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Three Models of Presidential Impeachment in South America

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Słowa kluczowe: impeachment, Ameryka Południowa, prezydent

Abstract

This article systematises procedures for dismissing a Head of State in the countries of South America. We look at the genesis of introducing impeachment to the constitutions of countries in this part of the world, paying close attention to the specific historical background of the Western Hemisphere, then focusing on the categorization and systematisation of the procedure itself. We present three models of the presidential impeachment in South America: Judicial, Bicameral and Unicameral. Using a contextual approach, doc-

trinal research, comparative method and theory-building strategy, we discuss the general features of these models and the specificities of use in each country of the continent.

Streszczenie

Trzy modele impeachmentu prezydenta w Ameryce Południowej

Niniejszy artykuł podejmuje temat procedury odwołania głowy państwa w krajach Ameryki Południowej. Autorki przyglądają się genezie wprowadzenia impeachmentu do konstytucji państw leżących w tej części świata, zwracając uwagę na szczególne uwarunkowania historyczne zachodniej półkuli, a następnie skupiają się na kategoryzacji i systematyzacji samej procedury. W oparciu o kryterium dotyczące tego jakie ciało wnosi oskarżenie a jakie odpowiada za proces i decyzję o ewentualnym pozbawieniu urzędu, autorki wyróżniają trzy modele impeachmentu prezydenta w Ameryce Południowej: sędowniczy, dwuizbowy oraz jednoizbowy. Wykorzystując podejście kontekstualne, metodę dogmatyczno-prawną, metodę porównawczą oraz strategię budowania teorii, autorki omawiają ogólne cechy każdego z modeli, jak również jego specyfikę w krajach kontynentu.

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I. Introduction

During the 1787 Constitutional Convention, Benjamin Franklin argued that without the possibility of impeachment, the only recourse for US citizens wishing to remove a President from power would be assassination¹. Although there are now other mechanisms for removing a Head of State, such as a revocatory referendum or a written declaration that a President is unfit to serve, impeachment is still considered the most transparent and reliable procedure. Presidential impeachment has been implemented more often in South America during the 21st century than any other region of the world. We use doctrinal research to examine this procedure and systematise the various types of presidential impeachment employed in South America based on which political body initiates the charge, and which adjudicates. Adopting a contextual

¹ L. Tribe, J. Matz, *To End a Presidency: The Power of Impeachment*, New York 2018, p. 17.

approach enables us to capture national specificities, while a theory-building orientation reveals regularities and enables us to draw conclusions without preconceived research hypotheses. Finally, a comparative method is applied in order to organize the results.

II. Historical background

Although impeachment is generally associated with the presidential system, it originated in the parliamentary system of England during the 14th century. In a two-stage procedure, the House of Commons would make a charge and the House of Lords conduct the trial². By the 18th century, when impeachment was adopted in the Americas, the process had been superseded in its birthplace by a vote of no confidence³.

The figure of President occupies a central role in the political systems of South American countries. This is largely a result of the majority of republics in this part of the world following the example of the United States, as well as a strong tradition of personified politics in Spanish-speaking countries⁴. Guyana and Suriname only declared independence in the second half of the twentieth century with the cooperation of their former colonial masters⁵.

The various paths to independence undertaken by the countries of South America have resulted in different political systems. These systems combine elements of existing solutions in the Americas with European models. While most South American countries have adopted a classic presidential system, a separation of powers is less evident in Guyana and Suriname, where the legislature and executive often overlap on a political level. In Guyana, both the President and the Prime Minister – who is also First Vice President – are members of the ruling party, linking them directly to the legislature. The President

² Ch.L. Black, P. Bobbit, *Impeachment: A handbook*, London 2018, p. 16.

³ F. Zúñiga Urbina, *Acusación en juicio político: Notas sobre la justicia política*, “Revista chilena de derecho” 1993, vol. 20, no. 2/3, p. 706.

⁴ A. Dawson, *Latin America since Independence*, New York 2010, pp. 15–17.

⁵ Guyana declared independence as a Commonwealth realm in 1966, and became a parliamentary republic in 1970. Suriname became a republic immediately after declaring independence in 1975.

of Suriname is Head of both the State and the Government⁶, and is elected by a National Assembly that generally votes for the ruling party candidate.

Despite political disparities, all South American countries have included impeachment in their constitutions. We have identified three models of presidential impeachment in this area, based on which body initiates a charge and adjudicates. These models are presented in Table 1. It should be noted that this is not the first approach to the systematization of impeachment in the Western Hemisphere. An important proposal in this matter has been presented by Aníbal Pérez Liñán, however, firstly, it focused on Latin America, excluding therefore Guyana and Suriname, secondly, the criterion was the degree of involvement of the judiciary in the president's trial, and thirdly, it took into consideration the constitutions approved before 2004, while the ones of Ecuador and Bolivia are more recent⁷.

Table 1. Three models of presidential impeachment in South America

Model	Judicial model	Bicameral model	Unicameral model
Initiates Charge	Legislature (Unicameral Congress in Suriname and Venezuela, joint session of the Plurinational Legislative Assembly in Bolivia)	Lower Chamber (Cámara de Diputados, Cámara de Representantes, Câmara dos Deputados)	Unicameral Congress
Conducts Trial	Judiciary (Supreme Court, Highest Court)	Upper Chamber (Senado, Cámara de Senadores)	
Countries	Bolivia, Suriname, Venezuela	Argentina, Brazil, Chile, Colombia, Paraguay, Uruguay	Ecuador, Guyana, Peru

Source: own study.

⁶ The Constitution of Suriname of 1987, http://www.oas.org/juridico/pdfs/mesic-ic4_sur_const.pdf (16.04.2022).

⁷ A. Pérez Liñán, *Impeachment and the New Political Instability in Latin America*, Cambridge-New York 2007, p. 136; For models of the president's constitutional responsibility in Europe consult S. Grabowska, *Is there a "universal" model of the president's constitutional responsibility in European countries?*, "Studia Polityczne" 2020, vol. 58; For models of presidential breakdown in Latin America consult M. Llanos, L. Marsteintredet, *Conclusions: Presidential Breakdowns Revisited* [in:] *Presidential Breakdowns in Latin America: Causes and Outcomes of Executive Instability in Developing Democracies*, ed. M. Llanos, L. Marsteintredet, New York 2010, pp. 213–228.

III. Judicial model

In the Judicial Model, characteristic of Bolivia, Suriname and Venezuela, the highest court plays a significant role in removing a Head of State from office. Although procedures are country-specific, the Supreme Court, or the High Court in Suriname, has the authority to charge a President with common crimes and/or crimes in the exercising of his/her duties. The highest court in Bolivia and Venezuela requires authorization from the legislative branch to proceed with a trial⁸. In Suriname, the National Assembly is responsible for indicting a Head of State and subsequently submitting the case to the Procurator General⁹. Significantly, definitions of the grounds for removing a President from office in the constitutions of countries that have adopted the Judicial Model are rather nebulous and leave considerable room for interpretation. While a Surinamese President can be impeached for “punishable acts committed in the discharge of their official duties”, and a Bolivian President for “crimes committed in the exercise of the mandate”¹⁰, the Constitution of Venezuela lists no specific grounds for removing a President from office. Interestingly, the Judicial Model permits a Head of State to be held criminally liable for their actions after they have left office, although this is only directly referred to in the Constitution of Suriname¹¹.

There is an association between the Judicial Model and the right to a revocatory referendum. This right to recall a head of state was introduced to the Bolivian constitution in 2009 and the Venezuelan constitution in 1999¹². To initiate the recall process, a certain amount of those eligible to vote – 20% in Venezuela, 15% in Bolivia – must sign a petition. The referendum can only be undertaken during the second half of a President’s term in both countries, cannot take place in the Bolivian President’s final year of office, and cannot be commenced more than once in the constitutional mandate of the elect-

⁸ Constitución Política del Estado Plurinacional de Bolivia de 2009, <https://sea.gob.bo/digesto/CompendioNormativo/01.pdf> (16.04.2022); Constitución de la República Bolivariana de Venezuela de 1999, <http://www.minci.gob.ve/wp-content/uploads/2011/04/CONSTITUCION.pdf> (16.04.2022).

⁹ The Constitution of Suriname...

¹⁰ *Ibidem*; Constitución Política del Estado...

¹¹ The Constitution of Suriname...

¹² The right to a revocatory referendum also exists in Ecuador under the 2008 Constitution.

ed Head of either country¹³. In order to be successful, the number of votes in favour of recall must be higher or equal to the number of voters who elected the President¹⁴. It is also salient that, in stark contrast to the rare use of impeachment, the revocatory referendum has often been used in both Bolivia and Venezuela. In the former, a vote to recall President Evo Morales was held in 2008¹⁵; in the latter, a 2004 referendum was held to decide whether President Hugo Chávez should remain in office. The number of votes to recall the president were insufficient in both cases, although the Chávez referendum was subject to allegations of fraud¹⁶. Persistent attempts have been made by the Venezuelan opposition to recall Chávez's successor, Nicolas Maduro. However, the undemocratic nature of the regime effectively prevents any public scrutiny of the Head of State.

IV. Bicameral model

The Bicameral Model of impeachment has been adopted in Argentina, Brazil, Chile, Colombia, Paraguay, and Uruguay. Those countries have bicameral parliaments, with both chambers participating in the process of removing a President. In this model, the lower chamber of Congress serves as the accusing body, and the higher chamber conducts a trial to determine whether a President should be removed from office. In the Bicameral Model, the legislative body is not required to consult with other institutions and there is no right to appeal.

In terms of the causes for which a president can be impeached, countries following the Bicameral Model exhibit no specific differences from other South American states. The constitutions of Argentina, Brazil, Chile, Colombia, Paraguay, and Uruguay brusquely describe grounds for impeaching a President with expressions such as “crimes of national responsibility”¹⁷ (Brazil), “acts

¹³ Constitución Política del Estado...; Constitución de la República Bolivariana...

¹⁴ *Ibidem*.

¹⁵ Ley no. 3850 de 12 de mayo de 2008. Ley de referendum revocatorio de mandato popular, http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis_gob/263 (16.04.2022).

¹⁶ R. Brading, *Populism in Venezuela*, New York 2013, p. 78.

¹⁷ Constituição da República Federativa do Brasil de 1988, http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm (10.04.2022).

that gravely compromise the honor or the security of the Nation” (Chile)¹⁸, “misconduct or crimes committed in the fulfilment of duties” (Argentina)¹⁹ and “violation of Constitution or serious crimes” (Uruguay)²⁰. Within the Bicameral Model, a Head of State is personally liable for misconduct in his/her functions and/or crimes committed while in office.

In this model, the impeachment process starts with a written petition presented by, depending on the country, an individual or group of Deputies. In all but one of these countries, the petition must refer to a current Head of State: an impeachment procedure may be undertaken against a former President of Chile up to six months after he/she has left office²¹. An impeachment petition must be submitted to the appropriate committee within the lower chamber of parliament. If the committee decides the request has merit, the matter is referred to the lower chamber for a ballot. In Argentina, Brazil and Paraguay, two-thirds of deputies must vote in favour for impeachment to proceed²²; in Chile and Colombia a majority will suffice²³. The constitution of Uruguay does not specify the number of votes required. If the required majority is not attained, the case against the Head of State is dismissed. If the number of votes is sufficient, a two-third majority in the Senate is needed to convict the Head of State. However, in Brazil and Colombia, the Senate is only empowered to judge a Head of State for crimes committed in the exercise of his/her duties²⁴. With common crimes, the lower chamber of Congress still serves as the accusing body, but the trial is conducted by the Supreme Court.

¹⁸ Constitución Política de la República de Chile de 1980, <https://www.bcn.cl/leychile/navegar?idNorma=242302> (10.04.2022).

¹⁹ Constitución de la Nación Argentina de 1853, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm> (10.04.2022).

²⁰ Constitución de la República Oriental del Uruguay de 1967, <https://www.impo.com.uy/bases/constitucion/1967-1967> (10.04.2022).

²¹ Constitución Política de la República de Chile...

²² Constitución de la Nación..., Constituição da República Federativa..., Constitución de la República del Paraguay de 1992, <https://www.bacn.gov.py/constitucion-nacional-de-la-republica-del-paraguay> (10.04.2022)

²³ Constitución Política de la República de Chile..., Constitución Política de la República de Colombia de 1991, <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4125> (10.04.2022).

²⁴ Constituição da República Federativa..., Constitución Política de la República de Colombia...

It is important to emphasise that in countries using the Bicameral Model, as in all countries with a presidential system of government, a politically elected Congress is only authorised to remove a President from office on constitutional (legal) grounds, not for political reasons. However, as recent examples of impeachment in South America have demonstrated, the procedure has been deployed to politically undermine a Head of State²⁵.

V. Unicameral model

In countries with a unicameral parliament, presidential impeachment is usually enacted through this institution. The only exception in South America is Suriname, which, as previously mentioned, follows the Judicial Model. The countries of South America with a Unicameral Model of impeachment are therefore Ecuador, Guyana, and Peru.

Reasons for presidential impeachment in Ecuador include “crimes against state security”, “crimes of concussion, bribery, embezzlement or illicit enrichment”, as well as “crimes of genocide, torture, forced disappearance of persons, kidnapping or homicide for political or conscientious reasons”²⁶. A President can also be dismissed for “assuming functions that do not constitutionally belong to his/her competence”, and for “severe political crisis” or “internal unrest”²⁷. In Guyana the President can be impeached for “violation of [...] Constitution or any gross misconduct”²⁸, while “violation of the Constitution” is also listed in Peru, along with “any crime committed in the exercise of their functions and up to five years after they have ceased”.²⁹ Article 117 of the Pe-

²⁵ A. Pérez-Liñán, *Impeachment or backsliding? Threats to democracy in the twenty-first century*, “Revista Brasileira de Ciências Sociais” 2018, vol. 33(98), p. 1.

²⁶ Constitución de la República del Ecuador de 2008, https://www.defensa.gob.ec/wp-content/uploads/downloads/2021/02/Constitucion-de-la-Republica-del-Ecuador_act_ene-2021.pdf (26.04.2022).

²⁷ *Ibidem*.

²⁸ Constitution of the Co-operative Republic of Guyana of 1980, <https://parliament.gov.gy/Constitution%20of%20the%20Cooperatiive%20Republic%20of%20Guyana.pdf> (26.04.2022).

²⁹ Constitución Política del Perú de 1993, https://cdn.www.gob.pe/uploads/document/file/198518/Constitucion_Politica_del_Peru_1993.pdf (26.04.2022).

ruvian constitution adds that the President “can only be accused, during his period, for treason against the fatherland; for preventing the presidential elections, parliamentary, regional or municipal; for dissolving Congress, except in the cases provided for in Article 134 of the Constitution, and for preventing its meeting or operation, or those of the National Elections Jury and other bodies of the electoral system.”³⁰ It is important to note that while some offences listed in the constitutions of these three countries are precisely defined, others are rather vague and open to interpretation: for example, *gross misconduct* and *concussion* can be construed in various ways.

The impeachment procedure in Ecuador is initiated at the request of at least two-thirds of the National Assembly. The motion is then directed to the Constitutional Court, which rules on the admissibility of the case. If trial is recommended, this is conducted by the National Assembly. The President can defend him/herself, and, once again, a guilty verdict requires the agreement of two-thirds of the National Assembly³¹. The impeachment process in Guyana starts with a motion signed by no less than half the National Assembly, which is then passed to the Speaker. From here the procedure is similar to the one adopted in Ecuador, requiring two-thirds of the National Assembly to back the motion for a trial to be conducted.

In Guyana, however, a Special Tribunal is created to investigate the case and report back to the National Assembly. If these judges do not find the President guilty, no further action can be taken. In Peru, a motion for impeachment is directed to the Permanent Commission of the National Assembly, which delegates the investigation to a Subcommittee for Constitutional Accusations. If the Subcommittee upholds the motion, the Permanent Commission presents the charge to the National Assembly, which then votes on impeachment. As in other countries following the Unicameral Model, a two-thirds majority is required for the motion to pass. It is important to note that in Peru, where the entire process is conducted by politicians, details of the impeachment procedure are not listed in the constitution, but in the Rules of Procedure of the National Assembly.

³⁰ *Ibidem.*

³¹ Constitución de la República del Ecuador...

VI. Conclusions

While the characteristics of presidential impeachment in South America vary depending on country, we have identified 3 general models based on which bodies initiate a charge and conduct the trial: Judicial, Bicameral, and Unicameral. While none of these procedures is perfect, the Judicial Model, which can be applied in both bicameral (Bolivia) and unicameral (Suriname, Venezuela) systems, appears to be the most universal. Also, by placing the trial in the hands of what should be an impartial and apolitical court, the Judicial Model guarantees a substantive examination of the matter regardless of the legislature's political composition. Of course, for this to happen, the state must respect the principles of democracy, the rule of law, and judicial independence. Thus, these factors must be explored within any research on the practical dimensions of impeachment in South America.

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