

DEMOCRACY IN LATIN AMERICA? AN ASSESMENT

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Abstract

This essay will make an evaluation about political liberalism in the electoral democracies of Latin America. For doing so it will take into account three different indicators: a) the rule of law, b) horizontal accountability, encompassing: i) separation of powers/checks and balances, and ii) corruption, and; c) the respect for civil rights (specifically freedom of expression). This will be done through different examples that show that Latin American democracies are far from consolidated (e.g. that don't fulfil the previous three criteria) and that a 'second transition' is needed in order for them to become liberal, constitutional democracies.

Keywords

Political liberalism, democracy, Latin America, rule of law, accountability, comparative study

Democracy in Latin America? An Assessment

If a democracy doesn't preserve liberty and law,
that it is a democracy is a small consolation
(Zakaria. 1997:5)

Political liberalism supports the idea of the rule of law, the separation of powers, a system of checks and balances and that there are basic rights and liberties of speech, assembly, religion and property (Zakaria.1997:1) which no power, particularly the state, should violate (O'Donnell.1998:113). Political liberalism is closely related to the concept of contemporary democracy since they both share the idea of the existence of certain civil and political freedoms² (Dahl.2000:85-86). In order to have these freedoms, they need to be contained and protected by rules which must be impartial and applied to and respected by everyone, in short, the rule of law. This republican idea is the bridge between political liberalism and democracy. Therefore, since the three concepts are intertwined, this assessment about political liberalism is also an assessment of the state of democracy and the rule of law in the region.

This assessment is not a simple one. Regimes in Latin America range from countries such as Cuba (authoritarian) to others like Uruguay (liberal democracy).³ However, this

essay will try to shed some light on those regimes in the region that are classified as democratic, at least according to its electoral definition; as having free, fair and regular elections (Diamond. 2002: 22). In general, these regimes are characterized on the one hand by holding relatively free and fair elections and on the other by the lack of accountability, and disrespect for the rule of law and the protection of civil rights. This is why some have described them as 'delegative' (O'Donnell), 'illiberal' (Zakaria), 'partial' (Sznajder, Roniger) or 'hybrid' (Diamond, Karl) democracies.

Therefore, this evaluation about political liberalism in the electoral democracies of Latin America will take into account three different indicators: a) the rule of law, b) horizontal accountability, encompassing: i) separation of powers/checks and balances, and ii) corruption, and; c) the respect for civil rights (specifically freedom of expression) This will be done through different examples that show that Latin American democracies are far from consolidated (e.g. that don't fulfil the previous three criteria) and that a 'second transition' is needed in order for them to become liberal, constitutional democracies.

Political liberalism is closely related to the concept of contemporary democracy since they both share the idea of the existence of certain civil and political freedoms. Classical political liberalism considers individual liberty as the main political value, and seeks to protect and uphold it (Gaus.1996:162-166). In concrete, 'liberalism refers to the idea that there are basic civil liberties and rights which no power, prominently including the state, should violate' (O'Donnell.1998:113). These rights mainly include the freedom of speech, expression, thought, association, belief and property (Steiner.1994). On the other hand, modern democracy, or polyarchy as Dahl defines it, consists on having free, fair and frequent elections, freedom of expression and associational autonomy (2000: 85-6).

Although there is some tension between the two concepts, since democracy is about using power and liberalism is about limiting it (Zakaria.1997:3), individual rights (specifically freedom of expression and association) are the bridge between both. Without these rights, democracy can bring with it the erosion of liberty and the abuse of power (Zakaria.1997:6); and can become the tyranny of the majority (O'Donnell. 1998:115). Therefore, these rights need to be respected. In order to do this, these

freedoms need to be protected by rules which must be impartial and applied to and respected by everyone: liberalism and democracy must be linked by the republican concept of the rule of law.⁴ Sometimes undemocratic leaders that violate the constitution and disrespect individual rights are elected through democratic procedures; this is why the three concepts must be understood as complementary. Therefore this assessment about political liberalism is also an assessment of the state of democracy and the rule of law in the region.

However, this assessment will not deal with all of the countries of the region; it will only take examples from regimes that are classified as democratic, at least according to its electoral definition; as having free, fair and regular elections (Diamond. 2002: 22). According to Diamond's 2001 classification (2002: 21-35), 30 countries in the region can be classified as liberal and electoral democracies and ambiguous regimes.⁵ This classification will be useful since the current assessment deals with regimes that have democracy but are weak in their liberal and republican components.

In these Latin American regimes, 'gains in the electoral arena haven't been accompanied by the establishment (...) of the rule of law' (Karl.1995:80) or the efficient protection of individual rights. The rise in human rights violations in Guatemala, (Karl.1995:76), the failed 2002 coup in Venezuela and Menem's rule by decree in Argentina (Zakaria. 1998:3) are simple evidence that constitutional liberalism is weak in the region. In these countries free and fair elections are held at the same time that there is disrespect for the rule of law, a lack of accountability, and a weak and selective protection of individual rights such as freedom of expression. In these countries it seems that electoral competition masks the lack of real democracy and political liberalism (Diamond. 2002: 24). Then, if we take a broad definition of democracy, as including not only elections but protection of civil liberties (of speech and assembly, as Dahl suggests) under a strong rule of law (Diamond. 2002: 3) many Latin American 'democracies' are empty.

Since these regimes are not clearly democratic (according to the broad definition of democracy) some authors have described them as 'delegative' (O'Donnell), 'illiberal' (Zakaria), 'partial' (Sznajder, Roniger) or 'hybrid' (Diamond, Karl) democracies. Firstly, delegative democracies rest on the premise that whoever wins the 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.1994:59). Delegative executives are scarcely liberal and republican characters who attempt to maximize their power by eliminating or denying the validity of other, potentially controlling, state powers (O'Donnell. 1998:120). In second place, illiberal democracies are democratically elected regimes that routinely ignore constitutional limits on their power and deprive their citizens of basic rights and freedoms (Zakaria.1997:1). Furthermore, partial democracy is a democratic political system pervaded by exclusionary trends that limit the scope and quality of participation and contestation well beyond electoral processes and happens in tandem with various combinations of old traits such as clientelism, corruption, ineffective implementation of the rule of law, and authoritarianism (Sznajder, Roniger.2003:324). Finally, hybrid regimes are systems of government that are not clearly democratic nor clearly authoritarian, but occupy some blurry spot in the middle where different mixes of authoritarianism, clientelism and pluralism coexist (Karl.1995:79) or where civil liberties and the rule of law are not upheld (Diamond.2002: 25-33). All these labels stem from the idea that Latin American regimes have the appearance of democracy but without substance, it is as if they were wearing 'smiling masks' (Lagos.1997:126). All these classification share something in common: the coexistence of free and fair elections with a disregard for the rule of law, lack of checks-and-balances, corruption and civil rights violations.

Therefore, the current evaluation will take the four deficits mentioned above and will use them as indicators of the state of political liberalism and constitutionalism in the electoral democracies of Latin America. In detail, these indicators will be: a) the fact that the law is respected, that nobody is above it and its not applied selectively, b) 'the respect of rulers and state officers to the legal and constitutional limitations on their jurisdictions in relation to other jurisdictions⁶ and insofar as they should not put private interests above the public ones they are supposed to serve⁷' (O'Donnell, 2007:101) and; c) the protection, respect and enforcement of the freedom of expression of individuals.

Rule of Law

Aos meus amigos, tudo: aos meus inimigos, a lei.
Getúlio Vargas (in O'Donnell.2007: 111)

The rule of law consists of the respect for legal rules that are applied fairly, consistently, and predictably across equivalent cases, irrespective of the class, status, or power of those subject to the rules (Diamond.1999:xi) In this respect Latin American regimes have a long tradition of ignoring the law or, when acknowledging it, of twisting it in favour of the powerful (O'Donnell.2007: 119) In particular, the region has a record of state-bias where the state and its agencies tend to be arbitrary, corrupt and patrimonial (Philip.1999:75) and therefore apply the law selectively, punishing foes and favouring friends. In the region, the state apparatus and the law have been used conditionally for advancing certain interests. In Mexico, for example; in 2005 the government proposed a TV law that favoured big television businesses, expecting in return more TV coverage and favourable opinions for its candidates running for the 2006 elections; the bank reprivatization that took place in 1991 had not only the objective of achieving a market reform but favouring the close friends of the regime and obtaining support from the business elite (Philip.1999:80), also evidence of this is that President Salinas' charges of corruption have gone underground (Little.1997:190). In Peru, the closing of the Congress in 1992 and the impeachment of certain judges that opposed Fujimori's reelection proposal in 1996 are both evidence of the violation to the rule of law. In turn, Menem's subordination of the military to the government by forcefully putting down mutinies and by pardoning military leaders still in prison (Diamond.1999:101) is evidence too of the discretionary application of the law. These examples, along the negatively biased treatment towards black people in Brazil (Fry.1999:187) and the abuse of deadly force against peasant protests in Mexico (Chevigny.1999:53) amongst other examples, show that in Latin America the law is not equal for everyone. In the region, the rule of law at best has only intermittent and partial existence (O'Donnell. 1999: 320). The balance is not very promising; while Latin American regimes have 'democratized' by holding competitive elections they haven't adopted any serious culture of law enforcement (Philip.1999:74)

Horizontal Accountability.

“The weakness of horizontal accountability implies a corresponding weakness in the liberal and also the republican components of many new polyarchies”
(O, Donnell. 1998:113)

The respect of rulers and state officers to the legal and constitutional limitations on their jurisdictions (O'Donnell.2007:101) is a measure of accountability. Accountability implies some form of boundaries which office holders and agencies must respect. One of these boundaries relates to horizontal accountability which depends on the existence of autonomous state agencies that can and are able to take actions ranging from oversight to sanction in relation to unlawful actions or omissions by other agencies and officers of the state (O'Donnell.1998:117).

There are two distinct ways in which horizontal accountability can be violated. The first, or 'encroachment', 'occurs when one state agency trespasses upon the lawful authority of another' (O'Donnell.1998:121). This form of violation has been very common in Latin America, especially concerning the executive branch. Here, presidents tend to regard legislatures and the judiciary as obstacles rather than legitimate partners in government, (Huber, Rueschemeyer and Stephens. 1997: 334) and thus constantly trespass over other branches of power and state agencies by 'encroachment' (O'Donnell) or elimination. Former President of Guatemala Jorge Serrano's attempt of a palace coup in 1993; the deposition of Ecuador's President Abdalá Bucaram in 1997 by Congress through a procedure of dubious constitutionality (Hagopian. 2005:49); the closing of Congress by Alberto Fujimori of Peru in 1992 to overcome opposition (Tedesco and Barton.2004:3), (Little.1997:189); and the exercise of extraordinary powers over the elected congress to institute a new revolutionary Bolivarian Constitution (Tedesco and Barton.2004:3), by Venezuela's Hugo Chavez have one thing in common. These are all examples of how office-holders in Latin America trespass other branches of power and violate horizontal accountability. Also, horizontal accountability is violated when state agencies, although legally empowered to do so, fail to take actions against politicians and office-holders that break the law. Here, Latin America has failed too. "Contralorías" are used for personal gains and covering up corruption acts, "fiscalías" are used to sanction foes, and impunity is widespread. These agencies do this by applying the law selectively.

The second form in which horizontal accountability can be violated is through corruption, which means that officers don't respect the legal limitations to their duties and put private interests above the public ones they are supposed to serve (O'Donnell. 2007:101). In this respect, Latin America doesn't fare well either, 'bribery is not new to the region but massive grafts seems to have proliferated' (Weyland.1998:108). In Latin America the sheer volume of corruption cases is impressive (Little.1997:190). The opaque sale of national assets and enterprises,⁸ the bribery for obtaining government contracts, the unfair procedures for granting licenses for public works and the use of public funds for electoral campaigns are all examples of officials obtaining illegal advantages for their own private interests or those of their associates through their public offices. Former President of Brazil, Fernando Collor de Melo siphoned off funds for use in future electoral campaigns; in Mexico the syndicate of petroleum workers used 100 million dollars of its funds to favour the 2000 presidential campaign of the PRI in 2000⁹ (a procedure not allowed by the law); and in Venezuela the government of Carlos Andrés Pérez distributed oil revenues in a very obscure fashion. All these cases demonstrate that Latin American politics are loaded with corruption. This, in turn, goes hand in hand with the selective application of the law and the lack of proper and effective checks and balances and separation of powers required in a modern constitutional-liberal democracy.

Civil Rights: Freedom of Expression

Freedom of expression means that citizens have the right to express themselves without danger of severe punishment on political matters broadly defined, including criticism of officials, the government, the regime, the socioeconomic order and the prevailing ideology (Dahl.2000:85-86). In a modern democracy, or polyarchy, freedom of expression is necessary in order to secure effective participation, enlightened understanding and control of the agenda (Dahl.2000:92). Furthermore, this civil right needs to be contained in the law and enforced and protected by the state. In Latin America, although these liberties are included in the constitutional framework, in reality they are not protected all the time.

One way to measure the performance of Latin American regimes in regards to the freedom of expression is by analyzing the number and type of attacks on journalists; again in this respect the region doesn't fare well. All around the region journalists have

been threatened and attacked (in some cases even murdered) because of their investigations regarding politics, organized crime and drugs. In some of these cases it has been actually the state and its security forces who have persecuted journalists, in others the state has failed to find and/ or prosecute the offenders. In Paraguay, in 2008 'the Executive Committee of the Paraguayan Union of Journalists protested against a wave of repression and harassment against journalists and accused the authorities of attempting to intimidate and silence critics' (Paraguay-Amnesty International Report. 2008:1). In Mexico during 2008 journalists particularly those reporting on drug trafficking and corruption, were repeatedly attacked. At least six journalists and media workers were murdered and three others were abducted. The majority of official investigations into these crimes and past attacks on journalists made little or no progress' (Mexico-Amnesty International Report.2008:1). Other example is Bolivia where members of the security forces and others were reported to have attacked and threatened media workers during 2008, particularly more than 10 journalists were reportedly attacked in Sucre in November while covering violent confrontations between police and demonstrators protesting about the new Constitution progress' (Bolivia-Amnesty International Report.2008:1). In general these attacks on journalists and the ineffectiveness and/ or unwillingness of the authorities to investigate and prosecute offenders, have led to self-censorship and have diminished freedom of expression. This in turn, has undermined the quality of democracy and weakened liberalism and republicanism.

The balance

In the region the record of political liberalism and republicanism is not very good. The failure of the application of the rule of law, the separation of powers, the lack of accountability, the widespread corruption and the systemic violation to the rights and freedoms of individuals (specially of expression) are examples of the general state of democracy in the region. We have to keep in mind that democracy, liberalism and republicanism are complementary pieces of the same system; therefore this assessment is also a measure of democratic consolidation in the region. The examples mentioned in the three indicators above are, by themselves and altogether, harmful for Latin America. A modern democracy, besides having free and fair elections, must have and respect individual rights which in turn need to be contained and protected by impartial rules and state agencies.

After the ‘transitions’ to democracy from dictatorships everyone assumed the authoritarian practices would disappear, however we now see that ‘elections are only one step to genuine liberalization and democratization’ (Zakaria. 1997:5). In order for Latin American ‘democracies’ to consolidate, a second transition is needed, requiring the respect for civil liberties, ‘some kind of effective division and balancing of power, and also a rule of law’ (Diamond. 1999:33). It is clear that much remains to be done beyond the electoral aspect of democracy; however Latin America also shows some signs of progress. The impeachment of Fernando Collor de Mello in Brazil, the fine imposed by the Federal Electoral Institute of Mexico to the PRI for the Pemexgate scandal, and the 2008 extradition of Alberto Fujimori from Chile to Peru to face corruption and human rights violation charges, show that there is some hope for democratic consolidation. Latin American regimes need to move away from state bias, corruption, clientelism, the lack of respect of the rule of law and the violation of rights and freedoms; only then we will be able to speak of the success of democracy, constitutionalism and, of course political liberalism.

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² Freedom of expression and association.

³ According to Larry Diamond’s regime classification at the end of 2001 (Diamond.2002: 30-31).

⁴ Therefore it should be no surprise that the modern conception of political liberalism supports the idea of the rule of law, separation of powers and the respect of individual freedoms. (Zakaria.1997:1), (Dahl. 1989:221), (Tedesco and Barton. 2004:37).

⁵ I will employ in this analysis also the regimes labelled as “ambiguous regimes” since the countries included in this category (Venezuela, Paraguay and Colombia) hold some sort of free, fair and frequent elections. Countries such as Cuba, Haiti and Antigua and Barbuda will not be taken into account in this evaluation since they are defined as ‘closed’ or ‘competitive authoritarian’.

⁶ Separation of powers/checks and balances.

⁷ Corruption.

⁸ Privatization of publicly owned companies has involved billion dollar operations with virtually no scrutiny or accountability (Potter, 1997: 191)

⁹ Pemexgate scandal.