venezuelan democracy has eroded, all of the other countries are now classified as electoral democracies. Economic openness, measured as trade as a percentage of GDP, has also been rising continuously since 1960. Existing knowledge points to economic and political liberalization as a precondition for curbing political corruption. However, political corruption levels in Latin America have remained stagnant, or worsened in some cases, despite gains in both economic and political liberalization. Latin America’s performance controlling corruption has been less
inspiring. Using Worldwide Governance Indicator’s Control of Corruption (CC) index, Figure 1.1 shows how levels of control of corruption have remained relatively unmoved.

![Corruption in Latin America (1996-2015)](chart.png)

**Figure 1.1. Control of Corruption in Latin America**
*Source: Worldwide Governance Indicators Control of Corruption Index 2015. Authors’ Composition. Control of Corruption is measured from -2.5 to +2.5; higher values correspond to greater control of corruption (less corruption)*

It is important to note that the Control of Corruption index measures perceptions of both petty and grand forms of corruption. In other words, Figure 1.1 illustrates the perceptions of the ability of the state to control all forms of corruption. Focusing on the level of executive corruption, that which is committed by presidents, ministers, and other high-level officials, we see how executive corruption levels are perceived to be decreasing slightly over time as shown in Figure 1.2, although they remain relatively high when comparing with other regions of the world. Different indices measuring corruption provide slightly distinct illustrations of corruption. These differences will be an important area of analysis further into this study.
To explain why corruption levels have not improved significantly, in spite of the considerable political and economic liberalization, a quantitative analysis of the institutional frameworks of 17 Latin American countries from 1996-2016, for which data are available, will be undertaken. Economic openness, economic growth, and income inequality have been shown to be relevant variables affecting corruption in Latin America in conjunction with levels of democratic quality, democratic experience, and vertical and horizontal accountability mechanisms (O’Donnell, 1998; Rose-Ackerman, 1999; Tresiman 2000; Morris 2004, Chang and Golden, 2007; Pellegrini and Gerlagh, 2008). Two main hypotheses will be tested throughout this dissertation. First, that greater economic and political liberalization leads to decreases in executive corruption. Second, that increased power concentration in the executive yields greater corruption due to weak horizontal accountability.

In “Corruption and Democracy in Latin America,” Thacker analyzes the statistical relationship between democracy, economic policy, and political corruption (Thacker, 2009). The author concludes

---

1 The countries analyzed are: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay, and Venezuela.
that, in terms of political corruption, Latin America is only “slightly” worse as a region compared to the rest of the world and that if there is any dissatisfaction with regards to democratic governance, it is a factor of limited experience with democracy (Thacker, 2009). Throughout this dissertation I will also determine whether democratic experience is a significant factor in Latin American levels of executive corruption. Executive corruption is not new to the Latin American region, since the nineties and perhaps owing to such democratic disillusionment, issues of corruption have seen an upsurge and have taken center stage (Weyland, 1998; Morris, 2004; Arnold 2012). Warf and Stewart (2016) note that Latin America seems to be particularly affected by corruption.

Thacker’s analysis covered only four years (1996, 1998, 2000, and 2002) of data using Worldwide Governance Indicator’s Control of Corruption Index. Today, more data exists that can help explain why political corruption has remained seemingly unmovable. The argument that the effect of institutions on political corruption is long-term, while informed, is left wanting. How long is long enough? Is Latin America’s only remedy to wait for the advancement of experience with democracy? Or are there institutional factors affecting corruption that may be addressed in the short and medium term? How can Latin America perform better in terms of fighting corruption?

Thacker argues that there remains few region-specific, quantitative work with regards to political corruption. According to the author, “only recently has significant attention been paid to the theoretical and empirical links between corruption and political institutions” (Thacker, 2009). This study is being undertaken in an effort to advance the literature and our knowledge with regards to one of the important challenges for improving the quality of democracy in Latin America.

Political corruption is defined here as the abuse of public office for private gain (Nye, 1967). By using this simple definition, political corruption entails the acceptance, solicitation, or extortion of a bribe; kickback; patronage and nepotism; embezzlement of public funds, etc. By altering the field in which
decisions are made on behalf of the greater populace, corruption represents a denial of justice to the citizenry, thereby undermining it and its democratic statutes (Johnston, 2005). Understanding the major causes of corruption aids in the fight against it, a fight that affects millions of people in Latin America. In most Latin American countries today, democratic institutions have taken hold and democracy is the only game in town. However, concerns remain with regards to the quality of democratic regimes in Latin America.

With transitions to democracy also came optimistic expectations of a better quality of life led by better governance. Some believe that these expectations have not been attained and disillusionment with democracy has become a common theme (Morris, 2004; Arnold, 2011). Further disenchantment, as explained by Mainwaring and Welna (2003), may lead to democratic erosion and breakdown in Latin America, which may be the case of present-day Venezuela. Hence, reducing executive corruption is paramount to the continued success and stability of democracy in the region.

Executive corruption, and corruption in general, speaks to the manner in which institutions of the state are respected by, in this case, government executives. This is a component of governance as described by Kaufmann, Kraay, and Zoido-Lobatón (1999) who define governance as “the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them.” Like so many concepts in the field, governance is a debated concept; yet despite its many definitions, there is some consensus amongst scholars. A capable state and rule of law are key elements of good governance. This will be the working definition of governance throughout this study.
Perceptions on a country’s control of corruption specifically addresses the last aspect of governance defined above; are institutions respected? More specifically, are institutions respected by high-level government officials, who are accountable to the citizenry? Presidents, ministers, and other high-level officials are responsible for the treasure of public resources which, in the Latin American experience, have continued to be lost to their high-level corruptibility. According to Global Financial Integrity, illicit financial flows out of the Latin American region represent 3.3% of its total GDP annually (Kar and Spanjers, 2014). To put this number in perspective, in 2014 Latin American GDP growth was 1% (World Bank, 2015).

Clearly, corruption represents a challenge that significantly impacts millions of people. In Latin America, political corruption infiltrates the highest echelons of government; the resignation of Guatemalan president Otto Perez Molina on September 2\textsuperscript{nd} 2015, as well as the impeachment of Brazilian president, Dilma Rousseff in August 31\textsuperscript{st}, 2016, both amid corruption allegations, attests to that fact. As explained by Blake and Morris (2009), “corruption and democracy represent antithetical forces, one embodying the ideal of curbing corruption; the other threatening to undermine the very meaning and existence of democracy itself” (Blake and Morris, 2009). Thus, corruption embodies a failure of democracy. Understanding corruption is the first step in combating it in Latin America and other regions of the world.

Literature Review

Corruption and Political Liberalization

Despite the hurdles, important advances have come about from the efforts of scholars to understand corruption. Ades and Di Tella (2000) organize the literature on corruption into two main categories: theories about the causes of corruption and theories about its effects. Scholars have focused on institutions, both formal and informal in explaining causes and effects of corruption. Institutions and
rules which are “created, communicated, and enforced outside [emphasis added] of officially sanctioned channels,” are defined as informal institutions (Helmke and Levitsky, 2004, 725). One good example of informal institutional analysis is found in a recent study by Fjelde and Hegre (2014). The authors analyze political corruption as an informal institution that affects in varying ways the stability of political institutions in authoritarian, democratic, and those which possess characteristics of both, hybrid regimes.

Their analysis encompasses 133 countries over 23 years (1985-2008) with results showing that “high-corruption autocracies and hybrid regimes are more stable than their low-corruption counterparts, but that low-corruption democracies are more stable than high-corruption ones” (Fjelde and Hegre, 2014). In other words, the authors find that countries that have more illiberal regimes are prone to higher levels of corruption, which provides the regime with greater stability, thus creating a vicious circle of regime stability aided by high-level corruption. On the other hand, regimes that are more liberal are more likely to reduce political corruption, and increasing political stability.

The authors argue that in autocracies, high political corruption concentrates more de facto power in the hands of the incumbent. Along with other external factors, there are internal factors that create much of the instability in non-democratic regimes. These factors usually stem from internal strife within elites (hard-liners vs. soft-liners) that support the regime to varying extents (O’Donnell, Schmitter, and Whitehead, 1986). Where high levels of political corruption abound, the incumbent is well served to co-opt groups by providing them with rent-seeking opportunities (graft, ‘second salaries,’ etc.) in order to avoid credible threats to the status-quo. Needless to say, “the incentives to expand political corruption, are thus high” (Fjelde and Hegre, 2014).

In hybrid regimes, because of the constraints posed by their democratic institutions, incumbents may use political corruption as a substitute for methods of repression. Similar to the case previously stated, the incumbent can use political corruption as a tool to gain de facto power over political elites to invoke loyalty or use this power to disproportionately alter the playing field (Fjelde and Hegre, 2014). In
this way, political power is concentrated further on the executive, thereby weakening other branches of government and sources of horizontal accountability.

In democratic regimes, democratic institutions provide a different array of institutional constraints. The existence of free and fair elections ensures a greater amount of accountability from the incumbent to the citizenry. Although elections may exist in hybrid regimes, other less liberal institutional dynamics may shield the incumbent from all of the accountability she would bear if the regime were completely open. Likewise, in a democratic regime, a free press and legal opposition may expose corruption cases more freely than they would in an undemocratic regime. Another important constraint emphasized by democratic regimes is that time horizons are shorter. As explained by the authors, “incumbents cannot credibly promise that the regulations that ensure private actors extraordinary rents will continue in the future,” thus lowering the incumbents’ ability to establish corrupt networks (Fjelde and Hegre, 2014).

With the development of sources of data such as Transparency International’s Corruption Perceptions Index (CPI) and the Worldwide Governance Indicator’s Control of Corruption measure, more scholars have delved into the question of how political and economic systems affect corruption across time and across countries, with differing results. Looking exclusively at Latin America, Laurence Whitehead (2000) argues that the ‘economic-cum-political liberalization’ often prescribed for countries to curb corruption is not very convincing. The expectation following such liberalization is that high-level political corruption is to be likely in authoritarian countries whereas a transition to democracy should lead to the creation of institutions (free press, competitive political parties, rule of law, and an independent judiciary) that will discourage high-level political corruption in more liberal governments.

Likewise, a statist, interventionist economic system would encourage high-level political corruption by creating rents which are distributed with the discretion of public officials (Whitehead, 2000). It is clear that there exists a dichotomy favoring democratic and economic liberalization over its
authoritarian and interventionist counterpart for lowering executive corruption levels. Whitehead (2000) emphasizes that the dichotomy is incomplete; the missing ingredients being monitoring mechanisms and accountability.

Subsequently, the question remains, what happens with corruption in moments of transitions from illiberal to liberal political and economic systems? Whitehead argues that during transitions, corruption should increase due to the increased uncertainty and reduced time horizons of those who hold power (Whitehead, 2000). Rose-Ackerman maintains that because the ‘rules of the game’ remain uncertain, opportunities for rent seeking rise, making developing countries and those making a transition from socialism particularly at risk; the latter, as they engage in a ‘double-transition’ both politically and economically (Rose-Ackerman, 1999).

Reasonably, we can expect that no country will effectively improve its control of corruption overnight. It takes time for corruption to decrease and for democratic institutionalization to take hold and consolidate. Thus, countries facing a transition to democracy are more vulnerable to corruption, although once completed, corruption levels should begin to diminish. As noted by Huntington (1991), Latin America began its transition to democracy in the late twentieth century. Nevertheless, widely used measures such as Freedom House, Polity IV, and Varieties of Democracy, show that more Latin American countries than ever before have had significant experience with democratic governance and have ascertained greater political liberties and civil rights. For this reason, Blake and Morris argue that to reduce corruption, the long-term democratic experience, democratic stock, is needed (Blake and Morris, 2009). Yet, levels of executive corruption have not improved accordingly.

From the aforementioned literature we can thus expect that autocracies are least likely to reduce corruption, followed by hybrid regimes. Democracies, in turn, are most likely to reduce political corruption. Other scholarship has focused on understanding the effects of political institutions once a
transition to democracy has been completed. The theory that a competitive political system, such as a
democracy, may lead to less political corruption goes beyond the restraints of only elections. Thacker
argues that democracy leads to less corruption by increasing the accountability of the political elite to the
citizenry. Democracy also aids in the development of a civil society and an independent media that will
serve as a monitor against corrupt endeavors (Thacker, 2009). Together with an increase in
professionalization, institutionalization, and the development of a rational bureaucracy, a more
competitive political system increases accountability and transparency, both safeguards against
corruption.

Formal institutions are the underlying rules of the game that include the written constitution,
laws, policies, rights, and regulations enforced by official authorities. In an attempt to explain the causes
of corruption, scholars have looked at how a country’s political and economic institutional matrices have
affected levels of corruption. Rose-Ackerman (1999) analyzes corruption along four dimensions: the
background organization of state and society, the recognition that corruption entails different meaning
across countries, how the basic structure of public and private sectors produces or suppresses corruption,
and finally, ways in which to achieve reform.

In Chapter 11 of “Corruption and Government,” she argues that a more competitive political
system may be a check on corruption since opposition members have an immediate interest of exposing
corrupt incumbents before the next election (Rose-Ackerman, 1999). Montinola and Jackman describe
that “public choice explanations of corruption attribute the phenomenon to a lack of competition in either
or both economic and political arenas” (Montinola and Jackman, 2002, 147).
Corruption and Economic Liberalization

Economic liberalization limits corruption by reducing government regulation, enhancing competition, and eliminating the opportunities for rent-seeking. Scholars have pointed out that economic development, economic openness and liberalization, income equality, and the absence of large resource endowments have an inverse relationship with corruption (Blake and Morris, 2009). Likewise, increases in economic development increase the spread of education and literacy (Lipset, 1960). We should expect that increases in educational resources and quality should enhance the risk for detection of corruption as well as decrease tolerance for such behavior.

Treisman (2000) analyzes the causes of corruption by means of a cross-national study using Transparency International’s CPI for 1996-1998, providing us with a good survey of the literature on the economic causes of corruption. After an analysis of the commonly cited factors that help ameliorate corruption (highly developed, long-established liberal democracies, a free and widely read press, a high share of women in government, and a history of openness to trade) Daniel Treisman finds that “reported corruption experiences correlate with lower development, and possibly with dependence on fuel exports, lower trade openness, and more intrusive regulations” (Treisman, 2007, 211). Despite a limited number of observations, Treisman (2000) does an excellent job explaining how economic systems affect corruption.

Corruption and Accountability

One of the most important challenges for reducing corruption in Latin America revolves around establishing and/or improving institutions of accountability (Mainwaring, 2003). Scholars like O’Donnell (1998) have argued of the accountability deficiency in Latin American countries, an argument that is generally accepted. For this reason, it is paramount to our analysis that focus be placed on how vertical, horizontal, and societal accountability may affect political corruption in Latin America.
The concept of accountability is, as Mainwaring (2003) explains, a far-from-consensual concept. Much debate and disagreement exists with regards to defining accountability; how broad or how narrow should the concept be? For the purposes of this study, accountability is defined broadly as, “the answerability and the responsibility of public officials” (Mainwaring, 2003, 7). This broad definition will be helpful in clarifying cases of weak accountability.² Schedler (1999) notes that institutionalizing accountability ultimately depends on those public officials who will consent to such self-restraint. Veto players such as the executive and the legislature must be willing to institutionalize self-restraint in order for horizontal accountability to succeed. Incentives for acceding to such accountability measures include electoral and macroeconomic benefits of instituting accountability mechanisms as well as normative arguments involving honor and future legacy, although a tangible benefit seems to be the biggest factor (Schedler, 1999).

**Horizontal accountability.** In the analysis of non-electoral accountability mechanisms, Guillermo O’Donnell is one of the field’s most prominent exponents. His analysis of what he coins as horizontal accountability has sparked ample debate and continued research. O’Donnell (1998, 117) defines horizontal accountability as “the existence of state agencies that are legally enabled and empowered, and factually willing and able, to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful.”

By unlawful, O’Donnell (1998) notes that state or individual agents may *encroach* upon the authority of another or they may be *corrupt*; whereby public officials obtain an unlawful advantage for themselves and/or their associates. Strong horizontal accountability thus, requires an agent or agency

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² For a complete discussion and overview of the scholarly debate with regards to this subject see Mainwaring and Welna (2003).
legally empowered and willing to act, as well as a network of agencies – culminating in high courts – committed to enforcement (O’Donnell, 2003).

The independence of the high courts, hence, becomes a critical component of effective horizontal accountability. Domingo (2000), analyzing judicial-executive relations in Mexico, argues that the role of the judicial branch is largely dependent on the degree of autonomy and the powers of review enjoyed by the judiciary. Judges that are politically independent are less influenced by political considerations, aiding in their ability to rein in executive corruption. In her assessment of the requirements for judicial independence, Domingo (2000) explains that such independence can be achieved by a judiciary with financial autonomy and having judges that are appointed without political considerations, that have life-long tenure, decent salaries, and that have constitutional and judicial review powers.

Rose-Ackerman and Palifka (2016, 383) explain that “an independent judiciary should help limit the diversion of public funds into private pockets and help to settle legal disputes fairly.” Thus, judicial independence is essential in limiting executive corruption. Similar to the arguments presented by Domingo (2000) above, the authors note that while judicial independence is necessary, it is not sufficient. Judges must be well respected and be accountable as well in order to reduce their incentives of engaging in corruption by taking advantage of their positions for private gain (Rose-Ackerman and Palifka, 2016). An independent judiciary thus, becomes a requirement for being able to convict and punish public officials that commit corruption. This allows for a more effective constraint of the judiciary on public officials that want to engage in corruption in the future by increasing the costs of doing so if discovered. This dissertation will go into a more in-depth analysis of those arguments presented above in order to elucidate exactly which components of judicial independence are necessary for curbing executive corruption and how these variables interact with each other.
An institution or individual that is formally empowered to prosecute or sanction possesses *direct sanctioning power*. Likewise, if an institution or agent must refer transgressions to another institution, they have *indirect sanctioning power* (Mainwaring, 2003). This distinction is important to keep in mind as horizontal accountability may exist in different forms across the institutional matrices of Latin American countries.

As noted by O’Donnell, “all types of accountability are important for the workings of a democratic regime” (O’Donnell, 2003). In all, the considerations placed on accountability and our efforts to understanding its deficiency in Latin America will help reduce political corruption in the region. Research in this direction remains incomplete; efforts to understand how the interactions of these types of accountability affect political corruption are, according to O’Donnell, “a frontier for research” (O’Donnell, 2003).

There is consensus that horizontal accountability in Latin America is weak. Why is this the case? Analyzing regimes in Latin America, O’Donnell (1994) characterizes ‘delegative democracies’ as regimes with very weak or no effective horizontal accountability. O’Donnell explains that “delegative democracies rest on the premise that, whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and by a constitutionally limited term of office” (O’Donnell, 1994). Analyzing these constraints becomes paramount in our investigation of how, and to what extent, power is concentrated in the executive. The hypothesis is that a high degree of power concentration in the executive leads to weaknesses in horizontal accountability mechanisms leading to greater political corruption.

Another way to analyze weaknesses in horizontal accountability is by examining the institutions legally charged to pursue corruption within a given political system. As noted by Moreno et al., if legislators don’t care or perhaps even benefit from executive corruption, then subordinate agencies will
not enforce either (Moreno et al., 2003). Creating agencies for horizontal accountability without proper vertical consideration is also a misplaced judgement. Actions such as those will only serve to elevate expectations to a citizenry that will be faced with disillusionment if the agency fails, taking away even more legitimacy from the government. Where corruption thrives, we can expect to see horizontal accountability agencies to be unable, incapable, or unwilling to enforce oversight.

Smulovitz and Peruzzotti focus on what they argue is the less traditional mechanism the literature overlooks, societal accountability. Societal accountability refers to the ability of the press and social movements to hold regimes accountable. As defined by the authors, this kind of accountability involves “actors that recognize themselves as legitimate claimants of rights...[that] aim to expose governmental wrongdoing, bring new issues to the public agenda or influence or reverse policy decisions implemented by public officials” (Smulovitz and Peruzzotti, 2003). When the press or civil society is unsuccessful at exposing corruption or having the ability to take issues to the public fore, weaknesses in societal accountability increase. Needless to say, the three types of accountability described here are necessarily intertwined in their efforts against political corruption.

As noted by Whitehead (2000) and Alfano et al. (2013), accountability has been the missing ingredient when analyzing corruption and still, much remains unexplored. Noticeably, the concept of accountability remains on the fringes of the discussion about political corruption. Understanding the level of political accountability of actors and/or institutions is crucial in determining the magnitude and the direction of political corruption.

**Vertical accountability.** Vertical accountability refers to the accountability of public officials to the citizenry through the electoral system. As explained by Moreno et al. (2003), vertical accountability sees public officials as agents accountable to the ultimate principal, the citizenry. As principals, the citizenry has the opportunity, through elections, to punish public officials by ‘voting the rascals out.’ This
is the foundation in enforcing the oversight and the laws that will prevent or ameliorate the problem of corruption. Distinct electoral rules have distinct effects on competition and thus, on the incentives and the risks of engaging in corrupt behavior. Moreno et al. explain that much of the problem of legislators shirking their duties to provide collective oversight is rooted in party and electoral systems that fail to effectively assign accountability of legislators to voters (Moreno et al., 2003).

In this dissertation, analysis of vertical accountability and the extent to which the citizenry has indeed ‘voted the rascals out’ is limited since parties in power have not lost elections stemming from corruption allegations against them. However, we can still analyze vertical accountability with regards to how electoral rules and nomination processes for candidate selection affect accountability between representatives and their constituents. Nominations and elections are part of the same process, thus it is essential to consider them together with regards to how they affect vertical accountability. Moreno et al. note Latin American nomination processes are usually affected by excessive centralization in their candidate-selection processes. A highly centralized nomination process, they argue, puts the political party over the particular district, hence “leading to legislators who are responsible to party elites rather than voters” (Moreno et al., 2003).

Elections, however, remain the foundation of the democratic system and establish the rules of competition for seats. How do electoral and political party systems affect corruption once democracy is the ‘only game in town’? Much of the debate with regards to how electoral systems affect the level of corruption has centered on the number of effective political parties, the number of seats available per district or district magnitude, and the effects of single member districts (SMDs) vs. proportional representation systems (PR). Throughout this dissertation, focus will be placed on the number of effective political parties as well as district magnitude since most Latin American countries employ a PR electoral system.
Chang and Golden (2007) focus their analysis on the performance of proportional representation systems with regards to political corruption. They add to the literature on corruption and electoral systems by asserting the importance of district magnitude, the number of members to be elected in each district. In their study, the authors also make an important point of analyzing how open-list and closed-list PR systems affect corruption. This distinction is key in aiding our understanding of how electoral systems can affect corruption levels. Analyzing PR systems over 47 countries from 1996-1998, the authors find that corruption increases with district magnitude in open-list PR systems. Contrary to what has been stated previously in the literature, Chang and Golden find that it is only at low district magnitudes (lower than 15) that closed-list PR systems are associated with higher corruption (Chang and Golden, 2007).

This is a very interesting finding, as it seems to entail that political competition affects corruption differently in these two electoral formats (SMDs v. PR). The literature on corruption has maintained three key assumptions in analyzing this phenomenon. The first is that, as represented by the public choice school, increases in political competition should lead to decreases in corruption. Second, a rise in the need for votes, derived by the need to cultivate personal reputations, leads to a rise in political corruption as well. Lastly, political corruption is negatively correlated to the risk of being detected.

Taking these assumptions into consideration, we should expect that highly competitive traits such as the first-past-the-post, zero-sum game, found in SMD’s leads to less corruption. Yet, it seems from the aforementioned authors’ analyses that the competition dynamic changes drastically when going from SMDs to PR systems. In PR systems, increased intra-party competition does not seem to necessarily lead to reductions in corruption; in fact, quite the contrary. As explained by the authors, when district magnitude increases in open-list PR systems (thereby elevating the level of intra-party competition amongst the candidates) greater political corruption is expected, as these candidates have to develop personal reputations to stand out from the crowd. The effects of needing to develop personal reputations
and the lower risk of detection produced by the large number of candidates, generate greater incentives for corruption.

In closed-list systems, where voters vote for a slate and not for individuals, a greater district magnitude leads to less corruption, because the increase in numbers of candidates reduces their individual need for votes as party lists are developed. Thus, political competition decreases corruption in SMDs but has a more complex effect in PR systems. This illustrates some important gaps in the literature on corruption.

Aside from efforts of attaining a more experiential measure of corruption, there seems to be a contradictory argument involving political competition, the need to obtain votes, and their effects on corruption. Looking at political competition and its relation to electoral systems and corruption, Alfano et al. state that they are “wrapped in a complex web” (Alfano et al., 2013). The authors define political competition as competition amongst parties to obtain the vote (Alfano et al., 2013). In their study, they analyze 20 Italian regions over 26 years and note how barriers to entry into the political system, and the level of accountability of each candidate to the citizenry, affect levels of corruption differently. To the extent that one effect dominates the other, there will be varying levels of corruption.

The authors expect SMDs to, contrary to what has been said, exhibit more corruption as their small district magnitude translates into a barrier to entry. PR systems, which usually exhibit multiple parties have less barriers to entry and therefore should exhibit less corruption since competition between parties is greater. On the other hand, with regards to the effect of accountability, SMDs should exhibit less corruption since it is easier to discern (hold accountable) one of the two candidates that is engaging in corruption. The increased number of candidates in PR systems leads to the expectation of greater incentives to be corrupt as the risk of being caught decreases. To the extent, once again, that one effect
dominates the other, the author explains, the effects on corruption (increases or decrease) will be different.

Noticeably, corruption has become a difficult subfield to analyze. Although Alfano et al. do not distinguish between variants of PR systems or the differences between internal and external competition; the authors note that “the key in analysing the relationship between the electoral system and corruption is the change in political competition caused by a change in the degree of proportionality [the rules] of the electoral system” (Alfano et al., 2013). What is even more important is that this relationship remains theoretically and empirically unexplored (Alfano et al., 2013).

Exactly how does electoral competition affect political corruption across different electoral systems and rules? There is little consensus in the literature about how the changing dynamics of political competition translate into increase or decrease in corruption. If we assume, as pointed out by the literature, that increased political competition must lead to a decrease in corruption, we cannot also assume that an increase in the need for votes must lead to an increase in corruption. A rise in the need for votes is synonymous with an increase in competition.

Furthermore, a process that over-centralizes the selection of candidates erodes vertical accountability needed to effectively curb corruption. What is perhaps even more important to note is that, according to Moreno et al. (2003), electoral systems that are designed to compensate for such centralization will not be successful. They explain that, regardless of the electoral rules, because of the nomination process, “candidates would have every incentive to cater to the very defined needs of a particular selectorate (electorate) rather than thinking of the district as a whole, not to mention the party platform” (Moreno et al., 2003). Similarly, where the electoral rules encourage too particularistic (pork-barrel) representation, the nomination process cannot counteract them. Hence, there exists a very delicate balance in the creation and design of electoral rules (Moreno et al., 2003). It will be important to
take into account nomination processes as well as electoral rules in determining any effects on political corruption. Effective vertical electoral accountability, in this sense, remains an important necessary condition for the effectiveness of both horizontal and societal accountability.

Executive Power

Non-Legislative power. Shugart and Carey (1992) classify presidential powers into two distinct groups: legislative vs. non-legislative powers. In their analysis, legislative powers of the executive include the power to veto or partial veto, to decree, budgetary powers, the exclusive introduction of legislation, and the proposal of referenda. In contrast, non-legislative powers include the ability to form and dismiss the cabinet, censure, as well as their ability to dissolve the assembly or congress (Shugart and Carey, 1992).

The power of the president to appoint his/her own cabinet, as well as the power to dismiss it, can aid in gauging the amount of concentration of power in the executive. These non-legislative powers are examined by Shugart and Carey (1992) and scored according to the executive’s power to construct a cabinet. For example, if a president names members of the cabinet without any restrictions (such as confirmation by the Senate) the cabinet formation score is high. If the president can equally dismiss a cabinet member without limitations or restrictions, their cabinet dismissal score is high.

In countries where the executives hold these non-legislative powers to a high extent, members of the cabinet are more dependent on a single branch (the executive) and perhaps solely on a single individual (the president). We would expect that such power relation would benefit the executive if he or she were to engage in corruption. Members of the cabinet could be effectively coerced to actively participate in the corrupt scheme or perhaps advised to look the other way if they wish to maintain their government positions. Figure 1.3 shows a simplified game-theoretic approach to elucidate this relationship.
Figure 1.3. Simplified Model of a Minister’s Incentive to Engage in Corruption

The appointment of a minister may not necessarily lead to acts of corruption unless through nepotism where the appointment itself becomes corrupt. However, an executive may not be able to engage in corruption until the scheme itself is developed. For example, an executive that is interested in embezzling funds from the treasury may likely require the minister of the treasury’s collaboration and thus, present the opportunity to her. At this point, the minister may elect to engage in the corrupt act or she may elect to deny the offer and face possible removal from office to be replaced by an acquiescent minister in her place.

Of course, this is an oversimplification and many other factors may affect the minister’s calculation before making a decision; such as the expected return of engaging in corruption as well as the risks and costs of detection (both professionally and personally). Nevertheless, we can expect that an executive who can appoint but especially dismiss cabinet members at will, will have a higher concentration of power at his/her disposal that would lead to higher corruption. While an executive may accumulate power due to popularity and the political nature of the office, concentration of power is characterized by an executive’s infringement into the powers of other branches of government and the latter’s subsequent erosion of power.

Shugart and Mainwaring (1997) talk of another presidential power category, namely, the executive’s partisan powers. According to the authors, “where party discipline is weak, party leaders can
negotiate a deal, only to have the party’s legislative members back out of it...this is a difficult situation for presidents, and it encourages the widespread use of clientelism and patronage to secure the support of individual legislators” (Shugart and Mainwaring, 1997). For this reason, when party cohesion is high, party leaders can deliver the votes that are needed by the president and, in turn, the president has less of an incentive to resort to methods that involve clientelism and corruption.

In *The Political Economy of Corruption*, Rose-Ackerman corroborates the argument presented above by explaining that a president, “is potentially most corrupt in systems where the legislative parties are weak, since he can expect to retain a higher proportion of the corrupt gains” (Rose-Ackerman, 2001, 43). Interestingly, Kunicova (2006) argues that stronger parties, usually characterized in a closed-list proportional representation system, where candidates are selected through party lists, political corruption is expected to be higher. The author notes that if a president needs the legislature to pass corrupt deals, these should be easier to negotiate and harder to detect when legislative parties are strong.

In what has been a debated issue with mixed results, this dissertation will attempt to test these theories regarding party strength and cohesion and their relationship to executive corruption. In order to ascertain the level of executive power concentration, focus is also placed on O'Donnell’s (1998) two constraints: existing power relations and constitutional term limits. In examining the former, an independent judiciary serves as a check on executive power. Hence, where the independence of the judiciary is weak, we can expect executive power concentration to be greater.

**Constitutional term.** In addressing the second constraint, that of constitutional term limits, re-election rules become an important factor in determining incentives to engage in corrupt behavior. Much of the literature expects re-election incentives to curb corruption. The argument is that incumbents will refrain from extracting rents in their first term in order to get re-elected, thereby securing their
opportunities to extract rents in the future. In examining this theory, Ferraz and Finan (2011) analyze audit reports of corruption in Brazilian municipalities. The authors find that first-term mayors are less likely to engage in corruption than second-term mayors. Although re-election incentives do seem to play a role according to Ferraz and Finan (2011), an unmeasured element may exist whereby willingly corrupt executives ‘learn the ropes’ in their first term and increase the sophistication with which they are able to hide their corrupt dealings with views towards a second term. Although empirical evidence on such kinds of knowledge acquisition is not addressed here, it is a question with important implications into the costs and benefits of engaging in corrupt behavior.

However, Pererira et al. (2009) argue that re-election incentives and their effect on curbing corruption may be offset by the amount of rents expected as well as the potential for detection. When the utility expectation is maximized and the probability of detection is low, re-election incentives fall short in preventing mayors in Brazil from engaging in corrupt behavior. Nevertheless, under certain conditions, the institutional constraints offered by re-election rules affect the calculus of individuals in engaging in corruption. For this reason, analyzing such constraint on executive power (constitutional term limits), will aid in our understanding of weaknesses in horizontal accountability in Latin America.

**Measuring Corruption**

The phenomenon of corruption has gained attention in recent years. In Latin America, more and more cases of presidential graft, illegal campaign contributions, electoral fraud, and other controversial cases have been brought to the public fore. Corruption permeates every government in the world today and, despite efforts to fight it, corruption has remained resilient.

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3 See Persson and Tabellini (2003); Ferejohn (1986)
Efforts to understand and combat corruption have been vexing for many reasons. One important challenge has been the collection of corruption data. Measures such as Transparency International’s Corruption Perception Index (CPI), or the Worldwide Governance Indicator, Control of Corruption Index, have only relatively recently produced the cumulative and systematic data needed to analyze this phenomenon. On the other hand, despite advances in the collection of data, important questions remain with regards to the validity of the data itself. Are we measuring what we intend to measure? Many argue that perceptions of corruption do not equate to a measure that actually quantifies real experience with corruption. However, corruption, by definition, is an act that involves secrecy and lurking in the proverbial shadows, thus, it is important to make good use of any and all of the tools we may have at our disposal when measuring such a complex concept.

Corruption presents a definitional problem as well. Klitgaard argues that corruption was simply a sensitive subject, involving reactions of either evasion or excuses. Evasion of the subject is frequently described by the feeling that if the entire system is corrupt, there is nothing that can be done (Klitgaard, 1991). On the other hand, corruption may be considered a necessity when political or economic goods are not delivered with efficiency; this argument envisions corruption as the ‘oil’ in the machine (Leff, 1964). The lack of systematic evidence and the moralistic nature regarding the debate about corruption has relegated it to the margins of the literature (Blake and Morris, 2009). The authors note that studying corruption in developing countries was often viewed as paternalistic and, moreover, that corruption paled in comparison to other challenges such as rampant poverty and repression (Blake and Morris, 2009).

Hypotheses

The discussion of the relevant literature informs the hypotheses to be evaluated in this study. Three overarching hypotheses will be examined throughout Parts I and II of this dissertation:

\[ H_1: \text{Greater Political Liberalization leads to decreases in executive corruption.} \]
H₂: Greater Economic Openness leads to decreases in executive corruption.
H₃: Greater institutional constraints on executive power lead to decreases in executive corruption.

Significance of the Research

Why have political corruption levels in Latin America remained stagnant or worsened despite gains in political and economic liberalization? Tackling this research question will help us understand the causes of political corruption in Latin America and other regions plagued by corruption, and how their institutional conditions may affect such outcomes. Determining causality remains an important goal in social science research. An investigation into these questions will aid in our understanding of political corruption and its institutional causes.

Outline of the Dissertation

This dissertation consists of two parts. Part 1 encompasses the first two chapters. In Chapter 1, I introduce the problem of executive corruption in Latin America and provide a brief overview of the literature. Chapter 2 consists of a quantitative analysis of the relevant variables as uncovered by the literature. The study will also examine in detail 14 hypotheses that are thought to affect the level of executive corruption across cases. Operationalization of these hypotheses will be further described in Chapter 2.

Part 2 begins with Chapter 3, where I lay out a qualitative analysis of two cases, Dominican Republic and Uruguay, and how their institutional differences lead to higher and lower levels of executive corruption. Chapter 4 focuses on the institutional conditions in Dominican Republic while Chapter 5 describes the case of Uruguay. Lastly, Chapter 6 will compare and contrast both of these cases in order to better understand what variables have the greatest effect in controlling political corruption levels. Lastly, Chapter 7 will provide concluding thoughts.
CHAPTER II

QUANTITATIVE ANALYSIS

Introduction

In order to understand why political corruption levels in Latin America have remained stagnant, or worsened in some cases, it will be necessary to analyze data across time and across countries to find what may be the strongest variable(s) affecting executive political corruption in the region. It will also be imperative to consider how the effects of these particular variables interact with the political systems of diverse countries. For this reason, this study will engage in a mixed method analysis of a myriad of independent variables that are expected to affect corruption as taken from the literature.

Following Huntington’s (1991) “Third Wave” of democratization, more Latin American countries than ever before have had significant experience with democratic governance and have ascertained greater political liberties and civil rights. Likewise, after the debt crisis of the 1980s, and the subsequent recommendations of the “Washington Consensus,” greater economic openness and liberalization has been achieved in the region overall. These policy recommendations focused greatly on privatization of state owned enterprises (SOEs), trade liberalization and deregulation, liberalization of foreign investment and exchange rates, removal of price controls, etc. However, despite expectations that greater political and economic liberalization and competition would curb corruption, it has remained resilient, permeating all levels of government.

Corruption remains unabated around the world and increasingly frustrating to counteract. Conducting a large-N study will allow us to better understand the effects of executive corruption in Latin America across time. Blake and Morris (2009, 200) explain that, “cross-national, aggregate-level studies of perceived corruption can, will, and should continue.” In Latin America, political corruption seems
evermore present, reaching the upper echelons of government and weakening democratic institutions and governability. To be able to understand the nature of political corruption and the inner-workings of its causes is the first step in being able to fight corruption.

Despite the gains in political and economic liberalization, corruption in Latin America has remained stagnant. The selection of specific countries for quantitative analysis was based on three criteria. Countries were first selected on the basis of their geographical location, belonging to the Latin American region. Second, country cases were selected on the basis of their classification as a democracy by the Polity IV regime classification database. Although the binary coding used by Polity IV has been criticized due to its minimalist approach with regards to defining democracy, the database allows for a straightforward differentiation between democratic and non-democratic countries (Coppedge et al., 2011)\(^4\). Using Polity IV data, countries that scored a six or higher classified as a democracy and thus, were selected. Lastly, countries with less than one million inhabitants were excluded from the study for due to limitations of data availability. Following such criteria, a total of 17 democracies from 1996-2016 were selected for which there are 20 years of data available.

Relevant independent variables will be examined with regards to their effect on the dependent variable, executive corruption. The executive corruption index is housed in the Varieties of Democracy (V-Dem) dataset which covers all countries of the world from 1900-2015. According to McMann et al. (2016), “multiple coders, at least three fifths of whom are native to the countries in question, were used to code each country-year observation, and the coder recruitment procedures and coding procedures were consistent over time and across countries” (McMann et al., 2016).

\(^4\) A more in-depth definition of democracy will be useful in the qualitative analysis described in Chapter 3.
Literature Review

Executive Corruption

The executive corruption index is constructed with expert survey responses to the question, “How routinely do members of the executive, or their agents grant favors in exchange for bribes, kickbacks, or other material inducements, and how often do they steal, embezzle, or misappropriate public funds or other state resources for personal or family use?” (McMann et al., 2016). Such specification allows the V-Dem executive corruption index to have the advantage of breaking apart the expansive definition of corruption usually found in other widely used indexes such as Transparency International’s Corruption Perceptions Index (CPI) as well as the World Bank’s Worldwide Governance Indicators Control of Corruption Index (CC). This allows us to focus the analysis of corruption squarely on the executive, thus examining grand, political corruption as opposed to mixing it with petty corruption. Other indices, such as the CPI and CC measure both grand and petty forms of corruption without a demarcation of one or the other.

As explained by McMann et al., another advantage of V-Dem’s executive corruption index is that it avoids the problems associated with the widely used “poll of polls” datasets such as the CPI and the CC indexes (McMann et al., 2016). V-Dem’s corruption index is developed using original data, thereby avoiding the aggregation of accumulated biases and errors from individual sources as do the aforementioned datasets. Using expert’s responses aids in the codification of corruption that is without the bias usually found in local citizen responses; most of which have little to no interaction with members that hold public office. In addition, as noted by the authors, having three fifths of respondents be either local or residents in the country in question allows V-Dem to “tap in a local source of expertise and knowledge on corruption, avoiding the problem of far removed experts and also the problem of citizens within limited experience and information” (McMann et al., 2016, 14). These attributes serve as a good fit for the study of executive corruption, specifically.
Finally, the V-Dem executive corruption index is highly valuable when comparing corruption across countries and across time. In contrast to the CPI and the CC, the coders for V-Dem’s executive corruption index are asked the same questions for each country and for each year and the originality of the data avoids the problem of changes in the number of sources that, for example, inform the CPI and the CC. McMann et al. (2016) note that “Kaufmann and Kraay (2002) estimate that half the variance in WGI’s [CC] index over time is product of changes in the sources and coding rules used rather than actual changes in corruption levels” (McMann, et al. 2016).

However, as a measure of robustness, the Worldwide Governance Indicators Control of Corruption (CC) index as well as Transparency International’s Corruption Perceptions Index (CPI) will be examined. As noted previously, these are two of the most widely used indexes for measuring corruption and thus, it will be important to consider what differences, if any, could be introduced by using different measures of corruption. Although McMann et al. (2016) note that there is consensus with regards to the validity across these indices, any differences between them that result from this analysis could aid in our understanding and improvement of such measures and, more importantly, in our efforts to curb corruption.

Control of corruption is a measure taken from the Worldwide Governance Indicators (WGI) of the World Bank. According to the creators of the index, control of corruption entails “capturing perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as ‘capture’ of the state by elites and private interests” (Kaufmann et al., 2011, 223).

The Worldwide Governance Indicators measure six dimensions of governance across 215 countries spanning from 1994-2014. Governance is hereby defined as, “the traditions and institutions by which authority in a country is exercised. This includes (a) the process by which governments are selected, monitored and replaced; (b) the capacity of the government to effectively formulate and implement
sound policies; and (c) the respect of citizens and the state for the institutions that govern economic and social interactions among them” (Kaufmann et al., 2011, 222). The control of corruption dimension, our dependent variable, focuses on the last of the former stated areas.

As explained by Kaufmann, Kraay, and Mastruzzi (KKM), the creators of the WGI, “these indicators are based on several hundred variables obtained from 31 different data sources, capturing governance perceptions as reported by survey respondents, non-governmental organizations, commercial business information providers, and public sector organizations worldwide” (Kaufmann et al., 2011, 221). One important attribute of the WGI is that margins of error are explicitly reported for all data since its inception, allowing for a more accurate analysis of differences in the control of corruption dimension between countries.

It is important to keep in mind the theoretical challenge posed by attempting to measure constructs such as perceptions, corruption, or governance. A definite measure of what is democracy or rule of law, for example, is still continuously debated amongst scholars in the field. Can we be sure that the methodology measures what we intend to measure? With regards to its methodological validity, the WGI has faced multiple criticisms, mainly covering the aggregation methodology and the possible bias of survey respondents.5

Criticism of the aggregation methodology centers on the argument that it is difficult to compare across countries using WGI data since the underlying data sources used to construct scores may differ from country to country (Arndt and Oman, 2006; Knack, 2006). KKM explain that, despite differences in underlying sources, the purpose of aggregation is to create a unifying score, converting different data into common units (Kaufmann et al., 2007). The usefulness of the aggregate indicators, they explain, is “noted by the broad country coverage, the summary of the existing wealth of information from different sources,

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5 For a complete discussion of the debate see the critiques of Arndt and Oman (2006); Knack (2006); Kurtz and Shrank (2007; the response from Kaufmann et al. (2007); and Thomas (2010).
the smoothing out of ‘inevitable idiosyncrasies’ of individual measures, and the explicit margins of error that add to the transparency of an already widely and easily accessible methodology” (Kaufmann et al., 2007, 1).

Another main critique focuses on the possible bias towards ‘business elites’ responding to survey questions regarding their perceptions of corruption (Kurtz and Schrank, 2007). In brief, the argument holds that business elites are more favorable towards policies that reduce taxation and minimize regulations, while other segments of the population may hold differing views on what constitutes good governance. Thus, measures of governance that rely heavily on business elites may become biased. In response to this criticism, KKM argue that data sources include surveys of firms, commercial risk agencies, individuals, government, multilateral organizations and non-governmental organizations. Thus, the indicators do not solely or primarily reflect business interests (Kaufmann et al., 2007).

With regards to the measure of corruption itself, as noted by Rose-Ackerman, corruption may entail one thing in one country and a different thing in another country (Rose-Ackerman, 1999). Taken together, the data sources that compose WGI’s Control of Corruption indicator tap into both subjective and objective measures of corruption. The control of corruption indicator measures both perceptions as well as experiences with corruption, as taken by surveys conducted by one of its data sources, Latinobarómetro. For this reason, it will be important to unpack WGI’s Control of Corruption Index in order to ameliorate bias due to the aggregation of these sources.

Being that the focus of this study will be solely on the Latin American region, an index that is encompasses statistics of the rest of the world may distort the reality of control of corruption when looking solely at Latin America. In other words, trends in Latin America may be different if we exclude the average score of other regions around the world. Because the WGI does not make these exclusions, an unpacking of the sources that compose the WGI’s control of corruption index may facilitate the creation
of an index of corruption that is a better fit to Latin America; adding validity and robustness to our measure of corruption in this specific region.

Despite the criticisms of the WGI and other ‘poll of polls’ that attempt to measure corruption through perceptions that may not reflect the reality of corruption, understanding these perceptions remains important. Perceptions of corruption that continue to rise unchecked may lead to further delegitimiztion of the government and its institutions (Seligson, 2002). Heightened perceptions of corruption and subsequent erosions of legitimacy may destabilize countries in a region with a notably unstable democratic experience. Measures of corruption remain relatively new and are continuously improved upon. Attempting to measure political corruption is paramount to improving governance and the quality of democracy in Latin America and other regions of the world.

Research Design

As noted in the literature review, many scholars ascertain that greater political and economic competition is necessary in the effort to curb corruption. Also, vertical and horizontal accountability are essential to the fight against corruption. Thus, in order to test these hypotheses, a panel study will be conducted to assess the effects of independent variables against the dependent variable, V-Dem’s executive corruption index and results checked for robustness using the Worldwide Governance Indicators Control of Corruption index as well as Transparency International’s Corruption Perceptions Index (TI CPI). Briefly, similar to the control of corruption index, TI’s CPI is a “poll of polls” dataset that measures perceptions of corruption. Therefore, similar weaknesses such as changes in corruption scores that derive from changes in sources and methodology remain. Nevertheless, the index is compiled annually since 1995 and it is widely used to measure corruption globally. As a robustness check, the CPI as well as the CC indexes are used. Political and economic liberalization and competition will lead to decreases in political corruption. Strong vertical and horizontal accountability should also lead to reductions in the levels of political corruption.
Accountability

Diminishing levels of political corruption should be visible where there is greater political liberalization and strong vertical and horizontal accountability, a democratic regime type, a more competitive political system, an independent judiciary and a legislature that can check the power of the executive, a professional bureaucracy, greater enjoyment and protection of political rights and civil liberties, and the accumulated years of continuous democratic experience. Likewise, to the extent that a country possesses greater economic liberalization, greater openness to trade, decreased government intervention on the economy, greater economic growth, and lesser income inequality there should also be less political corruption. Thus, the following hypotheses are developed from the literature and variables will be operationalized and tested accordingly against executive corruption.

**Horizontal accountability.** The independence of two branches of government, the legislature and the judiciary, are an important check on the power of the executive. A judiciary that is independent and can pose important constraints to the power of the executive should lead to decreases in executive corruption. Likewise, legislative constraints on the executive as well as freedom from encroachment by the executive should lead to decreases in executive corruption. As noted by Fish et al., (2015, 6) “When a legislature lacks the ability to control the funds that finance its own operations, for instance, it not only fails to place direct constraints on the executive, but also loses operational autonomy. When the executive controls these funds, then s/he controls the resources that legislators draw on to pay for (1) the legislature’s operations and (2) the legislators’ own perks. This gives the executive a powerful tool that s/he can wield to manipulate legislators and discourage them from carrying out due diligence, particularly in terms of pushing back against any questionable executive behavior.”

When the party of the executive controls both houses of congress, party cohesion in the legislature is another tool at the executive’s disposal, albeit the direction of its effect is debated. When party cohesion is high, the executive can seek the necessary support for particular legislation by delegating
to the party leaders. When cohesion is low, discipline is weak, and the executive may need to resort to clientelistic behavior in exchange for essential votes. However, as noted by Kunicova (2006), greater cohesion found in stronger parties can result in greater corruption by allowing the president to more easily negotiate corrupt deals and by making corruption harder to detect. Similarly, the problem of collective action also affects a highly fractionalized and dispersed opposition which can serve no significant challenge to a powerful executive. Thus, a highly fractionalized opposition is expected to increase the concentration of power in the executive.

As noted by Shugart and Carey (1992) above, the executive holds certain powers to form and dismiss the cabinet. An extreme case of cabinet formation and removal may allow the executive to select and remove members on a whim, effectively increasing the dependence of ministers to the executive. It is not difficult to think of a situation where ministers are coerced to partake or remain silent on corrupt behavior. An executive with great power of cabinet formation and removal should yield greater opportunity for executive corruption than one which is more limited or checked by other branches of government.

**Vertical accountability.** In analyzing the level of competition of the electoral system, six variables of interest will be examined. First, the type of electoral method or formula. A majority of Latin American electoral systems are proportional representation (PR) systems and use closed party lists for the selection of candidates. Following the literature, proportional representation systems with closed party lists and a low district magnitude should be associated with more corruption. Similarly, with a greater number of political parties in play for votes, detection becomes more difficult in PR systems. Multiple party systems are affected by a collective action problem of denouncing corruption and cannot be sure of how the benefits of denouncing corruption will be distributed amongst all the parties. Hence a greater number of parties should lead to increases in executive corruption.
Keeping in mind the public choice school argument of higher competition leading to lower corruption, the vote share of the largest government party, the margin of victory in an election, and the executive’s party control of both houses of the assembly or congress should all be positively related to corruption. In the manner that these variables increase (i.e., greater margin of victory leading to a greater share of seats of the official party and/or control of congress) executive corruption should increase.

Executive Power Concentration

In observing the power concentration of the executive, there are nine relevant variables that attempt to measure such concentration. In a study of executive corruption such as this, it is important to note that while the interest is focused on the corruptibility of officials, not all individuals elected to office may resort to corruption. However, in considering those who will engage in corruption, the literature is not clear. There are arguments that establish that re-election increases the time horizons of elected officials which, facing re-election incentives, will choose to be less corrupt during a first term (Ferraz and Finan, 2011).

On the other hand, sufficient incentives to be corrupt (low detection, high reward) may exist to offset those re-election incentives (Pereira et al., 2009). Having the ability to be re-elected may also serve to establish greater, more fortified, power relations among corrupt officials. As noted by O’Donnell (1994), constitutional term limits may constrain the executive’s ability to concentrate power. Thus, re-election may have a more complex effect on the executive’s incentive to engage in corruption. For this reason, analyzing such constraint on executive power (constitutional term limits), will aid in our understanding of weaknesses in horizontal accountability in Latin America.

Lastly, with regards to the concentration of power in the executive, Doyle and Elgie provide an index of presidential power constructed by normalizing the score from 28 other measures. They explain that their presidential power index is based on an analysis of constitutions and therefore, scores of presidential power only vary when the constitution of a particular country is amended in a way that alters
the power of the executive (Doyle and Elgie, 2016). By comparing the range of standard errors on two of their measures of presidential power, the authors note that “scholars wanting to estimate the effect of presidential power solely in Latin America might wish to use the prespow1 scores,” which will be an index used in this study (Doyle and Elgie, 2016).

However, the index will be used cautiously since, according to the authors, it is more a blunt measure of presidential power rather than a fine-tuned one (Doyle and Elgie, 2016). In relation to this claim the authors contend that if scholars wish to test a particular theoretical proposition about a certain aspect of presidential power, such as veto power or decree power, “they should construct their own measure and estimate its effect” (Doyle and Elgie, 2016).

In evaluating Shugart and Carey’s (1992) model, Fortin (2012) demonstrates that indeces that combine measures of a president’s power to form and dismiss a cabinet, as well as the power of censure, or to dissolve the assembly, weaken the validity of such measures. In her study, Fortin explains that “by using the more independent components of presidential power separately in analyses, researchers stand to gain a much clearer grasp of the effects of specific powers than by using an index in which the effects of some items are diluted by being combined with unrelated indicators” (Fortin, 2012, 97). For these reasons, an inclusion of the powers to form and dismiss the cabinet as well as the nomination and removal processes of judges will be relevant for inclusion.

**Judicial Nomination, Removal and Constraints**

As noted previously, the judiciary may be a relevant variable explaining differences in executive corruption across cases. I incorporate data regarding nomination and removal procedures as well as constraints in order to analyze different aspects of the effects of the judiciary on executive corruption. Judicial constraints, using the Varieties of Democracy database, measures whether the executive respects

---

6 Prespow1 is an index developed by Doyle and Elgie (2014) focused on the constitutional powers of the president in order to measure presidential power.
the constitution, whether the executive complies with court rulings, and the extent to which the courts can act independently. Using data from the Comparative Constitutions Project (CCP) Melton and Ginsburg (2014) analyze the de jure selection and removal procedures of judges to the highest ordinary court. As noted by the authors, “Even if judges are independently appointed, they will not be independent if they are under constant threat of being removed from office” (Melton and Ginsburg, 2014). Using these data, analysis of the effects of judge selection and judge removal procedures as well as that of judicial independence and the ability of the judiciary to limit presidential power, results in a more rigorous exploration of the causes of executive corruption in Latin America.

**Democratic Quality**

In measuring the democratic quality of a country, four variables will be included. The Freedom House freedom of the press score will allow us to analyze this specific arena of accountability. As mentioned in the literature review, a weak societal accountability is consequence of a press that is unsuccessful in uncovering corruption. Hence, a freer press should be associated with lower executive corruption levels. Similarly, a combined Freedom House/Polity II score will provide us with a measure of the quality of democracy. Hadenius and Teorell (2005) demonstrate that such a combined score has both greater validity and reliability than either one of its components on its own.

**Democratic Experience**

Lastly, the number of years of continuous democracy, the freedom to trade and level of government regulation in the economy, the Gini coefficient, GDP growth (%) and per capita growth, as well as the rents obtained from natural resources as a percent of GDP will be assessed to ascertain each country’s level of democratic experience, economic openness, inequality, growth, and dependence on natural resources. We should expect that greater democratic experience, greater openness and growth, less inequality, and less dependence on natural resources should be conducive to less executive corruption.
Education

Government expenditure on education, measured by the World Banks’ percentage of GDP assigned to education, will be used to analyze its effect in enhancing the quality of democracy and curbing corruption. Morris (2004) explains that much of the literature focus on the level of education as a major factor in reducing corruption. However, it is important to remind ourselves that the amount of resources expended by government on education may not necessarily mean an improvement on the educational system. Many times, an increase in government projects for education become an opening of opportunities for illicit procurement. Thus, it will be important to include a measure of the quality of the educational system by obtaining an educational attainment measure. That is, what percentage of the population has successfully completed primary schooling? The measure on educational attainment is taken from World Bank data.

Ethnic Fractionalization

Following the arguments of Fearon and Laitin (1996), Treisman (2000) explains that communities which are more ethnically fragmented than others could facilitate the enforcement of corrupt contracts amongst themselves by providing “cheap information about and even internal sanctions against those who betray their coethnics” (Treisman, 2000, 406). The theory holds that ethnic groups will seek to accrue more benefits to their members while limiting the provision of such benefits to other groups. In terms of corruption, this may translate into a stringent monitoring of material (or other) benefits in exchange for votes in an election, thus increasing the probability of incurring in clientelistic practices by political leaders attempting to secure those votes (Kitschelt et al., 2010).

However, ethnic favoritism is expected to be reduced when societies approach perfect ethnic homogeneity or heterogeneity. In these cases, enforcing corrupt contracts becomes more challenging. According to Chandra (2007, 108), “In such situations, politicians will be hampered in their attempt to use
their discretionary control over state jobs and services as a strategy for obtaining votes.” In either case, politicians will be unable to send meaningful ethnic signals to their target voters, a reason why they will have an incentive to delegate patronage to the micro level (family, village, neighborhood, etc.) thereby reducing corruption at the executive or macro level (Chandra, 2007).

The scholarship surrounding the effects of ethnic fractionalization on corruption are mixed. Interestingly, Latin America presents a sample of countries that are highly homogenous, such as Argentina, as well as highly heterogeneous, such as Bolivia and Peru. Thus, understanding the relationship between ethnic fractionalization and corruption in Latin America will shed light on the scholarly debate described above. Using the Quality of Government (QoG) database, a variable developed by Alesina (2003) that measures ethnic fractionalization will be examined. The variable reflects the probability that two randomly selected citizens will not share, in this case, ethnic qualities. Thus, the index goes from low to high fractionalization.

**Civil Service**

Having a meritocratic civil service is the foundation for a professional bureaucracy. In order to measure this condition, the Quality of Government (QoG) database provides a variable that analyzes whether a country’s laws or constitution include provisions for the meritocratic recruitment of civil servants through exams or credential requirements. A country which possesses provisions for the meritocratic recruitment of civil servants is expected to yield less executive corruption.

**Openness to Trade**

Competitive economic markets have been suggested as a factor that lowers corruption. Thacker (2009) argues that economic liberalization should reduce political corruption by reducing government intervention in the economy. The theory contends that barriers to trade increase incentives for corruption as it creates opportunities for rent-seeking whereby individuals will seek officials to bribe in exchange of
an exemption with a lower total cost than the cost of trading with all barriers. Again, much of the scholarship focuses on reducing the incentives of engaging in corruption by increasing market competition through liberal reforms.

**Regulation**

Scholars such as Tanzi (1994) argue that as governments become larger and the extent of their intervention in the economy increases, so would the opportunities available to engage in corruption. Mauro (1995) provides evidence that higher corruption leads to slower economic growth using a cross-national study. However, the direction of causality between economic development and corruption has been contested. Pellegrini and Gerlagh (2008) describe that richer countries are expected to have lower levels of perceived corruption as greater economic growth is expected to lead to greater levels of education, urbanization, and access to media; all of which may lower the tolerance for political corruption.

**Natural Resource Endowments**

Ades and Di Tella (1997, 2000) have found that countries with an active industrial policy and those with large endowments of raw materials tend to be more corrupt while countries with more competitive economies, measured by openness to trade, tend to be less corrupt. Great endowments of natural resources (fuels and/or minerals) become a source of high rents that could be targeted for personal gain by individuals able to exploit them.

**Hypotheses and Operationalization**

Following this discussion, greater economic competition, growth, and liberalization lead to decreases in political corruption. In the case of Latin America, we should expect that countries that possess more open and less regulated economies should exhibit less corruption than their more heavily regulated counterparts. Similarly, greater trade openness should lead to less corruption whereas greater
government regulation and a greater natural resource endowment should yield greater corruption levels.

Following the literature above, there are 14 hypotheses that will be analyzed using a quantitative approach. The operationalization of the hypotheses in table 2.1 below will be described next.

<table>
<thead>
<tr>
<th>H1</th>
<th>Executive corruption decreases as years of continuous democracy and political rights and civil liberties increase.</th>
</tr>
</thead>
<tbody>
<tr>
<td>H2</td>
<td>Executive corruption decreases as economic openness increases, growth increases, and inequality decreases.</td>
</tr>
<tr>
<td>H3</td>
<td>Executive corruption decrease as dependence on natural resources decrease</td>
</tr>
<tr>
<td>H4</td>
<td>Executive corruption will be higher when re-election is not allowed</td>
</tr>
<tr>
<td>H5</td>
<td>Executive corruption will be lower in countries with PR systems with open party lists.</td>
</tr>
<tr>
<td>H6</td>
<td>Executive corruption will be lower when district magnitude increases.</td>
</tr>
<tr>
<td>H7</td>
<td>Executive corruption will be higher when the effective number of parties increase.</td>
</tr>
<tr>
<td>H8</td>
<td>Executive corruption will increase with increases in the executive’s margin of victory, government vote share in the legislature, and when the executive controls both houses of congress.</td>
</tr>
<tr>
<td>H9</td>
<td>Executive corruption is lower when provisions in the constitution allow for a meritocratic civil service.</td>
</tr>
<tr>
<td>H10</td>
<td>Executive corruption decreases with an increase in the percentage of the population that completes primary education.</td>
</tr>
<tr>
<td>H11</td>
<td>Executive corruption will increase with increased opposition fractionalization.</td>
</tr>
<tr>
<td>H12</td>
<td>Executive corruption will decrease as party cohesion in the legislature increases.</td>
</tr>
<tr>
<td>H13</td>
<td>Executive corruption will decrease as judicial and legislative constraints and independence increase.</td>
</tr>
<tr>
<td>H14</td>
<td>Executive corruption will increase with increases in the executive’s power to form and dismiss the cabinet.</td>
</tr>
</tbody>
</table>
In all, 29 independent variables will be analyzed against V-Dem’s executive corruption index. The variables are all derived from the relevant literature on corruption and are all included in order to avoid a problem of omitted-variable bias. Moreover, these variables are meant to operationalize each of the relevant causes of corruption described above. All of the operationalized variables as well as their sources are listed in Table 2.2 below.

Table 2.2. Operationalization of Independent Variables

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Operationalization</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competitive Electoral System</td>
<td>• Type of Electoral Method&lt;br&gt;• District Magnitude&lt;br&gt;• Effective Number of Political Parties&lt;br&gt;• Margin of Victory in Elections&lt;br&gt;• Control of both houses of Congress</td>
<td>QoG Basic Data (2016)&lt;br&gt;Bormann and Golder (2013)&lt;br&gt;DPI (2012)&lt;br&gt;DPI (2012)&lt;br&gt;DPI (2012)</td>
</tr>
<tr>
<td>Power Concentration of the Executive</td>
<td>• Re-election&lt;br&gt;• Independent Judiciary&lt;br&gt;• Legislative Constraints on the Executive&lt;br&gt;• Judicial Constraints on the Executive&lt;br&gt;• Legislative Party Cohesion&lt;br&gt;• Fractionalization of the opposition&lt;br&gt;• Power to form and dismiss the cabinet&lt;br&gt;• Power to nominate and remove judges&lt;br&gt;• Presidential Power Index</td>
<td>DPI (2012)&lt;br&gt;QoG (2016)&lt;br&gt;VDEM (2016)&lt;br&gt;VDEM (2016)&lt;br&gt;VDEM (2016)&lt;br&gt;DPI (2012)&lt;br&gt;Melton and Ginsburg (2014)&lt;br&gt;Melton and Ginsburg (2014)&lt;br&gt;Doyle and Elgie (2016)</td>
</tr>
</tbody>
</table>
Table 2.2 – continued

<table>
<thead>
<tr>
<th>Ethnic Diversity</th>
<th>• Ethnic Fractionalization Index</th>
<th>QoG (2016)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Bureaucracy</td>
<td>• Meritocratic Civil Service in</td>
<td>QoG (2016)</td>
</tr>
<tr>
<td></td>
<td>Constitution</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Press</td>
<td>QoG (2016)</td>
</tr>
<tr>
<td></td>
<td>• Degree of Civil Liberties/</td>
<td>QoG (2016)</td>
</tr>
<tr>
<td></td>
<td>Political Rights</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Govt. Expenditure on Education</td>
<td>World Bank (Barro-Lee)(2016)</td>
</tr>
<tr>
<td></td>
<td>(%GDP)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Educational Attainment (% Pop.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Completed Primary)</td>
<td></td>
</tr>
<tr>
<td>Democratic Experience</td>
<td>• Number of years of continuous</td>
<td>Polity IV (2014)</td>
</tr>
<tr>
<td></td>
<td>democracy</td>
<td></td>
</tr>
<tr>
<td>Economic Openness</td>
<td>• Freedom to Trade</td>
<td>QoG (2016)</td>
</tr>
<tr>
<td></td>
<td>• Govt. Regulation in the Economy</td>
<td></td>
</tr>
<tr>
<td>Economic Inequality</td>
<td>• Gini Coefficient</td>
<td>World Bank (2015)</td>
</tr>
<tr>
<td>Economic Growth</td>
<td>• GDP Growth annual (%)</td>
<td>World Bank (2015)</td>
</tr>
<tr>
<td></td>
<td>• GDP Per Capita</td>
<td></td>
</tr>
<tr>
<td>Dependence on Natural Resources</td>
<td>• Total Natural Resource Rents</td>
<td>World Bank (2015)</td>
</tr>
<tr>
<td></td>
<td>(% GDP)</td>
<td></td>
</tr>
</tbody>
</table>

**Methods**

The 14 hypotheses are all tested through multiple regression analysis. Many of the variables identified by the literature may be both correlated with each other and with executive corruption, for this reason, it will be necessary to include all of the variables in the analysis in order to reduce the risk of omitted variable bias. In examining correlation between independent variables, only the Freedom House Freedom of the Press score and the Freedom House – Polity measure were highly correlated with each other. As explained by Treisman (2000, 408) in his seminal study on corruption, “before assuring a country that it could reduce corruption by reducing state intervention in the economy, one would want to know
not just that state intervention is positively correlated with corruption but that this relationship holds controlling for other characteristics of countries — e.g., economic development or democracy — that correlate with both lower corruption and lower state intervention.”

The model specification includes variables of predetermined, historical conditions, as well as ethnic characteristics which are slow to change. From there, an inclusion of economic conditions and political institutions will allow for an examination of variables that may be more suitable to change in the short and medium term. This model will be replicated three times using different corruption indices as a measure of robustness.

The Worldwide Governance Indicator’s Control of Corruption index will be deconstructed in order to avoid the potential problem of aggregation of bias in “poll of polls” datasets. This deconstruction is achieved by unpacking the sources that compose the index and excluding those sources that do not focus solely on the Latin American region. This strategy will narrow the focus of the index squarely on Latin America and remove correlations that stem from the inclusion of possible independent variables to be used in this study that may also be used to construct the index. Table 2.3 below shows the correlation coefficients between the different measures of corruption used in this study.

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7 The sources used for deconstruction of the Worldwide Governance Indicators index are: Bertelsmann Transformation Index (BTI); Economist Intelligence Unit (ECI); Global Corruption Barometer Survey (GCB); Global Competitiveness Report (GCS); Global Integrity Index (GII); Gallup World Poll (GWP); IFAD Rural Sector Performance Assessments (IFD); Institutional Profiles Database (IPD); Latinobarometro (LBO); World Bank Country Policy and Institutional Assessments (PIA); Political Risk Services International Country Risk Guide (PRS); Vanderbilt University’s AmericasBarometer (VAB); Institute for Management and Development World Competitiveness Yearbook (WCY); Global Insight Business Condition and Risk Indicators (WMO).
Table 2.3. Correlation of Measures of Corruption

<table>
<thead>
<tr>
<th></th>
<th>Transparency Intl.</th>
<th>WGI Control of Corruption</th>
<th>V-Dem Executive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Control of Corruption</td>
<td>1.0000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unpacked</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transparency Intl.</td>
<td>0.2678*</td>
<td>1.0000</td>
<td></td>
</tr>
<tr>
<td>Corruption Perceptions</td>
<td>0.0010</td>
<td></td>
<td></td>
</tr>
<tr>
<td>WGI Control of Corruption Index</td>
<td>0.2718*</td>
<td>0.9412*</td>
<td>1.0000</td>
</tr>
<tr>
<td>V-Dem Executive Corruption Index</td>
<td>-0.1753*</td>
<td>-0.6729*</td>
<td>-0.7324*</td>
</tr>
<tr>
<td></td>
<td>0.0017</td>
<td>0.0000</td>
<td>0.0000</td>
</tr>
</tbody>
</table>

All of the measures of corruption used in this study are highly correlated with each other, except for the deconstructed version of control of corruption, labeled as ‘Control of Corruption Unpacked’. It is important to note that the Worldwide Governance Indicator’s corruption index measures control of corruption. Therefore the directionality goes from low to high control of corruption which implies higher to lower perceived corruption, respectively. Transparency International’s CPI measures corruption from 0 (highly corrupt) to 100 (very clean). Finally, the main dependent variable used in this study, Varieties of Democracy’s executive corruption index, measures corruption from less corrupt to more corrupt.

Even though the measures are critiqued for their possible bias, something to note is that, with such a high correlation among measures of corruption, it seems that if bias exists it is widely shared. More likely however is that these distinct indeces do measure what we intend to measure, evidence of their validity in measuring widespread corruption. To determine the statistical relationship between the
independent variables and executive corruption, a panel data regression of the stated 17 democracies across 20 years is conducted. In order to estimate coefficients appropriately, the variable for opposition fractionalization (oppfrac) was inflated by generating a new variable, oppfrac_new, which was created by dividing oppfrac by 1000. This modification allowed for a more comparable size of coefficients across independent variables for analysis.

In order to estimate the relationships between independent variables and executive corruption across cases, it is important to determine whether a fixed-effect (FE) or a random-effects (RE) model is appropriate. According to Hunter and Schmidt (2000), both models have been widely used in the social and behavioral sciences to explain phenomena of interest. Throughout the literature, scholars have recommended an approach that focuses more on the theoretical consideration and implications of using one model over another (Hunter and Schmidt, 2000; Borenstein et al., 2010; Bell and Jones, 2015). In order to do so, it is important to understand what assumptions of the data are made by each model.

The FE model assumes that the effects on the dependent variable are correlated with the explanatory variables. In contrast, RE estimation assumes that the dependent variable is uncorrelated with the explanatory variables. Furthermore, FE models cannot measure the effects of time-invariant variables (Bell and Jones, 2015). The key assumption of a random-effects model is that there is no single and identical effect of variables between cases, but that there is a distribution of effects that may vary in size due to differences between cases (Borenstein et al., 2010).

In order to determine whether a fixed-effects or random-effects model will be the most appropriate model, scholars also usually employ a Hausman test. This diagnostic tool tests the null hypotheses that the random-effects model is appropriate; the alternative hypotheses is that the fixed-effect model is appropriate. After performing a Hausman test, an FE model was found to be appropriate. This result was of particular interest since utilizing an FE model would omit variables that are of keen interest to this study. This is of particular concern with regards to the goal of this dissertation in measuring
how some time-invariant variables, especially those related to executive power, such as cabinet formation and dismissal powers, rules for selecting and removing justices, and reelection incentives, affect levels of executive corruption across cases. After estimating both FE and RE models with, I report the output below noting the coefficients of a few variables of interest.

Table 2.4. FE vs. RE Estimation Coefficients

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Fixed Effects</th>
<th>Random Effects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democratic Experience</td>
<td>Omitted</td>
<td>-0.025***</td>
</tr>
<tr>
<td>Judicial Constraints</td>
<td>-0.785**</td>
<td>-1.128***</td>
</tr>
<tr>
<td>Power to form the Cabinet</td>
<td>Omitted</td>
<td>-0.427***</td>
</tr>
<tr>
<td>Power to dismiss the Cabinet</td>
<td>Omitted</td>
<td>0.489**</td>
</tr>
<tr>
<td>No Presidential Reelection</td>
<td>Omitted</td>
<td>0.445***</td>
</tr>
</tbody>
</table>

After estimation using the fixed-effects model, the variable of interest with respect to the judiciary’s ability to constrain executive power remained significant and in the expected direction as compared to the random-effects estimation. Similarly using the random-effects model we are able to learn the effects of relevant variables that were omitted in the fixed-effects model, such as the stock of democracy, judicial removal provisions, re-election incentives, and the executive’s power to form and dismissing the cabinet. For these reasons, I opt for using a random effects model to estimate the effects of the previously laid out variables on executive corruption. Of course, there exist trade-offs in choosing between estimation models. In overcoming problems of omitted variable bias, a fixed effects estimation may help reduce the risk by introducing dummy variables, although, as noted in Table 2.4 above, we may lose a lot of data from other variables of interest in doing so. Keeping this trade-off in mind, I opt for
choosing the random effects estimation and interpret its results with caution. These results are discussed further in the next section.

**Findings**

Table 2.5 below shows the regression output for two models in the analysis of executive corruption in Latin America. The Full Model incorporates 51 observations across 12 countries and the Limited Model explains 99% of the variation of executive corruption in Latin America from 1996-2015\(^8\). Following O'Donnell's (1998) discussion on constraints, an institutional model was created in order to analyze only those predictors which imposed a constitutional constraint (i.e. Re-election) and those which focused on existing power relations vis-à-vis the other branches of government. This Limited Model analyzed 17 countries over 221 observations\(^9\). I report coefficients from the random-effects model.

It is important to consider that while the Limited Model increased the number of observations in the data substantially, the incorporation of only a number of predictors increases the risk for omitted variable bias as the model over- or under-estimates the effects of the variables in order to compensate for a limited number of factors. As noted by Clarke (2009) there is no way of knowing if this bias is increased or decreased with the inclusion of more variables. Hence, the Limited Model is used with caution.

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Table 2.5. Effects of Multiple Models on Executive Corruption in Latin America (1996-2016)

<table>
<thead>
<tr>
<th>VARIABLES</th>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Full Model</td>
<td>Limited Model</td>
</tr>
<tr>
<td></td>
<td>Executive</td>
<td>Executive</td>
</tr>
<tr>
<td></td>
<td>Corruption</td>
<td>Corruption</td>
</tr>
<tr>
<td>Regulation in the Economy</td>
<td>-0.020</td>
<td>-0.015</td>
</tr>
<tr>
<td></td>
<td>(0.024)</td>
<td>(0.020)</td>
</tr>
<tr>
<td>Natural Resource Endowment</td>
<td>-0.003</td>
<td>-0.025***</td>
</tr>
<tr>
<td></td>
<td>(0.003)</td>
<td>(0.007)</td>
</tr>
<tr>
<td>Democratic Experience</td>
<td>-0.025***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.007)</td>
<td></td>
</tr>
<tr>
<td>District Magnitude</td>
<td>-0.004</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.020)</td>
<td></td>
</tr>
<tr>
<td>Effective Number of Parties</td>
<td>0.017</td>
<td>0.027</td>
</tr>
<tr>
<td></td>
<td>(0.014)</td>
<td>(0.059)</td>
</tr>
<tr>
<td>Control of Both Chambers in Legislature</td>
<td>0.030</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.045)</td>
<td></td>
</tr>
<tr>
<td>Vote Share of Largest Government Party</td>
<td>-0.001</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.002)</td>
<td></td>
</tr>
<tr>
<td>Margin of Majority</td>
<td>0.040</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.108)</td>
<td></td>
</tr>
<tr>
<td>Opposition Fractionalization</td>
<td>0.027</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.059)</td>
<td></td>
</tr>
<tr>
<td>No Reelection</td>
<td>0.445***</td>
<td>0.015</td>
</tr>
<tr>
<td></td>
<td>(0.143)</td>
<td>(0.020)</td>
</tr>
<tr>
<td>Gini</td>
<td>0.008**</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.004)</td>
<td></td>
</tr>
<tr>
<td>Ethnic Fractionalization</td>
<td>-0.977***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.285)</td>
<td></td>
</tr>
<tr>
<td>Meritocratic Civil Service</td>
<td>2.247***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.561)</td>
<td></td>
</tr>
<tr>
<td>Judicial Independence</td>
<td>0.016</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.028)</td>
<td></td>
</tr>
<tr>
<td>Closed List PR</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Freedom of the Press, Score (1993-2014)</td>
<td>-0.0008</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.002)</td>
<td></td>
</tr>
<tr>
<td>Level of Democracy (Freedom House/Imputed Polity)</td>
<td>0.001</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.025)</td>
<td></td>
</tr>
<tr>
<td>Govt. Expenditure on Education (% GDP, logged)</td>
<td>0.080</td>
<td></td>
</tr>
</tbody>
</table>
Table 2.5 – continued

<table>
<thead>
<tr>
<th>Variable</th>
<th>Coefficient</th>
<th>Standard Error</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Educational Attainment (% pop. completed primary)</td>
<td>0.075</td>
<td>0.001</td>
<td></td>
</tr>
<tr>
<td>Trade (% of GDP)</td>
<td>(0.003)</td>
<td>0.006**</td>
<td></td>
</tr>
<tr>
<td>Judicial Constraints on Executive</td>
<td>(0.003)</td>
<td>-1.128***</td>
<td>-0.754***</td>
</tr>
<tr>
<td>Legislative Constraints on Executive</td>
<td>(0.309)</td>
<td>-0.124</td>
<td>0.147*</td>
</tr>
<tr>
<td>Legislative Party Cohesion</td>
<td>(0.333)</td>
<td>-0.045**</td>
<td></td>
</tr>
<tr>
<td>Executive Power to Appoint Cabinet</td>
<td>(0.020)</td>
<td>-0.427***</td>
<td>0.130***</td>
</tr>
<tr>
<td>Executive Power to Dismisses Cabinet</td>
<td>(0.119)</td>
<td>0.489**</td>
<td>0.058</td>
</tr>
<tr>
<td>Presidential Power Index (Doyle and Elgie, 2016)</td>
<td>(0.195)</td>
<td>-0.527</td>
<td></td>
</tr>
<tr>
<td>Judge Selection Procedure Exists</td>
<td>(0.478)</td>
<td>-0.073***</td>
<td>-0.024</td>
</tr>
<tr>
<td>Judge Removal Procedure Exists</td>
<td>(0.026)</td>
<td>-0.274***</td>
<td>-0.075*</td>
</tr>
<tr>
<td>GDP per capita (logged)</td>
<td>(0.10)</td>
<td>0.142</td>
<td></td>
</tr>
<tr>
<td>GDP growth (logged)</td>
<td>(0.191)</td>
<td>-0.003</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>(0.012)</td>
<td>1.44**</td>
<td>0.662***</td>
</tr>
<tr>
<td>Observations</td>
<td>51</td>
<td>221</td>
<td></td>
</tr>
<tr>
<td>R-squared</td>
<td>0.993</td>
<td>0.423</td>
<td></td>
</tr>
<tr>
<td>Number of country</td>
<td>12</td>
<td>17</td>
<td></td>
</tr>
</tbody>
</table>

**Political Liberalization**

The data confirms the first of the hypotheses, namely, that greater political liberalization yields less political corruption. However, when controlling for the number of years of democratic experience,
variables such as freedom of the press and quality of democracy become insignificant. Thus, this may be part of the answer for why corruption levels have remained stagnant despite increases in political liberalization, simply, the need for more experience with democracy. Latin American countries, with the exception of Costa Rica, have less experience with uninterrupted democracy.

The average for the countries in this study is 32 years of continuous democracy when excluding Costa Rica and its 140 years of democratic experience. Thus, a greater accumulation of years of democratic experience could translate into a more significant effect of political liberalization on reducing executive corruption. According to these estimates, an additional 10 years of continuous democracy would lead to a 25-point decrease in the level of executive corruption on a scale of 0 (very low) to 100 (very high). If we consider Venezuela as an example, the worst-ranked country in terms of levels of executive corruption, this would represent a drop, relative to levels of executive corruption in Latin America, from 17th to 10th, on par with Argentina.

In other words there is truth to Thacker’s (2009) argument that any dissatisfaction with regards to democratic governance, where corruption is considered, is a factor of limited experience with democracy. Of course, there exists the possibility that, with time, greater institutional reforms are implemented which subsequently reduce executive corruption. Or that greater corruption is the cause for the dissatisfaction with democracy Thacker (2009) is referring to. A greater in-depth analysis will be carried out beginning in Chapter 3 in order to ascertain this very question.

**Economic Liberalization**

The second major hypothesis; that economic liberalization leads to decreases in executive corruption, shows a more complex relationship. The data confirms that greater inequality, as measured by the Gini coefficient, results in greater executive corruption. While economic growth and GDP per capita were found to be insignificant, greater openness to world trade had a significant and unexpected effect. Although a marginal effect, its unexpected direction could be the cause of greater rent seeking
opportunities created by the openness to new markets in the short-run. A lack of proper auditing mechanisms, for example, could result in vulnerability to customs agencies and the further risk of corruption due to lower risks of detection stemming from weak accountability measures.

**Ethnic Fractionalization**

Another interesting result is shown by the relationship between ethnic fractionalization and executive corruption. The data demonstrates that as ethnic fractionalization increases there is a decrease of executive corruption. Latin America, as noted previously, presents countries that are low on ethnic fractionalization, such as Argentina (0.25), as well as those that score high, such as Bolivia (0.73) and Peru (0.65). That higher fractionalization leads to decreases in corruption may be due to countries having either high homogeneity or high heterogeneity, where ethnic groups serve as a check against others. As explained by Chandra (2007), such situations hamper politicians’ ability to send signals to particular groups of voters and thus weakens their incentive to engage in ethnic favoritism through clientelistic practices.

**Constraints on the Executive**

*Executive power.* The results of the regression analysis, shown in Table 2.5, demonstrate that constraints on executive power are paramount in achieving reductions in executive corruption. An analysis of the executive’s partisan and non-legislative powers shows that party cohesion in the legislature has a statistically significant effect on executive corruption. When party cohesion is high, party leaders can deliver the votes that are needed by the president and, in turn, the president has less of an incentive to resort to clientelistic or corrupt endeavors. The data demonstrates that executive corruption decreases when party cohesion or discipline strengthens, as explained by Shugart and Mainwaring (1997). The relationship between the powers of the executive to appoint and dismiss cabinet members is less straightforward.
The data above demonstrates that with greater power to appoint ministers, executive corruption actually decreases, an unexpected but significant effect. On the other hand, the greater the executive’s power is to dismiss ministers, the more executive corruption exists. The statistical significance of these variables validates the positive relationship between the executive’s power to dismiss the cabinet and executive corruption. As noted previously, a highly dependent minister, whose survival depends only on the executive, may choose to become complicit in corruption with others if at risk of losing her government position.

Many of the variables thought to encompass executive power were significant. Having control of both houses of the legislature was found to increase executive corruption, thus, the role of the opposition remains important in checking executive power and reducing the executive’s incentive and influence in engaging in corruption. However, the presidential power index, created by Doyle and Elgie (2016), was not statistically significant. Thus, analyzing individual components separately, improves the validity, and provides a better understanding, of the specific effects of presidential power on executive corruption as noted by Fortin (2012).

**Reelection.** When looking at O’Donnell’s (1994) two major constraints on executives; that of existing power relations and of constitutional term limits, re-election is found to be statistically significant in their relationship to executive corruption. When re-election is not allowed, corruption increases. Thus, the argument posited by Ferejohn (1986) is confirmed; that incumbents have the incentive to refrain from extracting rents in their first term in order to get re-elected. Although these incentives may be offset by the amount of rents expected to be received from engaging in corruption during a first term, as explained by Pereira et al. (2009), this does not seem to be the case for the Latin American countries examined under this specific period of time. The reduced electoral time horizons of no re-election provide elected officials a palpable endgame and thus enhance their incentives for enrichment while they can.
The Limited Model also presents some interesting results. Focusing on O’Donnell’s (1994) constraints on the executive, the model included the effect of re-election, judicial and legislative constraints, the executive’s power to appoint and to dismiss the cabinet, as well as whether selection and removal procedures for justices exist. Such model specification explains 42% of the variance of executive corruption. Although re-election was found not to be statistically significant, its effect remains in the expected direction; with no-reelection, corruption increases. Interestingly, the executive’s power to form a cabinet, and legislative constraints on the executive, change directionality in their effect on corruption, more power to appoint ministers and more legislative constraints yielding more corruption. As noted previously however, these results are interpreted with greater caution as they do not include all of the variables of interest but focus only on those institutional constraints.

**Judicial constraints.** Although the variables mentioned above suffer changes in terms of their effects on executive corruption, perhaps in part due to omitted variable bias, judicial constraints and removal procedures for justices remain significant and contribute to less executive corruption in both the Full Model and the Limited Model. These results demonstrate that the existing power relations between the executive and judicial branches of government is a key variable in reducing levels of executive corruption.

When the judiciary has more constraints on the executive branch, executive corruption decreases significantly. This variable measures the extent to which the executive respects the constitution and complies with court rulings, and to what extent is the judiciary able to act in an independent fashion. The analysis finds a highly statistically significant relationship between judicial constraints on the executive and executive corruption. When judicial constraints increase by one unit, corruption at the executive level decreases by 1.13 units. Figure 2.1 below illustrates the relationship between the two variables.
This result is a testament to what scholars have said about the lack of horizontal accountability in Latin America. Weak horizontal accountability exacerbates the problem of executive corruption. As noted by O’Donnell (2003), horizontal accountability requires a network of agencies that culminates in the high courts. Following this argument, the judiciary serves as the crowning element in establishing horizontal accountability. Thus, when the high courts’ ability to constrain the executive is hindered, strong horizontal accountability cannot exist. Corruption is but a product of the weakened horizontal accountability in the system.
**Nomination and removal of justices.** An integral part of the judiciary’s independence relates to the selection and removal\(^{10}\) procedures of its judges; a relationship examined here as well. The independence of the highest court, being the court of last resort, can affect the independence of the entire judicial system. As noted by Melton and Ginsburg (2014, 191), “practically focusing on the highest court reduces the aforementioned dimensions of variance to make the analysis manageable and is standard practice in the existing literature.” The authors also find that in countries where checks and balances are in place that can check the executive, selection and removal procedures that involve more than one political branch (i.e., a judicial council which provides a list of candidates to the executive, who in turn, nominates one candidate that is confirmed by the legislature) actually enhance judicial independence in practice.

Having rules regarding the selection and removal procedures of justices are shown to be statistically significant at the 99% level in their effect against executive corruption. The analysis shows that when these rules govern selection de jure, executive corruption decreases. A selection procedure that involves more than one branch of government in the appointment, promotion, and removal of judges is supportive of the goal to fight executive corruption. A similar relationship is found in Latin American countries where rules governing the removal of judges are found in the constitution. When removal procedures exist, executive corruption is expected to decrease since other branches of government are interested in protecting their constitutionally assigned powers.

**Political party system.** Other commonly referred to variables in the literature were found to be statistically significant for Latin American countries from 1996-2016 for which data was gathered. As the effective number of parties increase, executive corruption also increases and the relationship is significant. When more competitors enter the political arena, the risks of detection decrease and the

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\(^{10}\) Melton and Ginsburg (2014) code removal procedures as 1 if JREM is “no” in the Comparative Constitutions Project (CCP) database. Thus, Judge Removal Procedure is a binary variable that represents countries where a procedure is present in the constitution.
incentives for corruption increase. At lower magnitudes, internal competition to make the party list requires candidates to stand out against their competitors. Similarly, as parties increase in number, the same incentive to cultivate reputations exists, only at the macro (party) level. Therefore, the question is not one of more or less competition but of the nature of the competition and its incentives to create and incentivize personal (or party) reputations.

**Education.** Interestingly, although not significant, the direction of the effect of government’s investment on education was found to yield more executive corruption. This finding could point to procurement policies ailed with corruption. When educational attainment is introduced into the model, the effect of govt. expenditure on education is reduced and educational attainment is found to reduce executive corruption. Governments may increase the share of GDP going towards education without necessarily increasing the quality of education. Building more schools, while helpful, will mean nothing if there are no students in the classrooms. Hence, the importance of the level of education outweighs that of the quantity of resources directed to education when combating corruption.

**Civil service.** A major recommendation for the reduction of corruption levels involves the professionalization of the bureaucracy. Such professionalization is expected to reduce the incentives and opportunities to be corrupt as the bureaucracy is made to be more career-oriented (Thacker, 2009). Formal rules for the selection of bureaucrats, qualifications, an established hierarchy and impersonality, job specialization, and career positions that are not completely vulnerable to political turnover are, according to Weber (1978), an ideal type of bureaucracy.

Mention of meritocratic civil service in a country’s constitution, while not fully guaranteeing its existence, is an important first step in securing the implementation of such a bureaucracy. The results of the regression analysis uncovers an interesting relationship. When the constitution includes provisions for the meritocratic recruitment of civil servants, executive corruption increases by 1.75 units. The direction of the relationship is thought-provoking.
Of the countries in question, only Bolivia changed from having no mention, to establishing constitutional provisions of meritocratic civil service. Bolivia realized such change in 2009 and saw a reduction in executive corruption levels by 2011. The implementation of such a policy may be, of course, simply a reaction to the effects of corruption in a particular country. In other words, a country that is fraught with corruption may choose to instate policies for the meritocratic selection of civil servants in an effort to fight it; reason why we would see countries with greater corruption associated with such policies. Countries with lower levels of executive corruption may not have the “need” to implement such policies. President could also resort to using a professionalized bureaucracy to implement their agenda and policies. By doing so, the executive may be able to bypass the legislature and the constraints that the legislature can impose on the President. Unfortunately, more data will be required in order to make a better assessment of the effects of provisions of meritocratic civil service in constitutions on executive corruption.

**Strength of Predictors**

In order to better analyze the relationship between the independent variables and executive corruption, the 20th percentiles were subtracted from the 80th percentiles of each variable and multiplied by their coefficients. This operation produces a standardized magnitude of the effect of the independent variables on the executive corruption observed in Table 2.6.

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Magnitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democratic Experience</td>
<td>-0.69</td>
</tr>
<tr>
<td>Executive Power to Appoint Cabinet</td>
<td>-0.66</td>
</tr>
<tr>
<td>Executive Power to Dismiss Cabinet</td>
<td>0.37</td>
</tr>
<tr>
<td>Judicial Constraints on Executive</td>
<td>-0.35</td>
</tr>
</tbody>
</table>
When going from low to high democratic experience, corruption decreases the most relative to other predictors. Interestingly, the same occurs with regards to the power of the executive to appoint members of the cabinet. The data shows that amongst the executive’s non-legislative powers, the power to dismiss the cabinet has a powerful effect on yielding greater corruption. With regards to institutional constraints, those imposed by the judiciary on the executive have a powerful effect in decreasing corruption.

**Robustness**

As a measure of robustness, the analysis was repeated twice using the World Bank’s Worldwide Governance Indicator Control of Corruption Index and Transparency International’s Corruption Perceptions Index.

Table 2.7. Effects of Key Variables on Different Measures of Corruption

<table>
<thead>
<tr>
<th>VARIABLES</th>
<th>(1) V2X_EXECORR</th>
<th>(2) WBGI_CCE</th>
<th>(3) TI_CPI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Corruption Vdem</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulation</td>
<td>0.00054</td>
<td>0.20929**</td>
<td>5.82214***</td>
</tr>
<tr>
<td></td>
<td>(0.01849)</td>
<td>(0.09837)</td>
<td>(1.81653)</td>
</tr>
<tr>
<td>DemStock</td>
<td>-0.02791***</td>
<td>0.03507</td>
<td>-0.02271</td>
</tr>
<tr>
<td></td>
<td>(0.00530)</td>
<td>(0.02557)</td>
<td>(0.52047)</td>
</tr>
<tr>
<td>Constant</td>
<td>0.10304</td>
<td>0.42482</td>
<td>3.79780</td>
</tr>
<tr>
<td></td>
<td>(0.60065)</td>
<td>(3.53533)</td>
<td>(59.00001)</td>
</tr>
<tr>
<td>Observations</td>
<td>50</td>
<td>45</td>
<td>50</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.993</td>
<td>0.993</td>
<td>0.993</td>
</tr>
<tr>
<td>Number of country</td>
<td>12</td>
<td>12</td>
<td>12</td>
</tr>
</tbody>
</table>

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1
Table 2.7 reports coefficients from the Full Model but only includes the output of the effects of two key variables, government regulation in the economy and a country’s experience with democracy, on distinct measures of corruption. Results show how some widely used variables vary with regards to their effects on corruption depending on what measure is used. This is a very interesting finding as it demonstrates how different measures of corruption can yield distinct results. Government regulation in the economy was found to be significant in both the World Bank’s Control of Corruption (CC) index as well as TI’s CPI. The amount of years of democratic experience (Democratic Stock) was only significant in the model focusing only on executive corruption. This is significant as it provides important insights of how measures of corruption vary amongst each other and how variables may affect executive corruption in particular. The CC and CPI indeces measure perceptions of corruption, both petty and grand, and do not exclusively look at executive corruption, as does the Varieties of Democracy measure.

Conclusion

Both petty and grand forms of corruption have been widely analyzed. However, less of a focus exists on the effects of widely known variables on executive corruption more specifically. Focusing this study on Latin America attempts to improve and advance the knowledge on a specific region, hopefully continuing to add to the number of region-specific studies that remain lacking in the field as previously suggested by Thacker (2009).

It is important to recall the non-legislative powers of the president, specifically the power to dismiss ministers. The data demonstrates that as the executive’s power for dismissal increases, executive corruption is expected to increase. This may be due to the leverage of the executive on the cabinet once the appointments are made. Moreover, the results above show that when there is no constitutional re-election, executive corruption increases. Following O’Donnell (1994), constitutional term limits constrain the executive’s ability to concentrate power and hence, their ability to weaken horizontal accountability
if they are willing to do so. The data confirms the hypothesis that constitutional term limits reduce corruption by reducing the executive’s ability to concentrate power.

Although a combination of judicial procedures and constraints may lead to significant decreases in corruption, the domination of one political party over the powers of government may easily circumvent the established constraints, as noted by Melton and Ginsburg (2014). Having a sufficient majority may allow party leaders to control important veto points in the political system or even change the constitution and/or other procedures to their advantage, an occurrence which is not uncommon in Latin America. Analyzing policies such as these may enable countries to gain more of an advantage when lessening corruption than they would by tackling systemic income inequality or by increasing their years of democratic experience; both of which have significant effects on corruption but entail medium- to long-term time horizons.

The effects of political institutions on executive corruption in Latin America have been even less abundant in the literature; despite the ailments brought forth by corruption in the region. In an effort to fight such a resilient phenomenon, much attention must be paid to the relationships between branches of government. More specifically, constraints on the executive, especially those held by the judiciary, are of extreme importance in achieving successes in the fight against corruption. Equally important is the selection and removal procedures for judges to the highest courts; a procedure that involves more than one branch of government is likely to enhance judicial independence as noted by Melton and Ginsburg (2014). However, the combination of both of these policies, is the best strategy towards decreasing executive corruption.

An in-depth analysis of institutional constraints on executive power will shed light on the mechanisms through which weak constraints lead to executive corruption. The second part of this dissertation will engage in a qualitative study of the Dominican Republic, a case exhibiting high levels of executive corruption, and Uruguay, where levels of executive corruption are low. Such in-depth
examination will seek to understand the causal mechanisms that may affect executive corruption in these two cases as well as increase the robustness of the results shown above and the overall rigor of this dissertation.
PART II

CHAPTER III

QUALITATIVE ANALYSIS

Introduction

While presidential power has received some focus in the study of corruption, executive corruption more specifically, has been less examined\textsuperscript{11}. Studies focus on executive power concentration to explain the weaknesses of the judiciary (Verner 1989; Rosenn 1987, Nino 1992, Larkins 1998, Domingo 1999, O’Donnell 1999, Helmke 2000) however, little research exists on judiciary constraints on the executive vis-à-vis levels of executive corruption in Latin America. While research on the effects of corruption on the judiciary has been amply researched, research on how judicial independence and constraints affect executive corruption has received much less empirical attention. This part of the dissertation will seek to unravel the linkages between judicial checks on the executive and executive corruption. In order to do so, I will conduct an in-depth study focusing on two cases, Dominican Republic and Uruguay. As noted by Kapiszewski and Taylor (2008), in the study of judicial politics in Latin America, both of these cases represent only 1% of the scholarship in this area.

An in-depth analysis of the party systems, the constitutional power the president, and the judiciary in Uruguay and Dominican Republic will help elucidate how the executive branch can concentrate power and subsequently, how judicial independence and constraints on executive power can affect executive corruption. This dissertation will take aim at such questions by helping to clarify the mechanisms through

\textsuperscript{11} Executive corruption is defined as corruption engaged by the President, members of the cabinet, and other high-level officials
which vertical and horizontal accountability can effectively constrain the executive from concentrating power and engaging in executive corruption.

In this comparison of cases it is important to recognize that Uruguay possesses a more consolidated democracy and a greater tradition of democratic institutions than the Dominican Republic. However, the hypothesis I present here is that, more than simply depending on increases democratic experience, weak vertical and horizontal accountability, stemming from varying degrees of party system institutionalization, and weaknesses in judicial constraints lead to greater executive corruption and a greater ability of the executive to concentrate power. As mentioned above, presidential non-legislative power, as well as the legislative shield can give us an idea of the extent of the executive’s control over other branches of government. If the executive is able to concentrate power, they may choose to, and be better able to, weaken mechanisms of horizontal accountability, particularly in the judiciary. A systemic weakening of checks and balances that may yield greater executive corruption and widespread impunity.

**Literature Review**

**Vertical Accountability**

_**Party system institutionalization.**_ The institutionalization of the party system is an avenue towards improving levels of vertical accountability and, perhaps this way, ameliorating the problem of executive corruption. To this end, Downs (1957) lays out three hypotheses on the behavior of political parties. First, the ruling party’s social function is not necessarily the same as its motivation. Second, and perhaps most importantly, the ruling party is motivated by the goal of maximizing votes. Finally, the ruling party is itself in competition with other parties for the control of government. In understanding this relationship, Mainwaring and Torcal (2006, 204) note of party systems that, “weak institutionalization has negative consequences for electoral accountability.” Where vertical accountability is low, representatives are less responsive to their constituents and these, in turn, are less able to vote corrupt rascals out, thus,
corruption may be expected to increase. The weakening of institutionalization in the party system may occur in varying degrees and at various levels.

An affiliation to a political party provides information for voters that reduces decision-making costs and provides a core group of supporters and, this way, establishes roots in society (Aldrich, 2011). Party cohesion, the level of organization, inter-party competition, and clear differences in ideological/programmatic platforms are but some of the widely cited characteristics of institutionalization throughout the literature (Sartori, 1976; Dix, 1992; Mainwaring, 1999; Randall and Svasand, 2002; Basedau and Stroh, 2008).

In analyzing the electoral and party systems, evaluating differing voting methods and rules, as well as distinct nomination processes, may explain whether candidates have an incentive to cultivate a personal vote or are more accountable to the party leadership than to their constituents, affecting levels of party cohesion. Literature has pointed out to the importance of open vs closed party lists and district magnitude with regards to vertical accountability and its effect on legislative party cohesion (Persson et al., 2003; Kunivoca and Rose Ackerman, 2005; Chang and Golden, 2007).

In open list systems, legislators’ vertical accountability is increased as their dependence shifts to their constituents and not the party leadership (Kunivoca and Rose-Ackerman, 2005; Lederman et. al, 2005). This shift creates incentives to develop a personal vote in order to stand out against competitors, yielding weaker internal cohesion. Weaker party cohesion may lead to a greater use of clientelistic methods by a willing executive in order to accomplish their political agendas (Shugart and Mainwaring, 1997). On the other hand, Kunicova (2006) argues that strong cohesion may also enable a corrupt executive the necessary votes to pass a corrupt deal, due to the legislative party’s high discipline. The analysis of these case studies will attempt to shed light on the relationship between cohesion and executive corruption. Greater cohesion is also thought to increase the institutionalization of the party
system by increasing their level of organization and a party’s internal stability (Randall and Svasand, 2002; Basedau and Stroh, 2008).

The institutionalization of the party system is also a factor of the ideological/programmatic differences between parties. In analyzing programmatic party structuration (PPS), Kitschelt et al. (2010), look at the extent to which politicians create ‘coherent policy alternatives’ and their capacity to create linkages with voters through coalitions based on these alternatives. They explain that, “where PPS is weak or absent, politicians may seek to mobilize electoral constituencies on the basis of direct selective incentives... (clientelism, with office patronage and other currencies)(Kitschelt et al., 2010, 3).

**Horizontal Accountability**

*Judicial independence.* By analyzing horizontal accountability in greater depth, we are better able to determine whether this aspect of accountability may play a causal role in determining levels of executive corruption. One component of horizontal accountability is the independence of the judiciary. We should expect an increase in judicial constraints when judiciaries are not dominated by partisan politics. A judiciary that is more isolated from external partisan political influences should allow it greater power to constrain the executive, thereby leading to less executive corruption. In analyzing judicial councils, Calleros (2009) notes that judicial councils are a good first step in increasing judicial independence. However, Popkin (2002, 105) explains that, “in practice, judicial councils have often reflected the same politicization they were designed to help reduce, created new bureaucracies, and generally failed to live up to expectations.” Hence, a judicial council whose membership represents all branches of government and that is balanced, is expected to perform better in terms of curtailing executive corruption than one which is dominated by one political party and hence, skewed.

Likewise, the court’s ability to constrain the executive will be reliant on the courts independence. Greater independence of the highest court is thought to strengthen horizontal accountability mechanisms
and moreover, limit the president’s ability to concentrate power and engage in corrupt behavior. Lastly, as noted by Melton and Ginsburg (2014, ), the de jure appointment and removal of judges will be likely the case in practice when more than one branch of government is involved in the decision-making process. Appointments should then be carried out through a process where the interests of multiple political parties can be heard. Thus, an alternative hypothesis tested in this study expects judicial independence to increase as the nominations are reviewed by multiple bodies of government. Similarly, judges that possess life appointments or longer tenure, and do not face removal provisions, are expected to have greater independence and thus greater ability and/or willingness to constrain the executive than judges with shorter tenures and enforceable provisions for their removal.

Calleros (2009) explains that financial independence is one of the best indicators of the judiciary’s independence. The author notes that, a decent allowance and the autonomy to administer its own resources are paramount for judicial independence. He goes on to explain that, “in fact, when the judiciary shows a degree of independence higher than expected by Latin American executives, a subtle way to reduce this independence is by restricting financial resources” (Calleros, 2009). Similarly, we can expect that judges with a good salary will be less affected from external pressures leading to decreases in independence. It is often the case in Latin America that other actors outside of the judicial system, especially in the executive branch, intervene in such a way that politicizes the judiciary (Russell & O’Brien, 2001, 118).

Judicial Constraints. But, how does greater independence lead to increases in the court’s ability to effectively constrain the executive? Judicial independence can be evidenced in the willingness of the courts to rule against the government in salient political cases (Domingo, 1994; Ungar, 2002; Calleros, 2009). Thus, we can expect that courts that are independent rule more frequently against the government. An executive that does not engage in power concentration or corrupt behavior may not need
to be constrained by the court, but, the power of the court to constrain would exist if it did engage in corruption. The extent to which judicial constraints on the executive branch vary in Latin America is shown in Figure 3.1 below.

![Figure 3.1. Judicial Constraints on Executive Power Rankings](image)

Source: Varieties of Democracy database (2016)

**Executive Power**

*Non-legislative power.* When does the executive tend to abuse power? Power concentration enables the executive to engage in corruption and get away with it. This part of the puzzle illustrates how increased constraints may lead to less corruption. Horizontally, as the independence of the judiciary increases, the power once concentrated in the executive now transfers, diffusely, onto the judicial, and legislative branches and other agencies. Vertically, the behavior of the executive will be affected by the cohesion of
the official party, and the extent to which it has a legislative majority, components of what Pérez-Liñán (2007) refers to as the ‘legislative shield’.

Shugart and Carey (1992) classify presidential powers into two distinct groups: legislative vs. non-legislative powers. In their analysis, legislative powers of the executive include the power to veto or partial veto, to decree, budgetary powers, the exclusive introduction of legislation, and the proposal of referenda. In contrast, non-legislative powers include the ability to form and dismiss the cabinet, censure, as well as their ability to dissolve the assembly or congress (Shugart and Carey, 1992).

The power of the president to appoint his own cabinet, as well as his power to dismiss it, can aid in gauging the concentration of power in the executive. These non-legislative powers, along with assembly dismissal and censure, are examined by Shugart and Carey (1992) and scored according to the executive’s power to construct a cabinet. For example, if a president names members of the cabinet without any restrictions (such as confirmation by the Senate) the cabinet formation score is high. If the president can equally dismiss a cabinet member without limitations or restrictions, their cabinet dismissal score is high.

In analyzing Shugart and Carey’s (1992) model, Fortin (2012) demonstrates that indeces that combine measures of a president’s power to form and dismiss a cabinet, as well as the power of censure, or to dissolve the assembly, weaken the validity of such measures. In her study, the author explains that “by using the more independent components of presidential power separately in analyses, researchers stand to gain a much clearer grasp of the effects of specific powers than by using an index in which the effects of some items are diluted by being combined with unrelated indicators” (Fortin, 2012, 97).

In countries where the executives hold non-legislative powers of cabinet formation and dismissal powers to such a high extent, members of the cabinet are more dependent on a single branch (the executive) and perhaps solely on a single individual (the president). We would expect that such power relation would benefit the president if he or she were to engage in corruption. Members of the cabinet
could be effectively coerced to actively participate in the corrupt scheme or perhaps advised to look the other way if they wish to maintain their government positions. Therefore, we can expect that a president who can appoint and dismiss cabinet members at will, will have a higher concentration of power at his/her disposal, and could engage in corruption because it will be easier to do so and get away with it than under alternative conditions.

Legislative Shield. According to Perez- Liñán (2007), impeachment has substituted coups d’état as the most sought after political displacement tool. In just two decades, six Latin American executives from five distinct countries have faced impeachment processes resulting in removals from office. However, not every corrupt activity will lead to impeachment. It is the executive’s legislative shield which has enabled some to avoid impeachment processes while others have faced removal under similar conditions Perez-Liñán (2007).

The legislative shield, I argue, is an important part of the calculus of engaging in corruption. Although analyzed as a measure of executive power, it also incorporates party cohesion and inter-party competition, two variables that affect the strength of vertical accountability as explained above. When cohesion and competition between parties is high, the institutionalization of the party system is greater and the use of clientelistic strategies may be less effective in obtaining votes (Buquet and Piñeiro, 2014). The effects of these on the legislative shield is more complex.

It can be argued that the executive has the incentive to avoid actions that can lead to judicial rulings against it. This could lead to negative publicity and thus damage public opinion against the executive, jeopardizing re-election prospects (Kunicova, 2006). Furthermore, as noted by Chavez (2004, 451), “The rule of law results from a balance of power between at least two political parties, neither of which has

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12 Colombian President Ernesto Samper (1996); Ecuadorian President Abdalá Bucaram (1997); Paraguayan President Raúl Cubas Grau (1999); Ecuadorian President Lucio Gutierrez (2004); Guatemalan President Otto Perez Molina (2015); Brazilian President Dilma Rousseff (2016)
monolithic control, meaning that no highly disciplined party sustains control of both the executive and legislative branches.” When real party competition is absent and party discipline is high, a powerful executive has the incentive to concentrate power and is able to do so (Chavez, 2004). A powerful executive can also undermine the power of the judiciary (O’Donnell, 1998). On the other hand, we can expect that an executive is more likely to comply with the court when there is low party cohesion and when the official party does not possess a legislative majority.

Moreover, while Perez-Liñán (2007) analyzes the legislative shield and the outcome of impeachment as a result of executive-legislative crises, this dissertation analyzes the shield with respect to other elected officials as well as analyzes the potential for the judiciary’s effect on the legislative shield. Such an analysis will help clarify the mechanisms through which the judiciary can effectively constrain the executive from engaging in corruption.

Executive corruption is decreased when there exists greater independence of the court which increases its ability to constrain the executive through rulings that are credible and legitimate. The executive then will more likely comply with these constraints when party discipline is weak and when it does not possess majority control of the legislature since these factors increase the executive’s risks for impeachment (Baumgartner and Kada 2003; Perez-Liñán 2007). Pérez-Liñán (2007) explains there are four factors related to the impeachment of the executive: Constitutional rules, the political party system, the executive-legislative relationship, and the overall political context. The latter offers an exogenous source for increasing executive constraints which include constituency pressures or a hostile public opinion, mass media, and the electoral calendar.

The size of the executive’s legislative shield is a factor in facing impeachment. It is based on the president’s party in the legislature (S), its ability to gain support from allied parties (A), and party cohesion (d). These serve as a buffer against the constitutional threshold required to initiate an impeachment
process \((v)\). Thus, the executive’s legislative shield \((L)\) can be interpreted as \(L = dS + A - v\). The greater the legislative shield, the lesser the potential for impeachment and thus, the lesser the incentive to comply with a judicial ruling; thereby possibly not constraining the executive from engaging in corruption.

Although the author makes little mention of the role of the judiciary, judicial rulings against the executive can provide fodder to the opposition and media, and, very well sway public opinion, create fluctuations in party discipline, and unravel political coalitions. Hence, an executive that concentrates power, one which possesses a large legislative shield, avoid compliance outright in such a way that it erodes the horizontal accountability mechanisms of constraints, which may lead to greater political corruption. The arguments laid out above will be used as testable hypotheses for this section of the dissertation.

\(H_1\): Judiciaries that are less influenced by the partisan politics of a ruling party, in the selection and removal of judges, enhance the ability of the courts to constrain the executive; contributing to less executive corruption.

\(H_2\): An executive that concentrates power may subvert the independence of the judiciary, eroding the horizontal accountability mechanisms of judicial constraints, thereby leading to greater political corruption.

\(H_3\): An executive with a large legislative shield reduces the risks of impeachment, thereby reducing the costs engaging in corruption after being discovered.

**Research Design**

The use of research designs focusing on a single case study or cross-case studies can both generate and test hypothesis. Case studies are often useful for the purpose of elucidating causal mechanisms (Gerring, 2007). The intricateness and detail of case study research reveal the causal mechanisms in the
relationships between independent and dependent variables. Looking for causal mechanisms for political phenomena can be accomplished by analyzing a few cases in detail, rather than many cases with a broad scope (George and Bennett, 2005). King, Keohane, and Verba (1994) suggest that researchers should select cases in terms of independent variables and where they can see how the dependent variable varies. Following these recommendations this study will be focused on a case with low perceived levels of executive corruption (Uruguay) and a case exhibiting high perceived levels of executive corruption (Dominican Republic).

Throughout the quantitative section of this dissertation, data pointed to the significance of judicial constraints on executive corruption. As judicial constraints on the executive increase, executive corruption decreases significantly. This section of the dissertation will attempt to establish causality between judicial constraints on the executive and reductions in executive corruption through mechanisms that increase horizontal accountability such as high court independence. An examination of judicial independence must encompass procedures for appointing and removing judges, their tenure, as well as their financial independence. Calleros (2009) explains that the ability of the court to have financial independence contributes to the overall independence of the judiciary.

This section will also scrutinize the characteristics found in vertical accountability mechanisms, exemplified by the electoral and political party systems, and how these contribute to executive power concentration and, ultimately, executive corruption. This study seeks to expand our knowledge of corruption and its relationship to judicial constraints, as well as how concentration of power in the executive branch leads to the breakdown of effective horizontal accountability mechanisms.

**Case Selection**

The cases are similar in colonial legacy, culture, relative regional location, level of Gross Domestic Product (GDP), and both cases are democracies with presidential systems. Both Uruguay and Dominican
Republic also have a relatively similar experience with *continuous* democracy, exhibiting 32 and 21 years respectively. However, Uruguay suffered from a democratic interruption from 1973 to 1985, while the Dominican Republic’s experience with authoritarian regimes spans many decades. For this reason, it is sensible to expect a greater democratic consolidation of Uruguayan democratic institutions, a result of longer traditions of democratic principles.

With this in mind, and although Uruguay has had an additional 11 years of uninterrupted democracy to date, I argue that the wide variation in levels of executive corruption between the cases may also be explained through weaknesses in vertical and horizontal accountability mechanisms and their interaction with executive power. My aim is to underscore the importance of these institutional designs in relation to depending only on increasing experience with democracy. Greater experience with democracy without reforms that strengthen institutional constraints is not sufficient in lowering levels of executive corruption.

Similarly, while the literature expects greater economic openness to lead to reductions in corruption, Dominican Republic’s greater openness does not translate into less corruption. Uruguay, with a more closed economy, continues to exhibit less executive corruption than any other country in the region, including Panama, the most open economy in the region. This gives us reason to engage in the study of other variables that may be factors for the differences in levels of executive corruption.

These countries represent a case of success (Uruguay) and failure (Dominican Republic) with regards to their levels of perceived executive corruption. At the same time, judicial constraints against the executive as well as political party institutionalization show considerable variation in each case. Uruguay exhibits the lowest corruption as well as a higher level of judicial constraints and institutionalization of the party system than Dominican Republic. Such power relationships, I hypothesize will be key elements in unravelling the mechanisms that facilitate executive corruption. Focus will be placed on each country’s
electoral rules, party system institutionalization, and judicial frameworks as they relate to the ability of the executive to concentrate power and engage in corruption. The constraints provided by mechanisms of vertical and horizontal accountability on executive power are the key in evaluating incentives for executive corruption.

A 20-year average of executive corruption levels across Latin America shows Dominican Republic as the second worst performing country in the region in terms of executive corruption, circled below; it ranks 20/21. Only Venezuela performs worse in this regard. On the other, Uruguay, which is also circled in Figure 3.1 above, is the country with the least corruption in Latin America. I will use Mill’s method of difference, also known as most similar systems, to ascertain whether the independent variables in question are a necessary or sufficient condition for variations in executive corruption.

Figure 3.2. Executive Corruption in Latin America Rankings
Source: Varieties of Democracy database (2016)

The most similar systems method seeks to analyze cases that are similar in every respect but where the phenomenon in question varies widely. This means that where only one independent variable differs
between two cases, any variation in outcome will be the result of such difference in the independent variable. Hence, it can be argued that such variable is the cause leading to differences between the two cases. For these reasons, a comparative analysis of a successful and a non-successful case will aid in discerning a causal mechanism and show important differences between cases that affect executive corruption levels. Figure 3.2 shows how the dependent variable, executive corruption, varies across the two cases.

Beach and Pederson (2013) mention Gerring’s (2007) prescription for the selection of cases after performing a large-n study. They explain that a typical case is the case with the smallest residuals. Cases that are on or closer to the regression line plotting the dependent variable against the independent variable of interest are candidates for an in-depth analysis (Beach and Pedersen, 2013). From the quantitative analysis, both Venezuela and Costa Rica are cases with little to no residuals which, at the same time, differ greatly with regards to their level of executive corruption and judicial constraints on the executive. Looking exclusively at Dominican Republic and Uruguay, Figure 3.3 illustrates the extent of judicial constraints and level of executive corruption in each case. The observations below represent specific country-year data.
While such a comparison certainly seems fitting from the statistical data shown in Figure 3.3, there are important qualitative features to be considered in a comparison of both Venezuela and Costa Rica. At the time of this study, Venezuela has experienced an erosion of democracy and increasing economic turmoil that have it at the brink of a humanitarian crisis. While elections remain an important political contestation arena in Venezuela, as noted by Levitsky and Way (2002), other arenas such as the judiciary and freedom of the press remain weak.
The authors only hesitantly classify Venezuela as a competitive authoritarian regime by stating that “perhaps contemporary Venezuela” is one such case (Levitsky and Way, 2002, 61). The political space that is available has been so systematically manipulated that the incumbents have a significant advantage, therefore, elections can be said to be reasonably free but they cannot be regarded as fair. Finally, rule of law and horizontal accountability have been exceptionally weak, evidenced by the continued reduction of political space to contest throughout the arenas. As arenas for political contestation diminish, horizontal accountability is weakened. For these reasons, and because some scholars have defined the Venezuelan regime as ambiguous, I believe it is better to drop it as a case. Thus, I select Dominican Republic for examining a case of failure.

Costa Rica, on the other hand, is the country with the greatest democratic experience in all of Latin America with 140 years of continuous democracy; which is not comparable to other Latin American democracies, and especially to the Dominican Republic. As shown in the first part of this dissertation, long-standing democracies do have a positive effect in controlling corruption. Costa Rica also lacks a standing military, a trait shared only by its neighbor, Panama, in the region. For these reasons, Costa Rica is often considered as an outlier in the region and thus, not appropriate for comparing with Dominican Republic. Thus, while executive corruption varies greatly between these two countries, key differences in each country’s political and economic institutions render such comparison a less suitable one.

Methodology and Data

Executive Corruption

Although both Uruguay and the Dominican Republic share similar cultures, corruption in and of itself could be tolerated at differing levels by their citizens. For example, while paying off an official to receive a driver’s license may be generally accepted by citizens of one country as common practice, citizens of another might deem such a practice completely unacceptable. The focus on grand corruption,
corruption at high-levels of government, could ameliorate this bias as cases like presidential corruption are usually seen as detrimental in any circumstance and catch national interest.

Thus, in measuring executive corruption levels in Uruguay and Dominican Republic, salient cases of political corruption, found by examining reports by country-branches of Transparency International, will help elucidate the perceptions of corruption in each case. Examining specific cases of corruption will also allow a more detailed study of how the cases were uncovered, processed, and what was their resolution. Media accounts as well as scholarly articles will also be used in order to obtain salient cases of political corruption in Uruguay and Dominican Republic.

**Political Party Institutionalization**

The literature on party system institutionalization, as noted above, covers party cohesion, the level of organization, inter-party competition, and differences in ideological/programmatic platforms (Sartori, 1976; Dix, 1992; Mainwaring, 1999; Randall and Svasand, 2002; Basedau and Stroh, 2008). In determining party cohesion, I will analyze data from the Varieties of Democracy database where cohesion is measured through country experts’ response to the question, “Is it normal for members of the legislature to vote with other members of their party on important bills?” (Pemstein et al., 2015).

Stability of the party system is associated with greater institutionalization. As noted by Huntington (1968, 12), “institutionalization is the process by which organizations and procedures acquire value and stability.” In order to measure the stability of the party system, I delve into the method used by Basedau and Stroh (2008) in assessing the variation in vote share of parties in legislative elections. Focusing on the largest parties and using data from election results gathered from several legislative elections, electoral volatility and the level of inter-party competition (party platform differences) will be assessed.
Parties that can be differentiated ideologically or through their platforms also inform us on the state of a party system’s roots in society, again, a measure of institutionalization. As explained by Mainwaring and Torcal (2006, 216), “widespread voting based on the personality characteristic of candidates, devoid of programmatic or ideological content is a telling sign of weak party roots in society.” Pemstein et al. (2015) measure the extent to which political party manifestos are both distinct (either in terms of content or general ideology) and publicly disseminated.

As noted by North (1990, 6), institutions change slowly through the evolution of conventions, codes of conduct, law, and other avenues which alter our choices. Understanding that these changes take time, an older political party and party system, all else equal, should exhibit a greater level of stability, at least in part, due to their learned experiences and adaptability. Likewise we should expect that the level of organization or roots in society, should be stronger in parties which have been part of the system for greater periods of time (Dix, 1992). The age of the largest political parties will also be used to as a proxy to their level of organization.

Judicial Independence and Constraints

With regards to judicial independence, it will be necessary to focus on nomination and removal provisions to the highest constitutional court, judge’s tenures, and the state of their financial resources. An analysis of the nature and composition of judicial councils, institutions created to improve the efficiency and independence of the courts, will be important in determining whether real judicial independence exists. As noted by Calleros (2009), “vested interests protected by politicians and the lack of political will to pursue deeper reform, resulted in mixed outcomes” when considering the successes of judicial councils. The Constitution and other enacted laws will provide the first point of analysis for judicial independence.
In determining the financial allocation and disposition of the courts, the national budget allocated to the judiciary and the agencies that allocate or play a role in allocation will serve if the judiciary can be influenced or constrained by the executive. Finally, in determining the extent to which the courts are willing and able to rule against the executive I analyze court decisions against the government.

**Legislative Shield**

Lastly, an analysis of the executive’s ‘legislative shield’ will inform us the extent to which the executive can be avoid impeachment even after being caught in engaging in corruption. As noted by Perez-Liñán (2007), high party cohesion and a legislative majority enhances the executive’s legislative shield and reduces the possibility of impeachment. Thus, an examination of the political party system will aid in our understanding of party cohesion in Uruguay and Dominican Republic.

Obtaining election results from the cases in question will illustrate the extent to which the official party has a legislative majority or not. Together with an examination of the constitutional rules for impeachment, the number of votes required to impeach, we will know the size of the executive’s legislative shield. Analyzing the legislative shield, corruption activities, and impeachments, will inform of us of the amount of dependence that ministers or members of the judiciary may have to the executive.

A nomination and removal process for justices of the Supreme Court that involves more than one branch of government is consistent with more independence and hence, a lesser ability of the executive to abuse power and get away with it. In the following chapters, an examination of these institutional conditions in Dominican Republic and Uruguay will be examined in depth and will subsequently be compared in a concluding chapter.
CHAPTER IV

DOMINICAN REPUBLIC

Weak Constraints on Executive Power and High Perceptions of Executive Corruption

Introduction

Dominican Republic achieved its independence from Haiti on February 27th, 1844. Located in the Caribbean, the Dominican Republic has a GDP of $71 billion dollars (2016), exhibiting the fastest economic growth in Latin America since 2015 (International Monetary Fund, 2017). In 2016, its population was about 10.6 million (OECD, 2017). Authoritarian regimes exercised political power in the country for decades until, in 1996, the “Pact for Democracy” shortened the presidency of Joaquin Balaguer and called for new elections. Since 1996, the Dominican Republic has had a 21 year continuous experience with democracy. The country also ranks as the 6th most open to trade in the region according to World Bank data (World Bank, 2016). However, using data from the Varieties of Democracy database, Dominican Republic stands as the second-most corrupt country in Latin America when considering perceptions of executive corruption; Venezuela being the worst performer in the region (McMann et al., 2016).

To date, there have been 34 constitutions since independence, three since 1996 (2002, 2010, and 2015), the most for any country in the world (Elkins Ginsburg, & Melton, 2009). Analyzing such democratic experience as well as the low level of institutionalization as evidenced, for example, by its constitutional instability, will provide context for understanding the effects that institutional designs of the judiciary and political party systems have had on levels of executive corruption in the country. In this chapter, an analysis of the institutionalization of the party system, the concentration of executive power, and judicial independence in Dominican Republic will help elucidate how these variables interact in a way that results in deficient judicial constraints and increased executive corruption through widespread impunity.
First, by looking at perceptions of corruption through Latinobarómetro, I will describe the overall perception of corruption in Dominican Republic. The data will allow us to ascertain how much of a problem corruption is perceived to be by the average Dominican citizen. An executive corruption case will be laid out as an example of corruption that made its way to the Supreme Court, effectively beyond perceptions. Cases that did not reach the highest court will be discussed to the extent that they include members of the executive and, arguably, increase perceptions of executive corruption. Next, an analysis of the institutionalization of the party system, the extent of the executive’s power, and the independence of the judiciary will aim to compare how levels of vertical and horizontal accountability in Dominican Republic contributed to greater executive corruption.

**High Executive Corruption**

Although the data is limited due to the difficulty of accessing official reports on cases of executive corruption, salient executive corruption cases are taken from the Dominican Republic’s Transparency International chapter, Participación Ciudadana. ¹³ Citizen’s assessments of corruption levels, their perceptions of corruption, point out to a generally high corruption environment. Unfortunately, data on perceptions of executive corruption has only recently increased and the data continues to be limited. Participacion Ciudadana (2004) reports that an increasing majority of the population considered corruption in government a very serious matter.

The report states that in 1994, 88% of the population agreed with that assertion, 90% in 1997, and 94% in 2001 (Collado, 2004, 3). Similarly, from 2002 to 2015, for which data is available, a majority of respondents believed that little to no progress had been made in reducing corruption in state institutions.

¹³ The Office for the Persecution of Administrative Corruption (PEPCA) is the Dominican Republic’s specialized anti-corruption agency. However, because it is housed in the office of the Attorney General, who is appointed by the executive, it has been excluded from the analysis.
A 2008 report found that 56.1% of respondents believed that corruption amongst politicians was higher than that of the rest of society (Latinobarómetro, 2015).

Latinobarómetro surveys provide a recent overview of the environment of corruption in Dominican Republic. In 2013, 42.7% of respondents believed that a majority of government of officials were corrupt (Latinobarómetro, 2015). A 2015 Latinobarómetro survey found that almost a third of respondents, 27.1% of people surveyed knew of an act of corruption in the past year (Latinobarómetro, 2015). Furthermore, in response to the progress made with regards to reducing corruption in state institutions, a majority of respondents (53.3%) thought that little to no progress had been made; 32.8% of those belonged exclusively to ‘no progress’ category (Latinobarómetro, 2015). Lastly, the 2016-2017 World Competitiveness Report notes that corruption is the most problematic factor for doing business in Dominican Republic (World Economic Forum, 2016).

A more longstanding review of corruption is made through reports by Participación Ciudadana (PC), which looks into cases of corruption from 1983 to 2003. The investigation finds as many as 227 cases of corruption adjudicated at various levels of the judiciary, with some referred by the government anti-corruption agency out of the Specialized Attorney General’s office for the Persecution of Administrative Corruption (PEPCA), formerly known as the Department for the Prevention of Corruption (DEPRECO).

Out of the 227 cases of corruption, 155 involve members of the administration and other dependent departments and institutions. Furthermore, of the 155 cases, only six were resolved through the courts, resulting in five decisions absolving those accused and only one conviction. The only case of conviction was the case of the then-legislator, Rafael Flores Estrella in 1988, who was eventually pardoned by then-president Joaquin Balaguer (Participación Ciudadana, 2004). In other words, 149 cases of corruption at high levels of the administration have not been resolved. Although cases may be dismissed on the basis of their merits, or lack thereof, a majority of these cases have been dismissed, perhaps, due to the
executive’s ability to concentrate power and exert influence on other branches of government such as the judiciary. More will be discussed about this possibility in the sections to follow.

The five cases that were resolved included the case of ex-President Salvador Jorge Blanco of the PRD, accused of fraud and prevarication against the state in 1986. The case spent 13 years in the courts which initially found the ex-president, amongst others, guilty and sentenced to 20 years in prison. Yet, the decision was later overturned in appeal and those accused, including the ex-President, were absolved. The decision, according to PC, coincided with the electoral victory of the former president’s party, the PRD in the year 2000. In total, out of 207 individuals indicted in the cases analyzed from 1983-2003, there were none serving sentences in prison at the time of the publication of the report (Participación Ciudadana, 2004).

Since then, cases of executive corruption have continued to be exposed through media coverage as well as formal indictments by the Attorney General’s office, although the outcomes have exhibited similar patterns to cases mentioned above (Participación Ciudadana, 2014). A second report of corruption cases by Participación Ciudadana (PC) examines 94 denouncements and formal cases of corruption from 2000-2013, having some overlap with PC’s earlier report. In their report, PC explains that, “there is a powerful drawing of attention to the fact that out of the 94 cases noted in the study, the number of convictions is summarized into a much reduced number of the total and always in relation to minor officials” (Participación Ciudadana, 2014). Of cases examined in both reports, seven were extracted for greater analysis that occurred between the years 1996 and 2016 and are shown in table 4.1. These cases were selected on the basis of having an executive, minister, or other high-level official involved in a judicial proceeding against them due to corruption allegations. Two of these cases have yet to be resolved by the courts.
One case against the Sun Land Corporation will be expanded upon to illustrate the extent of judicial constraints on the executive specifically. The case of Odebrecht, ongoing at the time of this study, shows the reach of corruption into Latin American governments and, with respect to the Dominican Republic specifically, stresses the institutional deficiencies of a country which was targeted by Odebrecht as a safe-haven for corruption to operate as an institution.

According to the U.S. Department of Justice, in Dominican Republic alone, Odebrecht admitted paying bribes amounting to approximately US$ 92 million over the course of 13 years (2001-2014) and generating a profit of about US$ 163 million (United States Department of Justice, 2017). The corruption case against Odebrecht provides evidence of the systemic and chronic nature of executive corruption in Dominican Republic. The bribes spanned across four presidencies, that of Hipolito Mejía (2000-2004), Leonel Fernández (2004-2008 and 2008-2012) and Danilo Medina (2012-2016). Of the countries Odebrecht engaged with abroad (outside of Brazil), the Dominican Republic experienced the second-most amount of bribes; only surpassed by Venezuela’s US$ 98 million. Figure 4.1 shows a visual representation of the amount of bribes disbursed in Latin American countries through Odebrecht with the exclusion of Brazil, Odebrecht’s country of origin. ¹⁴

¹⁴ Not surprisingly, the countries with the greatest levels of perceived executive corruption (Dominican Republic and Venezuela) are also those which received the greatest amount of bribes.
The Dominican Attorney General’s office opened a formal investigation into Odebrecht in December 26th, 2016. Having admitted culpability in the United States’ courts, Odebrecht pled guilty to paying US$ 92 million in bribes in Dominican Republic and accepted the payment of a penalty of US$ 184 million, twice the amount of bribes as established by Dominican law in cases of corruption. The agreement between the Dominican Republic and Odebrecht, reached nearly a month after the investigation begun, is to pay US$ 30 million up front and the rest by the year 2025 (Acento, 2017).

To date, multiple current and former ministers and legislators have been formally accused of corruption in the case. What is of interest to this research is that, according to documents obtained from Brazil’s Federal Superior Tribunal, which is hearing the case in that country, Odebrecht’s “Structural Operations” Department (dubbed the bribe department by the U.S. Justice Dept.) was partially transferred to Dominican Republic in 2014. The court documents explain that one of the major concerns of then-president of Odebrecht, Marcelo Odebrecht, was to secure the viability and continuity of the
Structural Operations Department and that the Dominican Republic provided the environment whereby the program would be able to be safely maintained (Acento\textsuperscript{b}, 2017)\textsuperscript{15}.

The partial transfer of Odebrecht’s “bribery department” to Dominican Republic is of great concern. Out of the 12 countries in which the department operated, Odebrecht executives believed the Dominican Republic was the most viable country from which bribery, as an institutionalized branch of the company, could be based out of. The case suggests that even Odebrecht considered the Dominican Republic a highly corrupt country in the region from where they could operate their bribery operation.

The cases described in Table 4.1 span from 1996 to 2016 for which data is available, some having not be resolved at the time of this study. It is important to note that of the seven cases described below, two out of three cases, in which the accused were members of the opposition party, received convictions with prison sentences. Two other cases, in which the accused belonged to the official party, were dismissed. Lastly, two investigations remain open, one (the case of the Super Tucanos) has been ongoing for nearly 10 years.

\textsuperscript{15} In Brazil, Marcelo Odebrecht has been convicted of money laundering and criminal association and sentenced to 19 years in prison (Schmidt and Valle, 2016). The Brazilian investigation led to the impeachment of ex-president Dilma Rousseff and is currently investigating 12 out of Brazil’s 27 governors, eight ministers, and all of the five living ex-presidents; Jose Sarney (1985-1990), Fernando Collor de Melo (1990-1992), Fernando Henrique Cardoso (1995-2002), Luiz Inacio Lula da Silva (2003-2010), and Dilma Rousseff (2011-2016) (Acento\textsuperscript{c}, 2017).
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<thead>
<tr>
<th>Case</th>
<th>Accused</th>
<th>Govt. in Power</th>
<th>Summary</th>
<th>Year Opened</th>
<th>Ruling Party at Open</th>
<th>Year Closed</th>
<th>Ruling Party at Close</th>
<th>Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. PEME</td>
<td>Simón Lizardo and Diandino Peña, both previous secretaries of the PLD; Haivanjoe NG Cortiñas, ex-Comptroller General, and Leonel Fernández, ex-President</td>
<td>PLD 1996-2000</td>
<td>Checks destined for the PEME program would be cashed and used by high level officials within the PEME program and allegedly used to finance the electoral campaigns of the PLD in 1998 and 2000.</td>
<td>2000</td>
<td>PRD</td>
<td>2007</td>
<td>PLD</td>
<td>In 2001, the judge hearing the case sentenced both ex-secretaries of the presidency to prison. The judge dismissed the case against the ex-Comptroller General and the ex-President, although on appeal, the ex-Comptroller General was sentenced to prison. The case continued for 6 more years, amidst judicial proceedings and appeals; and in 2007 the prosecution withdrew their accusations against the defendants.</td>
</tr>
</tbody>
</table>
### Table 4.1 – continued

<table>
<thead>
<tr>
<th>Plan Renove</th>
<th>Ex-Minister of the Interior and Police Pedro Franco Badia.</th>
<th>PRD 2000-2004</th>
<th>These members of the PRD administration (2000-2004) were indicted, including the former secretary of the interior and the police.</th>
<th>2005</th>
<th>PLD 2008</th>
<th>Found guilty and sentenced to three years of house arrest in 2008. Appealed the decision in 21 Feb. 2008 and was rejected by the SCJ. Later that year 22 Dec. 2008, President Fernández (PLD) pardoned them.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greenhouse Program</td>
<td>ex-Ministers of Agriculture Eligio Jáquez and Antonio Fabelo, the ex-Vice Minister for the Environment Andres Escarramán, and other government officials</td>
<td>PRD 2000-2004</td>
<td>Accused of corruption and fraud in the distribution of 50 greenhouses worth RD$ 500 million (approximately US$ 11 million) to leaders of the then-ruling party, PRD according to Participacion Ciudadana, (2014).</td>
<td>2005</td>
<td>PLD 2007</td>
<td>PLD</td>
</tr>
</tbody>
</table>

---

16 In response to the court’s decision, Attorney General Francisco Dominguez Brito said, “The worst that happens to us in the fight against corruption is the culture of impunity. More than RD$ 500 million were gifted to ex government officials and it seems like nothing happened” (Participacion Ciudadana, 2014).
<table>
<thead>
<tr>
<th>Case</th>
<th>Ex-Officer</th>
<th>Court</th>
<th>Description</th>
<th>Year</th>
<th>Court</th>
<th>Year</th>
<th>Court</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Super Tucanos</td>
<td>Ex-Minister of Defense, Pedro Antonio.</td>
<td>PLD</td>
<td>Acquisition of airplanes for the purposes of combating drug trafficking. Planes were overvalued by over SUS 2 million and reported bribes paid in the amount of SUS 3.4 million</td>
<td>2007</td>
<td>PLD</td>
<td>-</td>
<td>-</td>
<td>Investigation is ongoing</td>
</tr>
<tr>
<td>5. Sun Land</td>
<td>Felix Bautista, Director of OISOE</td>
<td>PLD 2004-2008</td>
<td>Contractual obligation between Sun Land R.D., S.A, and the Office of Supervisory Engineers for Public Works (OISOE) without Congressional authorization as deemed by law in articles 37 and 55 of the Constitution. Opposition party PRD sues OISOE on the basis of non-constitutionality to the Supreme Court.</td>
<td>2007</td>
<td>PLD</td>
<td>2008</td>
<td>PLD</td>
<td>In December 2008, the Supreme Court dismisses the case on the basis of lack of standing of the parties in bringing the lawsuit</td>
</tr>
<tr>
<td>6. Victor Diaz Rua</td>
<td>Ex-Minister of Public Works, Victor Diaz Rua</td>
<td>PLD 2004-2008; 2008-2012</td>
<td>Accused of fraud, corruption, and money laundering through the procurement process of construction projects.</td>
<td>2013</td>
<td>PLD</td>
<td>2014</td>
<td>PLD</td>
<td>Case was permanently closed in 2014 and the investigation was dropped.</td>
</tr>
</tbody>
</table>
Table 4.1 – continued

| 7. Odebrecht | Juan Temistocles Montas, current minister of Industry and Commerce; Victor Diaz Rua, ex-minister of Public Works; other former and current legislators. | PLD | Bribery in the amount of US 92 million dollars for the approval of construction projects under procurement process. | 2016 | PLD | - | - | Investigating is ongoing. |


The Sun Land Corporation Corruption Case

In 2007, the Dominican Republic, through the office of supervisory engineers for state works (OISOE), contracted the services of Sun Land Corporation for the construction of buildings in the public university Universidad Autónoma de Santo Domingo (UASD), and the remodeling and creation of other state-owned buildings. The contract was worth US$ 130 million and it would be administered by OISOE under the direction of Felix Bautista.

Bautista had faced previous accusations of corruption. President Hipolito Mejía, of the opposition party (PRD), first accused Bautista of committing corruption in the year 2000. This first case was brought against Bautista on the basis of a RD$ 50 million (approximately US$ 1 million) over-valuation of the construction of the highway San Juan-Vallejuelo while he was deputy director and later, director of OISOE. For this, Bautista served 5 months in prison while awaiting trial; the case was eventually dismissed (De la Rosa and Ramirez, 2013). Nevertheless, in 2004 and with the rise to power of President Leonel Fernández
Bautista was, once again, named director of OISOE after serving previously under Fernández’s first term in 1996.

The contract with Sun Land Corporation was authorized by President Fernández and it consisted of the construction of 11 buildings. Although later changes to the contract reduced the number of buildings to 5, it did not alter the budgetary provisions initially undertaken for the construction of the 11 buildings (De la Rosa and Ramirez, 2013). Members of the opposition party (PRD) initiated a lawsuit against Bautista and the executive branch for the alleged unconstitutionality of the contract as it had not been authorized by Congress as expressed in article 39, title 13 of the Dominican Constitution of 2002.

The case was heard by the Dominican Supreme Court which, in December 2008, determined that while the executive branch had an inescapable duty of submitting the contract to the sanctioning of Congress, in accordance with the Constitutional norms, the parties presenting the lawsuit had no standing (Montero, 2013). The court continued its decision by explaining that only the presidents of the Chamber of Deputies and of the Senate had the proper authority to file a suit for unconstitutionality by the executive. Following this explanation, the court dismissed the case.

At the time, the President of the Chamber of Deputies as well as the President of the Senate were both members of the official party, the PLD. This raises important questions regarding who is able to bring cases of unconstitutionality to the Supreme Court or, now, to the Constitutional Tribunal (TC). If standing in cases like the one described above is only granted to the presiding members of the chambers of Congress, with a sufficient majority in congress, the executive may engage in corruption and get away with it, in part, because of a strong legislative shield, as will be explained in a later section.

Once again, in 2014, then Attorney General, Francisco Dominguez Brito and member of the PLD, presented formal charges of illicit enrichment against Senator Felix Bautista. According to the Public Ministry who was headed by Brito, the senator had engaged in illicit enrichment when heading the office
of supervisory engineers for public works (OISOE). At the time of his accusation, Bautista also served as secretary for the party in power, the PLD. In a much televised case, the judge, Alejandro Moscoso Segarra, who himself was a member of the PLD, dismissed the case through resolution number 544-2015 (Acento, 2014). An analysis of why the case against Bautista was dismissed will be discussed in more detail in a later section.

**Party Institutionalization**

In order to ascertain the cause of corruption, I will analyze party institutionalization. The level of institutionalization of the party system in Dominican Republic can be examined by looking at party cohesion, the age of the major parties in the electorate, the volatility or stability of their electoral support and the extent to which their party ideologies and platforms are clear, differentiable, and publicly available. Here, party institutionalization will be analyzed on the basis of the entire system and not individual parties. As noted by Basedau and Stroh (2008), a system is more than the sum of its parts as it enables analysis of the relations between the individual parties; this is my aim when referring to the party system institutionalization.

Considering the age of the main parties in the Dominican electoral system, the relatively new PRM party was founded in 2015. The PRM party originated from an internal split within the PRD that began in 2014. The PLD was founded in 1973, the PRD in 1939, and the PRSC in 1964. With 173 years of independence (1844), the average age of major Dominican political parties is 44 at the time of this study and 58 if we exclude the newest party PRM.
Table 4.2. Congressional Elections in Dominican Republic (1998-2016)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Partido de la Liberacion Dominicana</td>
<td>Senators</td>
<td>4(13%)</td>
<td>2(6%)</td>
<td>22(69%)</td>
<td>31(97%)</td>
<td>26(81%)</td>
</tr>
<tr>
<td>(PLD)</td>
<td>Representatives</td>
<td>49(33%)</td>
<td>41(27%)</td>
<td>96(54%)</td>
<td>105(58%)</td>
<td>106(55%)</td>
</tr>
<tr>
<td>Partido Revolucionario Moderno</td>
<td>Senators</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2(6%)</td>
</tr>
<tr>
<td>(PRM)**</td>
<td>Representatives</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>42(22%)</td>
</tr>
<tr>
<td>Partido Reformista Social Cristiano</td>
<td>Senators</td>
<td>2(3%)</td>
<td>1(3%)</td>
<td>3(9%)</td>
<td>1(3%)</td>
<td>1(3%)</td>
</tr>
<tr>
<td>(PRSC)</td>
<td>Representatives</td>
<td>17(11%)</td>
<td>36(24%)</td>
<td>22(12%)</td>
<td>75(40%)</td>
<td>18(9%)</td>
</tr>
<tr>
<td>Partido Revolucionario Dominicano</td>
<td>Senators</td>
<td>24(81%)</td>
<td>29(91%)</td>
<td>7(22%)</td>
<td>0(0%)</td>
<td>0(0%)</td>
</tr>
<tr>
<td>(PRD)</td>
<td>Representatives</td>
<td>83(56%)</td>
<td>73(49%)</td>
<td>60(34%)</td>
<td>3(2%)</td>
<td>16(8%)</td>
</tr>
</tbody>
</table>


*In 2010, legislators were elected to serve a 6-year term in order to make presidential and congressional elections concurrent for the 2016 cycle. ** Contested the 2016 elections as a new political party produced by a split within the PRD.
Moreover, by looking back at the congressional electoral contests, we can further establish which have been the major political parties in the Dominican party system. Analyzing the electoral support and age of the major political parties in Dominican elections can demonstrate party institutionalization. With the passage of time, a party system is more likely to have established the roots in society and an organizational structure that are staples of a more institutionalized party system. Table 4.2 shows the electoral support of the major political parties in Dominican elections for five electoral contests.

Electoral results of the contests show how volatile or stable the political environment has been with regards to the share of seats received by each party. Although the PRD had lost seats in the 2010 election, with the founding of the PRM in 2015, more electoral support shifted from the PRD to the PRM as noted by the figures above. Meanwhile, the PRSC, once dubbed the king-maker of Dominican politics lost its status as third biggest party in the 2008 elections. It regained its place in 2012. In 2002 the PRSC increased its share of seats in Congress by 111% from 1998, it then lost 38% in the next election, gained a whopping 240% in 2006 and lost 76% seats in the next congressional election held in 2010. Although alternation is common-place in democratic politics, the high volatility among the opposition, in part, led to the PLD’s three consecutive wins in elections. Hence, Dominican electoral politics points to a less competitive system which is evidence of less institutionalization. As noted by Huntington (1968) and Basedau and Stroh (2008), stability is associated with greater institutionalization of the party system. This is an avenue towards improving levels of vertical accountability and, perhaps, ameliorating executive corruption. Below we can observe the number of seats in Congress gained and the change in seat allocation relative to previous elections by party.
Table 4.3. Party Representation in the Legislature in Dominican Republic

<table>
<thead>
<tr>
<th>Party</th>
<th>Change in lower house seats (%) from 1998 to 2002</th>
<th>Change in upper house seats (%) from 1998 to 2002</th>
<th>Change in lower house seats (%) from 2002 to 2006</th>
<th>Change in upper house seats (%) from 2002 to 2006</th>
<th>Change in lower house seats (%) from 2006 to 2010</th>
<th>Change in upper house seats (%) from 2006 to 2010</th>
<th>Change in lower house seats (%) from 2010 to 2016</th>
<th>Change in upper house seats (%) from 2010 to 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLD</td>
<td>-8(-16)</td>
<td>-2(-50)</td>
<td>+55(+134)</td>
<td>+20(+900)</td>
<td>+9(+9)</td>
<td>+9(40)</td>
<td>+1(+1)</td>
<td>-5(-16)</td>
</tr>
<tr>
<td>PRM</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>+42</td>
<td>+2</td>
</tr>
<tr>
<td>PRSC</td>
<td>+19(+111)</td>
<td>-1(-50)</td>
<td>-14(-38)</td>
<td>+2(+200)</td>
<td>+53(+240)</td>
<td>-2(-66)</td>
<td>-57(-76)</td>
<td>0</td>
</tr>
<tr>
<td>PRD</td>
<td>-10(-12)</td>
<td>-5(-20)</td>
<td>-13(-17)</td>
<td>-22(-75)</td>
<td>-57(-95)</td>
<td>-7(-100)</td>
<td>+13(+433)</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Central Electoral Board (JCE) Dominican Republic

Using the data from Table 4.2, Table 4.3 above shows the change in number of seats by party from 1998-2016 in the Dominican party system. Although changes in seat allocation are to be expected in electoral politics, significant changes may show that parties are unable to adapt to electoral shifts and the system is less competitive. Less stability points to lesser institutionalization in the party system relative to other countries as noted earlier. Significant changes in the seat allocation of the PLD in 2006 from the 2002 elections, as well as changes experienced by the PRD from 2010 to 2016 demonstrate the high volatility of the Dominican party system. Relative to the 2010 elections, the PLD lost five senators and gained one deputy to the lower chamber. The greatest change for the PLD was the gain of 20 senators, equivalent to an increase of about 900% of seats. With the most recent internal strife suffered by the PRD,
the seats in 2016 transferred mostly to the newly formed party, the PRM, which gained an impressive 42 seats in the Chamber of Deputies and two senators. The PRD, once the main opposition party, entered into an allegiance with the party in power, PLD, for the 2016 elections.

The results of the 2016 congressional elections situated the PRD with 16 deputies, a 433% increase in seats, but no senator. Interestingly, one of the deputies elected to the chamber under the PRM changed allegiances to the PRD after being sworn in as a legislator. The PRSC lost 57 seats in the Chamber of Deputies for a 76% decline and the number of senators was unchanged. Currently, the Dominican party system is dominated by the PLD, which holds 106 of the 190 seats in the lower chamber and 28 of the 32 seats in the senate. The political dominance of the PLD is due to, in part, the high volatility suffered by opposition parties, especially in more recent electoral contests. Although the official party’s dominance shows a certain stability in the party system, it also shows that inter-party competition has been weak. This is partly due to weak institutionalization as demonstrated by the breakup of the PRD and subsequent formation of the PRM. The weak opposition contributed in its inability to hold the ruling party accountable possibly permitting corruption to take place more easily.

A content analysis of the ideology of the major political victors of the 2016 electoral cycle will hopefully shed light into the major programmatic differentiations, if any, between parties. By analyzing the statutes publicly available from party websites, I found there is little clear differentiating platforms between parties. Indeed, only the PRSC has ideological roots expressly based in Christian principles. Neither the PLD nor the PRM distinguish themselves greatly in terms of ideology.

From 1996-2016, the Varieties of Democracy database measured for distinct party platforms through survey responses of country experts to the question, “How many political parties with representation in the national legislature or presidency have publicly available party platforms (manifestos) that are publicized and relatively distinct from one another?” (Pemstein et al., 2015). The
Dominican Republic is classified as having “fewer than half” of the parties meeting this criteria, falling short of having “all, or nearly all” of the parties demonstrating distinct party platforms.

The PLD is self-characterized as a progressive party with interests on some government regulation of the economy to ameliorate inequality and incentivize growth. The PRM, under its statutes, self-describes the party as ascribing to the political ideology of democratic socialism. Yet, as noted by Mitchell (2014, 30), “Since the early 1990s...the chief Dominican parties have pursued consistent strategies, as ‘catch-all’ parties with moderate goals. Their programs have been so temperate that the label of ‘ideology’ is hardly applicable to them.” For these reasons, the political parties here described are all considered centrist parties, with the PRSC further on the right of the political ideological spectrum; the PLD located on the center-right and the PRM on center-left.

The lack of ideological differentiation has arguably translated into a more personalistic and diffuse system, where two main political leaders, Leonel Fernández and Hipolito Mejía, have dominated the last 20 years. A rank order of the 12 countries in a study ranks Dominican Republic as the least programmatic system (Kitschelt et al., 2010). Lastly, Table 4.4 shows the placement along the left-right political continuum of ideology.

Table 4.4. Ideological Differentiation of Dominican Political Parties (2010)

<table>
<thead>
<tr>
<th>Political Party</th>
<th>Left-Right Party Placement (LRPP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partido de la Liberacion Dominicana (PLD)</td>
<td>4.54</td>
</tr>
<tr>
<td>Partido Revolucionario Dominicano (PRD)</td>
<td>5.10</td>
</tr>
<tr>
<td>Partido Revolucionario Social Cristiano (PRSC)</td>
<td>6.63</td>
</tr>
</tbody>
</table>

Source: (Kitschelt et al., 2010); note: 1 = extreme left and 10 = extreme right
As noted by Kitschelt et al. (2010), the Dominican Republic possesses a center-right political party system and the greatest ideological differentiation yields a difference of 2.09 points (which will be useful in comparison to that of the Uruguayan system). The authors note that the Dominican Republic was amongst the countries with the least amount of ideological differentiation and thus exhibited weak programmatic party structuration (PPS) since left-right labels in the party system were lacking (Kitschelt et al., 2010). Evidence seen by Jacobs and Spierings (2010) and the OAS election observers regarding the level of electoral clientelism supports the argument that parties, due to their weak programmatic platforms, resort to clientelistic practices in the election for president and other government officials.

According to Sagás (1999), the Dominican electoral system has always evidenced clientelism, many are offered cash in exchange for their citizen IDs in order to vote or abstain on their behalf. Jacobs and Spierings (2010) demonstrate that this has remained the case by noting that clientelism seems to be more conspicuous in smaller Dominican districts. In an overall evaluation of the 2016 Dominican presidential election, the Organization of American States (OAS) reported that 33% of election observers had seen instances of voters being offered rewards in exchange for votes (OAS, 2016). Thus, Dominican parties have resorted to clientelistic practices in order to maintain the linkages between party and voter.

Clientelistic practices that extend from vote-buying to benefits including job placements have been commonplace in the Dominican party system. As noted by Morgan et al. (2011) “in the Dominican Republic, high poverty rates enable the parties to extend small clientelistic benefits to the poor, who still constitute more than 40 percent of the population, while also providing targeted benefits to middle-sector partisans.” For the authors, such practices allow for some stability in the Dominican party system, maintaining linkages with voters although they foster corruption (Morgan et al., 2011).

The lack of substantial programmatic differences and the extensive reliance on clientelistic networks demonstrate weak party institutionalization. The young age of political parties relative to the
independence of the country in 1844, low inter-party competition as demonstrated by high electoral volatility amongst the opposition parties, and a convergence of ideology between parties in general, demonstrate low levels of institutionalization of the Dominican party system.

**Concentration of Executive Power**

Analyzing the extent to which the executive concentrates power is key to understanding the mechanism whereby corruption and impunity remain unwavering and systemic. The concentration of power in the executive weakens mechanisms of checks and balances, such as through the judiciary, and executives become less constrained as explained by O’Donnell (1994). An analysis of the executive’s constitutional terms (Ferraz and Finan, 2011), non-legislative powers (Shugart and Carey, 1992), and strength of their legislative shield (Perez-Linan, 2007) will allow us to gauge the level of power wielded by the executive and their ability to concentrate power, decrease constraints, and hence, facilitate corruption from a willing executive.

As noted by Perez-Liñán (2007) presidential impeachment occurs only when “the mass media systematically investigate and expose political scandals and when the president fails to keep control of Congress” (Perez-Liñán, 2007). I argue that it is precisely the concentration of power that allows the executive to, not only weather political scandals, but engage in corruption due to a much lessened threat of impeachment in presidential systems.

**Executive’s Constitutional Term**

Constitutional provisions regarding term limits could shed light into the sources and degree of executive power. Term-limits serve as an institutional constraint on the executive’s power (O’Donnell, 1994). Thus, when there are no constraints (unlimited re-election) the executive’s power is strongest. On the other hand, when re-election is prohibited, the president’s power is weakest, ceteris paribus.
Considering re-election incentives, executives may withhold from engaging in corrupt acts in their first term in order to secure re-election (Persson and Tabellini, 2003). However, these incentives may be offset by the amount of rents expected to be received (Pereira et al., 2009).

The Dominican president is elected by a simple majority vote to a four year term. The constitution also establishes that the president can run for one consecutive re-election, with the exception that if he were to lose, he would not be allowed to run for president or vice-president ever again (Dominican Constitution, 2015). Interestingly, re-election was prohibited under the 1994 constitution, reinstated in the 2002 constitution, removed again in the 2010 constitution, and once again implemented in 2015. Re-election has been, and surely will continue to be, a frequently debated issue, being at times the only differentiating provision amongst previous Dominican constitutions. Frequent changes in term limits does not enable us to analyze empirically the effects of re-election on presidential corruption in Dominican Republic.

Non-Legislative Power

The Dominican constitution, under article 128 section 2, title (a) states the president has the power, as head of government, to “appoint the ministers and vice-ministers, and other public officials whose appointment is free from and not attributable to another branch of the State recognized by this constitution or the law, as well as to accept their resignation and to remove them” (Dominican Constitution, 2015). They do not have to be approved by the Senate as in the United States for example, hence, the Dominican president appoints and removes ministers at will. The constitution designates, only to the executive, absolute powers of cabinet formation and removal.

The executive in Dominican Republic has complete discretion, and thus high non-legislative power, in both cabinet formation and cabinet dismissal. Following Shugart and Carey’s argument, an executive with no constraints on these non-legislative powers is assigned a score of 4, reflective of the...
strongest power (Shugart and Carey, 1992, 152-153). Likewise, considering the power of censure, congress has the ability to vote for the removal of a member of the president’s cabinet. Although not specific to the president, censure does concern the power of the executive. Shugart and Carey (1992) explain that, where there is no censure, the president’s power is strongest. On the other hand, when congress can vote on the removal of a cabinet member without restrictions, the president’s power is weakest.

In Dominican Republic, the Constitution assigns the power of censure to the legislature in article 95; it states, “...the chambers, with the vote of 2/3 of its members, can emit a vote of censure against a public official and recommend their destitution from office to the President of the Republic...” [Emphasis added] (Dominican Constitution, 2015). Congress, however, can only submit a recommendation to the president on the removal of a cabinet member after an affirmative vote of a very difficult threshold to attain, two-thirds of both chambers. Even though a censure could make for bad publicity, the president need not heed the recommendation. Further, the legislature has never exercised this power in Dominican Republic.

The non-legislative powers of the president of the Dominican Republic, I argue, could be classified under the strongest category in Shugart and Carey’s (1992) model. The Dominican executive has complete control over the appointment and removal of all cabinet positions and their deputies, as well as directors of autonomous bodies, such as the governor of the central bank, without the involvement of any other branch of government (a combined score of 8 out of 8). Because a real power of censure is lacking in the Dominican legislature, the executive’s power is greatest and scores a 4. The Dominican executive does not have the power to dissolve the Assembly and hence, in this category, the executive’s power is weakest and scores a 0. In total, following Shugart and Carey (1992), an assessment of the Dominican executive’s
combined non-legislative power yields a score total of 12 points out of a possible 15. This assessment will remain important in a comparison with the second case in this study, Uruguay.

**Legislative Shield**

In facing impeachment, the size of the executive’s legislative shield depends on the number of members of the president’s party in the legislature (S), the party’s ability to gain support from allied parties (A), and party cohesion (d). These serve as a buffer against the constitutional threshold required to initiate an impeachment process (v). Thus, the executive’s legislative shield (L) can be interpreted as

\[ L = dS + A - v. \]

The greater the legislative shield, the lesser the potential for impeachment after being discovered engaging in corruption.

Currently, the president’s party (PLD) controls both chambers of congress. As noted in Table 4.2 above, the PLD has obtained between 52 and 41 percent of seats in the past three congressional elections. Moreover, in the 2016 election where the PLD obtained 41% of votes, they were awarded 106 seats in the Chamber of Deputies. This means that, out of a total of 190 seats, the PLD controls an actual 55.78%. In comparison, the PRM obtained 20.43% of the vote and 41 seats, translating to 21% of seats in the chamber\(^\text{17}\).

Another component of the legislative shield, the amount of votes required for impeachment, is given by the Dominican constitution under Article 83, section 1 which requires three-fourths of the lower chamber to vote for impeachment. Thus, in calculating the executive’s legislative shield (L) for 2016, as described by Perez-Liñán (2007), the proportion of the chamber voting against impeachment (the number seats controlled by the ruling party in the legislature) (P) is 55.78%. Likewise, the threshold required to

\(^{17}\)In Dominican Republic, the use of the D’Hondt electoral formula, recognized to be less proportional than alternative formulas, disproportionately favors the winner of elections with regards to the amount of seats held in the lower chamber.
prevent impeachment (v) is 26%. Thus we can conclude that the shield is strong due to the relative strength of the president’s party and the threshold required to prevent impeachment. The last component of the shield, legislative party cohesion, will be incorporated into the legislative shields for Dominican executives using data from the Varieties of Democracy database. The database calculates legislative party cohesion by analyzing whether it is normal for members of the legislature to vote with other members of their party on important bills. Legislative shields are shown in Figure 4.2 for the 1996-2016 period.

Figure 4.2. Legislative Shield in Dominican Executives (1996-2016)

Figure 4.2 shows an increasing trend with regards to the strength of the legislative shield. As the shield increases, the risks of impeachment decrease and thus, an executive faces less costs if they seek to engage in corruption. No impeachments nor attempts of impeachment have been made between 1996 and 2016 against Dominican presidents, in part because of the strength of their legislative shields. Interestingly, substantial differences in the strength of legislative shields are revealed when integrating the level of
party cohesion. The inclusion of a party cohesion measure renders a much better picture of what legislative shields resemble in reality; increasing the validity of the measure.

During the Sun Land case described previously, in 2008, the Chamber of Deputies was composed of 178 members; 96 belonging to the official party, the PLD; 42 to the PRD, and 40 to the PRSC (Georgetown University, 2007). Because impeachment required three-fourths vote in the 2002 Dominican Constitution, the threshold to prevent impeachment \( (v) \) was 26%.

A similar analysis for 2014, when then-Senator Bautista was again indicted on charges of corruption under the administration of President Danilo Medina (2012-2016), is important for comparison as it occurred under a new constitution (2010) and an increased number of deputies. After the 2010 legislative elections, the PLD held 105 seats, the PRD 75, and the PRSC 3 for a total of 183 deputies (Georgetown University, 2010). Thus, in calculating the executive’s legislative shield, the proportion of seats held by the executive’s party \( (P) \) was 57% and the 2010 Constitution continued the threshold of a vote of three-fourths of the chamber for impeachment of the president or vice-president specifically.

Moreover, the Constitution specifies that for other elected government officials, impeachment could be approved with two-thirds vote (Dominican Constitution, 2010). Thus, there are two thresholds to prevent impeachment \( (v) \); one for the president of 26% and another for other elected officials of 35%. Although cohesion levels decreased slightly from 2007 to 2008, as shown by Varieties of Democracy data, relatively high levels of inter-party cohesion remained. This, I argue, resulted in an elevated legislative shield for Bautista throughout judicial proceedings. Although the court dismissed his case, Bautista could have, theoretically, been impeached by the legislature as per the Constitution, but, in practice would not have been following this argument and indeed, he was not. The legislative shield enjoyed by Bautista may explain the lack of impeachment proceedings against him.
Convening the other components of the shield, cohesion and the votes provided by allies, we can ascertain that the legislative shield, while strong, can be weakened by low cohesion and a disintegration of coalitions. Analyzing data in the Varieties of Democracy database, cohesion is measured through country experts’ response to the question, “Is it normal for members of the legislature to vote with other members of their party on important bills?” (Pemstein et al., 2015). Looking at data from 1996-2016, the Dominican Republic shows a relatively high level of cohesion, members being characterized as voting with their parties most of the time.

The Sun Land case also provides a good example of an executive that was able to accumulate power, as acknowledged by the court itself in describing the adjudication of the contract as noted in page 90. Further, even though the executive’s concentration of power was acknowledged by the court, it only dismissed the case and never challenged the executive’s actions which encroached upon the powers of the legislature. It is worth noting that the then-president of the Supreme Court, Jorge Subero Isa, when referring to their sentencing of the ‘Sun Land’ corruption case subsequently explained, “It was a political decision. Sun Land was a case imminently political, which received a political solution” (Listin Diario, 2013). This shows that while the executive’s legislative shield has been exclusively analyzed as being able to shield the president, it may also serve to shield government officials that are known to be close to the president.

The Sun Land case also demonstrates the lack of judicial constraints the Supreme Court possesses on the executive; even after acknowledging the executive’s wrongful actions in approving a contract without the consent of Congress. Hence, in this example, as the executive increased its power, it subtracted from the power of the legislature and, at the same time, faced little consequences from the judiciary in doing so. The lack of independence of the Dominican judicial system, as described in the next section, proves to be a sufficient condition for ineffective constraints on the executive’s power.
Analyzing Judicial Independence

The discussion above underscores the importance of analyzing executive power, both their non-legislative power and legislative shield, in understanding weaknesses in horizontal accountability and constraints, especially judicial constraints. Judicial constraints, as noted previously, have been the single greatest institutional explanatory factor with regards to levels of executive corruption and will be discussed next.

The Dominican Constitutions since 1994 state, “...the Judicial Power enjoys functional, administrative, and budgetary autonomy” (Dominican Constitution, 2015). But it is not so in practice. Historically, judicial independence has been weak in Dominican Republic. As noted by Angel Lockward (2014, 303), “the Supreme Court of Justice and all of the judicial system, which in the 19th century was designated during elections, from the 20th century on, was designated by the Senate of the republic. It was customary that each senator proposed to the full body, candidates from their own demarcations and that, the members of the high court, would be designated for a period of four years after debates on the floor of the senate.” These nominations occurred without any examination of a nominee’s competence, age, or other attribution based on merits (Poder Judicial Republica Dominicana, 2017).

This process of electing justices to the Supreme Court politicized the judiciary as judges were completely dependent on the particular members of Congress that nominated them. They were further politicized as their tenures did not last longer than those who appointed them. Thus, the justices of the Dominican Supreme Court were immersed in the partisan political environment of the time and necessarily affected by electoral politics every four years.

It was during the general elections of 1994 when the door was opened to judicial reforms that would bring change to the old order and create the Consejo Nacional de la Magistratura (CNM), the Dominican Judicial Council. These reforms changed the structure of the judiciary and the manner in which
judges were nominated and removed. It is important to keep in mind that the creation of a Judicial Council, as Calleros (2009) notes, “is a good step forward in the direction of guaranteeing a higher degree of impartiality in the court system as the appointment of lower court judges, the organization of a judicial career and the application of disciplinary measures are administered by a collegiate organ, rather than by the executive.” The extent to which these goals were in fact achieved by the reforms and their consequences will be analyzed in the following sections.

Nomination of Justices: Erosion of Independence

The established nomination and removal provisions, as well as the tenure of justices to the highest constitutional courts are all determined by article 179 of the Dominican Constitution, most recently revised in 2015, to be the domain of the Dominican judicial council known as ‘Consejo Nacional de la Magistratura’ (CNM). The law establishes the nomination of judges to be attributed to the CNM which selects judges and their alternates to the Supreme Court, the Electoral Tribunal, and the Constitutional Tribunal. The recruitment of the justices to the Supreme Court is divided amongst career jurists, which will compose three fourths of the body, and members of the public ministry whose head is the attorney general of the Dominican Republic.

Since 1996, nomination and confirmation of all of the judges to the high-courts is tasked in its entirety to the CNM which itself is composed of eight members. In accordance to the law, any citizen or institution is able to present a candidate for consideration to any of the high courts, within ten days of public announcement, and such documentation must be made available in both a physical and electronic format and deposited in the Supreme Court of Justice located in Santo Domingo, Dominican Republic.

With a revision of the Dominican constitution in 2010, reforms to the judiciary included the establishment of a Superior Electoral Tribunal (TSE) as well as a Superior Constitutional Tribunal (TC), the latter being the highest court with jurisdiction over matters of constitutionality and review of international
treaties. Before the creation of the TC, the Dominican Supreme Court of Justice was the judicial body with jurisdiction over these matters. Throughout the study of the judiciary in Dominican Republic, focus will be placed on an analysis of the Supreme Court until 2010 and, subsequently, the Constitutional Tribunal.

A look at the composition of these high courts over the years will allow us to gauge at the nomination of justices in practice. Prior to the creation of the Constitutional Tribunal in 2010, an analysis of the composition of the Supreme Court will be suitable as it was the highest court in the country. It is worth noting that since these institutions are relatively young, established with the ratification of the 2010 Constitution, generalizations are to be made with caution. Nevertheless, there are important insights that can be gleaned from an analysis of the real process of nominations to the high courts. In order to better understand the timing and context of these nominations, a timeline of Dominican presidents and the party they belonged to is shown in Figure 4.3.

Figure 4.3. Timeline of Dominican Presidents and Party Affiliation (1996-2016)
*Incumbent. Dominican presidential elections occur every 4 years.

Since 1994, the Constitution established a minimum of 11 justices. However, with the introduction of the 2010 reform, the minimum number of justices was raised to 16 and since 2011 there have been 17 justices to the Supreme Court. Since the creation of the CNM, the Dominican judicial council selected of justices to the Supreme Court and the Constitutional Tribunal (TC) in 1997, 2002, 2011, and in 2017.

In 1997, under President Leonel Fernández of the (PLD), the Dominican judicial council (CNM) nominated judges to the supreme court in what could be regarded as an open and balanced process.
(Lockward, 301, 2014; Suarez, 2002). Initially, for the nation-wide search in 1996, a call was made for the participation of all members of Dominican society. In this regard, the CNM encouraged all sectors of society and its citizens, members of the clergy, as well as individuals representing civil society institutions and political parties, to submit nominations for the selection of justices of the Supreme Court.

As explained by Suarez (2002), after reducing the nominees from 254 to 30, the latter were interviewed live on national television. After deliberation, the author notes, the CNM announced the eleven men and five women that would compose the Supreme Court of the Dominican Republic. During this first selection, the main considerations for the selecting the most competitive candidates included their years in the practice of law as well as their educational and research merits. Active members of any political party or even those who had attended events sponsored by any political party were disqualified from consideration (Suarez, 2002).

A second selection occurred in 2002 under President Hipólito Mejía of the Dominican Revolutionary Party (PRD) in order to complete the roll of justices. The selection of the final candidates was only televised nationwide in 1997 and 2017. During the evaluation and selection carried out in December 2011 and with Leonel Fernández and his PLD party at the helm of government, the CNM evaluated 8 of the 14 justices who were under the obligatory retirement age threshold of 75 years of age. The CNM was also presented with 95 nominations to the Constitutional Tribunal and 80 to the Supreme Court (Senate of the Dominican Republic, 2011). The CNM selected 14 new justices to the Supreme Court after the evaluation; only Edgar Hernández Mejía and Víctor José Castellanos Estrella would remain from the previous court. For the evaluation of justices in 2011 the CNM issued ruling CNM-2-11, establishing the rules for evaluation. This evaluation differed from the first selection of justices in 1996 since the members of the CNM now interviewed each judge and evaluated their performance behind closed doors.
and on the basis of eight criteria: integrity, public image, intellectual reputation, professional skills, analytical capability, work-ethic, academic competency, and efficiency on assigned cases.

As president of the Supreme Court of Justice, the CNM selected Dr. Mariano German; a prestigious jurist with familial ties to the Dominican Liberation Party (PLD). Previously, Dr. German was appointed by President Fernández as Attorney General of the Dominican Republic (1998-1999) and again as the president of the Dominican Institute of Telecommunications in 2000 during Fernández’s first administration\(^\text{18}\).

The CNM also selected as vice-president of the court Julio Castaños Guzman. Guzman had previously served as judicial consultant to the executive branch (1994-1996) and president of the central electoral board (Junta Central Electoral), an intrinsically political post, from 2006-2010. Guzman has held posts under all of President Fernández’s terms as well as the current President, Danilo Medina, both members of the PLD party. Most recently, Guzman has been elected unanimously by the Senate as the new president of the electoral board, this being his second term as president of that institution. He was elected in a session where the opposition party, with a total of 3 senators, abstained from the vote in protest after a motion to reconsider the proposed members failed to pass (Acento, 2016).

At the helm of the Constitutional Court (TC), the CNM appointed Dr. Milton Ray Guevara, previously a senator and secretary of labor under President Hipolito Mejía and member of the PRD party. His appointment to the TC, proposed by the CNM whose president was the Leonel Fernández (PLD) was

\(^{18}\) The latter position was designated by President Fernandez amidst the electoral transition in which the President-elect Hipólito Mejía, of the Dominican Revolutionary Party (PRD), would shortly gain office. Dr. Mariano Germán resigned before Hipólito Mejía would take office.
the result of a political alliance between the ruling party and the PRD and hence, was far from isolated from partisanship.

The 2017 selection process, ongoing at the time of this writing, has presented harsh critiques from the only two CNM members not belonging to the ruling party. Representative Josefa Castillo, of the main opposition party, expressed concern over the relationship candidates had to the ruling party or their outright membership to it, despite claims from civil society groups to select justices without political affiliations (Jaime, 2017). The legislative majority that the official party has had since 2004 has allowed members of the CNM to select justices without seeking the support of constituents and civil society groups as it did in 1996 when it had no majority (Siles Vallejo, 2012).

The Constitutional Tribunal (TC), succeeding the Supreme Court in its jurisdiction over the constitutionality of laws, is itself composed of 13 members. With the inception of these new judicial institutions, the CNM now had the task of selecting the justices that would compose this additional court. The 2010 constitution also altered the tenure of the justices to the Supreme Court; going from lifetime appointments, with obligatory retirement at age 75 to 7 year terms with the possibility of one re-election; all conducted by the CNM.

The implications of these nominations are two-fold. First, although we cannot naively assume that justices have no political and ideological inclinations, the appointments of the magistrates mentioned above reveal important and active political affiliations and postulate concrete political loyalties. This stands in contrast to the very first selection of the CNM in 1996 where having overt political affiliations were disqualifying. Second, after 2010, these politically aligned individuals were appointed as President or first substitute to the President (Vice-President) of their respective courts, a position that among other key functions, is the deciding vote in a tied decision.
Judicial Council

In Dominican Republic, the National Council of the Magistracy (CNM) is the institution responsible for the nomination of judges to all of the high courts and the evaluation and the removal of justices to the Supreme Court and the Constitutional Tribunal after 2010\textsuperscript{19}. The partisan appointment of justices after 2010 is due to the change in composition of the CNM, which occurred after the constitutional reform of 2010 and which has contributed to a lack of transparency in its selections.

The CNM, originally created by the 1994 constitution, was composed of seven members: the President, Vice-President, President of the Chamber of Deputies, President of the Senate, one Senator and one Deputy who are members of a party not belonging to the same party as the president of their respective chambers, the President of the Supreme Court and another judge appointed by the court. The 2010 constitution (revised in 2015) under Title VI, article 178 discusses the integration of the Council and adds an eighth member, namely, the attorney general. Currently then, the CNM is composed of the president, the president of the Senate, the president of the Chamber of Deputies, the Attorney General, two members of Congress not belonging to the ruling party, the president of the Supreme Court of Justice and another justice chosen by the court to serve as secretary to the council. A simple overview of the membership of the CNM shows that the executive has, in essence, two votes since the origin and survival of the position of attorney general is completely dependent on the president.

As noted above, the convening of the first CNM in 1997 has been widely held as balanced. Similarly, the second meeting in 2002 yielded a balanced result not only in its composition but, “also because the two members of the SCJ (Supreme Court of Justice), were neutral, as they were not submitted to evaluation (self-evalutaion) to re-elect themselves” [emphasis added] (Lockward, 2014). According to

\textsuperscript{19} Since 2010, the CNM evaluates Justices of the Supreme Court every 7-years.
Lockward (2014), “the partisan outcome was, President (PLD), Congress (two PRD and two PRSC), and SCJ (Supreme Court), apolitical and without the possibility for re-election” (Lockward, 2014, 301).

The introduction of the 2010 constitution brought forth changes to the composition of the CNM, and as noted above, presented the attorney general with a seat at the table and the executive branch with a possible two votes. Since then, the majority of the members of the Council belong to the ruling party, and the selection of the two members of the opposition is done with the vote of all of the Senate and all of the Chamber of Deputies, which are currently held in its majority by the ruling party. Lockward (2014) argues that, in 2010, the justices who composed the CNM were inhibited in their decisions to select new judges. The justices who joined the CNM were influenced by the proposition that the new administration would keep them in their judicial posts (Lockward, 2014, 305).

In 2011, the National Council of the Magistracy was composed by the President (PLD), the president of the Senate (PLD) and the president of the Chamber of Deputies (PLD). In the selection of a senator belonging to a different party than that of the President, Senator Felix Vasquez was elected as a member to the CNM. Senator Vasquez, member of the PRSC at the time, was voted into office in 2010 in a ballot shared with the PLD, product of an alliance made with the ruling party.

Another member to the CNM from the Chamber of Deputies belonged to the opposition (PRD). Lastly, the attorney general (PLD), and the president of the Supreme Court as well as an additional member selected by the court to serve as secretary completed the membership of the CNM in 2011. In all, the official party controlled the body tasked with the selection of judges to all of the high courts. It possessed five of a total of eight votes; the majority required to adopt a decision according to chapter VI article 12 of law 138-11 which governs the CNM.

The most recent convening of the CNM in 2016 has a similar representation. Only a representative of the Senate and one from the Chamber of Deputies belong to the major opposition party, the Modern
Revolutionary Party (PRM). The rest of the members, with the exception of the President of the Supreme Court and the secretary of the CNM who also belongs to the court, are affiliated with the ruling party. It is important to note however that, as explained previously, the president of the Supreme Court himself has been an official of the party in power (PLD) previously. Interestingly, the president of the Chamber of Deputies is also the sister of the President of the Dominican Republic at the time of this study. Therefore, at the very least, the official party controls 5 of the 8 votes of the CNM; at the most, it can be argued, it may control 6.

**Tenure and Removal of Justices**

As mentioned above, the 2010 Constitution shortened the tenure of justices who previously enjoyed lifetime appointments albeit with a compulsory retirement age of 75. Under the new constitution, judges are still required to retire once reached the age of 75 but, moreover, judges to the Supreme Court are to be appointed by the CNM to 7-year terms with the possibility of one re-appointment. The judges to the Constitutional Tribunal are appointed to 9-year terms with no possibility of re-appointment. Table 4.5 summarizes the origin and survival of these high courts before and after the 2010 constitutional reform.

Judges to the Supreme Court are subject to performance evaluations by the CNM and all of the judges to these high courts may be removed by the CNM as long as the decision is “based on the constitutional, legal or other regulations that may apply” (Ley 138-11, 2011). No further explanation or specific removal condition is given. In the decision involving the Sun Land corporation corruption case, of the three justices that issued dissenting opinions, none were called by the National Council of the Magistracy (CNM) to be selected for any of the high courts, including the newly formed Constitutional Tribunal (TC), Superior Electoral Tribunal (TSE), and Superior Administrative Tribunal (TSA). Whereas, only one of the justices voting in favor of Bautista, Victor Jose Castellanos Estrella, continued as a justice of the Supreme Court.
This could be, at least circumstantial evidence of a court ruling in favor of the ruling party and ways in which the ruling party garners such decisions through the use of rewards and penalties to judges.

Table 4.5. Origin and Survival of the Dominican Supreme Court and Constitutional Court

<table>
<thead>
<tr>
<th>Institution</th>
<th>Constitution of 1996</th>
<th>Constitution of 2010</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Origin</td>
<td>Survival</td>
</tr>
<tr>
<td></td>
<td>Elected by the National Council of the Magistracy composed of seven members: President, Vice-President, President of the Chamber of Deputies, President of the Senate, two members of an opposition party holding the second majority, the President of the Supreme Court and a second justice designated by the Court.</td>
<td>Life-time appointment with mandatory retirement at age 75.</td>
</tr>
<tr>
<td>Supreme Court of Justice</td>
<td></td>
<td>Elected by the National Council of the Magistracy composed of eight members: President, Vice-President, President of the Chamber of Deputies, President of the Senate, two members of an opposition party holding the second majority, the attorney general, the President of the Supreme Court and a second Justice designated by the Court.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constitutional Tribunal</td>
<td>Not in existence.</td>
<td>Not in existence.</td>
</tr>
<tr>
<td></td>
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</tbody>
</table>

Source: The information is given by art. 83, section 1 of the Dominican Constitution (2015) and by art. 2 section C of law 137-11 (2011).
Financial Independence

The absence of financial autonomy in practice reflects the reality of the Dominican judicial system. The financial limitations threaten the real independence of the judiciary. Law 46-97, passed in 1996, assigned the national budgetary office with dispensing monthly resources to the judiciary. These funds were to be disbursed in 12 equal parts throughout the fiscal year; however, it did not establish a fixed amount or proportion to be allotted to the judiciary from the national budget. Although financial independence would be farfetched under such legal framework, a new law passed in 2004 (law 194-04) established a definite proportion to be assigned to the judicial branch, and with its introduction, new hopes for a truly independent judiciary.

Article 3 of Law 194-04 allocated 4.10% of the national budget to the judicial branch; 65% of which would be assigned to the judiciary and 35% to the Public Ministry. Nevertheless, the 2.66% that would correspond to the judiciary (65% of 4.10) has never been apportioned. According to Siles Vallejo (2012), from 1996 to 2012, the highest allocation to the judicial branch has been a mere 1.7% of the budget. Figure 4.4 reviews national budgets from 1996-2017 and makes evident that this has remained the case.

![Figure 4.4. Budget Allocation for the Dominican Judiciary (1996-2017)](image)

Source: Dirección General de Presupuesto, DIGEPRES (2017)
Budget requests from the judiciary also shed light onto the actual need of funds for the successful operation of the judicial branch. To the extent that these funds are assigned to the judiciary, we can expect the judiciary to be able to operate effectively. Figure 4.5 shows the differences between the courts’ requested operational budget and that which is recommended by the executive and approved by Congress.

![Judicial Budget Requested vs Approved](image)

Figure 4.5. Approved vs. Requested Budget for the Dominican Judiciary (1997-2016)

As seen above, the resources with which the judicial branch has operated since 1997 have remained well under those demanded by the institution each year. In 2015, the judicial branch received less than 50% of the budget it had requested. While the courts have continued to operate despite the lackluster resources it disposes, this has not come without cost. As explained by the Supreme Court in its judicial journal publications, the court had been able to operate without resorting to mass firings by freezing salaries for the previous 5 years (2007-2012) and by creating and combining collegiate tribunals in judicial districts with low caseloads (Poder Judicial Republica Dominicana, 2012).
A study of judicial independence in Latin America shows that salaries in the Dominican judicial branch have risen between 275%-400% since 1996 (Popkin, 2003). Furthermore, a report released by FINJUS in Dominican Republic shows that in 1999, Justices of the Supreme Court earned a yearly income of $US 52,363.56 compared to the $US 89,296.32 in 2010 [2010 dollars] (Siles Vallejo, 2012). In 2017, justices of the Supreme Court earn a yearly income of $US 107,361 [2017 dollars] (Poder Judicial Republica Dominicana, 2017). Hence, while salaries have grown substantially, recent freezes in justice’s nominal salaries as a result of budgetary deficiencies translate into reductions of their real salary when inflation is considered. Thus, this may undermine the financial independence of justices individually, and of the court more generally by allowing the executive room to bargain with the judiciary for the allocation a budget. Judges could perceive that rulings against the executive could lessen budget allocations subsequently. The nomination and retirement process, as well as budgetary allocations, point out that judicial independence is lacking in the Dominican system of courts after 2010 compared to the 1996-2010 period.

Judicial Constraints in Practice

An examination of the number of decrees contested in the high courts of the Dominican Republic, and their resolution before and after 2010 can give us a better idea of the extent to which the courts are independent in practice and their potential to effectively constrain the executive. A pre- and post- 2010 analysis will allow us to understand how the constitutional reform of 2010 has affected the ability of the high court to effectively constrain the executive, providing a quasi-experimental design for analysis, and helping to establish causality.²⁰

²⁰ Moreover, with the ratification of a new constitution in 2010, the Dominican judicial system expanded, now incorporating a Constitutional Tribunal (TC), a Superior Electoral Tribunal (TSE), and a Superior Administrative Tribunal (TSA). Since 2010, the TC became the constitutional court and the ultimate decider on matters of constitutionality. Further, the composition of the CNM changed due to the 2010 Constitutional reform and the political dynamics that placed the PLD with a majority in both chambers and a political alliance with the PRD in 2016. The ruling party dominated the CNM in 2011 and 2016 and the recruitment and evaluation process became less transparent.
The institutional changes allows us to compare the role of the court before and after the constitutional reform in 2010 to examine whether differences in judicial behavior occurred after the ruling party appointed its party members in less transparent ways. Assuming that everything remained relatively constant except for the institutional and procedural changes in the appointment of justices, the comparison of court decisions on cases challenging the constitutionality of executive decrees would also allow us to establish that.

Figure 4.6 below classifies decisions made on the constitutionality of particular executive decrees from 1999-2010 through the courts’ power of judicial review; a total of 17 decrees were judged upon for this period of time. The cases were categorized as those that were inadmissible, which did not having proper standing; cases that were rejected, those in which the court sided with the constitutionality of the decree; and cases in which the court found an executive decree unconstitutional.

![Figure 4.6. Executive Decrees in the Supreme Court of Dominican Republic (1999-2010)](image)

An overview of cases in which the constitutionality of an executive decree was contested from 1999-2010 shows seven were inadmissible, five were constitutional, and another five were acknowledged unconstitutional. Three of these cases involved the voting method of the members of the Dominican Medical College (CMD) (B.J. No. 1197, Sentence 6; October 2003), the rights of particular individuals as successors to another (B.J. No. 1197, Sentence 3; August 2010), and the competence of the metropolitan transit authority to issue diverse types of fines (B.J. No. 1128, Sentence 5; October 2002). The other two cases against executive decrees dealt with the executive’s power over the appointment of a mayor (B.J. 1198, Sentence 2; Sept. 2010) and its ability to impose a tax on exports and imports (B.J. No. 1115, Sentence 1; March 2003).

On the last of these two cases against the executive, in 2003, the court found taxation to be the sole domain of Congress and thus, found decree 727-03 unconstitutional, which sought to establish a 5% tax on exports and 2% on imports due to an impending economic crisis brought about by the collapse of a major bank (the Intercontinental Bank). Nevertheless, with the weight of impending negotiations with the International Monetary Fund (IMF), Congress passed a law that gave way for the taxes previously proposed by the president (Hoy, 2004). The verdict on the other case came nearly a year prior to the presidential elections of 2004 and President Mejía (PRD) was already facing a weakened legislative shield due the decreased cohesion is his party after seeking re-election. The executive had emitted a decree in 2006 appointing one individual as mayor to a particular demarcation that had been recently denoted as a city.

Constituents of this new district were otherwise unable to establish an electoral process for the election of a mayor due to the executive’s decree. The court determined in September 2010, that the decree issued by the president was no longer viable since congressional elections, in May 2010, were held in which new representatives for that particular district were elected. Thus, case brought by one of
the opposition parties, PRSC, was ruled inadmissible (B.J. 1198, Sentence 2; Sept. 2010). It is important to note that while the decree was emitted in 2006, the court did not rule on its inadmissibility until after the 2010 elections.

Both of the cases involving the executive’s power occurred during different administrations. The first, which addressed the question of taxation, occurred under President Mejía (PRD) whose role in appointing judges to the high courts through the National Council of the Magistracy (CNM) was minimal. The second case, that of the appointment of the mayor, occurred under President Fernández (PLD), whose previous administration (1996-2000) appointed a majority these justices in the very first convocation of the CNM in 1997. While more data would be necessary in order to make a more confident assessment, the decisions of the Supreme Court with regards to these cases came in close proximity to elections or immediately thereafter; suggesting an incentive to make strategic decisions according to the potential future composition of the CNM.

![Executive Decrees in the Constitutional Tribunal of Dominican Republic (2012-2017)](image)

Figure 4.7. Executive Decrees in the Constitutional Tribunal of Dominican Republic (2012-2017)
An archival search of cases in the Dominican Constitutional Tribunal finds a total of 26 cases where the constitutionality of an executive decree was contested. As shown by Figure 4.7 above, in similar fashion as was the case for the Supreme Court, most of the cases adjudicated to the TC were deemed inadmissible by the court. Of 26 decisions reviewed, the court found a total of three decrees unconstitutional. As a matter of fact, in one of the decisions the court decided against the constitutionality of particular parts of a decree that established specific rules regarding the repayment from beneficiaries of homes bought from the state. Of the three decrees found unconstitutional, none were of a politically salient issue, they referred mostly to the executive’s power of eminent domain.

Although the TC has had a relatively short existence, considering the cases heard in the Supreme Court, there has been little ruling against the executive from the courts when analyzing executive decrees. After the reform of 2010 and the creation of the TC, the tribunal has found a fewer proportion of decrees to be unconstitutional, compared to the Supreme Court before 2010. Similarly, it has a much higher percentage of inadmissible cases, about 20% more than the cases earlier the Supreme Court. This gives credence to the argument that the TC has been a less constraining body than the Supreme Court was prior to 2010.

In other words, despite the fact that the tribunal is specifically charged only with matters of constitutionality, it has not increased its verdicts against the executive relative to the Supreme Court which presided over constitutional issues. The Supreme Court declared 29% of the decrees unconstitutional in the 1999-2010 period while the Constitutional Tribunal ruled only 11% of decrees as unconstitutional during the 2012-2017 period analyzed. This seems to indicate that the partisan bias that was introduced in 2010 with the addition of the Attorney General as member of the CNM and the increasing influence and representation of the ruling party has had a weakening effect on the ability of the constitutional court to effectively constrain executive power. This effect seems to hold even as the
budget of the judiciary has been on the rise since 2011, as noted in Figure 4.3. The deficiencies in independence of the judicial system translates directly into the court’s ability and its unwillingness to go against the executive, especially when considering that the recruitment and reappointment of the justices is now more dependent on the executive, relative to before 2010.

As noted previously, an analysis of corruption cases by Participación Ciudadana (PC), chapter of Transparency International in Dominican Republic, examines 94 denouncements and formal cases of corruption from 2000-2013. In their report, PC explains that, “there is a powerful drawing of attention to the fact that out of the 94 cases noted in the study, the number of convictions is summarized into a much reduced number of the total and always in relation to minor officials” (Participación Ciudadana, 2014). The powerful, and those belonging to the ruling party, are rarely convicted.

We have yet to know the resolutions of the bribery scheme engaged by the Brazilian construction conglomerate Odebrecht. The latter case merits attention since, through the Justice Department of the United States, Odebrecht admitted to paying bribes upwards of $788 million dollars since the year 2011 and across 12 countries. Of the twelve countries in question, the amount of bribes reported are highest in Brazil, Odebrecht’s country of origin, followed by Venezuela, and Dominican Republic coming in a close third. Interestingly, these two countries (Venezuela and Dominican Republic) are also the worst and second-worst performing countries in Latin America with respect to perceptions of executive corruption respectively. Moreover, the partial transfer of Odebrecht’s “bribery department” gives credence to the systemic institutional deficiencies, which the Odebrecht executives sought to take advantage of, in Dominican Republic.

As noted by the 2016 United States (U.S.) Human Rights report on Dominican Republic, “the government took some steps to punish officials who committed human rights abuses, but there were widespread reports of official impunity and corruption, especially concerning officials of senior rank”
(United States Department of State, 2016). The Dominican case exhibits an example of an executive that has strong non-legislative powers and that is further able to accumulate power, doing so to the detriment of horizontal accountability mechanisms, especially related to the judiciary.

Conclusion

Overall, there is widespread corruption in Dominican Republic. Only few cases have been successfully investigated and indicted. With regard to these, there seems to be a rise in successful investigations leading to convictions of cases of executive corruption upon the transfer of power between parties. Officials whose party has been ousted from the executive face a higher risk of being the subjects of investigations and, moreover, a greater risk of being convicted. Of the seven corruption cases outlined in this chapter, three (3) involved such inter-party accusations and two of them resulted in convictions for those accused. Of the two (2) cases involving intra-party accusations of the ruling party, the Supreme Court dismissed one and, after an 18 month investigation, the Attorney General’s office closed the other before going to court. This suggests that corruption cases will be far and few between when involving members of the ruling party while it is in power. Of course, greater in depth studies of cases will be necessary in order to better ascertain these dynamics.

There are also important financial challenges that exist with regards to the judiciary’s budget, which routinely receives less than the operational budget requested by the court. These financial constraints strengthen the dependence of the judiciary on the executive and may have contributed in reducing its ability to constrain an executive that attempts to concentrate power and is willing to engage in corrupt behavior. With little independence of the judiciary, constraints on the executive are weak, which facilitates abetting impunity and executive corruption.

The judicial system in the Dominican Republic evidences weak institutionalization, with little real independence as a consequence of the procedures for the nomination, removal and tenure of justice,
especially after 2010. Thus, although the Supreme Court constrained the executive prior to 2010, it did not effectively constrain the executive with regards to corruption after 2010. One clear example of this is noted by the case against the Sun Land Corporation and one of the president’s closest officials, Felix Bautista. While the Supreme Court acknowledged the executive’s overreach, it refrained from any direct challenge to it.

The National Council of the Magistracy (CNM), charged with the appointment, evaluation, and removal of judges of all the high courts is of special concern relative to the independence of the high courts and their ability to constrain the executive. The judiciary in the Dominican Republic is not exempt from political considerations, especially after 2010 and prior to 1994, and far from being isolated from them. High courts committed to enforcement of the rule of law, a necessary condition for achieving strong horizontal accountability according to O’Donnell (2003), has not been attained after 2010.

Because the origin and survival of Dominican high courts and their justices depend so heavily on the ruling party-dominated CNM after 2010, judges have an incentive to act strategically and in accordance to political considerations (Perry, 1991; Baum, 1997; Epstein and Knight, 1997; Langer, 2002; Baum, 2006; Lockward, 2014). The members to the National Council of the Magistracy, the body which elects, evaluates, and removes all of the justices to the highest courts, is inherently political. The executive is able to attain favorable decisions by rewarding or punishing justices with regards to their further nomination or removal. The U.S. report on human rights also notes that, “the judiciary routinely dismissed high-level corruption cases during President Medina’s five years in office” (United States Department of State, 2016).
CHAPTER V

URUGUAY

Controlling Corruption with Effective Constraints on Executive Power

Introduction

Uruguay achieved its independence from Brazil on August 25, 1825. Following a series of political and economic crises, the Oriental Republic of Uruguay experienced a transition from dictatorship in 1985 when presidential elections ended the military rule and Sanguinetti was elected president of Uruguay. Since then, Uruguay has had a continuous democratic experience for a total of 32 years at the time of this study. The country is considered to be one of the cleanest with regards to corruption (Martini, 2016). With regards to executive corruption more specifically, Uruguay ranks as the best performing country in the region. Thus, an analysis of the political, electoral, and judicial systems will be important in determining the Uruguayan success in the fight against executive corruption.

This section will proceed as follows. First, perceptions of corruption obtained through Latinobarómetro data, will describe the overall climate of corruption in Uruguay. The data will allow us to ascertain if corruption is perceived to be a major issue of concern for Uruguayans. Next, data on executive corruption will be retrieved from Transparency International’s local chapter, Uruguay Transparente. However, due to Uruguay’s exceptional control of corruption, little data exists in this regard. Although executive corruption cases may yet to be uncovered, existent data shows that Uruguay has maintained its ranking as one of the best performing countries for decades (Varieties of Democracy, 2017). Next, an analysis of the institutionalization of the party system, the extent of the executive’s power, and the independence of the judiciary will aim to compare how levels of vertical and horizontal accountability in Uruguay have resulted in the country’s ranking as the cleanest country in Latin America.
Low Levels of Executive Corruption

Uruguay is known to be amongst the cleanest Latin American countries with regards to corruption (GAN Business Anti-Corruption, 2016; Martini, 2016). With regards to cases of executive corruption, no other country in the region out performs Uruguay, which ranks 1st (Varieties of Democracy, 2017). According to Transparency International, Uruguay’s scores have fluctuated between the 78 and 90 percentiles since the creation of the assessment in 1996 (Martini, 2016).

Citizen’s assessments of corruption levels, their perceptions of corruption, also point out to a generally low corruption environment. From 2001 to 2015, the number of survey respondents who did not know of any acts of corruption in the past year ranged between 80.4%-89.1% (Latinobarómetro, 2015). In 2013, 20% of respondents believed a majority of government of officials were corrupt, compared to 42% in Dominican Republic (Latinobarómetro, 2015). Furthermore, in response to the progress made with regards to reducing corruption in state institutions, only 17.2% of respondents in 2015 thought that no progress had been made (Latinobarómetro, 2015). Lastly, World Competitiveness Reports from 2006 to 2016 note that corruption is amongst the least problematic factors for doing business in Uruguay (World Economic Forum, 2006-2016).

Reports of corruption are relatively scarce in the country (Martini, 2016). Nevertheless, executive corruption cannot be ruled out in its entirety. An examination of the data with the Transparency International chapter of Uruguay, Uruguay Transparente, yielded no results. Buquet et al., (2010) note that the limited amount of corruption studies in Uruguay coincide in describing corruption as limited in scale. The authors note that corruption cases that have been processed by the judiciary have been diminishing since 1997 with fluctuations between 2004 and 2007 (Buquet et al., 2010).

However, media accounts described some of the salient cases of corruption in the country. For example, in 2013, a case involved the former Minister of the Economy under President Mujica’s
administration, Fernando Lorenzo. The case came to be known as the Pluna case, which was the most politically salient judicial case of the administration (El Observador, 2016). In the case involving the establishment of an Uruguayan airline, the former Minister of the Economy submitted his resignation in 2013 and was subsequently processed by the judiciary system and convicted under charges of abuse of power in 2014 (Efe, 2015).

Also in 2014, the legislature invoked its power to llamar a sala, or to call a minister into the legislature to respond to questions regarding their administration. As noted by Chasquetti et al. (2013) the ministers are not constitutionally required to attend but their call is usually coordinated amongst legislative parties and thus, the ministers have little recourse not to appear. The case involved then-Minister of Public Health, Susana Muñiz, and alleged irregularities in the administration of health services (El Pais, 2014). Although the case did not have any real political consequences for the minister, it stands as an example of the check the legislature possesses over members of the executive.

Most recently, if we recall the corruption case against Odebrecht, the Brazilian company did not issue bribes in Uruguay seeking advantages in the procurement process. However according to Transparency International and due to lax financial regulations in Uruguay, executives in Odebrecht were able to create offshore companies in the country with the goal of hiding illegal funds originating from the Brazilian petroleum conglomerate, Petrobras (Martini, 2016).

In the fight against corruption, Uruguay also possesses an anti-corruption agency known as the Transparency and Public Ethics Board (JUTEP). Known commonly as the anti-corruption board, JUTEP is charged with initiating public policies, norms, and actions that strengthen the administration of the state and advises the judicial and executive branches of government with respect to the fight against corruption (Jutep, 2017). The agency was created under law 17.060 as a dependence of the office of the Attorney
General, a position appointed by the President with 3/5 confirmation of the Senate (Uruguayan Constitution, 2004, art. 168).

In 2001, law 17.296 established JUTEP as a department of the Ministry of Education and Culture. JUTEP is composed of three members, all nominated by the President and confirmed with a 3/5 vote of the Senate. Similarly, the President is able to remove a member of the anti-corruption agency with support from 3/5 of the Senate (JUTEP, 2017). Most recently in 2015, law 19.340 establishes JUTEP as an independent agency being able to propose its own operational budget. However, as noted by Buquet and Piñeiro (2014) the agency’s predecessor did not possess prosecutorial or investigative powers and could only refer cases to the judiciary. Under law 19.340, this remains the case. Although, the board is not completely dependent on the executive as its members cannot be appointed nor removed at the executive’s will, its lack of investigative and prosecutorial powers, as well as its financial dependence on the executive, stand as challenges to JUTEP’s fight against corruption.

The cases above demonstrate that corruption exists even in what scholars regard as the cleanest of Latin American countries. Yet, executive corruption, and corruption more generally, is not systemic or rampant in the administration of the government. Next, an analysis of the relevant political institutions will elucidate why this has been the case.

Party System Institutionalization

The political party system in Uruguay is considered by many to be one of the most institutionalized in Latin America (Mainwaring and Scully, 1995; Buquet and Piñeiro, 2014). Here, the level of institutionalization of the party system will be measured by examining party cohesion, the age of the major parties in the electorate, the volatility or stability of their electoral support and the extent to which their party ideologies and platforms are clear, differentiable, and publicly available.
One interesting characteristic of the Uruguayan political system is its emphasis and reliance on factions, or *lemas*. The law of lemas, or double simultaneous vote (DSV), allowed parties to present more than one candidate for president and vice president. These presidential tickets would be subsequently voted on through nationwide elections and the president and vice-president with most votes would gain office.

Under this electoral method, the leaders of the faction with the most votes would win at the primary level, becoming one of several presidential tickets. But, this method also decided elections for president, senators, and representatives simultaneously, as votes for a particular faction (*sub-lemma*) would accrue towards its party (*lemma*) (Nohlen, 2005). In his exhaustive analysis of Latin American electoral systems, Nohlen notes “The main drawback of this system was that the elected president actually represented only one sector (*sublema*) of his party, often assuming office with the votes of just one clear minority of the electorate” (Nohlen, 2005, 488).

In this open-list variant, the DSV system would weaken legislative cohesion as more individual candidates would compete against each other within their parties. When considering the elements that strengthen the executive’s legislative shield (cohesion, size of legislative party, votes of allies), the DSV system would also lead to, as noted above, an executive that mostly represents a sublema, or faction, of their particular legislative party.

In 1996, Uruguayan’s voted for a constitutional reform that eliminated the DSV system for the election of the president and substituted it for an absolute majority vote under a two-round system. Following the reform, political parties were also only allowed to submit one presidential and vice-presidential candidate (Nohlen, 2005). With the constitutional reform of 1996, closed and blocked lists for the election of representatives to the lower chamber were established (Nohlen, 2005). Now,
representatives would depend on their party leaders with regards to their designation on electoral ballots; however, the intra-party competition amongst factions within parties remains in place.

Open-list systems, where candidates of the same party compete amongst each other, create an incentive for seeking ways to differentiate themselves from their co-partisans. On the other hand, electoral competitors under open-list PR systems are also more accountable to their particular constituencies rather than to the party leaders that compose lists in closed-list systems. As explained by Owens (2003), “in open-list PR systems...the effects are to weaken legislative party cohesion” (Owens, 2003, 22). Because party members depend on their leaders for their inclusion on electoral lists, as well as the order in which they are presented, legislative party cohesion should be higher than under open-list systems, ceteris paribus.

Analyzing legislative cohesion in Uruguay, Chasquetti and Micozzi (2014, 93) explain “...expectations forecasted strong patterns of discipline and cohesion on floor voting behavior at the party and faction levels, facts verified by the empirical literature (Buquet, Chasquetti, and Moraes, 1998; Morgenstern, 2001; Zucco, 2013).” Besides the existence of intra-party factions, the Uruguayan electoral system also allows for variation in intra-party competition stemming from the range of district magnitudes which extend anywhere from 2 to 41.

Political parties in Uruguay have had a long history. Two of these three political parties have been in the political fray for many decades and the third, although relatively younger, has played a major role in recent electoral contests; having won the presidency in the last three elections. Combined, the average age of the parties is approximately 136 years. Both of the traditional parties, Colorado and Nacional, have been in existence since the 1830s. An examination of the most recent congressional elections will allow us to evaluate the extent to which these parties influence the political system.
Buquet and Piñeiro (2014) compile data on congressional elections since 1984. For the purposes of this study, we shall analyze the data from the 1994 legislative elections to 2014, the latest electoral contest. Following their data, Table 5.1 shows electoral results for the top three political parties, Partido Colorado (PC), Partido Nacional (PN), and Frente Amplio (FA). In addition, Figure 5.1 shows a timeline of Uruguayan presidents and their party affiliation from 1996-2016. This timeline will be a useful reference indicating which executives were at the helm of the government administration throughout congressional elections.

Table 5.1. Congressional Elections in Uruguay (1994-2014)

<table>
<thead>
<tr>
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<tbody>
<tr>
<td></td>
<td>Senators</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Partido Colorado (PC)</td>
<td>11(36%)</td>
<td>11(36%)</td>
<td>3(9%)</td>
<td>5(16%)</td>
<td>4(13%)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Representatives</td>
<td>32(32%)</td>
<td>33(33%)</td>
<td>10(10%)</td>
<td>17(17%)</td>
<td>13(13%)</td>
</tr>
<tr>
<td>Partido Nacional (PN)</td>
<td>10(32%)</td>
<td>7(23%)</td>
<td>11(36%)</td>
<td>9(29%)</td>
<td>10(33%)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Representatives</td>
<td>31(31%)</td>
<td>22(22%)</td>
<td>36(36%)</td>
<td>30(30%)</td>
<td>32(32%)</td>
</tr>
<tr>
<td>Frente Amplio (FA)</td>
<td>9(29%)</td>
<td>12(39%)</td>
<td>17(55%)</td>
<td>17(55%)</td>
<td>15(50%)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Representatives</td>
<td>31(31%)</td>
<td>40(40%)</td>
<td>52(52%)</td>
<td>50(50%)</td>
<td>50(51%)</td>
</tr>
<tr>
<td>Others</td>
<td>Senators</td>
<td>1(3%)</td>
<td>1(3%)</td>
<td>0(0%)</td>
<td>0(0%)</td>
<td>1(3%)</td>
</tr>
<tr>
<td></td>
<td>Representatives</td>
<td>5(5%)</td>
<td>4(4%)</td>
<td>1(1%)</td>
<td>2(2%)</td>
<td>4(4%)</td>
</tr>
</tbody>
</table>

Source: Buquet and Piñeiro (2014); Electoral Court of Uruguay (2017)
http://www.corteelectoral.gub.uy/gxpsites/page.aspx?3,26,453,O,5,0,
Figure 5.1. Timeline of Uruguayan Presidents and Party Affiliation (1994-2014)

*Incumbent. Uruguayan presidential elections occur every 5 years.

The Partido Colorado (PC) as well as the Partido Nacional (PN), known as the ‘traditional’ parties, have existed since the 1880s (Morgenstern, 2001). On the other hand, the Frente Amplio (FA) party, winner of the most recent electoral contests, was founded in 1971. Hence, the political party system of Uruguay has been enduring and adaptable, two factors lending evidence to Uruguay’s high institutionalization of its party system.

Electoral volatility has not been prominent in the Uruguayan system. Although the FA began to consolidate power since the 1970s, the two traditional parties have historically dominated the electoral arena in the country. Such a deep-rooted political system is, according to Bergara et al. (26, 2006), “associated with very low levels of electoral volatility.” Observing the data in table 5.1, we can also determine what seats were gained or lost amongst the major parties in the most recent electoral contests. Although the FA has recently gained important victories in recent elections, since 2004, there have not been major shifts in political accruals; the most significant change affecting the PC during the 1999 elections where they went from approximately 30% representation in both chambers to 10%. Chasquetti (2016) finds that Uruguay has Latin America’s most deeply rooted system.

The institutionalization of the party system is also a factor of the ideological/programmatic differences between parties. In analyzing programmatic party structuration (PPS), Kitschelt et al. (2010),
look at the extent to which politicians create ‘coherent policy alternatives’ and their capacity to create
linkages with voters through coalitions based on these alternatives. They explain that, “where PPS is weak
or absent, politicians may seek to mobilize electoral constituencies on the basis of direct selective
incentives... (clientelism, with office patronage and other currencies)(Kitschelt et al., 2010, 3). A rank order
of the 12 Latin American countries in their study ranks Uruguay second-most programmatic; following
Chile (Kitschelt et al., 2010).

The left-right political spectrum in Uruguay is occupied by both of the traditional parties (PC and
PN) on the right and Frente Amplio (FA) on the left. Using data from Kitschelt et al. (2010), the mean
left-right party placement for Uruguay’s major parties is as follows:

<table>
<thead>
<tr>
<th>Political Party</th>
<th>Left-Right Party Placement (LRPP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partido Colorado (PC)</td>
<td>5.0</td>
</tr>
<tr>
<td>Partido Nacional (PN)</td>
<td>5.60</td>
</tr>
<tr>
<td>Frente Amplio (FA)</td>
<td>2.96</td>
</tr>
</tbody>
</table>

Source: (Kitschelt et al., 2010) note: 1 = extreme left and 10 = extreme right

The values above demonstrate a clear differentiation between the traditional parties and the left-
leaning party, Frente Amplio. Calculating the greatest difference amongst the party’s ideological
placement can illustrate the amount of political polarization and differentiation with regards to
programmatic party structuration (PPS). The Uruguayan case presents the greatest variance between the
PN and FA, a difference of 2.64 points; difference which is greater than the 2.06 difference between
parties in the Dominican Republic. Kitschelt et al. (2010), following their study, note that Uruguay is one
of the countries where the left-right continuum is most strongly connected to issues that follow party lines.

A strong PPS, as noted by Kitschelt (2010), is associated with less clientelism and other types of patronage used by politicians to mobilize voters. Empirically, Buquet and Piñeiro (2014) find that a transformation in Uruguayan electoral politics from a clientelistic to a programmatic strategy occurred following the entering of Frente Amplio into the political fray and their strategy of building electoral support based on programmatic claims. These changes, the authors argue, have aided in the reduction of clientelism and other forms of corruption as it no longer offered to be an electorally effective strategy (Buquet and Piñeiro, 2014).

Executive Power

As explained above, an analysis of the executive's constitutional terms (Ferraz and Finan, 2011), non-legislative powers (Shugart and Carey, 1992), and strength of their legislative shield (Perez-Linan, 2007) will allow us to gauge the level of power wielded by the executive and their ability to concentrate such power in their interest to decrease constraints and facilitate executive corruption. In analyzing executive power, constitutional provisions, previous election results and margins of victory, and party coherence, will shed light into the sources and degree of executive power.

Executive's Constitutional Term

Article 151 of the Constitution of Uruguay states that the president and vice-president shall be elected by an absolute majority vote (Constitution of Uruguay, 2004). With the 1996 constitutional reform, Uruguay eliminated the DSV system for the election of the president and vice-president and replaced it with a two-round system (Bergara et al., 2006). The two round system enables the top two electoral contenders to face off in a run-off election where the winner gains office with an absolute
majority of the vote. Once elected, the president serves a 5-year term with a possible re-election after 5 years of leaving office; essentially, one other presidential term must have elapsed before being able to run for president once more (Constitution of Uruguay, Art. 152, 2004).

Although data availability does not enable us to analyze empirically the effects of re-election on presidential corruption, term-limits serve as an institutional constraint on the executive’s power (O’Donnell, 1994). When there are no constraints (unlimited re-election) the executive’s power may be the strongest. On the other hand, when re-election is prohibited, the president’s power is weakest, ceteris paribus. In the case of Uruguay, the President’s current ability to be re-elected after a 5-year lapse, weakens executive power relative to having immediate re-election due to greater constraints brought by short-term electoral considerations (Shugart and Carey, 1992). As noted by the authors, restrictions on reelection typically serve as a check on presidential power (Shugart and Carey, 1992). Further, incentives of engaging in corruption may also be lessened under immediate reelection since the executive faces a shorter time-horizon between their first and second terms, thus increasing the political cost of getting caught (Ferraz and Finan, 2011).

Non-Legislative Power

Non-legislative powers include the executive’s ability to form and dismiss the cabinet, censure, as well as their ability to dissolve the assembly or congress (Shugart and Carey, 1992). Examining these non-legislative powers in the Uruguayan executive will allow us to better understand the effects these institutional dynamics may have on executive corruption.

In Uruguay, the president is able to appoint and remove cabinet members without restrictions (Chasquetti et al., 2013). In so doing, the Uruguayan presidency scores a 4 under cabinet formation powers and a 4 under cabinet dismissal powers, the highest score in terms of power, following Shugart
and Carey (1992). However, some of the executive’s power is diminished, or diffused, by the legislature’s use of the power to censure.

The Uruguayan General Assembly, both chambers meeting as one, can invoke censure of a minister or a group of ministers with the supporting vote of a majority of its members. However, if the Assembly’s vote amounts to less than 2/3, the executive can veto the vote of censure. The Assembly can then override the president’s veto with the vote of more than 3/5 of its members. If such a majority cannot be achieved, the president can dissolve the chambers and call for new elections within two months (Altman, 2001). This mechanism would call for new elections for the legislature and cannot be used during the last year of the president’s term (Constitution of Uruguay, Art. 148, 2004).

The execution of this mechanism to its entirety is of the upmost risk to legislators as they would effectively be at risk of losing their seats. Thus, while the powers are stipulated in the Uruguayan Constitution, it has been only used once. As noted by Chasquetti et al. (2013), only in 1968 was a minister called into question by the General Assembly which voted to remove the minister; although the president vetoed the decision, the Assembly gathered the 3/5 votes necessary for the minister’s removal.

The multifaceted constitutional mechanism may invoke the legislature to use its power of censure and, at the same time, the executive’s power of dissolution. Although full-blown dissolution has yet to occur in Uruguay due to these conditions, the legislature remains an important check on the president’s cabinet, and executive power itself, as it can summon any and all ministers with the affirmative vote of 1/3 of the members of either chamber. According to article 119 of the constitution, any chamber can require the presence of the ministers for questioning or evaluation (Constitution of Uruguay, Art. 119, 2004). I argue that this mechanism increases the costs of a member of the executive branch to engage in corruption since a party in the opposition can secure 1/3 of the vote to censure the minister in question.
However, due to the limited number of executive corruption cases in Uruguay, it is difficult to ascertain empirically whether censure has contributed to less executive corruption.

These non-legislative powers considered, Shugart and Carey (1992) explain that, “If a vote of censure is tied to a process that leads to dissolution of the assembly, the score is 2,” as is the case just described for Uruguay (Shugart and Carey, 1992, 153). The authors also mention Uruguay when assessing the executive’s power of dissolution and explain that, “Weaker still (scored as 1) is where dissolution may be invoked only after censure or a certain number of censures by the assembly (as in Peru and Uruguay)” (Shugart and Carey, 1992, 154).

These non-legislative powers remain unaltered in Uruguay’s current constitution. From Shugart and Carey’s (1992) assessment of the powers of the presidency, an evaluation of Uruguayan presidential power yields a total score of 11; recall that the Dominican executive’s power obtained a score of 12 points total. What this shows is that the Uruguayan executive has lesser non-legislative powers and hence, members of the cabinet are less dependent on a single branch (the executive) since their survival is also dependent, albeit to a lesser degree, on the legislature and its ability to call a cabinet member into the legislature (“llamar a sala”) or to invoke censure. We would expect that higher executive power would benefit the president if he or she was attempting to be corrupt.

Legislative Shield

The previous three presidential electoral contests have been won by Frente Amplio (2005, 2009, 2014) and in each occasion they have gained a majority of seats in both chambers of the legislature. As shown above in Table 5.1, Frente Amplio controlled the executive office with the election of Tabaré Vásquez (2004 and 2014) and José Mujica (2009). With the most recent election of Tabaré Vásquez in 2014, the president’s party controlled 50% of members of the Chamber of Representatives, body responsible for the initiating a president’s impeachment proceedings. According to article 172 of the Uruguayan
Constitution, a president may be impeached with the affirmative vote of 2/3 of the Chamber of Representatives (Constitution of Uruguay, 2004).

Thus, in calculating the executive’s legislative shield \( (L) \) as described earlier by Perez-Liñán (2007), the proportion of the chamber voting against impeachment \( (P) \), following the 2014 elections, would be 50.5\%. Likewise, the threshold required to prevent impeachment \( (v) \) is 35\%. Cohesion \( (d) \) levels are incorporated using data from the Varieties of Democracy. Construction of previous presidents’ legislative shields below will attempt to display what trends have existed with regards executive power.

![Legislative Shield in Uruguayan Executives (1996-2016)](image)

**Figure 5.2. Legislative Shield for Uruguayan Executives (1996-2016)**

Source: Buquet and Piñeiro (2014); Electoral Court of Uruguay (2017)


As shown in Figure 5.2, the strongest legislative shield received by the Uruguayan executive (2.16 for Mujica in 2013) is made stronger by the addition of the strength of legislative cohesion. In comparison,
the strongest legislative shield in the Dominican Republic was enjoyed by Fernández in 2007 (1.8). Although little empirical data on executive corruption exists for Uruguay, Buquet and Piñeiro (2014) offer data on administrative corruption cases that were processed by the judiciary since 1997. The authors note that until 1997, there was an elevated number of judicial processing of cases of administrative corruption. The end of the 1990s and beginning of the 2000s brought about a drastic reduction in cases processed; while later fluctuations saw 2004 and 2007 with the greatest number of cases processed (Buquet and Piñeiro, 2014).

While data on executive corruption is unavailable, an interpretation of the abovementioned authors’ data does not seem to coincide with the strength of executives’ legislative shields. As a president increases her legislative shield, we should expect to see a greater number of executive corruption cases, as willing executives face less risks of impeachment if discovered engaging in corruption. This may suggest that legislative shields may not play a significant factor beyond other institutional dynamics. Data on executive corruption more specifically would aid in clarifying such a relationship, if any exists.

Furthermore, in analyzing party cohesion, it is important to re-consider the incentives created by electoral rules in Uruguay. One intrinsic characteristic of the Uruguayan political system is its emphasis and reliance on factions, or lemas. The law of lemas, or double simultaneous vote (DSV), allowed parties to present more than one candidate for president and vice president. Although the 1996 constitutional reform eliminated the DSV in the election for president, factions remain an essential part of national Uruguayan politics.

Bergara et al. (2006) explain that political parties in Uruguay are factionalized and that these factions are stable agents in the political system. Although political parties themselves are organized, factions within them organize around a particular presidential candidate within the party. When referring to executive power specifically, Altman (2001) notes that, “the elected president is no more than another
fraction leader...The chief executive has difficulties imposing discipline among members of his own party, let alone disciplining other parties’ members” (Altman, 2001, 72-73). Taking this into account, although legislative cohesion within factions is strong, cohesion between the executive and legislative parties is much more fluid (Zucco, 2013).

Moreover, despite the fact that Frente Amplio has won legislative majorities in the three most recent electoral contests, such a scenario has been the exception rather than the rule; these being the only cases since 1985. Thus, Uruguayan politics have also heavily featured political coalitions amongst parties. Parties that gained office had to create stable coalitions with other parties in order to enact their political agenda (Buquet and Piñeiro, 2014).

These political realities shape the relationship between the executive and legislative branches of government. When analyzing the institutional matrices of Uruguay and its effects on executive corruption, we can observe that executive power is limited by low cohesion due to the existence of factions, although inter-party cohesion is higher relative to that of the Dominican Republic. Executive power is also checked by the legislature which, despite the executive’s ability to dissolve the assembly, has the power of censure over members of the executive’s cabinet. Some of these institutional conditions increase the difficulty with which the executive may concentrate power.

Judicial Independence

Nomination and Tenure of Justices

The nomination and removal procedure, tenure, financial independence and salary of justices of the highest court in Uruguay will be analyzed with the aim of evaluating the extent of judicial independence. The Supreme Court of Uruguay, under article 239 of its constitution, is the highest constitutional court of the country. The court is composed of five justices which are appointed by the
General Assembly with the vote of two-thirds of all of its members (Constitution of Uruguay, 2004, Article 234 and 236). This vote requirement, allows the judiciary to be much more isolated from political manipulations due to the inability of any political party to influence the process in the fragmented system (Bergara et al., 2006).

According to these authors, “Traditionally, the Uruguayan judiciary has been impervious to political influence, and this reputation has formed the basis of its high public support” (Bergara et al., 2006, 37). The law also establishes the automatic appointment of the senior-most judge of the Appellate Tribunal if legislators cannot reach an agreement after 90 days of vacancy within the Supreme Court (Prats, 2007). Thus, even in cases where conflict arises between members of the legislature who cannot coalesce around a particular candidate, the court is able to function at full strength within a relatively short period of time and is hence, better insulated from the politics of a nominating process.

The last nomination to the Supreme Court followed such mechanism as described above. Because members of the Assembly could not reach an agreement within 90 days for nomination, Eduardo Turell was automatically incorporated into the Supreme Court as the senior-most member of the Appellate Tribunal (Gold, 2017). Table 5.3 below describes the appointment, re-appointment, and removal procedures for Justices of the Supreme Court of Uruguay

<table>
<thead>
<tr>
<th><strong>Origin</strong></th>
<th><strong>Survival</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supreme Court of Justice</strong></td>
<td>Elected by two-thirds vote of all members of the General Assembly; senior-most appellate court justice is appointed automatically if legislature does not appoint one within 90 days.</td>
</tr>
</tbody>
</table>

Source: The information is found in articles 93 and 102 of the Uruguayan Constitution (2004).
The ruling party, Frente Amplio, despite having majority control of the legislature, will have to reach across to other political coalitions in order to secure a two-thirds vote as established by the constitution for the nomination of a new justice. These institutional constraints on judicial nominations reduce the ability of a single party, or a strong party leader such as the president, to exert excessive influence in the composition of the Supreme Court.

Justices to the Supreme Court of Uruguay are appointed to serve 10-year terms and upon concluding their term, a judge may seek re-election only after a 5-year lapse. Moreover, the Constitution, in its Article 250, establishes a mandatory retirement age of 70. Table 5.3 denotes the origin and survival of these high courts. The institutional constraints of achieving a two-thirds vote for nomination or removal of a judge translates into a more independent judiciary. The influence that can be exerted on the judiciary by one particular party or party leader is minimized as legislators from various political factions and parties must reach an agreement regarding the removal of a judge. In other words, the president cannot easily remove a justice that does not conform to his political agenda, even when his party controls a majority of the legislature.

Financial Independence

Under section 3 of Article 239 of the Uruguayan Constitution, the Supreme Court has the power to draft its own budget and submit it to the executive for inclusion in the proposed national budget. Yet, there is no fixed budgetary allocation for the judicial branch. In the court’s 2015 annual report of accountability statement, it noted that it was able to reach their stated goals in spite of the challenges fundamentally posed by lack of operational resources (Suprema Corte de Justicia del Uruguay, 2015). In 2016 moreover, the President of the Supreme Court requested an additional $4.7 million dollars in order to be able to operate through the year (El Observador, 2016). Although the constitution establishes their
budgetary power *de jure*, in practice, the national Budget Office, which depends on the executive branch, determines the resources to be allocated to the judiciary (Bergara et al., 2006).

Data from the Uruguayan National Accountancy Office (CGN) comprises the budgets assigned to the judicial branch from the national budget. The resources obtained by the judicial branch allow for the functioning of its day-to-day operations, as well as the payment of fixed costs (i.e. salaries) and other investments. Figure 5.3 below shows the evolution of the allocations secured by the judiciary as a proportion to GDP.

![Judicial Branch Allocated Budget](image)

**Figure 5.3. Judicial Budget Allocation Uruguay (2000-2017)**

Source: Poder Judicial Uruguay (2017); CGN (2017)

*Budget allocation is projected for these years.

As noted in Figure 5.3, the historical allocation of the Judicial Branch ranges between 1.1% and 1.5% of the national budget. However, the judiciary has faced a declining budget allocation since 2011.
with the exception of the 2015 year; if current projections hold, the judiciary will face yet another cut in funding from 1.19% to 1.14% of the national budget due to decreases in Uruguayan GDP (De Haedo, 2017).

Although the availability of data describing requested vs. approved budget allocation was not readily available, accounts of these discrepancies do exist. In an interview with Uruguayan magazine *Búsqueda*, then-President of the Supreme Court, Jorge Chediak, expressed that the executive sent a strong signal to the judiciary when it did not include any of its proposals in the national budget (Chediak, 2015). In January 2016, the new president of the court, Ricardo Perez Manrique, noted that the judiciary did not have the necessary funds to operate through the year and that they required an additional $62 million Uruguayan pesos (Manrique, 2016).

These financial difficulties impede the judiciary from carrying out normal operations and diminish the courts’ goals of modernization. As noted by Bergara et al. (2006), some of the courts institutional problems regarding a lack of modernization and specialization with respect to specific issues are directly related to their lack of adequate financial allocations. More recently however, funds have been allocated to improve the modernization in the judiciary. In an interview to then-President of the Supreme Court, Dr. Ricardo Manrique stated that court is in a state of “profound technological renovation. It is a revolutionary change” (Manrique, 2016).

Judge’s Salaries

Much of the constraints faced by the judiciary in terms of the budget allocations mentioned above, translate into challenges in the funding of other areas. The financial restrictions imposed onto the judicial branch affect the extent to which they can modernize facilities and equipment. The same authors explain that administrative positions within the judiciary pay very low salaries, in part, due to these limiting factors (Bergara et al., 2006).
When it comes to the ministers or justices of the Supreme Court, the Uruguayan state has attempted to improve their salaries since 1985 (Bergara et al., 2006). In Uruguay, law 15.750 of the judiciary, notes that salaries for justices cannot be lower than salaries for ministers of the president’s cabinet. Furthermore, article 85 of the same law ties the salaries of other members of the Judicial Branch to those of the justices of the Supreme Court according to particular proportions Thus, an increase, decrease, or freeze of the salaries of justices directly affect those of lower judges and other administrative members of the judiciary, suggesting a level of salary independence Due current data availability, the annual salaries of presidents of Supreme Courts for four Latin American countries and the United States (as reference) in 2017 are noted below.

Table 5.4. Supreme Court Justice Salaries in Select Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Annual Salary (2017)</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>US $263, 300</td>
</tr>
<tr>
<td>Mexico</td>
<td>US $201, 972</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>US $107, 361</td>
</tr>
<tr>
<td>Uruguay</td>
<td>US $101, 465</td>
</tr>
<tr>
<td>Paraguay</td>
<td>US $91, 128</td>
</tr>
</tbody>
</table>

Source: Judicial branch data for respective country.

Data retrieved from the Judicial Branch of Uruguay notes that the President of the Supreme Courts earn a salary of US $101, 465 per year [2017 dollars] (Poder Judicial Uruguay, 2017). Until recently however, much conflict existed between the Judicial and Executive branches of Uruguay with regards to
raises in salaries. In 2010, the executive branch proposed a budget that increased the salaries of members of the cabinet by 26% but not those of the Supreme Court although required by law.

The conflict has resulted in multiple negotiations between branches of government concerning the increase of salaries for justices of the Supreme Court as well as for judges of inferior courts and other members of the judiciary whose salaries are linked to those of the justices of the high court. Still, at the time of this study, the conflict continues. Most recently, the executive has agreed to pay Supreme Court Justices a 14% raise disbursed in two payments (El Observador, 2017). Although the Uruguayan judiciary does possess institutional independence, de jure, in practice its financial dependence on the executive branch affects its overall independence. As noted by Calleros (2009), a judiciary that shows a higher degree of independence than expected by Latin American executives resort to restricting financial resources in order to lower the judiciary’s independence.

Judicial Constraints

The Uruguayan court provides an example of a judiciary that is willing to rule against the executive, effectively constraining and limiting its power. Judicial constraints on executive power increase the costs of an executive willing to engage in corrupt behavior. Examining of the number of decrees contested in the Supreme Court of Uruguay, and their eventual resolution, will allow us to determine whether real independence exists in the court and the extent to which such independence is exerted against the executive and its power. Although financial independence is lacking in practice and to a certain extent in the Uruguayan judiciary; independence with regards to the nomination and removal of justices is real. Uruguay is considered to have an independent judicial system. An analysis of 28 decrees found in the judicial database repository for the Supreme Court of Uruguay is shown in Figure 5.4.

Of the 28 cases brought to the Supreme Court between 1996 and 2017, in which the executive power was a party, the court ruled 20 as inadmissible, one in favor of the administration (declaring constitutionality) where the court sided with the executive and law 18.083 on reforms to the taxation system. Of the decrees heard, seven were ruled against the executive (declaring unconstitutionality) mostly regarding judiciary financial allocations and salaries. Examples of these latter decisions will be expanded upon in order to better ascertain the political context and the significant constraints the judiciary exercised on the executive, if any. Although most of the cases heard in court were found inadmissible, cases in which the court ruled against the government included politically salient cases.

The Supreme Court has shown real independence in striking down laws, sponsored by the executive, that are meant to affect its most vulnerable position, its finances. In one of the cases, the high court ruled against the law 18.834 in which the Judicial Studies Centre, overseen by the court, was mandated to train on issues regarding human rights but was not assigned a budget for doing so. In
resolution 323/2013, the court in its decision explained “to order the reassignment of credits to the Judicial Power implies an invasion of its sphere of competence and autonomy” (Resolution 323/2013).

In the aforementioned salary conflict between the executive and the judiciary, through resolution number 311/2015, the court ruled that articles 2, 8 and 9 of law 19.130 were unconstitutional. These articles stated, perhaps in an effort to end the conflict, that any raise in salary within the Judicial Branch would be paid for with the courts’ own resources. The court also found that the law attempted to modify the language of ‘remunerations’ in order to be able to change the proportion of salaries in a ‘harmful’ manner (Resolution 311/2015, 2015). The court could rule against the executive based on their interpretation of the laws because they were not dependent upon it for their nomination or reappointment.

Because both of the chambers of the legislature, as a General Assembly, is the body tasked with the nomination and removal of justices, there is a more balanced outcome due to the existence of interests of multiple parties and not just the ruling party. Hence, this supports the hypothesis laid at the outset that judiciaries that are less influenced by the partisan politics of a single party, in the selection and removal of judges, enhance the ability of the courts to constrain the executive. Such constraints, as noted in the first part of this dissertation, contribute to less executive corruption by limiting executive power.

Hence, despite some institutional weaknesses with regards to the court’s financial independence, the Supreme Court has been willing and able to rule against the executive. The cases described above demonstrate the court’s institutional independence with regards to the selection, removal, and tenure of its justices. In turn, although no cases were found where the court ruled against the executive’s encroachment into other branches or agencies, these institutional conditions enabled the court in its fight for financial independence from the executive.
Conclusion

Uruguay has been and continues to be successful in controlling corruption. Data from Latinobarómetro (2015) show that perceptions of corruption are low and, moreover, cases of corruption are rare (Martini, 2016). To what does Uruguay owe such performance with regards to corruption, and executive corruption specifically? Throughout this chapter, the aim was to analyze the institutional characteristics that have aided in Uruguay’s fight against corruption.

Time has played a role in Uruguay’s successes against corruption. Although Uruguay has had a continuous experience with democracy for 32 years, its democratic traditions are well cemented; its political parties being founded in the mid-19th century. As noted by North (1990, 6), institutions change slowly through the evolution of conventions, codes of conduct, law, and other avenues which alter our choices. Uruguay’s longstanding democratic institutions, then, have contributed to the establishment of a capable state and rule of law which are key elements of good governance (Buquet and Piñeiro, 2014).

Party system institutionalization in Uruguay has been found to be amongst the highest in Latin America (Mainwaring and Scully, 1995; Buquet and Piñeiro, 2014). High institutionalization increases the vertical accountability representatives have to their constituents, raising the costs of a willing executive to engage in corruption. More specifically, the programmatic party structuration developed in Uruguayan politics with the insertion of Frente Amplio into the electoral arena, have made clientelism and other forms of patronage less attractive as a vote getting strategy (Buquet and Piñeiro, 2014).

Although executives enjoy a strong legislative shield, the ability of the executive to concentrate power is constrained by existing constitutional provisions that have empowered the legislature and made for an independent judiciary. In analyzing Uruguay, O’Donnell (1994) explains that re-democratization, a network of institutionalized power, and constitutional restrictions circumvented the formation of delegative democracy and with it, the breakdown of horizontal accountability mechanisms at a time when
other countries in the region were vulnerable to it (O’Donnell, 1994). In observing power relations vis-à-vis the legislature, the President is able to form and dismiss cabinet members at will, but, it is constrained by the legislature’s power of censure. These constraints effectively raise the cost of the executive to unilaterally concentrate power in a country where democracy is the only game in town.

Also, the existence of intra-party factions means that the president typically lacks majority support within his own party, being more susceptible to flailing support with bad publicity and weakened legislative shield. Moreover, with regards to the executive’s term limits, the Uruguayan president’s inability to secure immediate re-election weakens his power and authority raising the risks of impeachment if caught engaging in corrupt behavior (Bergara et al., 2006).

Finally, the Uruguayan judiciary is independent, being able to constrain the executive even in cases involving financial resources, where the court is most vulnerable to executive pressure and, in terms of allocation and salary, comparable to the Dominican Republic. Thus, what is key is that justices are appointed by the General Assembly with 2/3 vote. Hence, the influence that can be exerted on the judiciary by one particular party or party leader is minimized due to the fact that legislators from various political factions and parties must reach an agreement regarding the appointment and removal of a judge. As noted by O’Donnell (2003), horizontal accountability requires a network of agencies – culminating in high courts – committed to enforcement. These institutional conditions reinforce the vertical and, especially the horizontal accountability mechanisms through which a strengthening of checks and balances has led to less executive corruption and reduced impunity.
CHAPTER VI

COMPARISON OF CASES

Introduction

The two cases analyzed throughout this dissertation, Dominican Republic and Uruguay, are cases with a relatively similar experience with continuous democracy, albeit a Uruguay possesses more years of uninterrupted democracy. These, however, do not explain all of the variation with regards to their levels of executive corruption. Both countries have similar economic openness, and similar cultural and historical backgrounds. By engaging in a controlled comparison of Dominican Republic and Uruguay, I analyze how the dependent variable, executive corruption, varies between otherwise similar cases. Of course, finding two cases which only vary in this regard is extremely challenging in the real world. With this in mind, it is difficult to establish with absolute certainty that no other variables may have affected the outcome (Alexander and Bennet, 2005).

Nevertheless, by including quantitative as well as qualitative methods one is better able to have theories that are replicable, falsifiable, and that can explain a lot with a little (King, Keohane, Verba, 1994). In this chapter, I will first make explicit the similarities between the two cases analyzed in this dissertation. Next, a comparative overview of differences between key independent variables amongst the cases will show how why the cases have arrived at different outcomes; whilst elucidating the effects of these variables on executive corruption. Finally, a typology is constructed which describes the institutional design differences that lead to differences in levels of executive corruption.

Most-Similar Systems

As noted in Chapter 3, Dominican Republic and Uruguay have similar experience with democracy. The Dominican Republic has had continuous experience with democracy since 1996, overcoming decades of
authoritarianism and dictatorship. Similarly, Uruguay has had continuous democratic experience since the end of military rule in 1985. Figure 6.1 shows the experience with continuous democracy amongst Latin American countries, Dominican Republic and Uruguay are circled.

![Experience with Democracy in Latin America](image)

Figure 6.1. Experience with Democracy in Latin America
Source: Varieties of Democracy (2016)

Some variation exists with regard to population size between both cases. According to the World Bank (2017), Dominican Republic is estimated to have a population of about 10.7 million people. Uruguay, on the other hand, is estimated to have a population size of about 3.3 million. The difference in population size is not likely associated to differences in executive corruption levels as Chile, a country with nearly 18 million inhabitants has very low levels of executive corruption as shown in Chapter 3, figure 3.1.

The size of the economy in both of the cases is also similar. Dominican Republic ranks 67th in the world with regards to GDP levels in 2016, Uruguay places 76th (World Bank, 2016). Figure 6.2 shows that the
amount of trade as a percentage of GDP is higher in Dominican Republic than in Uruguay. This is interesting because, as noted in Chapter 1, traditional thought would assume that Dominican Republic should have lower levels of executive corruption due to greater openness and trade; however, this is not the case.

![Economic Openness in Latin America](image)

**Figure 6.2. Economic Openness in Latin America**
Source: Varieties of Democracy (2016)

Both cases present many similarities with regards to political and economic liberalization that puts into question traditional theory with regards to executive corruption. A cross-country analysis of 17 Latin American countries across 20 years demonstrated that as judicial constraints on executive power increase, executive corruption goes down. In other words, that the ability of the high courts to limit presidential power leads to significantly less corruption. Such relationship was statistically significant and it had the greatest effect on executive corruption. An in-depth analysis of the two cases shed light into the key explanatory variables vary so widely between Dominican Republic and Uruguay and that may
explain their differences in outcomes. Chapters 4 and 5 delved into the institutional conditions of both cases and how these affected the perception of executive corruption in each. In this next section, a comparison of these key variables is made.

Institutional Conditions

Party System Institutionalization

The institutionalization of the party system increases the vertical accountability of politicians to their constituents. As explained previously, limited programmatic differences, low party cohesion, and higher electoral volatility, increase the incentives of executives to mobilize voters through the use of clientelistic methods (Owens, 2003; Kitschelt, 2010). In Latin America, party system institutionalization, as shown in Figure 6.3, varies widely.

![Institutionalization of Party Systems in Latin America](https://example.com/figure6.3.png)

**Figure 6.3. Institutionalization of Party Systems in Latin America (Avg. Score 1996-2016)**

*Source: Varieties of Democracy (2016)*
In Dominican Republic and Uruguay, three major political parties compete for most seats in the legislature and for the presidency. The average age of political parties varies greatly between the two cases. In Dominican Republic, the major political parties average 44 years of age, while in Uruguay, the average is 136 years. However, despite the difference in the average age of parties, Buquet and Piñerio (2014) note that parties in both cases have established strong roots within society. In fact, constituents identify more strongly with their party in Dominican Republic despite the lesser average age of parties (Buquet and Piñerio, 2014). The average age of party systems shows that, as a measure of established roots within society, party age in both cases has not contributed to the major differences in party institutionalization as shown in Figure 6.3.

However, a measure of electoral volatility found greater instability in electoral competition in Dominican Republic, especially amongst the opposition, than that of Uruguay. Although the recent electoral successes of the ruling party (PLD) provides some stability, the fractionalization of the opposition has yielded greater instability in the party system. In part, such fractionalization has been the result of the weakening of the major opposition party (PRD) due to internal conflicts and the subsequent formation of a new party, the PRM, which is formed mostly by former members of the PRD. To put this in perspective, despite the emergence of the Frente Amplio (FA) party in Uruguay, the political landscape has consolidated into two ideologically distinct blocks, the traditional parties (PC and PN) on the center-right, and the FA on the center-left (Buquet and Piñeiro, 2014). These blocks have remained relatively stable since 2004 in terms of their political gains and losses, thus making for a less volatile electoral system than that of the Dominican Republic.

The ideological differentiation of political party platforms across cases also seem to suggest why executive corruption levels are perceived to be higher in Dominican Republic relative to Uruguay. Programmatic differences were found to be greater in Uruguay, where, as noted above, a change in the
electoral landscape caused strategies of clientelism to be electorally less effective (Buquet and Piñeiro, 2014). In contrast, political parties in Dominican Republic have shown little programmatic differentiation, leading parties to resort to clientelism in order to differentiate themselves from their competitors (Sagás 1999; Jacobs and Spierings, 2010; OAS, 2016).

Thus, differences in party system institutionalization across the cases are driven by electoral volatility and programmatic differences. The combination of high volatility and low programmatic differentiation amongst parties has led to a greater use of clientelism as an electoral strategy (Sagás 1999; Jacobs and Spierings, 2010; OAS, 2016) and led to a lower level of institutionalization in the party system. In contrast, Uruguay’s low volatility and high level of programmatic difference between blocks have made electoral clientelism less effective as a strategy; leading to lower perceptions of executive corruption as compared to Dominican Republic.

**Executive Power**

The Dominican executive possesses greater non-legislative powers than its Uruguayan counterpart. The president in Dominican Republic may be re-elected once, immediately following their 4-year term. The executive is also able to appoint and dismiss members of the cabinet at will, providing for the greatest cabinet formation and dismissal powers according to Shugart and Carey’s (1992) measure. Moreover, the legislature may only provide a recommendation of censure for a member of the cabinet and there are no reprisals for the executive if he chooses not to follow such recommendations.

In contrast, the President of Uruguay may seek re-election only after a 5-year lapse. However, the non-legislative powers of the Uruguayan executive are less. Multiple bodies of the state engage in the appointment and dismissal of members of the cabinet. While the president may appoint and dismiss ministers at will, the legislature has the power of censure which weakens the executive’s ability to
concentrate power. If the legislature votes to censure a cabinet member, the president may veto only if less than 66% of legislators voted in favor of censure.

The survival of members of the cabinet in Dominican Republic, is solely dependent on the president, and thus, institutional horizontal checks on the executive are greatly weakened. In contrast, the Uruguayan case reduces the dependence of cabinet members solely on the executive by linking a minister’s survival to the legislature as noted above. Although the Uruguayan president may dissolve the assembly, whereas the Dominican executive cannot, the power cannot be exercised during the president’s last year in office and, in practice, has never been utilized successfully.

These differences suggest that where executive power is greater, executive corruption levels may be higher, as seen in the case of Dominican Republic. In contrast, executive power concentration is more limited in Uruguay, where the president faces greater legislative constraints vis-à-vis his power to form and dismiss cabinets. In the Uruguayan case, the president faces more institutional constraints and executive corruption is significantly lower. This suggests that in cases where institutional constraints are (lower) greater on executive power, as analyzed in both Dominican Republic and Uruguay, perceptions of executive corruption are (higher) lower.

**Legislative Shield.** Constitutional provisions in Dominican Republic require 75% of the lower chamber to vote for impeachment proceedings against the executive. In contrast, the impeachment threshold in Uruguay is 66%. This means that, ceteris paribus, the Dominican executive faces a lower risk of impeachment and, ostensibly, a lower cost of detection if she engages in corruption. Dominican executives have enjoyed legislative majorities since 2006. For Uruguayan presidents, legislative majorities have been the exception rather than the rule. Nevertheless, legislative majorities have been achieved by the Frente Amplio party since 2004.
The existence of institutionalized factions and low *intra*-party cohesion render presidents in Uruguay to be leaders of factions within their parties and less so of political parties as a whole. However, even though legislative majorities have not been frequent, parties show high levels of *inter*-party cohesion, making legislative shields strong. Cohesion across parties is also relatively strong in Dominican Republic, although to a lesser extent than that in Uruguay considering data from the Varieties of Democracy database. Figure 6.4 shows legislative shields in both cases since 1996.

![Legislative Shield DOM v. URU](image)

**Figure 6.4. Legislative Shields in Dominican Republic and Uruguay (1996-2016)**

Legislative shields in both Dominican Republic and Uruguay have been relatively similar. In both cases executives have enjoyed legislative majorities in conjunction with high legislative party cohesion. Yet, executive corruption levels vary widely between the cases. This suggests that legislative shields are not substantially affecting differences in executive corruption. Analyzing these two cases, we are able to see that little differentiation between legislative shields does not concur with the wide variations in these
case’s levels of executive corruption. This is not to say that the shield does not work in shielding executives. Once out of power, executive’s face a greater risk of being prosecuted due to the loss of their legislative shield.

The case study of Dominican Republic demonstrates that officials whose party is ousted from government face a higher risk of being the subjects of investigations and, moreover, face a greater risk of being convicted. The case against the Sun Land Corporation and Felix Bautista illustrates that a strong legislative shield may effectively protect members of the ruling party even if they engage corruption, as the risk of impeachment is lower. While the court dismissed the Sun Land case, due to the legislative shield, the legislature did not initiate impeachment proceedings against Bautista even though the legislature had the power to do so. In neither Dominican Republic nor Uruguay were impeachment proceedings initiated against an executive between 1996 and 2016.

Judicial Independence

Judicial independence is necessary for the court’s ability to constrain the executive’s power. Although both cases show a relatively vulnerable position with regard to their financial independence, the Dominican Supreme Court lacks institutional independence, especially with regard to the appointment, tenure, and removal of its justices. On the other hand, the Uruguayan judiciary is independent. Analysis of both cases supports the hypothesis that judiciaries that are less influenced by the executive in the selection and removal of judges constrain the executive from engaging in executive corruption.

All of the judges to the high courts in Dominican Republic are appointed, evaluated, and removed by the same body, the National Council of the Magistracy (CNM). Although the council is composed of representatives from all branches of government, five of its eight members are elected officials. Four of those members, one shy of the deciding majority, could potentially belong to the executive. Thus, the judiciary is not isolated from executive influence. Justices are now evaluated at the end of 7-year terms
and may be removed by a majority vote of the CNM. Ultimately, this weakens the court’s ability to rule against the executive as justices are more vulnerable to losing their positions if the executive is not pleased with their decisions.

Data showing the number of verdicts against executive decrees demonstrates that, despite increases in budgetary allocations, after the constitutional reform of 2010, the Supreme Court, and the newly formed Constitutional Tribunal, have constrained the executive less often. Prior to 2010, the composition of the CNM was more balanced as the Attorney General, who is appointed by the executive, was not part of the body. At the time, the Supreme Court had ruled more frequently against the executive, finding 29% of the decrees heard unconstitutional. Also prior to 2010, the case against the Sun Land Corporation serves as a good example once more, as the Supreme Court acknowledged the executive’s over-reach in the adjudication of a contract but did not rule the agreement unconstitutional.

Further, with the constitutional reform of 2010 and the inclusion of the Attorney General to the CNM, a Constitutional Tribunal was created and tasked with only hearing cases on matters of constitutionality. Despite the creation of this specialized court, it has ruled a less proportion of decrees unconstitutional than had the Supreme Court prior to 2010, ruling only 11% of decrees heard in court unconstitutional. The increase in executive influence on the high court after the reform has probably led to lower constraints on the executive.

The appointment of Uruguayan justices to the Supreme Court is made with the affirmative vote of two-thirds of the General Assembly. In order to reach such qualified majority, the executive’s party will almost always have to reach across the aisle. Similarly, the removal of a justice must be backed by two-thirds vote of the Senate, a proportion that requires various political factions to reach an agreement. These provisions increase the independence of the judiciary by isolating the high court from undue influence from the ruling political party or the executive. This way, rules governing the selection and
removal procedures for Supreme Court justices makes them more independent. The independent judiciary in Uruguay ruled against the government in higher proportion to that of Dominican Republic after 2010, finding 25% of decrees heard unconstitutional.

Higher executive influence in the judiciary has likely contributed to less judicial independence and, from this, a likely higher perception of executive corruption levels in the Dominican Republic. On the other hand, greater judicial independence and greater constraints on the executive have yielded low levels of executive corruption in Uruguay. However, the differences in levels of executive corruption in both cases are better explained by the combination of the aforementioned variables (party institutionalization, executive power, and judicial independence) and their combined interaction with perceptions of executive corruption. Among these key variables, judicial constraints were shown to be the most powerful variable in the cross-national analysis as well as a key variable in the qualitative analysis of both case studies, affecting constraints on executive power and thus, altering the calculus for an executive to engage in corruption. While the effects of other variables on executive corruption is less supported, their combined effects must not be overlooked.

High levels of executive power, in combination with low levels of party system institutionalization and a lack of judiciary independence have yielded high levels of executive corruption in Dominican Republic. Weakened vertical accountability due to the low institutionalization of the party system, as well as the executive's dominance over institutions of horizontal accountability have rendered the Dominican Republic as the second worst performing country in terms of executive corruption in the region. In Uruguay, greater vertical accountability, evidenced by a higher institutionalization of the party system, has reduced clientelism to a less effective strategy of getting votes. Moreover, an independent judiciary

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22 Data taken from the Varieties of Democracy Executive Corruption Index (2016).
that has effectively constrained the executive reinforces existing mechanisms of horizontal accountability and better checks the executive, relative to Dominican Republic.

**A Typology**

Table 6.1 describes institutional conditions in Uruguay and the Dominican Republic and how differences in institutional designs affect levels of executive corruption in both countries. While not all cases may fit perfectly into these categorizations, this study has attempted to show that the cases analyzed here (Uruguay and Dominican Republic) come very close to idealized types exhibiting high and low levels of executive corruption. It is important to note that these categorizations are not a perfect description of each country, rather, they are analytic categories meant to frame the discussion along three key variables in an effort to better compare across cases (Collier et al., 2008).

Table 6.1: Conditions for Executive Corruption

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<tbody>
<tr>
<td></td>
<td>Dominican Republic (Dominating Executive)</td>
<td>Dominican Republic (Dominating Executive)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Uruguay (Bounded Executive)</td>
<td>Uruguay (Bounded Executive)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Low</td>
<td>High</td>
<td></td>
</tr>
</tbody>
</table>
In Uruguay, a highly institutionalized party system and an independent judiciary combine to constrain an executive with low non-legislative power, relative to the Dominican executive, from concentrating power. Hence, Uruguay exhibits a case of a ‘bounded executive’ which faces greater institutional challenges in concentrating power and a greater cost of engaging in corruption. The Dominican Republic is a case of an institutionally ‘dominating executive’ who may be able to concentrate power as a consequence of low judicial constraints and weak party system institutionalization. These institutional conditions, as noted throughout this study, have contributed to seemingly higher levels of executive corruption.

Framing the argument into a ‘bounded’ vs. a ‘dominating’ executive serves to sharpen the focus in the comparison of the two cases in this study by providing analytically productive categorizations. As noted by Collier et al. (2008, 166), typologies are “a basic tool for organizing and analyzing data.” Typologies can also serve as a bridge between quantitative and qualitative analysis as performed in this dissertation. With this in mind, the aim is to underscore the institutional limits placed on executives that wish to accumulate power. Analysis of these variables support the hypotheses that an executive’s ability to concentrate power leads to greater corruption due to weak mechanisms of vertical and horizontal accountability. As noted in the first part of this dissertation, judicial constraints on executive power were found to lead to significantly less executive corruption. Qualitative analysis of the two cases help us understand how executives are constrained. Further, experience with democracy continues to be a key variable in lowering corruption levels in the long run.

If only considering increases in experience with democracy as a strategy for curbing corruption, substantive improvement may be achieved only after decades of experience accumulation. However, when controlling for democratic experience through a qualitative study of Dominican Republic and
Uruguay, two countries with a similar stock of democracy, I find that differences in horizontal accountability levels may explain most of the variation in their levels of executive corruption. Waiting for a greater accumulation of experience may lead to frustration amongst the citizenry that may challenge the value of the democratic system. While it is true that establishing democratic institutions that increase institutionalization, transparency, and accountability take time to consolidate, analysis from this dissertation has shown that policies that aim to increase high court independence and its ability to constrain the executive are a sufficient in achieving decreases in levels of executive corruption.
CHAPTER VII

CONCLUSION

Introduction

Executive corruption remains a complex challenge in Latin America. Although scholars have studied corruption, less empirical research focuses exclusively on executive corruption. Furthermore, the relationship between the judiciary and the executive remains under-researched, with few cross-national or within-country studies focusing on Latin American (Kapiszewski and Taylor, 2008). This dissertation has attempted to fill in this gap with a cross-national study of the institutional conditions that affect executive corruption in Latin America, as well as an in-depth study of two under-examined cases, Dominican Republic and Uruguay. This mixed-methods approach allows us to evaluate why political corruption levels have remained stagnant or perhaps worsened in spite of the significant increases in political and economic liberalization in Latin America.

The use of this mixed-methods approach permits an analysis of many of the most relevant variables in explaining executive corruption in Latin America. At the same time, the inherent shortcoming of large-N studies which employ broad, surface-level analysis across cases, is overcome through the use of a comparative analysis of two cases. This type of analysis engages in thick description and deeper level analysis into how relevant variables are affecting levels of executive corruption in two ideal cases. Of course, while generalizations extrapolated from two cases is limited under a comparative analyses of this type, through the use of a quantitative methodological approach such generalizations are better suited.

Applying both cross-national and in-depth analysis methods improves the rigor of the analysis of executive corruption in Latin America undertaken in this dissertation. Analyzing cases that increase the variance of the dependent variable is important because it provides a better estimate of the causal
relationships between variables. Thus, searching for causal mechanisms to explain political phenomena is accomplished by furthering the quantitative analysis’ broad scope by analyzing a few cases in detail (George and Bennett, 2005). The institutional conditions that affect executive corruption levels in both case studies are reexamined in the following sections.

In this concluding chapter I will first revisit the theoretical model and the hypotheses examined throughout this dissertation. Second, I review the quantitative and the qualitative analysis and integrate the findings resulting from both methods. Third, I propose a typology for understanding how party system institutionalization, executive power, and judiciary independence interact with each other and increase or decrease an executive’s accountability and hence, their incentives for engaging in corruption. Lastly, I present the implications of this study and provide areas for future research.

**Hypotheses Revisited**

This dissertation has focused on examining three overarching hypotheses. First, that increases in political liberalization decreases executive corruption. Second, that greater economic openness leads to decreases in executive corruption. Third, that institutional constraints on executive power lead to decreases in executive corruption. In analyzing these hypotheses, the dissertation takes three approaches, a cross-national analysis of the data, an in-depth study of two cases, and a subsequent comparison of two cases and the institutional design differences of each.

The cross-national analysis of Latin America examined all of the relevant variables that are thought to affect executive corruption. The data revealed that institutional constraints are decidedly significant in controlling executive corruption in Latin America, even more than experience with democracy alone. The quantitative analysis also showed that judicial constraints, specifically, reduced executive corruption markedly. However, such analysis stops short of explaining how the variables
associated with judicial constraints lead to decreases in corruption. Hence, an in depth analysis of Dominican Republic and Uruguay was carried out in order to answer such questions.

Such analysis sheds light on the institutional mechanisms that may hinder or aid in the control of corruption and exactly how they contribute to more or less corruption in the two cases. An examination of Dominican Republic, a case reflecting high perceived levels of executive corruption, and Uruguay, the least corrupt country in the region, found that judiciaries less influenced by the ruling party had greater ability to constrain the power of the executive and, this way, limit executive corruption. One example of this is evident in the case against the Sun Land Corporation in Dominican Republic, described in Chapter 4, where the court failed to constrain the executive from encroaching on the power of the legislature to approve contracts. Although the corruption case involving Brazilian conglomerate Odebrecht and its impact on 12 Latin American countries is yet to be resolved, much can be gleaned from the available data.

Figure 7.1: Judicial Constraints vs. Amount of Bribes from Odebrecht

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23By analyzing these two cases in particular, this study attempts to close the gap noted by Kapizsewski and Taylor (2008) who explain that Dominican Republic and Uruguay represent only 1% of the cases studied in Latin America.
Figure 7.1 incorporates data from the Varieties of Democracy database on judicial constraints on executive power in relation to the amount of bribes received from Odebrecht by those 12 Latin American countries. The amount of bribes were divided by 100 in order to standardize the scale in relation to judicial constraints. What the figure shows is that countries with greater judicial constraints on the executive received the least amount of bribes. Similarly, Venezuela received the highest amount of bribes while having the weakest levels of judicial constraints amongst the countries affected. Interestingly, Dominican Republic received more bribes relative to the level of judicial constraints. Other factors explained throughout this study, such as the high level of the executive’s power, as well as the lower level of institutionalization of the party system, may play a role in explaining why Dominican Republic received such a high amount of bribes.

When an executive concentrates power they undermine the power of other branches or agencies of government, such as judicial independence. Even when that is not the case, a judiciary that is more influenced by the partisan politics of the party in power becomes more vulnerable to being subverted. This erodes horizontal accountability, limits judicial constraints, reduces the costs of engaging in corruption, and could lead to higher levels of executive corruption.

**Significance of this Research**

This dissertation has shown that political institutions remain important in the short- and medium-run vis-à-vis executive corruption. Although democratic experience continues to be a key explanatory variable, vertical and horizontal accountability through the institutionalization of the party system and mechanisms that are able to constrain the executive effectively such as the judiciary, become much more significant, and are sufficient, in explaining high and low levels of executive corruption. Understanding the effects of political institutions on executive corruption may enable countries to gain more of an advantage when attempting to lessen corruption than they would by only focusing on achieving a greater number of
years of democratic experience. Changes in institutional design that can increase the power and independence of the courts can greatly aid in decreasing levels of executive corruption.

Furthermore, analysis of the executive’s non-legislative powers individually and not as part of an index of presidential power allowed for a more nuanced understanding of how the executive is able to weaken mechanisms of horizontal accountability and, at the same time, increases the validity of the measure of executive power used in this study (Fortin, 2012). This was also demonstrated in the quantitative part of this study which showed that individual examination of a president’s non-legislative powers was significant in explaining differences in executive corruption levels across cases, whereas an index of presidential power was not.

Similarly, it is important to note that the way in which we measure and define corruption, as seen from the comparison of widely-used indeces of corruption in Chapter 2, can lead to different results. Widely used measures such as Transparency International’s Corruption Perceptions Index, as well as the Worldwide Governance Indicators Control of Corruption index, do not discern between grand and petty forms of corruption. This becomes relevant as we examine a myriad of variables and their effects on corruption. Being able to discern between types of corruption allows for a more nuanced understanding of the phenomenon in question.

Categorizing these cases as ones in which the executive is bound vs. one where the executive dominates other institutions is also relevant. The creation of these typologies is important as they convey analytical relationships regarding the cases discussed in this dissertation. The objective is to show how executive corruption levels vary when levels of vertical and horizontal accountability also vary across countries.24 Scholars have argued that there remains few region-specific, quantitative work with regards

24 O’Donnell (1994) uses delegative democracies to describe cases in which vertical accountability is present but horizontal accountability is weak or absent.
to political corruption (Blake and Morris, 2009). This study was undertaken as an effort to advance our knowledge with regards to one of the important emerging challenges for improving the quality of democracy in Latin America.

Implications for Cases with High Executive Corruption

This dissertation focused on an examination of executive corruption in Latin America. The study revealed that, although democratic experience is important in lowering levels of executive corruption, institutional variables are highly significant as well. In other words, in countries where corruption is rampant, policies that increase the independence of the high courts, their ability to limit presidential power, and party system institutionalization, lead to significantly less corruption than relying on democratic experience alone. Thus, frustration with democratic institutions may be thwarted by focusing on institutional reforms that achieve those aforementioned conditions. What this dissertation has revealed is that such countries are able to ameliorate the problem more significantly by focusing on reforming weaknesses in their institutions, specifically, weaknesses in judicial constraints. Hence, an abundance of democratic experience but a lack of independence in the judiciary as well as ineffective constraints on the executive would yield little improvements in reducing executive corruption.

For the Dominican Republic, this entails a close examination into the lack of independence of the judiciary, a factor of the high influence of the ruling party in the body that selects high-court judges, the National Council of the Magistracy. As shown in Chapter 4, prior to 2010 and the addition of the Attorney General to the council, selections were more balanced and the judiciary constrained the executive more frequently. In Uruguay, where executive corruption levels are the lowest in the region, both chambers of the legislature, as General Assembly, appoint members of the judiciary with a 2/3 vote.

The power of the executive to nominate and remove cabinet members at will is also of significance. When other branches of government are involved in appointment and removal procedures,
distinct political interests must coalesce, thus limiting the influence of one party over the entire process. The power of the Uruguayan legislature to censure a cabinet member limits the executive’s power. Lastly, although greater institutionalization of the party system may be achieved in time, political parties that differentiate themselves more clearly along ideological lines may aid in reducing executive corruption more rapidly by limiting the effectiveness of clientelism as a vote-getting strategy. The experience of Frente Amplio in Uruguayan electoral politics is a testament to this fact (Buquet and Piñeiro, 2014).

Avenues for Future Research

This dissertation has analyzed the institutional conditions that affect executive corruption in Latin America however, much continues to be unexplored. Analysis of the empirical effects of electoral rules, district magnitudes, and the nomination processes of executives at the primary level and its effects on executive corruption is one such avenue for future research. Many scholars have focused on the effects of these variables on legislators (Rose-Ackerman, 1999; Rose-Ackerman, 2001; Kunicova, 2006) but little empirical evidence exists on corruption at high-levels of government.

The categorization of cases from Table 6.1 also allow for future research that uncovers the institutional conditions of cases that may fall under other categories within the matrix. Hence, further in-depth and cross-national studies of the region should continue that will contribute to our understanding of the relationship between distinct institutional designs and varying levels of executive corruption. Corruption represents a challenge that significantly impacts millions of people in Latin America and around the world. Furthering our understanding of the institutional determinants of corruption is thus a key in strengthening democracy, improving democratic quality, and improving the lives of millions of Latin Americans.


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