

PRESIDENTIAL IMMUNITY AND LEGAL LIABILITY OF THE PRESIDENT IN LATIN AMERICA

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ABSTRACT

The institution of presidential immunity has traditionally been entrenched in constitutions all around the world. Understandably, constitution-makers seek to prevent the use of impeachment, criminal prosecution, and civil liability to enable actions such as illegitimate contestation about election results or to exercise political opposition. Latin American constitutions have also institutionalized presidential immunity through a variety of methods. Still, constitution-makers across the continent attempt to strike a balance in the protection offered to the President through immunity. Too little presidential protection might lead to political unrest, while too much protection might transform presidential immunity into presidential impunity. This Article compares constitutional methods entrenching presidential immunity in Latin America and suggests how to strike a balance when institutionalizing this mechanism.

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I. INTRODUCTION

The institution of presidential immunity has traditionally been entrenched in constitutions all around the world.¹ In a presidential system of government, by entrenching presidential immunity, constitution-makers seek to prevent the use of impeachment, criminal prosecution, and civil liability with the purpose of undertaking illegitimate contestations about election results or exercising political opposition.²

Latin American constitutions have also established presidential immunity by means of a variety of institutions and procedures.³ Still, constitution-makers across the continent are in the quest of striking a balance.⁴ Presidential Immunity implies protection to the president. Too little presidential protection might lead to political unrest, because presidents can easily be illegitimately judged and removed from office.⁵ Notwithstanding, too much protection might transform presidential immunity into presidential impunity.⁶

This Article aims to undertake a comparison across Latin American constitutional ways to entrench presidential immunity, with the aim to suggest how to strike a balance to institutionalize this mechanism. To achieve this aim, Part II of this Article accounts for the historical way in which presidential immunity was institutionalized in Latin America, and for its relationship with impeachment. Next, Part III explains the convenience of achieving a balance concerning the protections to the President. Part IV classifies two models to institutionalize presidential immunity in Latin America. The final Part includes a critique of those two models, some suggestions for improvement, and a conclusion.

1. *E.g.*, CONSTITUTION OF IRELAND 1937 art. 13.8.1°, <https://www.irishstatutebook.ie/eli/cons/en/html> (“The President shall not be answerable to either House of the Oireachtas or to any court for the exercise and performance of the powers and functions of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and functions.”).

2. *See* Kailey Emmons, *Understanding the Debate on Presidential Immunity*, THE FULCRUM (Mar. 21, 2025), <https://thefulcrum.us/ethics-leadership/presidential-immunity-united-states> [<https://perma.cc/UCF6-6F86>].

3. *See infra* Part II.

4. Roberto Simon, *Should Latin America Abolish Immunity for Elected Officials?*, AMS. Q. (Aug. 15, 2019), <https://www.americasquarterly.org/article/should-latin-america-abolish-immunity-for-elected-officials/> [<https://perma.cc/HUS8-2TNE>].

5. *See* Aziz Z. Huq, *Structural Logics of Presidential Immunity*, 75 DUKE L.J. 565, 631 (2026).

6. *See id.* at 620.

II. THE INSTITUTIONALIZATION OF PRESIDENTIAL IMMUNITY ACROSS LATIN AMERICAN CONSTITUTIONS

Under a broader understanding, presidential immunity can protect presidents from: criminal prosecution and conviction;⁷ civil liability;⁸ and removal from office.⁹ Impeachment is the traditional procedure leading to removal from office when certain conditions are met.¹⁰ Some constitutions require congressional pretrial or impeachment before the judiciary can begin a criminal investigation of the President.¹¹ Finally, constitutions usually empower the Supreme Court with the exclusive authority to investigate and try the President.¹²

Immunity from criminal prosecution and conviction can be absolute or relative. Absolute immunity implies a disempowerment to investigate the President for any act or omission.¹³ This can be limited to only the presidential term or it can be perpetual.¹⁴ Relative immunity is a disempowerment to

7. This is a common focus of U.S. understanding of presidential immunity. *See, e.g., id.* at 604.

8. *See, e.g.,* Joseph Anthony P. Lopez, *Is the Head of State Above International Law? The Applicability of Head of State Immunity to the Commission of International Core Crimes*, 51 *ATENEOLJ* 1079, 1109 (2007).

9. *E.g.,* Eguiguren Praeli, *Antejuicio y Juicio Político en el Perú [Impeachment Proceedings and Impeachment Trials in Peru]*, 13 *PENSAMIENTO CONSTITUCIONAL* AÑO 111, 119 (2008) (discussing how one Peruvian constitutional immunity provision from 1933 had allowed a president to be removed from office after a criminal conviction, without having to be impeached); *see also* Tom Ginsburg, Aziz Huq & David Landau, *The Comparative Constitutional Law of Presidential Impeachment*, 88 *U. CHI. L. REV.* 81, 139 (2021) (discussing that most countries separate removal from office as a separate process from criminal prosecution).

10. *See Impeachment*, *BLACK'S LAW DICTIONARY* (12th ed. 2024).

11. *E.g.,* CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA [CONSTITUTION] Nov. 7, 1949, art. 121(9) (stating that the President can only be prosecuted after being charged by the Legislative Assembly); CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 199 (providing that the President can only be prosecuted after an investigation by the House of Representatives, approved by the Senate); Art. 53, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.) (vesting the exclusive right to bring charges against the President in the Chamber of Deputies).

12. *E.g.,* CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [CONSTITUTION] Dec. 30, 1999, art. 266(2).

13. *See* Isabella Sacca, *Presumptive Immunity in an Age of Legal Turmoil*, *COLUM. UNDERGRADUATE L. REV.* (Jan. 10, 2025), <https://www.culawreview.org/current-events-2/presumptive-immunity-in-an-age-of-legal-turmoil> [<https://perma.cc/QT3W-XDKH>] (noting that absolute immunity means “a ban against pursuing prosecution for the President’s actions”).

14. *E.g.,* CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 86 (Braz.) (limiting presidential immunity for acts unrelated to the performance of official duties only during term

investigate the President for acts and omissions concerning the performance of their powers.¹⁵

Inherited from the Spanish royal rule during the nineteenth century, Latin American constitutions did not generally foresee possibilities to investigate the President, make them liable, or remove them from office.¹⁶ Notwithstanding, there are some exceptions. In certain constitutions, some provisions included forms of political accountability and liability of the President. They preceded the entrenchment of impeachment. For example, Article 6 of Title 5, of the 1811 Constitution of Cundinamarca (Colombia) provided:

If the Justices observe that the President intends to take, or is taking, measures that directly or indirectly undermine this Constitution, they shall not fulfill their duty merely by expressing a dissenting opinion; rather, they shall be obligated, under the same duty, to immediately report the matter to the Senate, so that the Senate, in the exercise of its powers, may take the measures it deems appropriate.¹⁷

Furthermore, Article 106 of the 1819 Constitution of the United Provinces of the Río de la Plata (Argentina) provided a form of political responsibility for members of all branches of government, including the President and the rest of the members of the executive branch.¹⁸

In the early period of Latin American constitutional history, the 1824 Federal Constitution of the United Mexican States provides an example of regulation of

of office); CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA Nov. 7, 1949, art. 150 (offering presidential immunity to the period during term of office and for four years thereafter).

15. See Eleonora Bottini, *The Shield of the Presidency: Presidential Immunity and Accountability in France and the United States*, 85 MD. L. REV. ONLINE 44, 53–54 (2026).

16. E.g., CONSTITUCIÓN FEDERAL DE LOS ESTADOS UNIDOS MEXICANOS [CONSTITUTION] Oct. 4, 1824, arts. 110–12 (outlining attributes of the President with limited restrictions on power, not including provisions for investigation or impeachment). See Tyler Joseph Cerami, *Confronting the Colonial Legacy: Retaining and Rejecting Spanish Colonial Law in Nineteenth Century Latin America: Mexico and Argentina* 2–3 (UNIV. CHI. L. SCH. INT’L IMMERSION PROGRAM PAPERS, Working Paper No. 1, 2016), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1018&context=international_immersion_program_papers [<https://perma.cc/H7YL-RNNY>] (describing how Spanish colonial legal regimes shaped Latin American legal systems following independence).

17. CONSTITUCIÓN DE CUNDINAMARCA [CONSTITUTION] Apr. 4, 1811, tit. V, art. 6 (Colom.).

18. This provision states as follows: “The corporations and magistrates invested with Legislative, Executive, or Judicial, Power, are Attornies of the Nation, and responsible to it in the manner the Constitution prescribes.” CONSTITUCIÓN DE LAS PROVINCIAS UNIDAS EN SUD-AMÉRICA [CONSTITUTION] Apr. 22, 1819, art. 106 (Arg.).

presidential accountability. Articles 38, 39, and 40 of Title III, Section IV institutionalized a system of impeachment of the President and a procedure of criminal trial by Congress for offenses of treason and serious crimes against the constitutional order.¹⁹ Articles 38, 39, and 40 provide:

Article 38. Each of the chambers in their capacity of grand jurors can take cognisance of the following offences, viz:

1st. Of the President of the Union, for the crimes of treason against the national independence, or the established form government, and for bribery and corruption committed during the period of his employment.

2d. Of the same president; for acts manifestly intended to hinder the elections of presidents, senators and deputies, or to prevent them from serving in their respective employments during the periods pointed out by the constitution, or for preventing the chambers from exercising any of the powers conferred on them by the constitution.

. . . .²⁰

Article 39. The Chamber of Representatives shall be exclusive grand jurors, when the President and his ministers shall be accused of acts in which the senate and the council of government have intervened by virtue of their attributes. The same chamber shall also serve as grand jurors in all cases where the vice president shall be accused of any offence committed during the time of holding his office.²¹

Article 40. The Chamber before which may have been made the accusations spoken of in the preceding articles, shall form itself into a grand jury, and shall declare by vote of two-thirds of its members present, if there be sufficient cause for having the accused tried, in which event he shall be suspended from office, and the cause sent to the competent tribunal.²²

Since then, impeachment has migrated and evolved across Latin American constitutions. Typically, they might imply a mixture of political accountability,

19. CONSTITUCIÓN FEDERAL DE LOS ESTADOS UNIDOS MEXICANOS Oct. 4, 1824, arts. 38–40.

20. *Id.* art. 38.

21. *Id.* art. 39.

22. *Id.* art. 40.

with criminal liability standards.²³ The impeachment process typically begins with an accusation and a motion for impeachment, which is filed at the House of Representatives.²⁴ If a supermajority vote approves the motion, then the House of Representatives refers the matter to the Senate, where a final unappealable ruling should be issued.²⁵ The Senate ruling also requires a supermajority vote.²⁶ If that vote is obtained, then the President is removed from office.²⁷ After that, if relevant, the competent authorities can begin criminal prosecution.²⁸

Some Latin American constitutions include remarkable variations. For example, in Costa Rica, after impeaching a President, Congress turns to the judiciary to initiate criminal proceedings.²⁹ There are also mixed trial systems in which the power of prosecution is combined—while the Supreme Court is competent to investigate and judge common crimes committed by the President, the Senate tries cases related to the exercise of public office.³⁰ As explained below, this is the case in Brazil and Colombia.³¹

III. IN THE QUEST FOR A BALANCE

Beyond the formalities of the entrenchment of impeachment and criminal proceedings against the President, Latin American constitutional designers find themselves in the middle of a tension. On one hand, insufficient presidential protections may lead to political unrest because presidents can easily be impeached, removed, and convicted. On the other hand, too much presidential protection might transform presidential immunity into presidential impunity.

The result of that tension is a system of government characterized by hyper-presidentialism.³² Hyper-presidentialism mimics the presidential system of

23. See Adolfo Felipe Constenla Arguedas, *El “Juicio Político” o “Impeachment” en el Derecho Constitucional Comparado Latinoamericano* [“Political Trial” or “Impeachment” in Comparative Latin American Constitutional Law], 109 REVISTA JUD. 221, 230–31 (2013) (explaining that impeachment evolved in Latin America as a constitutional mechanism to hold public officials politically accountable through formal accusation and sanction procedures).

24. See *id.* at 224–28.

25. See *id.* at 225–28.

26. See *id.* at 225, 228.

27. See *id.*

28. *Id.* at 225–28.

29. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA Nov. 7, 1949, art. 151.

30. See *infra* Part IV.

31. See *infra* Part IV.

32. See Tom Ginsburg, *The Hyper-Presidency*, PERSUASION (July 2, 2025), <https://www.persuasion.community/p/the-hyper-presidency> [https://perma.cc/4ELQ-4AUJ]

government in the United States to some extent.³³ Nevertheless, in Latin American hyper-presidential democracies, there is a hypertrophy of the executive branch. The President usually has broad executive policymaking and non-technical regulatory powers, along with limited procedural safeguards or checks.³⁴ Additionally, presidents can gain control over Congress by means of clientelism. Clientelism is an illegitimate (and sometimes illegal) practice in which the President exchanges personal favors to congressmen in exchange for their votes in political matters, such as bills or political accountability motions.³⁵ In common cases, those personal favors include appointing family members of congressmen to positions in public administrations, or adjudicating procurement of people affiliated with congressmen.³⁶ Presidents can obtain control of Congress and the judicial branch and render political and criminal accountability innocuous by clientelism.³⁷ Other personal favors include achievement of congressional alliances, pressure against congressmen, and threats to the opposition.³⁸

A combination of presidential immunity from criminal and civil liability, and very demanding conditions for impeachment can create political stability. If those conditions are extremely demanding, they can lead, in practice, to presidential impunity.³⁹ Notwithstanding, an analysis of recent historical events shows that there are some good reasons to institutionalize at least a weak model of presidential immunity. Remarkably, presidents have been the subject of great political

(explaining that hyper-presidentialism is a term “used to describe systems in Latin America and the post-Soviet space in which presidential power is so great as to be effectively immune from checks and balances.”).

33. *See id.*

34. Susan Rose-Ackerman & Edgar Andrés Melgar, *Hyper-Presidential Administration: Executive Policymaking in Latin America*, 64 ARIZ. L. REV. 1097, 1124 (2022).

35. *See* EZEQUIEL GONZALEZ-OCANTOS & VIRGINIA OLIVEROS, CLIENTELISM IN LATIN AMERICAN POLITICS 2 (2019), <https://www.vanderbilt.edu/lapop/news/082819-latinamerica-oxford.pdf> [<https://perma.cc/GR82-XUWX>].

36. *See id.*

37. *See id.* at 9–13.

38. *See id.*

39. *See* Trump v. U.S., 603 U.S. 593, 676 (2024) (Sotomayor, J., dissenting) (arguing that immunity from criminal prosecution for a President who uses presidential powers to commit crimes inevitably results in impunity); Ginsburg, Huq & Landau, *supra* note 9, at 151 (discussing consequences of setting impeachment standards too high, such as only outright criminality, which may entrench unpopular and ineffective presidents from any politically expedient removal mechanisms); Jeffrey A. Tobin, *Impunity by Design: Latin America’s Quiet Crisis of Accountability*, JUST SEC. (Nov. 10, 2025), <https://www.justsecurity.org/124089/impunity-by-design-latin-americas-quiet-crisis-of-accountability/> [<https://perma.cc/CV26-NAGL>].

persecution in Latin America by opposition leaders, movements, and parties.⁴⁰ Throughout most of the twentieth century, Latin American countries navigated political unrest.⁴¹ In many cases, this unrest has led to processes of impeachment, which in many cases ended with the suspension or the resignation of the president. The impeachment, and later conviction, of President Collor (1992) and conviction of President Rousseff (2016) of Brazil; conviction of President Lugo (2012) of Paraguay; and conviction of President Pérez (1993) of Venezuela are examples of this phenomenon.⁴² In addition, Presidents Vizcarra (2020) and Castillo (2022) of Peru, and Bucaram (1997) of Ecuador, were separated from their positions by Congress due to a declaration of presidential vacancy because of moral or mental incapacity.⁴³ Presidents Merino (2020) and Kuczynski (2018) of Peru; Sánchez de Lozada (2004) of Bolivia; and Zelaya (2009) of Honduras resigned from office after institutional or public pressure.⁴⁴ In many of those cases, governance issues or political disagreement led to impeachment or presidential resignation.⁴⁵

Hence, the key question is how to strike a balance between protection of the President, and a system allowing political accountability and criminal and tort liability of the President, without creating extreme political stability? To answer this question, it is first necessary to analyze the different models of presidential immunity, political accountability, and criminal liability of the president, as well as impeachment in Latin America.

IV. TWO MODELS OF INSTITUTIONALIZATION OF PRESIDENTIAL IMMUNITY IN LATIN AMERICA

There are two models of institutionalization of presidential immunity in Latin America: a broader model and a narrower model.

Under the broader model, the President can neither be investigated nor prosecuted for any criminal offense, nor can they be declared liable for any tortious action. Nicaragua, Venezuela, and Uruguay provide clear examples of this

40. See ANÍBAL PÉREZ-LIÑÁN, PRESIDENTIAL IMPEACHMENT AND THE NEW POLITICAL INSTABILITY IN LATIN AMERICA 1–2 (2007).

41. See GUSTAVO PALAMONE, PRESIDENTIAL IMPEACHMENT IN LATIN AMERICA 63–67 (2024).

42. *Id.* at 71–72 tbl. 2.2.

43. *Id.*

44. *Id.*

45. See *id.* at 68–72.

model.⁴⁶ The Constitution of Nicaragua is the most extreme.⁴⁷ It does not provide any possibility of impeachment or any way to investigate or try the President.⁴⁸

In Venezuela, there is no impeachment.⁴⁹ According to Article 266.2 of the Constitution, the Supreme Tribunal of Justice can decide whether there is justification to investigate the President and, if it were the case, the Tribunal can only open an investigation with prior authorization of the National Assembly.⁵⁰ According to Article 233, after such investigation the Supreme Tribunal of Justice can remove the President.⁵¹ However, the President can neither be criminally convicted nor declared civilly liable.⁵² This regulation allowed Venezuela's president, Nicolás Maduro, to become a dictator.⁵³ He controlled Congress and the Supreme Tribunal of Justice.⁵⁴ For this reason, he was able to maintain impunity concerning his widely documented violations of human rights and electoral fraud.⁵⁵ That is, until his capture by the United States in January 2026 where he faces criminal charges relating to drugs, weapons, and narco-terrorism.⁵⁶

46. See CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA [Cn.], LA GACETA, DIARIO OFICIAL [L.G.] 9 January 1987, as amended by Ley No. 1234, Jan. 30, 2025, Reforma Parcial a la Constitución Política de la República de Nicaragua, L.G. Feb. 18, 2025; CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA Dec. 30, 1999; CONSTITUCIÓN DE LA REPÚBLICA ORIENTAL DEL URUGUAY [CONSTITUTION] Nov. 27, 1966.

47. See CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA [Cn.], LA GACETA, DIARIO OFICIAL [L.G.] 9 January 1987, as amended by Ley No. 1234, Jan. 30, 2025, Reforma Parcial a la Constitución Política de la República de Nicaragua, L.G. Feb. 18, 2025.

48. See *id.* arts. 120–27.

49. See CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA Dec. 30, 1999, art. 266(2).

50. *Id.*

51. *Id.* art. 233.

52. See *id.*

53. See Diego A. Zambrano, *The Constitutional Path to Dictatorship in Venezuela*, STAN. L. SCH. (Mar. 20, 2019), <https://law.stanford.edu/2019/03/20/the-constitutional-path-to-dictatorship-in-venezuela/> [https://perma.cc/4XEH-NJS5].

54. See Jonathan Watts & Alicia Hernández, *Venezuela Opposition Allege Coup as Supreme Court Seizes Power*, THE GUARDIAN (Mar. 30, 2017, at 18:16 EDT), <https://www.theguardian.com/world/2017/mar/30/venezuela-president-nicolas-maduro-national-assembly> [https://perma.cc/RD7Q-MSLX].

55. See Conor Finnegan, *UN Accuses Venezuela of Crimes Against Humanity in Post-Election Violence*, ABC NEWS (Oct. 15, 2024, at 18:20 CT), <https://abcnews.com/International/accuses-venezuela-crimes-humanity-post-election-violence/story?id=114833485> [https://perma.cc/U54E-SMRC].

56. Mariel Ferragamo, *A Guide to Maduro's Capture and Venezuela's Uncertain Future*, COUNCIL ON FOREIGN RELATIONS (Jan. 8, 2026), <https://www.cfr.org/articles/guide-maduros-capture-and-venezuelas-uncertain-future> [https://perma.cc/R6GN-37JR].

In Uruguay, according to Article 171 of the Constitution, the President of the Republic enjoys the same immunities, incompatibilities, and prohibitions as Senators and Representatives.⁵⁷ This immunity can be of three types: immunity from opinion, arrest, and prosecution.⁵⁸ The first immunity implies a lack of responsibility for opinions and votes cast during the exercise of office, even after the expiration of the President's term.⁵⁹ The second immunity is the impossibility of being arrested for any reason, even when caught red-handed in the commission of a crime.⁶⁰ The last immunity grants the benefit of not being accused or prosecuted by any criminal judge.⁶¹

The broader model of presidential immunity is clearly disproportionate. It makes it almost impossible for the legislature and the judiciary to hold the President politically and legally responsible. For the sake of promoting stability, it allows for a transformation of presidential immunity into presidential impunity.

Under the narrower model, presidents can be judicially prosecuted only after an impeachment, a congressional pretrial, or a congressional authorization. Most Latin American constitutions entrench a version of the narrower model.⁶² For example, under Article 150 of the Constitution of Costa Rica, the responsibility of the President for non-criminal acts can only be claimed and declared during the presidential term and up to four years after the end of that term.⁶³ According to Article 151 of the same Constitution, the President can only be prosecuted and judged after a formal declaration of Congress that there are grounds for a criminal investigation.⁶⁴ Furthermore, Article 121 Section 10 empowers Congress to suspend the President before the beginning of a criminal investigation for common offenses.⁶⁵ According to the Article, neither the President nor the Vice President may be prosecuted or tried except after being charged by the Legislative Assembly, which should have previously confirmed that a criminal offense has been

57. CONSTITUCIÓN DE LA REPÚBLICA ORIENTAL DEL URUGUAY Nov. 27, 1966, art. 171.

58. *Id.* arts. 112–14.

59. *See id.* art. 112.

60. *See id.* art. 113.

61. *See id.* art. 114.

62. *E.g.*, CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA Nov. 7, 1949, art. 151 (stating that the President can only be prosecuted after being charged by the Legislative Assembly); CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 199 (providing that the President can only be prosecuted after an investigation by the House of Representatives, approved by the Senate); Art. 53, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.) (vesting the exclusive right to bring charges against the President in the Chamber of Deputies).

63. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA Nov. 7, 1949, art. 150.

64. *Id.* art. 151.

65. *Id.* art. 121(9)–(10).

committed.⁶⁶ This immunity is non-waivable and can only be lifted by a two-thirds majority of the members of the Legislative Assembly and at the request of the Supreme Court of Justice.⁶⁷

In Colombia, the President can be investigated and tried for common crimes, political crimes, and serious disciplinary offenses committed in the exercise of their functions.⁶⁸ However, while in office, they cannot be tried by the ordinary courts—trial should be carried out through a special procedure.⁶⁹ Article 199 of the Constitution establishes that the President of the Republic may not be prosecuted or tried for crimes except through an accusation from the House of Representatives, provided that the Senate has declared that such an accusation is justified.⁷⁰ According to Article 178 of the Colombian Constitution, the House of Representatives receives complaints against the President and undertakes an investigation; if there are enough grounds, the House of Representatives accuses the President in the Senate.⁷¹ Article 174 provides that the Senate will undertake the judgment.⁷² If the President publicly admits to a charge by the Senate, they are automatically suspended from office.⁷³ According to Article 175, if the accusation relates to crimes committed in the exercise of office or to misconduct, the Senate may impose no penalty other than dismissal from office or temporary deprivation or absolute loss of political rights.⁷⁴ Notwithstanding, the accused shall be prosecuted before the Supreme Court of Justice if the facts make them guilty of an offense, which gives rise to the allocation of another penalty.⁷⁵ Additionally, if the accusation relates to common crimes, the Senate shall limit itself to declaring whether a case may be brought and, if so, shall refer the accused to the Supreme Court of Justice.⁷⁶

In Argentina, the Constitution does not expressly refer to presidential immunity. Nevertheless, it does establish that the President may only be tried by the Senate, at the request of the Chamber of Deputies.⁷⁷ Law 25320 also addresses the issue and establishes that parliamentarians, judges, and officials of the

66. *Id.* art. 121(9).

67. *Id.*

68. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] arts. 174–75.

69. *See id.*

70. *Id.* art. 199.

71. *See id.* art. 178(3).

72. *Id.* art. 174.

73. *Id.* art. 175(1).

74. *Id.* art. 175(2).

75. *Id.*

76. *Id.* art. 175(3).

77. Art. 53, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

executive branch, such as the President and ministers, may be investigated by the courts, and that if an arrest warrant is issued or a conviction is issued against them, they must request to be removed from office by the Chamber of Representatives.⁷⁸

In Bolivia, the 2009 Constitution of the Plurinational State provides in Article 161 that the Chambers shall meet in the Plurinational Legislative Assembly to authorize the prosecution of the President or Vice President of the State.⁷⁹ Article 184 allocates to the Supreme Court of Justice the power to:

[T]o try, in plenary as a collegial court and as the sole instance, the President of the State, or the Vice President of the State, for crimes committed in the performance of their mandate. The trial shall be undertaken upon prior request supported by the Prosecutor General of the State, who shall formulate the accusation if he believes the investigation provides the basis for trial.⁸⁰

In Brazil, the power to try the President for criminal offenses has been vested in the Supreme Court of Justice and the power to try the President for impeachable offenses has been vested in the Federal Senate.⁸¹ A prerequisite is that the Chamber of Deputies accepts an accusation by a two-thirds majority.⁸² In the case of criminal offenses, when the Supreme Court receives an accusation, the President must temporarily leave office for a period of up to 180 days.⁸³ A criminal trial is held after which the President may be subject to arrest if found guilty, however, if the trial has not concluded within 180 days, the President's suspension ends.⁸⁴ But, while in office, the President may not be held liable for acts unrelated to the performance of his duties.⁸⁵

In Chile, the House of Representatives has the power to declare if there is merit to accusations brought against the President.⁸⁶ Moreover, Article 52 of the Constitution provides that no fewer than 10 and no more than 20 of its members may bring accusations against the President for acts of his administration that have seriously affected the honor or security of the Nation or have openly violated the Constitution or the laws.⁸⁷ The accusation may be filed while the President is in

78. Law No. 25320, Sep. 12, 2000, [29482] B.O. 1 (Arg.).

79. CONSTITUCIÓN POLÍTICA DEL ESTADO [CONSTITUTION] Feb. 7, 2009, art. 161(7) (Bol.).

80. *Id.* art. 184(4).

81. CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] arts. 52, 102 (Braz.).

82. *Id.* art. 86.

83. *See id.*

84. *Id.* art. 86 § 2.

85. *Id.* art. 86 § 4.

86. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 52(2)(a).

87. *Id.*

office and for six months after their term expires.⁸⁸ During this latter period, they may not leave the Republic without the approval of the House.⁸⁹ Subsequently, according to Article 53, it is up to the Senate to resolve the accusation as a jury, limiting itself to declaring whether the President is guilty of the crime, breach, or abuse of power with which they are accused.⁹⁰ This declaration of guilt must be pronounced by two-thirds of the Senators in office, and the dismissed defendant may not hold any public office, whether elected or not, for a term of five years.⁹¹

In Ecuador, according to Article 129 of the Constitution, the President may be tried by the National Assembly through impeachment at the request of at least one-third of its members in the following cases: for crimes against state security; for crimes of extortion, bribery, embezzlement, or illicit enrichment; and for crimes of genocide, torture, forced disappearance of persons, kidnapping, or homicide for political or conscientious reasons.⁹² To proceed with impeachment, an admissibility ruling from the Constitutional Court is required, but a prior criminal prosecution is not necessary.⁹³ The Assembly's decision is reasoned and based on the exculpatory evidence presented by the President of the Republic.⁹⁴ To proceed with censure and removal, a favorable vote of two-thirds of the members of the National Assembly is required.⁹⁵ If the censure reveals indications of criminal liability, the matter is referred to the competent judge.⁹⁶ According to Article 130, the Assembly may remove the President of the Republic for assuming functions not constitutionally within his jurisdiction, subject to a favorable opinion from the Constitutional Court; and due to a serious political crisis and internal unrest.⁹⁷ A favorable vote of two-thirds of the members of the National Assembly is required for removal.⁹⁸

In El Salvador, the National Assembly is responsible for declaring whether grounds for a trial exist, and if so, sending the case to a Chamber of Second

88. *Id.*

89. *Id.*

90. *Id.* art. 53(1).

91. *Id.*

92. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR [CONSTITUTION] Oct. 20, 2008, art. 129.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* art. 130.

98. *Id.*

Instance to conduct any trial against the President.⁹⁹ Furthermore, according to Article 131 of the Constitution, the National Assembly rules on resignations submitted by the President, disavows a President who seeks to overstep their authority in the exercise of their office after the term has already expired, and declares the physical or mental incapacity of the President and their officials.¹⁰⁰

In Guatemala, the President enjoys immunity that can only be lifted by two-thirds or more of Congress (the approval of 105 of the 158 congressmen is required).¹⁰¹ Presidential immunity lifting is a prerequisite to investigation by the Prosecutor's Office.¹⁰²

In Mexico, according to Article 108 of the Constitution, public servants are liable for violations of the Constitution and federal laws.¹⁰³ According to Articles 109 through 111, in the case of the President, the Chamber of Deputies has the power to decide whether to proceed with a trial, and if so, the Chamber of Senators has the power to impeach.¹⁰⁴

In Peru, according to Article 117 of the Constitution, the President of the Republic may only be impeached during their term for treason; for preventing presidential, parliamentary, regional, or municipal elections; for dissolving Congress, except in the cases provided for in Article 134 of the Constitution; or for preventing the meeting or functioning of Congress, the National Elections Board, or other bodies of the electoral system.¹⁰⁵ Currently, there is no possibility of holding the President responsible for the commission of any other crime.¹⁰⁶ The Permanent Commission, composed of a group of legislators, is the body that presents the accusation, but the trial of the President is in the hands of the full Congress.¹⁰⁷

99. CONSTITUCIÓN DE LA REPÚBLICA DE EL SALVADOR [CONSTITUTION] Dec. 15, 1983, art. 236.

100. *Id.* art. 131(15)–(16), (20).

101. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA [CONSTITUTION] May 31, 1985, art. 165(h); *see also* Reuters, *Guatemala President Retains Immunity from Prosecution in Graft Probe*, VOA NEWS (Sep. 11, 2017, at 23:10 CT), <https://www.voanews.com/a/guatemala-president-retains-immunity-from-prosecution-in-graft-probe-/4024926.html> [<https://perma.cc/C4YT-R5BH>] (“Presidential immunity can only be lifted with the backing of at least two-thirds of the chamber, or 105 members.”).

102. *See* Reuters, *supra* note 101.

103. Constitución Política de los Estados Unidos Mexicanos, CP, art. 108, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 03-03-2026.

104. *Id.* arts. 109–11.

105. CONSTITUCIÓN POLÍTICA DEL PERÚ [CONSTITUTION] Dec. 29, 1993, art. 117.

106. *See id.*

107. *Id.* arts. 99–100.

In the Dominican Republic, according to Article 133 of the Constitution, the President, and Vice President of the Republic, whether elected or in office, may not be deprived of their liberty.¹⁰⁸ However, Article 80, Paragraph 1, establishes that it is the jurisdiction of the Chamber of Deputies to hear accusations brought against public officials, including the President of the Republic.¹⁰⁹ Article 83, Paragraph 1, establishes that the Chamber of Deputies may impeach the President or Vice President of the Republic if it obtains a favorable vote of three-quarters of the voting membership.¹¹⁰ According to this Article, impeachment entails suspension from office from the moment the Chamber declares it so.¹¹¹

Honduras provides a rare example of inexistent presidential immunity.¹¹² There are no special immunity rules given that the 2003 constitutional and legal reform eliminated immunity for high-ranking state officials and deputies in the National Congress.¹¹³ The criminal prosecution procedure falls under the jurisdiction of the Supreme Court of Justice, subject to a ruling on admissibility.¹¹⁴

Finally, some Latin American constitutions, such as Argentina and Peru, institutionalize some form of term-related immunity.¹¹⁵ This type of immunity protects the President during their term in office.¹¹⁶ In Argentina, Article 53 of the Constitution provides:

Only the House of Deputies has the power to impeach before the Senate the President, the Vice-President, the Chief of the Ministerial Cabinet, the Ministers, and the Justices of the Supreme Court, in such cases of responsibility as are brought against them for misconduct or crimes committed in the fulfillment of their duties; or for ordinary crimes, after having known about them and after the decision to bring

108. CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA [CONSTITUTION] June 13, 2015, art. 133.

109. *Id.* art. 80(1).

110. *Id.* art. 83(1).

111. *Id.*

112. See LADB Staff, *Immunity Curtailed in Honduras*, NOTICEN, Aug. 5, 2004, at 1, 1.

113. See *id.*; CONSTITUCIÓN DE LA REPÚBLICA DE HONDURAS [CONSTITUTION] Jan. 11, 1982.

114. CONSTITUCIÓN DE LA REPÚBLICA DE HONDURAS [CONSTITUTION] Jan. 11, 1982, art. 319(2).

115. See Art. 86, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.); CONSTITUCIÓN POLÍTICA DEL PERÚ Dec. 29, 1993, art. 200.

116. See Art. 86, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.); CONSTITUCIÓN POLÍTICA DEL PERÚ Dec. 29, 1993, art. 200.

an action had been voted by a majority of two-thirds of its members present.¹¹⁷

The Senate judges can remove the President from office.¹¹⁸ Once the presidency ends, they lose their immunity.¹¹⁹ In Peru, according to Article 117 of the Constitution, the President can only be tried for four political crimes (treason, preventing elections, dissolving Congress, and preventing the functioning of state bodies).¹²⁰ They cannot be charged or prosecuted for any other crime while acting as the President.¹²¹ Currently, some authors explore the possibility of including the crime of corruption and offenses against public administration as other exceptions to presidential immunity.¹²² In any case, immunity ceases at the end of the presidential term.¹²³

V. A CRITIQUE OF REGIMES OF PRESIDENTIAL IMMUNITY IN LATIN AMERICA

The narrower model of presidential immunity in Latin America has an institutional flaw. The general rule is that congressional pretrial or previous impeachment is the ordinary way to entrench that immunity. The problem is that, in practice, a congressional judgment or an impeachment are very difficult to

117. See Art. 53, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

118. *Id.* arts. 59–60.

119. Jorge Rausch McKenna, *¿Quiénes Tienen Fuero en Argentina? ¿Qué Es Inmunidad de Arresto? La Ley y la Constitución Nacional* [Who Has Legal Immunity in Argentina? What Is Immunity from Arrest? The Law and the National Constitution], NOTICIAS 24 ARG. (Nov. 20, 2024), <https://www.jorgerausch.com/post/quienes-tienen-fuero-en-argentina-inmunidad-de-arresto-nueva-ley-y-const-nacional> [https://perma.cc/5J77-VMD2].

120. CONSTITUCIÓN POLÍTICA DEL PERÚ Dec. 29, 1993, art. 117.

121. See *id.*

122. E.g., Luis Andrés Roel Alva & William Jesús Oblitas Villalobos, *Extinción de la Inmunidad Presidencial por Casos de Corrupción en la Constitución Política del Perú de 1993* [Lifting of Presidential Immunity in Cases of Corruption Under the 1993 Constitution of Peru], REVISTA ELECTRÓNICA IBEROAMERICANA, 2024, at 97, 99 (“[I]t is necessary to specify that it is also possible to accuse the president of [Peru] in cases of corruption[.]”).

123. Vanessa Buschschlüter, *Pedro Castillo: Peru’s Embattled President Faces Fresh Legal Battle*, BBC (Oct. 12, 2022), <https://www.bbc.com/news/world-latin-america-63213053> [https://perma.cc/LWQ5-L55X].

obtain.¹²⁴ Usually, Congress uses standards akin to criminal proceedings.¹²⁵ This creates an unwelcome combination between legal and political dimensions of presidential responsibility. Hence, the President becomes politically immune when congressmen demand the respect of criminal standards of proof in a pretrial or impeachment proceeding.

Certainly, in the Latin American context, there are differences between impeachment and criminal trials that can be brought against the President. On one hand, impeachment proceedings do not necessarily arise from the commission of criminal offenses or acts.¹²⁶ There are also grounds for investigation and prosecution that are political, ethical, or constitutional in nature.¹²⁷ For this reason, noncriminal impeachment proceedings against a President do not focus on investigating criminal conduct, but rather on investigating the President's fitness to continue holding office. The key question is whether the President should be removed from office. In Peru, impeachment proceedings against the President can be initiated for "permanent physical or moral incapacity";¹²⁸ in Ecuador, for "severe political crisis or internal unrest";¹²⁹ in Argentina, for "poor performance";¹³⁰ in Paraguay, for "malfeasance";¹³¹ in Brazil, for "attempts against the Federal Constitution" including non-criminal acts;¹³² in Chile, for acts "which have seriously affected the honor or security of the Nation";¹³³ and in Uruguay, for "violation of the Constitution or for other serious offenses[.]"¹³⁴ Those clauses are very ambiguous. They differ from the clauses institutionalizing

124. Mariana Llanos & Leiv Marsteintredet, *The Limits of Presidential Impeachment: Lessons from Latin America*, in *LATIN AMERICA IN TIMES OF TURBULENCE: PRESIDENTIALISM UNDER STRESS* 17, 19–20 (Mariana Llanos & Leiv Marsteintredet eds., 2023) ("[O]ver four decades, 22 presidents were dismissed from office prematurely in the region. Legislators were decisive in at least ten of these episodes" (footnote omitted)).

125. E.g., *La Declaración de Procedencia* [*The Statement of Origin*], CÁMARA DE DIPUTADOS, <https://www.diputados.gob.mx/bibliot/publica/prosparl/ivladecl.htm> [https://perma.cc/X9RV-Z3Q8] (describing a criminal-law threshold for lifting immunity).

126. See Ginsburg, Huq & Landau, *supra* note 9, at 81.

127. See *id.* at 88–89.

128. CONSTITUCIÓN POLÍTICA DEL PERÚ Dec. 29, 1993, art. 113(2).

129. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, art. 130.

130. Art. 53, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.)

131. CONSTITUCIÓN DE LA REPÚBLICA DEL PARAGUAY [CONSTITUTION] June 20, 1992, art. 225.

132. CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 85 (Braz.).

133. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 52(2)(a).

134. CONSTITUCIÓN DE LA REPÚBLICA ORIENTAL DEL URUGUAY Nov. 27, 1966, art. 93.

offenses, which, for the sake of protecting liberty, are usually more determinative.¹³⁵

On the other hand, a criminal trial against the President has a legal nature.¹³⁶ Its objective is to establish whether the President has committed conduct classified as an offense by criminal law.¹³⁷ Ordinarily, the prosecutor and the courts are the competent authority to hear criminal cases.¹³⁸ Although the President may be criminally prosecuted or brought to trial for any offense in the criminal code, offenses related to corruption, abuse of power, bribery, and embezzlement are more relevant to the office.¹³⁹

For example, the President of Mexico can be tried for treason, corruption, serious crimes, and electoral offenses;¹⁴⁰ Brazil's for common crimes such as corruption;¹⁴¹ Peru's for treason, preventing elections, unconstitutionally dissolving Congress;¹⁴² and Ecuador's for common crimes such as bribery, extortion, embezzlement, and illicit enrichment.¹⁴³

Unlike an impeachment trial, in theory, the evidentiary requirement is greater in a criminal trial.¹⁴⁴ However, in impeachment proceedings, the President's defense tends to try and convince Congress that the same evidence standards should be required for impeachment or pretrial.¹⁴⁵ In criminal judgment, the sentence may consist of a prison sentence, fines, and disqualification from

135. See, e.g., CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 9 (showing a constitutionally recognized offense (terrorism) whose elements and penalties are specified by law).

136. See Adriaan Alsema, *Colombia's Former President Alvaro Uribe Found Guilty of Bribing Witnesses*, COLOM. REPS. (July 28, 2025), <https://colombiareports.com/colombias-former-president-alvaro-uribe-found-guilty-of-bribing-witnesses/> [https://perma.cc/B4U6-68W5].

137. See *id.*

138. See *id.*

139. Alva & Villalobos, *supra* note 122, at 108.

140. Constitución Política de los Estados Unidos Mexicanos, CP, art. 108, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 03-03-2026.

141. See CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 86 (Braz.).

142. CONSTITUCIÓN POLÍTICA DEL PERÚ Dec. 29, 1993, art. 117.

143. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, art. 129.

144. See Alicja Fijałkowska-Myszyńska & Magdalena Lisińska, *Three Models of Presidential Impeachment in South America*, PRZEGLĄD PRAWA KONSTYTUCYJNEGO, 2023, at 287, 293 (explaining the discretion given to legislatures in determining the merit of claims against the President).

145. See David De Micheli, Jose T. Sanchez-Gomez & Kenneth M. Roberts, *Tenuous Pacts and Multiparty Coalitions: The Politics of Presidential Impeachment in Latin America*, 54 J. LATIN AM. STUD. 283, 289 (2022).

office.¹⁴⁶ It can only take effect after immunity has been lifted by Congress, or the presidential term has ended.¹⁴⁷ Among the most common crimes for which a President has been subject to criminal prosecution in Latin America are corruption and bribery (the Rafael Correa case in Ecuador, convicted of aggravated bribery),¹⁴⁸ bribery, influence peddling (Otto Pérez Molina case in Guatemala),¹⁴⁹ embezzlement and misappropriation of funds, illicit enrichment, abuse of power, usurpation of functions, treason, genocide (the Luis Echeverría case in Mexico, investigated for genocide but never convicted),¹⁵⁰ and crimes against humanity (the Alberto Fujimori case in Peru, convicted of human rights violations and corruption).¹⁵¹

When pretrial or impeachment is a prerequisite of criminal prosecution, the lower house usually conducts the investigation, and the upper house or Senate decides on the merits.¹⁵² During the investigation, the lower house receives a complaint, collects and analyzes evidence and, after assessing the relevant materials, closes the investigation or charges the President.¹⁵³ If the President is charged, the case is passed to the Senate for trial.¹⁵⁴

146. Benjamin Russell, *Legal Trouble for Latin American Presidents*, AMS. Q. (May 9, 2019), <https://www.americasquarterly.org/article/legal-trouble-for-latin-american-presidents/> [https://perma.cc/FP2A-PJ5H].

147. See, e.g., Catherine M. Conaghan, *Prosecuting Presidents: The Politics Within Ecuador's Corruption Cases*, 44 J. LATIN AM. STUD. 649, 654 (2012).

148. Gonzalo Solano, *Court Finds Ex-Ecuador President Guilty of Corruption*, AP (Apr. 7, 2020, at 15:58 CDT), <https://apnews.com/general-news-9b3e36da5af0c74a27bba9aefedb3fe> [https://perma.cc/UN3M-AG6Y].

149. *Ex Secretario del Presidente de Guatemala es Arrestado por Tráfico de Influencias* [Former Chief of Staff to the President of Guatemala Arrested for Influence Peddling], AMÉRICA ECONOMÍA (July 10, 2015, at 09:08 CT), <https://www.americaeconomia.com/politica-sociedad/politica/ex-secretario-del-presidente-de-guatemala-es-arrestado-por-traffic-de-inf> [https://perma.cc/W8BQ-YYK2].

150. *Ex-Mexico Leader Cleared of Genocide Charges*, NBC NEWS (July 8, 2006, at 17:48 CDT), <https://www.nbcnews.com/id/wbna13772086> [https://perma.cc/EK6S-ARAF].

151. *Alberto Fujimori, Ex-Peruvian President Convicted of Human Rights Abuses, Dies at 86*, NBC NEWS (Sep. 11, 2024, at 20:25 CDT), <https://www.nbcnews.com/news/world/alberto-fujimori-ex-peruvian-president-convicted-human-rights-abuses-d-rcna170750> [https://perma.cc/7RTV-SDKC].

152. Lilian María José Acuña, *El Juicio Político como Mecanismo de Control Constitucional* [Impeachment as a Mechanism of Constitutional Oversight], 1 REVISTA PARAGUAY DESDE LAS CIENCIAS SOCIALES 1, 16, 18 (2012).

153. *Id.* at 18.

154. *Id.*

In this congressional procedure, the investigation and the trial of the impeachment face several challenges. Among them are the lack of real autonomy of the House of Representatives and the Senate, a lack of regulatory clarity, excessive politization, and excessive delays. Politicians belonging to the same party of the President or captured by clientelism can delay the process or manipulate final decisions in the process.¹⁵⁵ Notably, politization can also play against the President. This was the case, when the Paraguay's President, Fernando Lugo, was abruptly removed from office in 2012 after an impeachment trial that lasted less than 48 hours (some commentators refer to this outcome as a "parliamentary coup").¹⁵⁶ The most remarkable example in the region is Peru, where presidents have been removed from office after Congress declared "vacancy due to moral incapacity."¹⁵⁷ In Peru, vacancy due to moral incapacity was declared in the cases of Pedro Pablo Kuczynski (2018), Martín Vizcarra (2020), and Pedro Castillo (2022) without a prior sentence.¹⁵⁸ This has led to significant democratic instability in Peru, which has had six presidents in six years.¹⁵⁹ Similarly, the progress of a very politicized pretrial led President Guillermo Lasso of Ecuador to leave the presidency in 2023 after declaring what is called a "cross-death," namely, the resignation of the President with a concurrent dissolution of Congress.¹⁶⁰ These outcomes also show that independence cannot be expected from congressmen. Finally, the ambiguity of impeachment clauses creates unclear regulation prone to manipulation.¹⁶¹

Furthermore, to date, there is no record of personal torts liability declared against a president in Latin America. Even though the government has been liable to pay compensation from presidential actions, and according to some constitutions governments can reclaim financial repayment from damages caused

155. See Ginsburg, Huq & Landau, *supra* note 9, at 81 (discussing impeachment difficulties across different countries).

156. See Tim Padgett, *Paraguay: President's Forced Exit Wasn't a Coup, but Still Deserves Scorn*, TIME (June 27, 2012), <https://world.time.com/2012/06/27/paraguay-presidents-forced-exit-was-no-coup-but-still-deserves-scorn/> [<https://perma.cc/XM92-SAJF>].

157. See OECD, OECD JUSTICE REVIEW OF PERU: TOWARDS EFFECTIVE AND TRANSPARENT JUSTICE INSTITUTIONS FOR INCLUSIVE GROWTH 46–47 (2024), https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/07/oecd-justice-review-of-peru_de9fb54d/bb556518-en.pdf [<https://perma.cc/6DR3-EX2L>].

158. *Id.*

159. *See id.*

160. Ignacio García-Marín, *The Use of Impeachment in Latin America Between 1990 and 2023: Neither Congresses as Weak nor Presidents as Strong*, 27 FORUM REVISTA DEPARTAMENTO DE CIENCIA POLÍTICA 116, 128 (2025).

161. *Id.* at 125.

by the corresponding president,¹⁶² this has never been the case. This is true even when public finances were negatively impacted by evidenced corruption, such as in the cases of Dilma Rousseff (Brazil), Luis Ángel González Macchi (Paraguay), Otto Pérez Molina (Guatemala), Carlos Pérez (Venezuela), and Sebastián Piñera (Chile).¹⁶³ Commentators, like Lezcano Claude, advocate for institutionalized and enforced liability for corruption impacting public finances for defamation.¹⁶⁴

Problems also arise when a constitution empowers the Supreme Court to carry out part of the impeachment proceedings or the criminal trial of the president. Here the risk is the politization of justice. The judicial branch should only decide on legal grounds and based on evidence properly collected. However, the Supreme Court can also be captured either by the president or by the opposition to carry out procedures with political bias.¹⁶⁵ The most recent case in the region is the one of former Colombian President Álvaro Uribe Vélez.¹⁶⁶ After President Uribe's vigorous opposition to the peace agreement with the Farc Guerilla, extreme leftist Senator Ivan Cepeda filed a criminal complaint against him for manipulation of witnesses.¹⁶⁷ Former President Juan Manuel Santos, who crafted the peace agreement with the Farc Guerilla, managed to incline Supreme Court Justices to begin the trial with dubious evidence like the testimonies of drug dealers, who received criminal benefits after testifying.¹⁶⁸ To avoid being convicted by biased judges, President Uribe renounced the privilege to be tried by the Supreme

162. See, e.g., CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 90 (allowing Colombia to claim restitution from public authorities for which it has been ordered to pay for damages due to fraudulent or seriously criminal behavior).

163. See PALAMONE, *supra* note 41, at 189, 265–69, tbl 4.3.

164. Luis Lezcano Claude, *Poder Ejecutivo: Propuestas de Reforma Constitucional* [Executive Branch: Proposals for Constitutional Reform], 1 REVISTA JURÍDICA UNIVERSIDAD AMERICANA 175, 188 (2010).

165. See *id.* at 195.

166. Salome Beyer Velez, *Former President Álvaro Uribe Found Guilty of Bribery, Procedural Fraud in Colombia's "Trial of the Century"*, LATIN AM. REPS. (July 30, 2025), <https://latinamericareports.com/former-president-alvaro-uribe-found-guilty-of-bribery-procedural-fraud-in-colombias-trial-of-the-century/11925/> [https://perma.cc/WPY8-HN8E].

167. Alsema, *supra* note 136.

168. See Mario Alejandro Rodríguez, *Santos le Respondió a Uribe y Dijo Entender el "Desespero" por Juicio en su Contra: "Espero Que Pueda Salir Bien Librado"* [Santos Responded to Uribe and Said he Understood the "Desperation" of the Trial Against Him: "I Hope He Can Get Away With It"], INFOBAE (Feb. 9, 2025, at 17:42 CST), <https://www.infobae.com/colombia/2025/02/09/santos-le-respondio-a-uribe-y-dijo-entender-el-desespero-por-juicio-en-su-contra-espero-pueda-salir-bien-librado/> [https://perma.cc/4BL6-STV4].

Court.¹⁶⁹ The Attorney General closed the investigation twice, but again, judges influenced by the Supreme Court forced the Attorney General to press charges.¹⁷⁰ In July 2025, he was convicted by a judge based on the unreliable testimonies of drug dealers, who received penalty reductions in exchange of their testimonies.¹⁷¹ Due to the politization, this case has been called the trial of the century.¹⁷²

Another issue of the Latin American models of presidential immunity is that in most cases, despite criminal evidence, a president is impeached but rarely subjected to criminal sanctions.¹⁷³ A good example of this is the case of the impeachment of former President Dilma Rousseff in Brazil. In 2015, the Chamber of Deputies charged Rousseff, who was into her second term, with criminal administrative misconduct and disregard for the federal budget because of her omissions in the Petrobras (the Brazilian national petroleum company) scandal, when she was president of that company.¹⁷⁴ Rousseff was formally impeached on April 17, 2016.¹⁷⁵ Some days after that, the Senate voted to suspend Rousseff's powers for the duration of the trial, and Vice President Michel Temer became acting President.¹⁷⁶ On August 31, 2016, the Senate removed President Rousseff from office, finding her guilty of breaking Brazil's budget laws.¹⁷⁷ Despite the

169. Adriaan Alsema, *Colombia's Supreme Court Suspends Uribe Trial*, COLOM. REPS. (Mar. 20, 2025), <https://colombiareports.com/colombias-supreme-court-suspends-uribe-trial/> [https://perma.cc/XQ8U-48M6].

170. *Colombian Prosecutors Say Former President Uribe Will Face Trial in Witness Tampering Probe*, AP (Apr. 9, 2024, at 15:00 CDT), <https://apnews.com/article/colombia-alvaro-uribe-trial-prosecutors-9ec7db521b7f871144909d1d1be5e958> [https://perma.cc/7M8U-LKZ6].

171. Dearbail Jordan, *Colombian Court Overturns Former President's Conviction*, BBC (Oct. 21, 2025), <https://www.bbc.com/news/articles/c629zz8gz5mo> [https://perma.cc/2CKX-5U2K].

172. Velez, *supra* note 166.

173. See De Micheli, Sanchez-Gomez & Roberts, *supra* note 145, at 308 (noting that presidents can be impeached even without evidence of personal criminal wrongdoing).

174. Simon Romero, Vinod Sreeharsha & Bryant Rousseau, *Brazil Impeachment: The Process for Removing the President*, N.Y. TIMES (May 12, 2016), <https://www.nytimes.com/interactive/2016/world/americas/brazil-dilma-rousseff-impeachment.html> [https://perma.cc/RM8W-KG85].

175. *Id.*

176. *Id.*

177. Mariam Khan, *Brazilian President Dilma Rousseff Impeached*, ABC NEWS (Aug. 31, 2016, at 11:53 CT), <https://abcnews.go.com/International/brazilian-president-dilma-rousseff-impeached/story?id=41769812> [https://perma.cc/JVG9-TFEK].

impeachment, President Rousseff was never convicted for the alleged crimes that led to her removal from office.¹⁷⁸

In some cases, the real possibility of impeachment has led presidents to resign. Resignation typically occurs when the president is close to facing impeachment. An emblematic case is the one concerning Bolivian President Evo Morales, who was forced to resign in 2019 due to the political crisis in his country.¹⁷⁹ In this case, the intervention of the Organization of American States requesting an audit of the election results had a significant influence on the presidential resignation.¹⁸⁰

Moreover, the influence of the public opinion seems to be decisive in cases of impeachment or pretrial. Popular rejection of the president has become a de facto force that can topple a government.¹⁸¹ The resignation of leaders in Latin America has not been entirely voluntary, but rather the result of popular pressure.¹⁸² In Argentina, for example, popular rejection arose because of the disastrous economic policies adopted by the government, a crisis that reached its peak in 2001, leading to the early departure of Fernando De la Rúa and immediate social protests.¹⁸³ Restricting citizens' freedom to manage their own resources (by imposing limits on the withdrawal of private funds from banks) as a mechanism to prevent capital flight was perhaps the final straw.¹⁸⁴ Citizens reacted to the President's abusive exercise of power and unanimously demanded institutional change. Social protests carried out by the country's main labor unions, such as the General Confederation of Labor of the Argentine Republic and the Argentine

178. *Brazilian Federal Court of Audits Acquits Dilma Rousseff*, ORINOCO TRIB. (Apr. 17, 2021), <https://orinocotribune.com/brazilian-federal-court-of-audits-acquits-dilma-rousseff/> [https://perma.cc/7AKX-L5JM].

179. Christine Armario, *AP Explains: Did a Coup Force Bolivia's Evo Morales Out?*, AP (Nov. 11, 2019, at 17:36 CDT), <https://apnews.com/article/evo-morales-did-a-coup-force-6b2c94306089451d9761878c9f7ce2f1> [https://perma.cc/6SNL-TSHG].

180. *Id.*

181. Kathryn Hochstetler & David Samuels, *Crisis and Rapid Reequilibration: The Consequences of Presidential Challenge and Failure in Latin America*, 43 COMPAR. POL. 127, 127–29 (2011) (reporting that from 1978–2006, 30 percent of democratically elected presidents faced “massive street protests”, formal removal efforts, or both, and 12 percent were “forced from office” before their terms ended).

182. *Id.*

183. See *The Events That Triggered Argentina's Crisis*, BBC NEWS (Dec. 21, 2001, at 09:34 GMT), <http://news.bbc.co.uk/2/hi/business/1721103.stm> [https://perma.cc/G8RC-XGTN]; *Argentine President Resigns*, BBC NEWS (Dec. 21, 2001, at 05:34 GMT), <http://news.bbc.co.uk/2/hi/americas/1722584.stm> [https://perma.cc/5ENQ-SFCQ].

184. See *Argentina's Economic Meltdown: Causes and Remedies: Hearings Before the Subcomm. on Int'l Monetary Pol'y & Trade of the H. Comm. on Fin. Servs.*, 107th Cong. (2002).

Workers' Central, succeeded in ending the state of siege decreed by President De la Rúa.¹⁸⁵ Despite the government's repressive response to the protests, which resulted in 39 deaths, the President had no choice but to step down.¹⁸⁶ Fernando De la Rúa resigned as President of Argentina on December 20th of that year.¹⁸⁷ He was succeeded by Adolfo Rodríguez de Saá, a President appointed by the Legislative Assembly for a 90-day term, who did not last more than seven days due to rejection by the legislative branch.¹⁸⁸

The same cause led to the resignation of Bolivian President Gonzalo Sánchez de Lozada, who, due to the economic crisis unleashed in the country, faced popular rejection of his mandate.¹⁸⁹ The already dire economic situation prevented the people from welcoming the creation of a new wage tax.¹⁹⁰ Demonstrations of disapproval and rejection were swift, resulting in around 80 deaths.¹⁹¹ The critical situation forced military intervention; however, the lack of supplies and necessities fueled popular discontent, leading President Sánchez de Lozada to finally resign on October 17th, 2003.¹⁹²

History repeated itself in Bolivia years later, when the government of President Evo Morales reached its lowest point of popularity.¹⁹³ The unfulfilled promises of an indigenous socialist government, coupled with evidence of electoral fraud, led to violent civil manifestations.¹⁹⁴ The public order situation forced the

185. Marcela Valente, *Labour-Argentina: Unions Join Forces Against Economic Adjustment*, IPS (Aug. 30, 2001), <https://www.ipsnews.net/2001/08/labour-argentina-unions-join-forces-against-economic-adjustment/> [<https://perma.cc/U6TX-MG9J>].

186. See *La Renuncia de De la Rúa y los Cinco Presidentes en Once Días* [*The Resignation of De la Rúa and the Five Presidents in Eleven Days*], LOS ANDES (July 9, 2019, at 20:03 CT), <https://www.losandes.com.ar/la-renuncia-de-de-la-rua-y-los-cinco-presidentes-en-once-dias> [<https://perma.cc/W5Y3-V223>].

187. See *Argentine President Resigns*, *supra* note 183.

188. See *Argentina's Seven-Day President*, BBC NEWS (Dec. 22, 2001, at 14:04 GMT), <http://news.bbc.co.uk/2/hi/americas/1724982.stm> [<https://perma.cc/D862-H3LS>].

189. See PÉREZ-LIÑÁN, *supra* note 40, at 185.

190. See *id.*

191. See *Bolivian President Resigns Amid Chaos*, THE GUARDIAN (Oct. 17, 2003, at 20:47 EDT), <https://www.theguardian.com/world/2003/oct/18/bolivia> [<https://perma.cc/DQ7Q-BDKS>].

192. See PÉREZ-LIÑÁN, *supra* note 40, at 185.

193. CLARE RIBANDO SEELKE, CONG. RSCH. SERV., IN11198, BOLIVIA: PRESIDENTIAL RESIGNATION AND AFTERMATH 1 (2019) (noting Morales resigned after weeks of protests and that the military recommended he step down to prevent escalation of violence).

194. See *id.*; Carew Boulding et al., *The Real Story Behind the Bolivia Protests Isn't the One You're Hearing*, WASH. POST (Nov. 20, 2019),

popular assemblies of La Paz and Santa Cruz to demand new elections and the resignation of President Evo Morales.¹⁹⁵ The President's resignation was requested by the university community, and by the rector of the Public University of El Alto, Freddy Medrano, who repudiated the President for his arrogance and inability to listen to the people.¹⁹⁶ The President's resignation was also requested by the Bolivian Workers' Central, the country's largest union—and initial ally of the government—¹⁹⁷ as the only plausible means to calm the violence and social crisis in Bolivia.

Guatemala was not far behind, providing another example in which popular pressure forced the president's departure from the executive branch. President Jorge Serrano, who assumed the presidency for the 1991–1995 term and promised to solve the country's guerrilla problem during his campaign, faced a struggle with the other branches of government.¹⁹⁸ He attempted to dissolve Congress and the high courts, suspended the constitution, and called for a new constituent assembly.¹⁹⁹ This clear overstepping of his constitutional powers provoked the rejection of his continued mandate by the entire institutional framework, as well as by broad sectors of society, human rights organizations, the Catholic Church, business groups, and the media.²⁰⁰ President Serrano finally gave up and submitted

<https://www.washingtonpost.com/politics/2019/11/20/here-are-myths-about-bolivias-protests/>; Caroline Stauffer, *Evo Morales, Indigenous Icon, Loses Support Among Bolivia's Native People*, REUTERS (Aug. 24, 2018, at 11:00 GMT), <https://www.reuters.com/investigates/special-report/bolivia-indigenous/>.

195. See *Cabildos Cívicos Exigen Renuncia del Presidente y Nuevas Elecciones sin Evo ni Álvaro* [Civic Councils Demand the Resignation of the President and New Elections Without Evo or Álvaro], LA VOZ DE TARIJA (Oct. 31, 2019, at 21:20 CT), <https://lavozdetarija.com/2019/10/31/cabildos-civicos-exigen-renuncia-del-presidente-y-nuevas-elecciones-sin-evo-ni-alvaro/> [https://perma.cc/6WEC-YZZ3].

196. See *UPEA Se aleja del Gobierno, Pide Renuncia de Evo y de los Vocales del TSE* [UPEA Distances Itself from the Government, Asks for the Resignation of Evo and the Members of the TSE], AGENCIA DE NOTICIAS FIDES (Nov. 9, 2019, at 14:51 CT), <https://www.noticiasfides.com/nacional/politica/upea-se-aparta-del-gobierno-pide-renuncia-de-evo-y-de-los-vocales-del-tse> [https://perma.cc/R6WQ-WUMT].

197. Redacción EC, *La Poderosa Central Obrera Boliviana Rompe con Evo Morales y Pide su Renuncia* [The Powerful Bolivian Workers' Central Breaks with Evo Morales and Calls for his Resignation], EL COMERCIO (Nov. 10, 2019, at 13:38 CT), <https://elcomercio.pe/mundo/latinoamerica/evo-morales-la-central-obrera-boliviana-cob-pide-al-presidente-de-bolivia-que-renuncie-noticia/> [https://perma.cc/GGT6-B7LR].

198. PÉREZ-LIÑÁN, *supra* note 40, at 182–83.

199. *Id.*

200. See Jody García, *Serrano Elías: El Caso del Expresidente Más Esperado por la Justicia* [Serrano Elías: The Case of the Former President Most Awaited by Justice], LA HORA

his resignation on June 1st, 1993, subsequently going into exile in El Salvador and Panama.²⁰¹

The Paraguayan people achieved the resignation of President Raúl Cubas Grau, elected in 1998.²⁰² President Cubas Grau issued an amnesty order in favor of Lino Oviedo, a general imprisoned for sedition, with the intention of being able to govern jointly with him.²⁰³ This decision was overturned by the Supreme Court, which deemed such a pardon unconstitutional.²⁰⁴ The Court ordered General Oviedo's return to prison, a decision the President chose not to abide by.²⁰⁵ A confrontation ensued between public powers, which culminated in a massive social protest, with demonstrations by the media, as well as agricultural, youth, and social organizations.²⁰⁶ The government repressed the protests, and on March 24th, Congress announced the impeachment of the President.²⁰⁷ Two days later, the so-called "Paraguayan March" took place, consisting of a confrontation between snipers and civilians that resulted in the deaths of seven people and "some seven hundred" injuries.²⁰⁸ These events forced the President to resign on March 28th.²⁰⁹ Upon leaving office, he went into exile in Brazil.²¹⁰

The ousters of Jamil Mahuad in 2000 and Lucio Gutiérrez in 2005 in Ecuador are two more examples of how power exercised by the people can force the ouster of its leaders.²¹¹ The departure of Jamil Mahuad, elected as President on July 12th, 1998, was due to his government's inability to control the territorial conflict with Peru, as well as the economic decline and currency devaluation, which led to a massive social crisis.²¹² The devaluation of the sucre, the liberalization of fuel

(Aug. 17, 2012), <https://hemeroteca.lahora.gt/serrano-elias-el-caso-del-expresidente-mas-esperado-por-la-justicia/> [<https://perma.cc/CK8J-6YJ5>]; *Guatemala: Amnesty International's Concerns After President Serrano's "Autogolpe" (Self-Imposed Coup)*, AMNESTY INT'L (May 26, 1993), <https://www.amnesty.org/en/documents/AMR34/032/1993/en/> [<https://perma.cc/36N2-ZTAD>].

201. PÉREZ-LIÑÁN, *supra* note 40, at 182–83.

202. *Id.* at 30–32.

203. *Id.* at 31.

204. *Id.*

205. *Id.*

206. *Id.*; see *Assassination Fuels Political Turmoil in Paraguay*, DESERET NEWS (Mar. 24, 1999, at 00:00 MST), <https://www.deseret.com/1999/3/24/19436150/assassination-fuels-political-turmoil-in-paraguay/> [<https://perma.cc/N76R-NPRR>].

207. PÉREZ-LIÑÁN, *supra* note 40, at 31.

208. *Id.* at 31–32.

209. *Id.* at 32.

210. *Id.*

211. *Id.* at 29.

212. *Id.* at 183–84.

prices, tax increases, and the privatization of public services led to a general strike against the government's fiscal policies.²¹³ The economic crisis led to the declaration of a state of emergency on several occasions.²¹⁴ In 1999, the second wave of social protests, especially among indigenous sectors (the Conference of Indigenous Nationalities of Ecuador) against economic policies, led Mahuad to declare the dollarization of the economy on January 9th, 2000, which led to the consolidation of a National People's Parliament of Ecuador composed of indigenous people, the military, and sectors of civil society.²¹⁵ This body was established to terminate the President's term. Government agencies were seized, and the powers of the state were declared nonexistent to form a new governing junta, in which the indigenous movement would be the fundamental pillar.²¹⁶ The President ignored the power of the National People's Parliament of Ecuador, as well as the citizen protests.²¹⁷ Seeing his impending overthrow and possible arrest, the President decided to resign and flee to the United States on January 21st, 2000.²¹⁸ The legislative branch interpreted his departure as abandoning office, so Vice President Gustavo Noboa assumed the presidential mandate, as provided for in Article 167 of the Ecuadorian Constitution.²¹⁹

Equally atypical was the departure of President Lucio Gutiérrez in 2005.²²⁰ He also resigned due to social pressure, in the wake of the so-called "Outlaws' Rebellion."²²¹ His departure can also be interpreted as an overthrow of the

213. *Id.*

214. Larry Rohter, *Banks in Ecuador Reopen After Week's Closing, but Taxi Strike Aggravates Tensions*, N.Y. TIMES (Mar. 16, 1999), <https://archive.nytimes.com/www.nytimes.com/library/world/americas/031699ecuador-econ.html> [<https://perma.cc/RUC2-GUS6>].

215. See Larry Rohter, *In Ecuador, Using the Dollar to Hold the Line*, N.Y. TIMES (Jan. 18, 2000), <https://archive.nytimes.com/www.nytimes.com/library/world/americas/011800ecuador-us-dollar.html> [<https://perma.cc/62TJ-P5K4>].

216. Larry Rohter, *Ecuador Coup Shifts Control to No. 2 Man*, N.Y. TIMES (Jan. 23, 2000), <https://www.nytimes.com/2000/01/23/world/ecuador-coup-shifts-control-to-no-2-man.html>.

217. See *id.*

218. Associated Press, *Day of Rebellion Ends with Ouster of Ecuador Leader*, N.Y. TIMES (Jan. 22, 2000), <https://www.nytimes.com/2000/01/22/world/day-of-rebellion-ends-with-ouster-of-ecuador-leader.html>.

219. *Ecuador Ushers in New President*, IOL, <https://iol.co.za/news/world/2000-01-23-ecuador-ushers-in-new-president/> (last visited Feb. 2, 2026).

220. Hector Tobar & Orlando Perez, *Ecuadorean President Ousted from Office by Lawmakers*, L.A. TIMES (Apr. 21, 2005, at 00:00 PT), <https://www.latimes.com/archives/la-xpm-2005-apr-21-fg-ecuador21-story.html>.

221. See Patrick Larsen, *Ecuador: New Explosions are Being Prepared*, IN DEFENCE OF MARXISM (Mar. 3, 2006),

President by civil society and the political class.²²² Congress, outside the legislative building due to the violence in the streets, declared the President's abandonment of office and appointed Cynthia Viteri as President-designate.²²³

Fernando De la Rúa and Adolfo Rodríguez de Saá in Argentina, Gonzalo Sánchez de Lozada in 2003 in Bolivia, Jorge Serrano in 1993 in Guatemala, Raúl Cubas in 1999 in Paraguay, and, finally, Jamil Mahuad in 2000 and Lucio Gutiérrez in 2005 in Ecuador, decided to resign after popular pressure, especially from the middle and lower classes.²²⁴ Social organizations such as labor unions, through work stoppages, social protests, and the exertion of national and international media pressure, have demonstrated that they have significant power over the politicians elected to represent them in Congress.²²⁵ These examples of protests and coups show direct democracy is effective whether exercised institutionally or de facto.²²⁶

After analyzing the abnormal behavior of presidents' entry and exit in the context of Latin America, it is evident the creation of a solid, comprehensive legal system that encompasses all possible scenarios, or the distribution of functions in any public branch does not guarantee the stability of a presidential term.²²⁷ Presidentialism in Latin America is both strong and weak. The same social power that elevates a president to the top is also the one that can topple them. The voice

https://marxist.com/index.php?option=com_content&Itemid=72&id=2903&lang=en&view=article [<https://perma.cc/JD3N-FWGZ>].

222. *See id.*

223. *Ecuadorian President Ousted*, CBS NEWS (Apr. 21, 2005, at 07:43 EDT), <https://www.cbsnews.com/news/ecuadorian-president-ousted/> [<https://perma.cc/36Q7-YFC8>].

224. *See* Daniel Merolla & Philippe Bernes-Lasserre, *Trauma of Argentine 'Great Crisis' Lives on 20 Years Later*, INT'L BUS. TIMES (Dec. 17, 2021, at 02:34 EST), <https://www.ibtimes.com/trauma-argentine-great-crisis-lives-20-years-later-3359563> [<https://perma.cc/NE6P-KYJM>]; *Bolivia's President Resigns*, CBS NEWS (Oct. 21, 2003, at 17:41 EDT), <https://www.cbsnews.com/news/bolivias-president-resigns/> [<https://perma.cc/Q67X-9V24>]; *Jorge Antonio Serrano Elías*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/jorge-antonio-serrano-elias> [<https://perma.cc/U3MU-MBKC>]; Reuters, *Ousted Paraguayan Leader Resigns, and Army Backs Successor*, N.Y. TIMES (Mar. 29, 1999), <https://www.nytimes.com/1999/03/29/world/ousted-paraguayan-leader-resigns-and-army-backs-successor.html>; Paul Knox, *Lucio Gutiérrez*, BRITANNICA (Mar. 19, 2026), <https://www.britannica.com/biography/Lucio-Gutierrez>.

225. *See* sources cited *supra* note 224 (demonstrating the role social organizations have had in overthrowing presidents in Latin America).

226. *See* sources cited *supra* note 224 (showing the people of a nation will exercise their rights and opinions regardless of a regime's resistance).

227. *See, e.g.,* Rose-Ackerman & Melgar, *supra* note 34, at 1173 (discussing the limit legal policies and systems may have on presidential power).

of the people, when it does not feel represented by its designated spokespersons, is expressed loudly in the streets. The same society that passionately goes out to vote for its leaders, for their government programs, takes to the streets with equal vehemence to demand that its leaders fulfil their promises. The pressure exerted by a disillusioned and weary people has the power to force a president to resign. It is a more effective mechanism than any other contemplated by the constitution and the law.

VI. SUGGESTIONS

An analysis of the theory and practice of presidential immunity and impeachment in Latin America leads to three suggestions. First, eliminate the absolute presidential immunity in Nicaragua and Venezuela. This could open a way to end the atrocious dictatorships in both countries.²²⁸

Second, eliminate the requirement of impeachment or congressional pretrial as a prerequisite to begin criminal investigation and prosecution of the President. The effect would be that: (1) the president could be investigated and tried by judicial bodies that are more familiar with and exercise jurisdictional functions due to their legal nature; (2) the president would be treated equally with other citizens, eliminating special and privileged treatment and honoring the principle of legality and the rule of law, according to which all citizens are equal before the law and subject to it; (3) the risk of impunity could be reduced, because the judicial body is not inherently political and, therefore, would be less at risk of being politicized and manipulated by political forces and partisan interests; (4) the preventive function of punishment is emphasized, according to which eliminating immunity and increasing the likelihood of being tried and convicted reduces the intention to commit acts repudiated by the constitution and the law; and (5) the principle of separation of powers would be strengthened, giving greater importance to the judicial branch and reducing the risk of executive control over this branch of public power and manipulation of the legislative branch.²²⁹

Naturally, causes for criminal investigation of the President should be strictly described and the procedure should guarantee due process of the President. Those guarantees would reduce the risk of weakening presidential status and the role of the President. A complaint mechanism could be established by the public, with a filter through oversight bodies, and a clear code of prohibited conduct for the

228. *See supra* Part V (discussing the downsides of absolute presidential immunity in the context of Latin America).

229. *See supra* Part III (explaining robust standards for impeachment in Latin American countries could lead to presidential impunity or other negative outcomes if balance is not struck).

presidential figure, so that the judicial body would only have to analyze the classification of the president's conduct and proceed with prosecution and trial, as appropriate.²³⁰ For cases of common crimes, the criminal code could continue to apply to the President, as it applies to any citizen. For other types of conduct, the judicial body could seek the assistance of expert witnesses, as appropriate, such as those from the experts Human Rights Committees of the United Nations, the Inter-American Human Rights Commission, and the Organization of American States.²³¹

The third recommendation is to maintain the impeachment procedure only as a tool for political accountability. In this perspective, criminal law standards should not be required in an impeachment proceeding. Although it is inevitable that, as a political body, Congress will exhibit a political bias or preference, it must ensure that it acts as impartially as possible during the impeachment. To this end, it is important that Congress establish a set of clear and precise rules concerning the grounds and procedures for impeachment. This will strengthen parliamentary oversight on the executive and respect for the separation of powers.²³²

VII. CONCLUSION

This Article has undertaken a critical analysis of law in books and law in practice of presidential immunity and impeachment in Latin America. There are some design flaws in both models of presidential immunity: the broader and the narrower. To overcome those flaws, this Article has endorsed three suggestions: (1) eliminating absolute presidential immunity in Nicaragua and Venezuela; (2) eliminating the requirement of impeachment or congressional pretrial as a prerequisite to begin criminal investigation and prosecution of the president; and (3) maintaining the impeachment procedure only as a tool for political accountability. The implementation of these suggestions would strike a balanced way to protect the presidential status in the exercise of their role, while at the same time, preserving the rule of law and the separation of powers. It can also diminish the hypertrophy of the presidential status and render Latin American systems of government more suitable to the protection of rights and less vulnerable to the capture by political elites.

230. See, e.g., Rose-Ackerman & Melgar, *supra* note 34, at 1166 (explaining "public information access" which is a mechanism used in Latin America to increase transparency and accountability in the political process).

231. See Simon, *supra* note 4 (proposing presidential immunity should not be available for criminal acts).

232. See PÉREZ-LIÑÁN, *supra* note 40, at 209 (expecting fewer crimes committed by the President and impeachment procedures to become unusual under presidential systems with strong legislative accountability).